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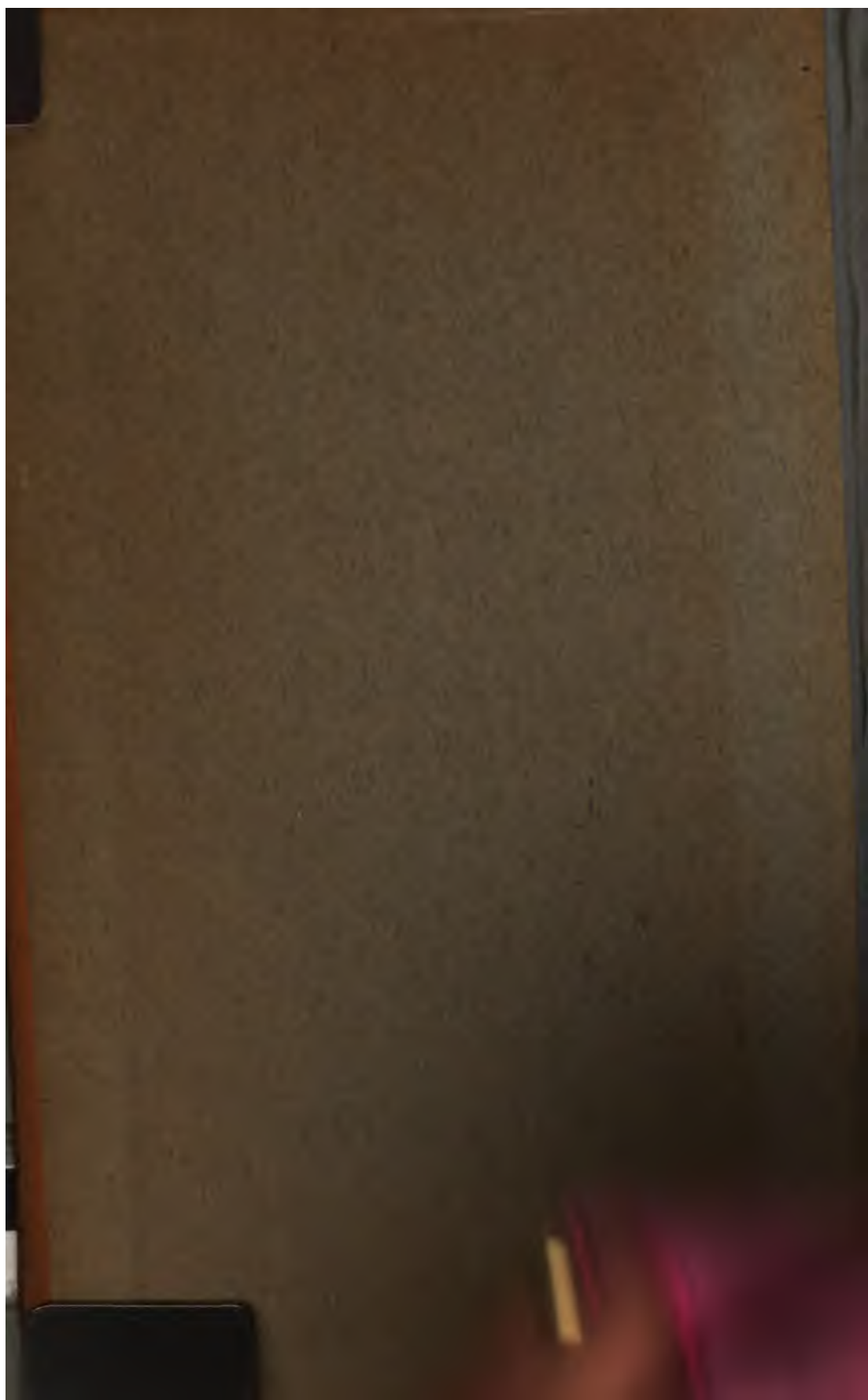
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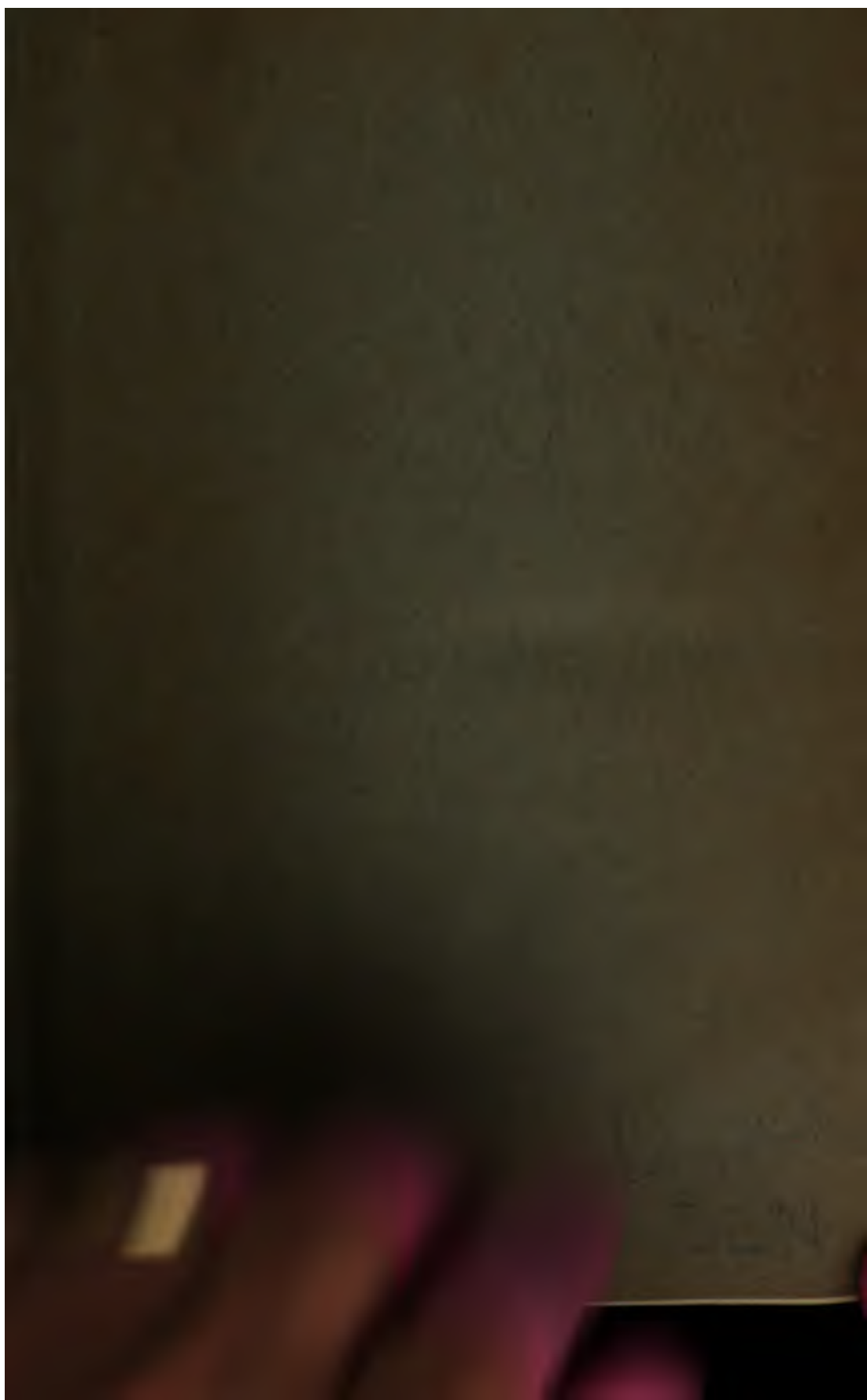
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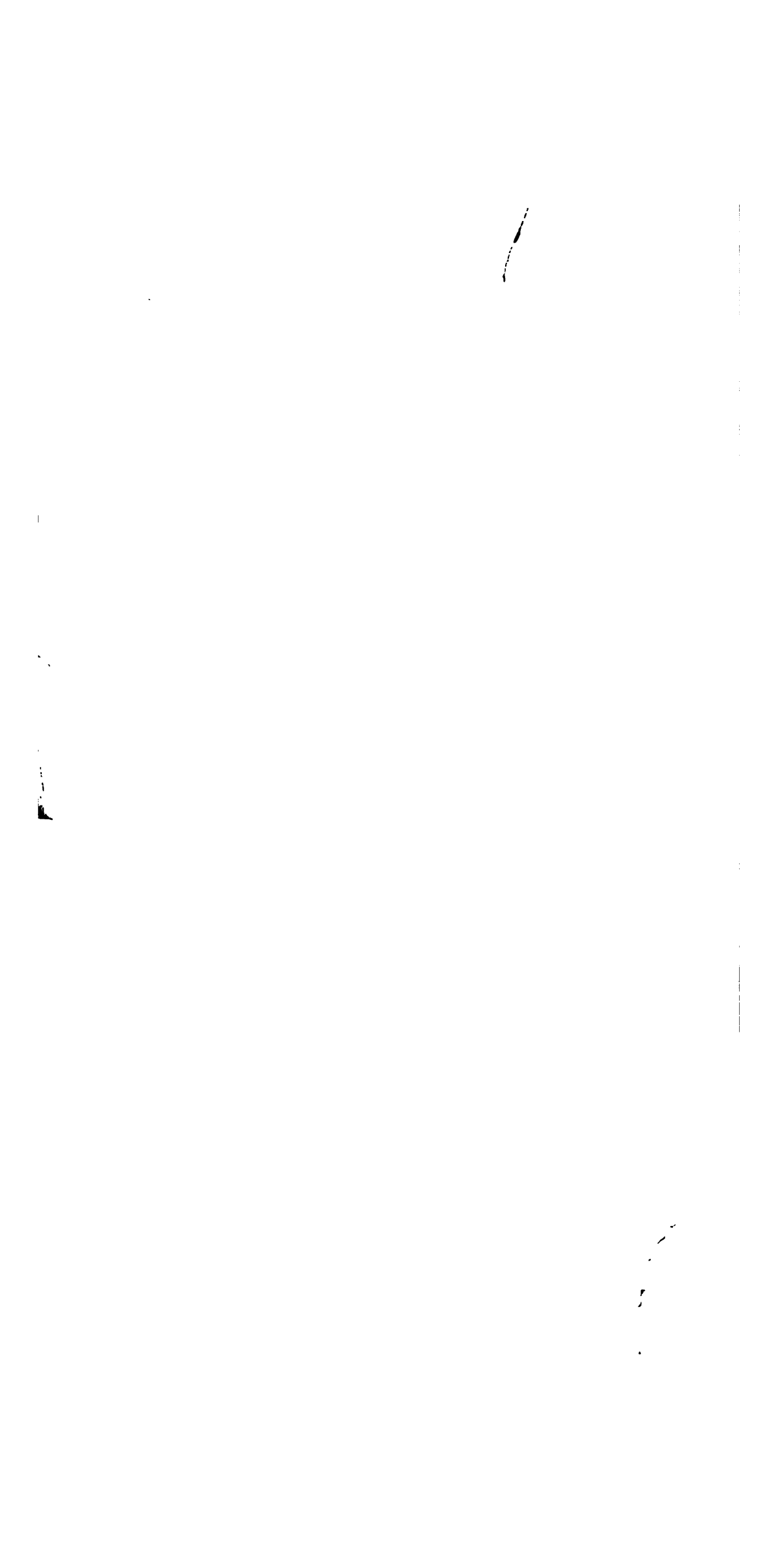
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# State Trials.

VOL. II.

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A  
COMPLETE COLLECTION  
OF  
State Trials

AND  
PROCEEDINGS FOR HIGH TREASON AND OTHER  
CRIMES AND MISDEMEANORS

FROM THE  
EARLIEST PERIOD TO THE YEAR 1783,  
WITH NOTES AND OTHER ILLUSTRATIONS:

COMPILED BY  
T. B. HOWELL, Esq. F.R.S. F.S.A.

INCLUDING,  
IN ADDITION TO THE WHOLE OF THE MATTER CONTAINED IN THE  
FOLIO EDITION OF HARGRAVE,  
UPWARDS OF TWO HUNDRED CASES NEVER BEFORE COLLECTED;

TO WHICH IS SUBJOINED  
*A TABLE OF PARALLEL REFERENCE,*  
RENDERING THIS EDITION APPLICABLE TO THOSE BOOKS OF AUTHORITY IN  
WHICH REFERENCES ARE MADE TO THE FOLIO EDITION.

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IN TWENTY-ONE VOLUMES.

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VOL. II.

1 JAMES I. TO 3 CHARLES I.....1603—1627.

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L O N D O N :

*Printed by T. C. Hansard, Peterborough-Court, Fleet-Street :*

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1816.



WILSON  
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# TABLE OF CONTENTS

TO

## VOLUME II.

### STATE TRIALS IN THE REIGN OF KING JAMES THE FIRST.

\* \* \* *The new Matter is marked [N.]*

	<i>Page</i>
74. The Trial of Sir WALTER RALEIGH, knt. at Winchester, for High Treason, 1603 - - - - -	1
75. The Trial of Sir GRIFFIN MARKHAM, knt. Sir EDWARD PARHAM, knt. GEORGE BROOKE, esq. BARTHOLOMEW BROOKESBY, esq. ANTHONY COPLEY, WILLIAM WATSON, Priest, and WILLIAM CLARKE, Priest, for High Treason, at Winchester, 1603 - - - - -	02
76. Proceedings in a CONFERENCE at HAMPTON COURT, respecting Reformation of the Church, 1604 [N.] - - - - -	70
77. The CASE between Sir FRANCIS GOODWIN and Sir JOHN FORTESCUE, relative to a Return for the County of Buckingham, 1604 - - - - -	91
78. The CASE of MIXED MONEY in Ireland, 1605 - - - - -	114
79. ARTICULI CLERI: Articles (so intitled by Lord Coke) of Complaint against the Judges of the Realm; exhibited by RICHARD BANCROFT, Archbishop of Canterbury, in the Name of the whole Clergy, 1605. Together with the Answers thereunto by all the Judges and Barons [N.] - - - - -	131
80. The Trials of ROBERT WINTER, THOMAS WINTER, GUY FAWKES, JOHN GRANT, AMBROSE ROOKWOOD, ROBERT KEYES, THOMAS BATES, and Sir EVERARD DIGBY, at Westminster, for High Treason, being Conspirators in the Gunpowder-Plot, 1606 - - - - -	150
The History of the Gunpowder-Plot, written by King James himself, extracted from the first Collection of his Works published during his life-time by Mountague, Bishop of Winchester [N].	105

## TABLE OF CONTENTS.

	<i>Page</i>
81. The Trial of HENRY GARNET, Superior of the Jesuits in England, at the Guildhall of London, for High Treason, being a Conspirator in the Gunpowder Plot, 1606	218
82. A true Report of the Arraignment, Tryall, Conviction, and Condemnation, of a Popish Priest, named ROBERT DREWRIE, at the Sessions-house in the Old Baylie, on Friday and Wednesday, the 20th and 24th of February, 1687 [N.]	358
83. The CASE of IMPOSITIONS, on an Information in the Exchequer by the Attorney-General against Mr. JOHN BATES, Merchant, 1606—1610	371
84. The Conviction and Attainder of ROBERT LALOR, Priest, being indicted on the Statute of the 16th Richard II. cap. 5: Commonly called, The Case of Præmunire in Ireland	534
85. The Case of the POSTNATI, or of the Union of the Realm of Scotland with England, 1608	559
86. The Trial of GEORGE SPROT, in Scotland, for High Treason, in conspiring with JOHN Earl of GOWRIE, to murder King James I. 1608	698
87. The Process and Trial of ROBERT LOGAN, of Restalrig, for High Treason, in conspiring with JOHN Earl of GOWRIE, to murder King James I. 1609	707
88. The Trial of Lord BALMERINOTH, at St. Andrew's, for High Treason, 1609	722
89. The CASE of PROCLAMATIONS, 1610 [N.]	723
90. The Cases of BARTHOLOMEW LEGAT and EDWARD WIGHTMAN, for Heresy, 1612 [N.]	727
91. The Earl of SHREWSBURY's Case; or the Case of Dignities, 1612 [N.]	742
92. The Arraignment and Confession of the Lord SANQUIRE, (who, being a Baron of Scotland, was arraigned by the Name of ROBERT CREIGHTON, esq.) at the King's-bench Bar, in Westminster-hall, the 27th of June, for procuring the Murder of John Turner, a Master of Defence, whom he caused to be shot with a Pistol by one Carliel, a Scottish-man, for thrusting out one of his Eyes in playing at Rapier and Dagger, 1612	743
93. Proceedings against Mr. JAMES WHITELOCKE, in the Star-Chamber, for a Contempt of the King's Prerogative, 1613	766
94. Proceedings against MARY Countess of SHREWSBURY, before a Select Council, for a Contempt in refusing to answer fully before the Privy Council, or to subscribe her Examination, 1612	770
95. Case of Mr. WILLIAM TALBOT, on an Information <i>ore tenus</i> , for maintaining a Power in the Pope to depose and kill Kings, 1613	778
96. Proceedings between the Lady FRANCES HOWARD, Countess of Essex, and ROBERT Earl of Essex, her Husband, before the King's Delegates, in a Cause of Divorce, 1613	786
97. The Earl of NORTHAMPTON's Case, 1613 [N.]	862
98. Proceedings against Dr. RICHARD NEILE, Bishop of Lincoln, for Words spoken in the House of Lords, 1614 [N.]	866

TABLE OF CONTENTS.

	vii
	Page
99. The Case of EDMUND PEACHAM, for Treason, 1615 [N.] - - -	870
100. The Case of JOHN OWEN, otherwise COLLINS, for Treason, 1615 [N.] -	879
101. Proceedings against JOHN OGILVIE, for High Treason, at Glasgow, in Scotland, 1615 - - - - -	884
The Arraignment of John Ogilvie, on Tuesday the 28th of February, in the Town-house of Glasgow, before James Hamilton, James Bell, Colin Campbell, and James Bradwood, Bailiffs of the City, Justices appointed by special Commission for that Business, by the Lords of the Privy-Council - - - - -	887
102. The Case of Mr. OLIVER ST. JOHN, on an Information <i>ore tenus</i> , in the Star-Chamber, for writing and publishing a Paper against a Benevo- lence collected under Letters of the Privy-Council, 1615 - - -	899
103. The Trial of RICHARD WESTON, at the Guildhall of London, for the Mur- der of Sir Thomas Overbury, 1615 - - - - -	911
104. The Trial of ANNE TURNER, Widow, at the King's-bench, for the Murder of Sir Thomas Overbury, 1615 - - - - -	930
105. The Trial of Sir JERVIS ELWES, knt. Lieutenant of the Tower; at the Guildhall of London, for the Murder of Sir Thomas Overbury, 1615 -	935
106. The Trial of JAMES FRANKLIN, at the King's-bench, for the Murder of Sir Thomas Overbury, 1615 - - - - -	947
107. The Arraignment of Sir THOMAS MONSON, knt. at the Guildhall of Lon- don, for the Murder of Sir Thomas Overbury, 1615 - - -	950
108. The Trial of the Lady FRANCES Countess of SOMERSET, for the Murder of Sir Thomas Overbury, 1616 - - - - -	951
109. The Trial of ROBERT CARR, Earl of SOMERSET, for the Murder of Sir Thomas Overbury, 1616 - - - - -	966
110. The Proceedings against Sir JOHN HOLLIS, Sir JOHN WENTWORTH, and Mr. LUMSDEN, in the Star-Chamber, for traducing the Public Justice, 1615	1022
111. The CASE OF DUELS; or Proceedings in the Star-Chamber, against Mr. WILLIAM PRIEST, for writing and sending a Challenge, and Mr. RICHARD WRIGHT for carrying it, 1615 - - - - -	1034
112. The Case of MARY SMITH, for Witchcraft, 1616 [N.] - - - -	1050
113. Proceedings against Mr. WRAYNEAM, in the Star-Chamber, for slander- ing the Lord-Chancellor Bacon of Injustice, 1618 - - - -	1059
114. The Case of WILLIAMS, of ESSEX, for Treason, 1619 [N.] - - -	1086
115. Proceedings in Parliament against FRANCIS BACON Lord Verulam, Viscount St. Albans, Lord Chancellor of England, upon an Impeachment for Bribery and Corruption in the Execution of his Office: And also against Dr. THEOPHILUS FIELD, Bishop of Llandaff, 1620 - - -	1097
116. Proceedings in Parliament against Sir GILES MOMPESON, a Monopolist and Patentee, 1620 [N.] - - - - -	1119

## TABLE OF CONTENTS.

	<i>Page</i>
117. Proceedings in Parliament against Sir FRANCIS MITCHELL, a Monopolist and Patentee, and Co-partner with Sir Giles Mompesson, 1621 [N.]	1131
118. Proceedings against Sir HENRY YELVERTON, the King's Attorney-General, for Misdemeanors, 1621 [N.]	1133
119. Proceedings in Parliament against Sir JOHN BENNETT, <i>knt.</i> for Bribery and Corruption, 1621 [N.]	1146
120. Proceedings in Parliament against EDWARD FLOYDE, for scandalizing the Princess Palatine, 1621 [N.]	1154
121. Proceedings against GEORGE ABBOT, Archbishop of Canterbury, for the killing of Edward Hawkins, one of the Lord Zouch's Keepers, 1621 [N.]	1159
122. Proceedings on the Impeachment of the Lord Treasurer MIDDLESEX, for High Crimes and Misdemeanors, 1624 [N.]	1153
123. Proceedings in Parliament against SAMUEL HARNET, Bishop of Norwich, for Extortion and other Misdemeanors, 1624 [N.]	1254

## KING CHARLES THE FIRST.

124. Proceedings in Parliament against RICHARD MOUNTAGUE, Clerk, for publishing a factious and seditious Book, 1625 [N.]	1258
125. Proceedings in Parliament against the Duke of BUCKINGHAM, the Earl of BRISTOL, and the Lord CONWAY, for High Crimes and Misdemeanors, 1626 [N.]	1267
126. Case of GEORGE ABBOT, Archbishop of Canterbury, for refusing to licence a Sermon preached by Dr. Sibthorpe, in order to promote the Loan and to justify the King's imposing Public Taxes without consent of Parliament, 1627 [N.]	1459

2

COBBETT'S  
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State Trials.

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74. The Trial of Sir WALTER RALEIGH, knt. at Winchester, for High Treason: 1 JAMES I. 17th of November, A. D. 1603.

THE Commissioners were, Henry Howard, earl of Suffolk, Lord Chamberlain; Charles Blunt, earl of Devon; lord Henry Howard, afterwards earl of Northampton; Robert Cecil, earl of Salisbury; Edward lord Wotton of Morley; sir John Stanhope, Vice Chamberlain, L. C. Justice of England, Popham; L. C. Justice of the Common-Pleas, Anderson; Mr. Justice Gawde; Justice Warburton; and sir W. Wade.

First, the Commission of Oyer and Terminer was read by the Clerk of the Crown Office; and the prisoner bid to hold up his hand.

And then presently the INDICTMENT, which was in effect as followeth:

"That he did conspire, and go about to deprive the king of his Government; to raise up Sedition within the realm; to alter religion, to bring in the Roman Superstition and to procure foreign enemies to invade the kingdom. That the lord Cobham, the 9th of June last, did meet with the said sir Walter Raleigh in Durham-house, in the parish of St. Martin's in the Fields, and then and there had conference with him, how to advance Arabella Stuart\* to the crown and royal throne of this

kingdom; and that then and there it was agreed, that Cobham should treat with Aremberg, ambassador from the archduke of Austria, to obtain of him 600,000 crowns, to bring to pass their intended treason. It was agreed that Cobham should go to the archduke Albert, to procure him to advance the pretended title of Arabella: from thence knowing that Albert had not sufficient means to maintain his own army in the Low Countries, Cobham should go

lady was daughter to Charles Stuart, (younger brother to our king's father) by Elizabeth Cavendish, and was married some years past to sir William Seymour, son to the lord Beauchamp, and grandchild to Edward earl of Hertford; both at some distance allied to the crown, therefore such a conjunction would not be admitted in the Royal Almanack; so dreadful is every apparition that comes near princes titles. Sir William Seymour for the marriage was committed to the Tower, and the lady Arabella confined to her house at High-gate. But after some imprisonment, they conclude to escape beyond sea together; appointing to meet at a certain place upon the Thames. Sir William leaving his man in his bed, to act his part with his keeper, got out of the Tower in a disguise, and came to the place appointed. She, dressed like a young gallant in man's attire, followed him from her house; but staying long above the limited time, made him suspicious of her interception; so that he went away, leaving notice if she came, that he was gone away before to Dunkirk. She, good lady, fraught with more fears, and lagging in her flight, was apprehended, brought back to the Tower, and there finished her earthly pilgrimage. She being dead, sir William Seymour got leave to return home, and married since to the lady Frances, daughter to the late earl of Essex."

\* This Arabella Stuart was daughter of Charles Stuart earl of Lennox, brother of Henry lord Darnley father of king James the 1st. These Charles and Henry were sons of Margaret the daughter of Margaret eldest sister of Henry 8th, and mother of James the 5th of Scotland; father of the celebrated Mary the mother of James the 1st of England. The contemporary historian Wilson, after mentioning the poisoning of Overbury, writes thus: "The lady Arabella dying about this time in the Tower, set mens tongues and fears at work, that she went the same way. Such mischief doth one evil action introduce, that it makes a great road for jealousy to pursue after it. The



to Spain to procure the king to assist and further her pretended title.—It was agreed, the better to effect all this Conspiracy, that Arabella should write three Letters, one to the Archduke, another to the king of Spain, and a third to the duke of Savoy; and promise three things:—1. To establish a firm Peace between England and Spain. 2. To tolerate the Popish and Roman Superstition. 3. To be ruled by them in contracting of her Marriage.—And for the effecting of these traitorous purposes, Cobham should return by the isle of Jersey, and should find sir Walter Raleigh captain of the said Isle, there, and take counsel of Raleigh for the distributing of the aforesaid crowns, as the occasion or discontentment of the subjects should give cause and way.—And further, That Cobham and his brother Brook met on the 9th of June last, and Cobham told Brook all these Treasons: to the which Treasons Brook gave his assent, and did join himself to all these. And after, on the Thursday following, Cobham and Brook did speak these words; ‘That there would never be a good world in England, till the king’ (meaning our sovereign lord) ‘and his cubs’ (meaning his royal issue) ‘were taken away.’—And the more to disable and deprive the king of his crown, and to confirm the said Cobham in his intents, Raleigh did publish a Book, falsely written against the most just and royal Title of the king, knowing the said Book to be written against the just Title of the king; which Book Cobham after that received of him. Further, for the better effecting these traitorous purposes, and to establish the said Brook in his intent, the said Cobham did deliver the said Book unto him the 14th of June. And further, the said Cobham, on the 16th of June, for accomplishment of the said Conference, and by the traitorous instigation of Raleigh, did move Brook to incite Arabella to write to the three forenamed princes, to procure them to advance her Title; and that she after she had obtained the crown, should promise to perform three things, viz. 1. Peace between England and Spain. 2. To tolerate with impunity the Popish and Roman Superstitions. 3. To be ruled by them three in the contracting of her marriage.—To these motions the said Brook gave his assent. And for the better effecting of the said Treasons, Cobham on the 17th of June, by the instigation of Raleigh, did write Letters to count Aremberg, and did deliver the said Letters to one Matthew de Lawrency, to be delivered to the said count, which he did deliver, for the obtaining of the 600,000 crowns; which money by other Letters count Aremberg did promise to perform the payment of; and this Letter Cobham received the 18th of June. And then did Cobham promise to Raleigh, that when he had received the said money, he would deliver 8000 crowns to him, to which motion he did consent; and afterwards Cobham offered Brook, that after he should receive the said crowns, he would give to him 10,000 thereof; to which motion Brook did assent.”

To the Indictment, Sir Walter Raleigh pleaded Not Guilty.

The Jury were sir Ralph Conisby, sir Thomas Fowler, sir Edward Peacock, sir Wm. Rowe, knights; Henry Goodyer, Thomas Walker, Roger Wood, Thomas Whitby, esquires; Tho. Highgate, Robert Kempton, John Chawkey, Robert Bromley, gentlemen.

Sir Walter Raleigh, Prisoner, was asked, Whether he would take exceptions to any of the Jury?

*Raleigh.* I know none of them; they are all Christians, and honest gentlemen, I except against none.

*E. of Suffolk.* You gentlemen of the king’s learned Counsel, follow the same course as you did the other day.

*Raleigh.* My lord, I pray you I may answer the points particularly as they are delivered, by reason of the weakness of my memory and sickness.

*L. C. J. Popham.* After the king’s learned council have delivered all the Evidence, sir Walter, you may answer particularly to what you will.

*Heale,* the King’s Serjeant. You have heard of Raleigh’s bloody attempts to kill the king and his royal progeny, and in place thereof, to advance one Arabella Stuart. The particulars of the Indictment are these: First, that Raleigh met with Cobham the 9th of June, and had Conference of an Invasion, of a Rebellion, and an Insurrection, to be made by the king’s subjects, to depose the king, and to kill his children, poor babes that never gave offence. Here is blood, here is a new king and governor. In our king consists all our happiness, and the true use of the Gospel; a thing which we all wish to be settled, after the death of the queen. Here must be Money to do this, for money is the sinew of war. Where should that be had? count Aremberg must procure it of Philip king of Spain, five or six hundred thousand crowns; and out of this sum Raleigh must have 8000. But what is that count Aremberg? Though I am no good Frenchman, yet it is as much as to say in English, earl of Aremberg. Then there must be Friends to effect this: Cobham must go to Albert archduke of Austria, for whom Aremberg was ambassador at that time in England. And what then? He must persuade the duke to assist the pretended title of Arabella. From thence Cobham must go to the king of Spain, and persuade him to assist the said title. Since the Conquest, there was never the like Treason. But out of whose head came it? Out of Raleigh’s, who must also advise Cobham to use his brother Brook to incite the lady Arabella to write three several Letters, as aforesaid in the Indictment: all this was on the 9th of June. Then three days after, Brook was acquainted with it. After this, Cobham said to Brook, ‘It will never be well in England, till the king and his ‘cubs’ are taken away.’ Afterwards, Raleigh delivered a book to Cobham, treacherously written against the Title of

the king. It appears that Cobham took Raleigh to be either a God, or an idol. Cobham endeavours to set up a new king, or governor; God forbid mine eyes should ever see so unhappy a change. As for the lady Arabella, she, upon my conscience, hath no more Title to the crown than I have, which before God I utterly renounce. Cobham, a man bred in England, hath no experience abroad; but Raleigh, a man of great wit, military, and a sword-man. Now, whether these things were bred in a hollow tree, I leave to them to speak of, who can speak far better than myself.—And so sat him down again.

*Attorney General* (Sir Ed. Coke) I must first, my lords, before I come to the cause, give one caution, because we shall often mention persons of eminent places, some of them great monarchs: whatever we say of them, we shall but repeat what others have said of them; I mean the Capital Offenders in their Confessions. We professing law, must speak reverently of kings and potentates. I perceive these honourable lords, and the rest of this great assembly, are come to hear what hath been scattered upon the wrack of report. We carry a just mind, to condemn no man, but upon plain Evidence. Here is Mischief, Mischief in *summo gradu*, exorbitant Mischief. My Speech shall chiefly touch these three points; Imitation, Supportation, and Defence.—The Imitation of evil ever exceeds the Precedent; as on the contrary, imitation of good ever comes short. Mischief cannot be supported but by Mischief; yea it will so multiply, that it will bring all to confusion. Mischief is ever underpropped by falshood or foul practices: and because all these things did concur in this Treason, you shall understand the main, as before you did the bye.—The Treason of the bye consisteth in these Points: first, that the lord Grey, Brook, Markham, and the rest, intended by force in the night to surprize the king's court; which was a Rebellion in the heart of the realm, yea, in the heart of the heart, in the Court. They intended to take him that is a sovereign, to make him subject to their power, purposing to open the doors with musquets and cavaliers, and to take also the Prince and Council: then under the king's authority to carry the king to the Tower; and to make a stale of the admiral. When they had the king there, to extort three things from him: first, A Pardon for all their Treasons: Secondly, A Toleration of the Roman Superstition; which their eyes shall sooner fall out than they shall ever see; for the king hath spoken these words in the hearing of many, 'I will lose the crown and my life, before ever I will alter Religion.' And thirdly, To remove Counsellors. In the room of the Lord Chancellor, they would have placed one Watson a priest, absurd in Humanity and ignorant in Divinity. Brook, of whom I will speak nothing, Lord Treasurer. The great Secretary must be Markham; *Oculus patriæ*. A hole must be found in my Lord Chief Jus-

tice's coat. Grey must be Earl-Marshal, and Master of the Horse, because he would have a table in the court; marry, he would advance the earl of Worcester to a higher place. All this cannot be done without a multitude: therefore Watson the priest tells a resolute man, that the king was in danger of Puritans and Jesuits; so to bring him in blindfold into the action, saying, That the king is no king till he be crowned; therefore every man might right his own wrongs: but he is *rex natus*, his dignity descends as well as yours, my lords. Then Watson imposeth a blasphemous Oath, that they should swear to defend the king's person; to keep secret what was given them in charge, and seek all ways and means to advance the Catholic Religion. Then they intend to send for the Lord Mayor and the Aldermen, in the king's name, to the Tower; lest they should make any resistance, and then to take hostages of them; and to enjoin them to provide for them victuals and munition. Grey, because the king removed before Midsummer, had a further reach, to get a Company of Sword-men to assist the action: therefore he would stay till he had obtained a regiment from Ostend or Austria. So you see these Treasons were like Sampson's foxes, which were joined in their tails, though their heads were severed.

*Raleigh*. You Gentlemen of the Jury, I pray remember, I am not charged with the Bye, being the Treason of the priest.

*Attorney*. You are not. My lords, you shall observe three things in the Treasons: 1. They had a Watch-word (the king's safety); their Pretence was *Bonum in se*; their Intent was *Malum in se*; 2. They avouched Scripture; both the priests had *Scriptum est*; perverting and ignorantly mistaking the Scriptures: 3. They avouched the Common Law, to prove that he was no king until he was crowned; alledging a Statute of 13 Eliz. This, by way of Imitation, hath been the course of all Traitors.—In the 20th of Edw. 2. Isabella the Queen, and the lord Mortimer, gave out, that the king's Person was not safe, for the good of the Church and Commonwealth. The Bishop of Carlisle did preach on this Text, 'My head is grieved,' meaning by the Head, the King; what when the Head began to be negligent, the people might reform what is amiss. In the 3rd of Henry 4, sir Roger Clarendon, accompanied with two priests, gave out, that Richard 2, was alive, when he was dead. Edward 3 caused Mortimer's head to be cut off, for giving counsel to murder the king. The 3rd of Henry 7, sir Henry Stanley found the crown in the dust, and set it on the king's head: when Fitzwater and Garret told him, that Edward 5 was alive, he said, 'If he be alive, I will assist him.' But this cost him his head. Edmund de la Pole, duke of Suffolk, killed a man in the reign of king Henry 7, for which the king would have him hold up his hand at the bar, and then pardoned him: Yet he took such an offence therat, that he sent to the noblemen to help to reform the Commonwealth; and then said, he

would go to France and get power there. Sir Roger Compton knew all the Treason, and discovered Windon and others that were attainted. He said, there was another thing that would be stood upon, namely, that they had but one Witness. Then he vouched one Appleyard's Case, a Traitor in Norfolk, who said, a man must have two accusers. Hehns was the man that accused him; but Mr. justice Catlin said, that that Statute was not in force at that day. His words were, 'Thrust her into the ditch.' Then he went on speaking of Accusers, and made this difference: an Accuser is a speaker by report; when a Witness is he that upon his oath shall speak his knowledge of any man.—A third sort of Evidence there is likewise, and this is held more forcible than either of the other two; and that is, when a man, by his accusation of another, shall, by the same accusation, also condemn himself, and make himself liable to the same fault and punishment: this is more forcible than many Witnesses. So then so much by way of Imitation.—Then he defined Treason: there is Treason in the heart, in the hand, in the mouth, in consummation: comparing that *in corde* to the root of a tree; *in ore*, to the bud; *in manu* to the blossom; and that which is *in consummatione*, to the fruit.—Now I come to your Charge, You of the Jury: the greatness of Treason is to be considered in these two things, *Determinatione finis*, and *Electione mediourum*. This Treason excelleth in both, for that it was to destroy the king and his progeny. These Treasons are said to be *Crimen læsæ majestatis*; this goeth further, and may be termed, *Crimen extirpanda regie majestatis, & totius progenici suæ*. I shall not need, my lords, to speak any thing concerning the King, nor of the bounty and sweetness of his nature, whose thoughts are innocent, whose words are full of wisdom and learning, and whose works are full of honour: although it be a true Saying, *Nunquam nimis quod nunquam satis*. But to whom do you bear Malice? to the Children?

*Raleigh*. To whom speak you this? You tell me news I never heard of.

*Attorney*. Oh, sir, do I? I will prove you the notorious Traitor that ever came to the bar. After you have taken away the King, you would alter Religion: as you sir Walter Raleigh, have followed them of the Bye in Imitation: for I will charge you with the Words.

*Raleigh*. Your words cannot condemn me; my innocency is my defence. Prove one of these things wherewith you have charged me, and I will confess the whole Indictment, and that I am the horriblest Traitor that ever lived, and worthy to be crucified with a thousand thousand torments.

*Attorney*. Nay, I will prove all: thou art a monster; thou hast an English face, but a Spanish heart. Now you must have Money: Arenberg was no sooner in England (I charge thee Raleigh) but thou incitedst Cobham to go unto him, and to deal with him for Money, to bestow

on discontented persons, to raise Rebellion on the kingdom.

*Raleigh*. Let me answer for myself.

*Attorney*. Thou shalt not.

*Raleigh*. It concerneth my life.

*L. C. J.* Sir Walter Raleigh, Mr. Attorney is but yet in the General: but when the king's Counsel have given the Evidence wholly you shall answer every Particular.

*Attorney*. Oh! do I touch you?

*Lord Cecil*. Mr. Attorney, when you have done with this General Charge, do you not mean to let him answer every Particular?

*Attorney*. Yes, when we deliver the Proofs to be read. Raleigh procured Cobham to go to Arenberg, which he did by his instigation: Raleigh supped with Cobham before he went to Arenberg; after supper, Raleigh conducted him to Durham-house; from thence Cobham went with Lawrency, a servant of Arenberg's, unto him, and went in by a back way. Cobham could never be quiet until he had entertained this motion, for he had four Letters from Raleigh. Arenberg answered, The Money should be performed, but knew not to whom it should be distributed. Then Cobham and Lawrency came back to Durlam-house, where they found Raleigh. Cobham and Raleigh went up, and left Lawrency below, where they had secret conference in a gallery; and after, Cobham and Lawrency departed from Raleigh. Your jargon was Peace: What is that? Spanish Invasion, Scottish Subversion. And again, you are not a fit man to take so much Money for procuring of a lawful Peace, for peace procured by money is dishonourable. Then Cobham must go to Spain, and return by Jersey, where you were Captain: and then, because Cobham had not so much policy, or at least wickedness, as you, he must have your advice for the distribution of the Money. Would you have deposed so good a king, lineally descended of Elizabeth, eldest daughter of Edward 4? Why then must you set up another? I think you meant to make Arabella a Titular Queen, of whose Title I will speak nothing; but sure you meant to make her a stale. Ah! good lady, you could mean her no good.

*Raleigh*. You tell me news, Mr. Attorney.

*Att.* Oh, sir! I am the more large, because I know with whom I deal: for we have to deal to-day with a man of wit.

*Raleigh*. Did I ever speak with this lady?

*Att.* I will track you out before I have done. Englishmen will not be led by persuasion of words, but they must have books to persuade.

*Raleigh*. The Book was written by a man of your profession, Mr. Attorney.

*Att.* I would not have you impatient.

*Raleigh*. Methinks you fall out with yourself; I say nothing.

*Att.* By this Book you would persuade men, that he is not the lawful king. Now let us consider some circumstances: My lords, you know my lord Cobham (for whom we all lament and rejoice; lament in that his house, which

bath stood so long unspotted, is now ruined; rejoice, in that his Treasons are revealed :) he is neither politician nor sword man; Raleigh was both, united in the Cause with him, and therefore cause of his destruction. Another circumstance is, the secret contriving of it. Humphry Stafford claimed Sanctuary for Treason. Raleigh, in his Machiavelian policy, bath made a Sanctuary for Treason: He must talk with none but Cobham; because, saith he, one Witness can never condemn me. For Brook said unto sir Griffith Markham, 'Take heed how you do make my lord Cobham acquainted; for whatsoever he knoweth, Raleigh the witch will get it out of him.' As soon as Raleigh was examined on one point of Treason concerning my lord Cobham, he wrote to him thus; 'I have been examined of you, and confessed nothing.' Further, you sent to him by your trusty Francis Kemish, that one Witness could not condemn; and therefore bad his lordship be of good courage. Came this out of Cobham's quiver? No: but out of Raleigh's Machiavelian and devilish policy. Yea, but Cobham did retract it; why then did ye urge it? Now then see the most horrible practices that ever came out of the bottomless pit of the lowest hell. After that Raleigh had intelligence that Cobham had accused him, he endeavoured to have intelligence from Cobham, which he had gotten by young sir John Payton: but I think it was the error of his youth.

Raleigh. The lords told it me, or else I had not been sent to the Tower.

Att. Thus Cobham, by the instigation of Raleigh, entered into these actions: So that the question will be, Whether you are not the principal Traitor, and he would nevertheless have entered into it? Why did Cobham retract all that same? First, Because Raleigh was so odious, he thought he should fare the worse for his sake. Secondly, he thought thus with himself, If he be free I shall clear myself the better. After this, Cobham asked for a Preacher to confer with, pretending to have Dr. Andrews; but indeed he meant not to have him, but Mr. Galloway; a worthy and reverend preacher, who can do more with the king (as he said) than any other; that he, seeing his constant denial, might inform the king thereof. Here he plays with the preacher. If Raleigh could persuade the lords, that Cobham had no intent to travel, then he thought all should be well. Here is Forgery! In the Tower Cobham must write to sir Thomas Vane, a worthy man, that he meant not to go into Spain: which Letter Raleigh devised in Cobham's name.

Raleigh. I will wash my hands of the Indictment, and die a true man to the king.

Att. You are the absolutest Traitor that ever was.

Raleigh. Your phrases will not prove it.

Att. Cobham writeth a Letter to my lord Cecil, and doth will Mellis's man to lay it in a Spanish Bible, and to make as though he found it by chance. This was after he had intelligence with this viper, that he was false.

Lord Cecil. You mean a Letter intended to me; I never had it.

Att. No, my lord, you had it not. You, my masters of the jury, respect not the wickedness and hatred of the man, respect his cause: if he be guilty, I know you will have care of it, for the preservation of the king, the continuance of the Gospel authorized, and the good of us all.

Raleigh. I do not hear yet, that you have spoken one word against me; here is no Treason of mine done: If my lord Cobham be a Traitor, what is that to me?

Att. All that he did was by thy instigation, thou Viper; for I thou\* thee, thou Traitor.

Raleigh. It becometh not a man of quality and virtue, to call me so: But I take comfort in it, it is all you can do.

Att. Have I angered you?

Raleigh. I am in no case to be angry.

C. J. Popham. Sir Walter Raleigh, Mr. Attorney speaketh out of the zeal of his duty, for the service of the king, and you for your life; be valiant on both sides.

#### The Lord COBHAM'S Examination.

"He confesseth, he had a Passport to go into Spain, intending to go to the Archduke, to confer with him about these Practices; and because he knew the Archduke had not Money to pay his own army, from thence he meant to go to Spain, to deal with the king for the 600,000 crowns, and to return by Jersey; and that nothing should be done, until he had spoken with sir Walter Raleigh for distribution of the Money to them which were discontented in England. At the first beginning, he breathed out oaths and exclamations against Raleigh, calling him Villain and Traitor; saying he had never entered into these courses, but by his instigation, and that he would never let him alone."—[Here Mr. Attorney willed the Clerk of the Crown-Office to read over these last words again, 'He would never let him alone.'] "Besides he spake of Plots and Invasions; of the particulars whereof he could give no account, though Raleigh and he had conferred of them. Further he said, he was afraid of Raleigh, that when he should return by Jersey, that he would have delivered him and the Money to the king. Being examined of sir Arthur Gorge, he freed him, saying, They never durst trust him: but sir Arthur Savage they intended to use, because they thought him a fit man".

Raleigh. Let me see the Accusation: This is absolutely all the Evidence can be brought against me; poor shifts! You Gentlemen of the Jury, I pray you understand this. This is that which must either condemn, or give me life; which must free me, or send my wife and children to beg their bread about the streets:

\* Shakespear, in all probability, alludes to this, when he makes sir Toby in giving directions to sir Andrew for his challenge to Viola, say, If thou thou'st him some thrice, it may not be amiss." See Twelfth Night.

This is that must prove me a notorious Traitor, or a true subject to the king. Let me see my Accusation, that I may make my Answer.

*Clerk of the Council.* I did read it, and shew you all the Examinations.

*Raleigh.* At my first Examination at Windsor, my lords asked me, what I knew of Cobham's practice with Aramberg, I answered negatively: And as concerning Arabella, I protest before God, I never heard one word of it. If that be proved, let me be guilty of ten thousand Treasons. It is a strange thing you will impute that to me, when I never heard so much as the name of Arabella Stuart, but only the name of Arabella.—After being examined, I told my lords, that I thought my lord Cobham had conference with Aramberg; I suspected his visiting of him: for after he departed from me at Durham-house, I saw him pass by his own stairs, and passed over to St. Mary Saviours, where I knew Lawrency, a merchant, and a follower of Aramberg, lay, and therefore likely to go unto him. My lord Cecil asked my opinion concerning Lawrency; I said, that if you do not apprehend Lawrency, it is dangerous, he will fly; if you do apprehend him, you shall give my lord Cobham notice thereof. I was asked who was the greatest man with my lord Cobham; I answered, I knew no man so great with him as young Wyt of Kent.—As soon as Cobham saw my Letter to have discovered his dealing with Aramberg, in his fury he accused me; but before he came to the stair-foot he repented, and said he had done me wrong. When he came to the end of his Accusation, he added, that if he had brought this money to Jersey, he feared that I would have delivered him and the money to the king. Mr. Attorney, you said this never came out of Cobham's quiver; he is a simple man. Is he so simple? No; he hath a disposition of his own, he will not easily be guided by others; but when he has once taken head in a matter, he is not easily drawn from it: he is no babe. But it is strange for me to devise with Cobham, that he should go to Spain, to persuade the king to disburse so much money, he being a man of no love in England, and I having resigned my room of chiefest command, the Wardenship of the Stannaries. Is it not strange for me to make myself Robin Hood, or a Kett, or a Cade? I knowing England to be in better estate to defend itself than ever it was. I knew Scotland united; Ireland quieted, wherein of late our forces were dispersed; Denmark assured, which before was suspected. I knew, that having lost a lady whom time had surprized, we had now an active king, a lawful Successor, who would himself be present in all his affairs. The State of Spain was not unknown to me: I had written a Discourse, which I had intended to present unto the king, against peace with Spain. I knew the Spaniards had six repulses; three in Ireland, and three at sea, and once in 1588, at Cales, by my Lord Admiral. I knew he was discouraged and dishonoured. I knew the king of Spain to be the proudest prince in

Christendom; but now he cometh creeping to the king my master for peace. I knew, whereas before he had in his port six or seven score sail of ships, he hath now but six or seven. I knew of 25,000,000 he had from his Indies, he hath scarce one left. I knew him to be so poor, that the Jesuits in Spain, who were wont to have such large allowance, were fain to beg at the church-door. Was it ever read or heard, that any prince should disburse so much money without a sufficient pawn? I knew her own subjects, the citizens of London, would not lend her majesty money, without lands in mortgage. I knew the Queen did not lend the States money, without Flushing, Brill, and other towns for a pawn. And can it be thought, that he would let Cobham have so great a sum?—I never came to the lord Cobham's, but about matters of his profit; as the ordering of his house, paying of his servants board-wages, &c. I had of his, when I was examined, 4,000*l.* worth of jewels for a purchase; a pearl of 3,000*l.* and a ring worth 500*l.* If he had had a fancy to run away, he would not have left so much to have purchased a lease in fee-farm. I saw him buy 300*l.* worth of Books to send to his Library at Canterbury, and a cabinet of 30*l.* to give to Mr. Attorney, for drawing the conveyances: and God in heaven knoweth, not I, whether he intended to travel or no. But for that practice with Arabella, or letters to Aramberg framed, or any discourse with him, or in what language he spake unto him; if I knew any of these things, I would absolutely confess the indictment, and acknowledge myself worthy ten thousand deaths.

*Cobham's second Examination read.*

The lord Cobham being required to subscribe to an Examination, there was shewed a Note under sir Walter Raleigh's hand; the which when he had perused, he paused, and after brake forth into those Speeches: Oh Villain! Oh traitor! I will now tell you all the truth; and then said, His purpose was to go into Flanders, and into Spain, for the obtaining the aforesaid Money; and that Raleigh had appointed to meet him in Jersey as he returned home, to be advised of him about the distribution of the Money.

*L. C. J. Popham.* When Cobham answered to the Interrogatories, he made scruple to subscribe; and being urged to it, he said, if he might hear me affirm, that a person of his degree ought to set his hand, he would: I lying then at Richmond for fear of the Plague, was sent for, and I told he ought to subscribe; otherwise it were a Contempt of a high nature: then he subscribed. The lords questioned with him further, and he shewed them a Letter, as I thought written to me, but it was indeed written to my lord Cecil: he desired to see the Letter again, and then said, 'Oh wretch! Oh traitor!' whereby I perceived you had not performed that trust he had reposed in you.

*Raleigh.* He is as passionate a man as lives; for he hath not spared the best friends

he hath in England in his passion. My lords, I take it, he that has been examined, has ever been asked at the time of his Examination, if it be according to his meaning, and then to subscribe. Methinks, my lords, when he accuses a man, he should give some account and reason of it: It is not sufficient to say, we talked of it. If I had been the Plotter, would not I have given Cobham some arguments, whereby to persuade the king of Spain, and answer his objections? I knew Westmoreland and Bothwell, men of other understandings than Cobham, were ready to beg their bread.

*Sir Tho. Fowler*, one of the Jury. Did sir Walter Raleigh write a Letter to my lord before he was examined concerning him, or not?

*Att. Yes.*

*Lord Cecil.* I am in great dispute with myself to speak in the Case of this gentleman: A former dearness between me and him, tyed so firm a knot of my conceit of his virtues, now broken by a discovery of his imperfections. I protest, did I serve a king that I knew would be displeas'd with me for speaking, in this case I would speak, whatever came of it; but seeing he is compacted of piety and justice, and one that will not mislike of any man for speaking a truth, I will answer your question.—Sir Walter Raleigh was staid by me at Windsor, upon the first news of Copley, that the king's Person should be surprized by my lord Grey, and Mr. George Brook; when I found Brook was in, I suspected Cobham, then I doubted Raleigh to be a partaker. I speak not this, that it should be thought I had greater judgment than the rest of my lords, in making this haste to have them examined. Raleigh following to Windsor, I met with him upon the Terrace, and willed him, as from the king, to stay; saying, the lords had something to say to him; then he was examined, but not concerning my lord Cobham, but of the surprizing Treason. My lord Grey was apprehended, and likewise Brook; by Brook we found, that he had given notice to Cobham of the surprizing Treason, as he delivered it to us; but with as much sparingness of a brother, as he might. We sent for my lord Cobham to Richmond, where he stood upon his justification, and his quality; sometimes being froward, he said he was not bound to subscribe, wherewith we made the king acquainted. Cobham said, if my L. C. Justice would say it were a Contempt, he would subscribe; whereof being resolved, he subscribed. There was a light given to Aremburg, that Lawrency was examined; but that Raleigh knew that Cobham was examined, is more than I know.

*Raleigh.* If my lord Cobham had trusted me in the Main, was not I as fit a man to be trusted in the Bye?

*Lord Cecil.* Raleigh did by his Letters acquaint us that my lord Cobham had sent Lawrency to Aremburg, when he knew not he had any dealings with him.

*Lord Hen. Howard.* It made for you, if Lawrency had been only acquainted with Cob-

ham, and not with you. But you knew his whole estate, and were acquainted with Cobham's practice with Lawrency: and it was known to you before, that Lawrency depended on Aremburg.

*Attorney.* 1. Raleigh protested against the surprizing Treason. 2. That he knew not of the matter touching Arabella. I would not charge you, sir Walter, with a matter of falsehood: you say you suspected the Intelligence that Cobham had with Aremburg by Lawrency.

*Raleigh.* I thought it had been no other Intelligence, but such as might be warranted.

*Attorney.* Then it was but lawful suspicion. But to that whereas you said, that Cobham had accused you in passion, I answer three ways:

1. I observed when Cobham said, Let me see the Letter again, he paused; and when he did see that count Aremburg was touched, he cried out, Oh Traitor! Oh Villain! now will I confess the whole truth. 2. The accusation of a man on hearsay, is nothing; would he accuse himself on passion, and ruinate his case and posterity, out of malice to accuse you? 3. Could this be out of passion? Mark the manner of it; Cobham had told this at least two months before to his brother Brook, 'You are fools, you are on the bye, Raleigh and I are on the main; we mean to take away the king and his cubs:' this he delivered two months before. So mark the manner and the matter; he would not turn the weapon against his own bosom, and accuse himself to accuse you.

*Raleigh.* Hath Cobham confessed that?

*L. C. J.* This is spoken by Mr. Attorney to prove that Cobham's Speech came not out of passion.

*Raleigh.* Let it be proved that Cobham said so.

*Attorney.* Cobham saith, he was a long time doubtful of Raleigh, that he would send him and the money to the king. Did Cobham fear lest you would betray him in Jersey? Then of necessity there must be Trust between you. No man can betray a man, but he that is trusted, in my understanding. This is the greatest argument to prove that he was acquainted with Cobham's Proceedings. Raleigh has a deeper reach, than to make himself, as he said, 'Robin Hood, a Kett, or Cade;' yet I never heard that Robin Hood was a Traitor; they say he was an outlaw. And whereas he saith that our king is not only more wealthy and potent than his predecessors, but also more politic and wise, so that he could have no hope to prevail; I answer, There is no king so potent, wise and active, but he may be overtaken through Treason. Whereas you say Spain is so poor, discoursing so largely thereof; it had been better for you to have kept in Guiana, than to have been so well acquainted with the state of Spain. Besides, if you could have brought Spain and Scotland to have joined, you might have hoped to prevail a great deal the better. For his six Overthrows, I answer, he hath the more malice, because repulses breed

desire of revenge. Then you say you never talked with Cobham, but about leases, and letting lands, and ordering his house; I never knew you Clerk of the Kitchen, &c. If you had fallen on your knees at first, and confessed the Treason, it had been better for you. You say, He meant to have given me a Cabinet of 30*l.*; perhaps he thought by those means to have anticipated me therewith. But you say all these are Circumstances: I answer, all this Accusation in Circumstance is true. Here now I might appeal to my lords, that you take hold of this, that he subscribed not to the Accusation.

Lord *Hen. Howard.* Cobham was not then pressed to subscribe.

*Attorney.* His Accusation being testified by the lords, is of as great force, as if he had subscribed. Raleigh saith again, If the Accuser be alive he must be brought face to face to speak; and alledges 25 Edw. 3rd that there must be two sufficient Witnesses, that must be brought face to face before the accused; and alledgeth 10 and 13 Elizabeth.

*Raleigh.* You try me by the Spanish Inquisition, if you proceed only by the Circumstances, without two Witnesses.

*Attorney.* This is a treasonable speech.

*Raleigh.* *Evertere Hominem justum in causa sua injustum est.* Good my lords, let it be proved, either by the laws of the land, or the laws of God, that there ought not to be two Witnesses appointed; yet I will not stand to defend this point in law, if the king will have it so: it is no rare thing for a man to be falsely accused. A Judge condemned a woman in Sarum for killing her husband on the testimony of one Witness; afterwards his man confessed the Murder, when she was executed; who after being touched in conscience for the Judgment, was used to say, *Quod nunquam de hoc facto animam in vita sua purgaret.* It is also commanded by the Scripture; *Allocutus est Jehova Moesen, in Ore duorum aut trium Testium, &c.* If Christ requireth it, as it appeareth, Mut. xviii. if by the Canon, Civil Law, and God's Word, it be required, that there must be two Witnesses at the least; bear with me if I desire one. I would not desire to live, if I were privy to Cobham's Proceedings. I have been a slave, a villain, a fool, if I had endeavoured to set up Arabella, and refused so gracious a lord and sovereign. But urge your proofs.

*L. C. Justice.* You have offered Questions on diverse Statutes, all which mention two accusers in case of Indictments; you have deceived yourself, for the laws of 25 Edw. 3d, and 5 Edw. 6th are repealed. It sufficeth now if there be Proofs made either under hand, or by testimony of Witnesses, or by oaths; it needs not the Subscription of the party, so there be hands of credible men to testify the Examination.

*Raleigh.* It may be an error in me; and if those laws be repealed, yet I hope the equity of them remains still; but if you affirm it, it must be a law to posterity. The Proof of the

Common Law is by witness and jury: let Cobham be here, let him speak it. Call my accuser before my face, and I have done.

*Attorney.* *Scientia sceleris est mera ignorantia.* You have read the letter of the law, but understand it not. Here was your anchorhold, and your rendezvous: you trust to Cobham, either Cobham must accuse you, or nobody; if he did, then it would not hurt you, because he is but one Witness; if he did not, then you are safe.

*Raleigh.* If ever I read a word of the law or statutes before I was Prisoner in the Tower, God confound me.

*Attorney.* Now I come to prove the Circumstances of the Accusation to be true. Cobham confessed he had a Pass-port to travel, hereby intending to present overtures to the Arch-Duke, and from thence to go to Spain, and there to have conference with the king for Money. You say he promised to come home by Jersey, to make merry with you and your wife.

*Raleigh.* I said in his return from France, not Spain.

*Attorney.* Further in his Examination he saith, nothing could be set down for the Distribution of the Money to the discontented, without conference with Raleigh. You said it should have been for procurement of Peace, but it was for raising Rebellion. Further, Cobham saith, he would never have entered into these courses, but by your instigation, and that you would never let him alone. Your scholar was not apt enough to tell us all the Plots; that is enough for you to do, that are his master. You intended to trust sir Arthur Savage, whom I take to be an honest and true gentleman, but not sir Arthur Gorge.

*Raleigh.* All this is but one Accusation of Cobham's, I hear no other thing; to which Accusation he never subscribed nor avouched it. I beseech you, my lords, let Cobham be sent for, charge him on his soul, on his allegiance to the king; if he affirm it, I am guilty.

*Lord Cecil.* It is the Accusation of my lord Cobham, it is the Evidence against you: must it not be of force without his subscription? I desire to be resolved by the Judges, whether by the law it is not a forcible argument of evidence.

*Judges.* My lord, it is.

*Raleigh.* The king at his coronation is sworn *In omnibus Judiciis suis equitatem, non rigorem Legis, observare.* By the rigour and cruelty of the law it may be a forcible evidence.

*L. C. J.* That is not the rigour of the law, but the justice of the law; else when a man hath made a plain Accusation, by practice he might be brought to retract it again.

*Raleigh.* Oh my lord, you may use equity.

*L. C. J.* That is from the king; you are to have justice from us.

*Lord Anderson.* The law is, if the matter be proved to the jury, they must find you guilty; for Cobham's Accusation is not only against you, there are other things sufficient.

*Lord Cecil.* Now that sir Walter Raleigh is satisfied, that Cobham's Subscription is not necessary, I pray you, Mr. Attorney, go on.

*Raleigh.* Good Mr. Attorney, be patient, and give me leave.

*Lord Cecil.* An unnecessary patience is a hindrance; let him go on with his proofs, and then refer them.

*Raleigh.* I would answer particularly.

*Lord Cecil.* If you would have a table and pen and ink, you shall.

Then paper and ink was given him. Here the Clerk of the Crown read the Letter, which the lord Cobham did write in July, which was to the effect of his former Examination; further saying, I have disclosed all: to accuse any one falsely, were to burden my own conscience.

*Attorney.* Read Copley's Confession the 8th of June; He saith, He was offered 1000 crowns to be in this action.

Here Watson's Additions were read. 'The great mass of Money from the count was impossible,' &c.

*Brook's Confession* read. 'There have Letters passed, saith he, between Cobham and Aremburg, for a great sum of Money to assist a second action, for the surprizing of his majesty.'

*Attorney.* It is not possible it was of passion: for it was in talk before three men, being severally examined, who agreed in the sum to be bestowed on discontented persons; That Grey should have 12,000 crowns, and Raleigh should have 8000, or 10,000 crowns.

*Cobham's Examination, July 18.*

If the money might be procured (saith he) then a man may give pensions. Being asked if a pension should not be given to his brother Brook, he denied it not.

*Lawrency's Examination.*

Within five days after Aremburg arrived, Cobham resorted unto him. That night that Cobham went to Aremburg with Lawrency, Raleigh supped with him.

*Attorney.* Raleigh must have his part of the Money, therefore now he is a traitor. The crown shall never stand one year on the head of the king (my master) if a Traitor may not be condemned by Circumstances: for if A. tells B. and B. tells C. and C. D. &c. you shall never prove Treason by two Witnesses.

*Raleigh's Examination was read.*

He confesseth Cobham offered him 8000 crowns, which he was to have for the furtherance of the Peace between England and Spain, and that he should have it within three days. To which he said, he gave this answer; When I see the Money, I will tell you more: for I had thought it had been one of his ordinary idle conceits, and therefore made no Account thereof.

*Raleigh.* The Attorney hath made a long narration of Copley, and the Priests, which concerns me nothing, neither know I how Cobham was altered. For he told me if I would agree to further the Peace, he would get me 8000 crowns. I asked him, Who shall have

VOL. II.

the rest of the money? He said I will offer such a nobleman (who was not named) some of the Money. I said, he will not be persuaded by you, and he will extremely hate you for such a motion. Let me be pinched to death with hot irons, if ever I knew there was any intention to bestow the money on discontented persons. I had made a discourse against the Peace, and would have printed it; if Cobham changed his mind, if the Priests, if Brook had any such intent, what is that to me? They must answer for it. He offered me the Money before Aremburg came, that is difference of time.

*Serj. Philips.* Raleigh confesseth the matter, but avoideth it by distinguishing of times. You said it was offered you before the coming of Aremburg, which is false. For you being examined whether you should have such Money of Cobham, or not; you said, Yea, and that you should have it within two or three days. *Nem moriturus presumitur mentiri.*

*Ld. Hen. Howard.* Alledge me any ground or cause, wherefore you gave ear to my lord Cobham for receiving Pensions, in matters you had not to deal with.

*Raleigh.* Could I stop my Lord Cobham's mouth?

*Ld. Cecil.* Sir Walter Raleigh presseth, that my lord Cobham should be brought face to face. If he asks things of favour and grace, they must come only from him that can give them. If we sit here as commissioners, how shall we be satisfied whether he ought to be brought, unless we hear the Judges speak?

*L. C. J.* This thing cannot be granted, for then a number of Treasons should flourish: the Accuser may be drawn by practise, whilst he is in person.

*Justice Gawdy.* The Statute you speak of concerning two Witnesses in case of Treason, is found to be inconvenient, therefore by another law it was taken away.

*Raleigh.* The common Trial of England is by Jury and Witnesses.

*L. C. J.* No, by Examination: if three conspire a Treason, and they all confess it; here is never a Witness, yet they are condemned.

*Justice Warburton.* I marvel, sir Walter, that you being of such experience and wit, should stand on this point; for so many horse-stealers may escape, if they may not be condemned without witnesses. If one should rush into the king's Privy-Chamber, whilst he is alone, and kill the king (which God forbid) and this man be met coming with his sword drawn all bloody; shall not he be condemned to death? My lord Cobham hath, perhaps, been laboured withal; and to save you, his old friend, it may be that he will deny all that which he hath said.

*Raleigh.* I know not how you conceive the Law.

*L. C. J.* Nay, we do not conceive the Law, but we know the Law.

*Raleigh.* The wisdom of the Law of God is absolute and perfect *Hac fac et vives, &c.* But



now by the Wisdom of the State, the Wisdom of the Law is uncertain. Indeed, where the Accuser is not to be had conveniently, I agree with you; but here my Accuser may; he is alive, and in the house. Susanna had been condemned, if Daniel had not cried out, 'Will you condemn an innocent Israelite, without examination or knowledge of the truth?' Remember, it is absolutely the Commandment of God: If a false witness rise up, you shall cause him to be brought before the Judges; if he be found false, he shall have the punishment which the accused should have had. It is very sure, for my lord to accuse me is my certain danger, and it may be a means to excuse himself.

*L. C. J.* There must not such a gap be opened for the destruction of the king, as would be if we should grant this. You plead hard for yourself; but the laws plead as hard for the king. I did never hear that course to be taken in a case of Treason, as to write one to another, or speak one to another, during the time of their imprisonment. There hath been intelligence between you; and what under-hand practices there may be, I know not. If the circumstances agree not with the Evidence, we will not condemn you.

*Raleigh.* The king desires nothing but the knowledge of the truth, and would have no advantage taken by severity of the law. If ever we had a gracious king, now we have; I hope, as he is, such are his ministers. If there be but a trial of five marks at Common Law, a witness must be deposed. Good my lords, let my Accuser come face to face, and be deposed.

*L. C. J.* You have no law for it: God forbid any man should accuse himself upon his oath!

*Attorney.* The law presumes, a man will not accuse himself to accuse another. You are an odious man: for Cobham thinks his cause the worse that you are in it. Now you shall hear of some stirs to be raised in Scotland.

*Part of Copley's Examination.*

"Also Watson told me, that a special person told him, that Aremberg offered to him 1000 crowns to be in that action; and that Brook said, the stirs in Scotland came out of Raleigh's head."

*Raleigh.* Brook hath been taught his Lesson.

*Ld. Hen. Howard.* This Examination was taken before. Did I teach him his lesson?

*Raleigh.* I protest before God, I meant it not by any privy-counsellor; but because money is scant, he will juggle on both sides.

*Raleigh's Examination.*

"The way to invade England, were to begin with Stirs in Scotland."

*Raleigh.* I think so still: I have spoken it to divers of the Lords of the Council, by way of discourse and opinion.

*Attorney.* Now let us come to those words of destroying the king and his cubs?

*Raleigh.* O barbarous! If they, like unnatural villains, should use those words, shall I

be charged with them? I will not hear it; I was never any Plotter with them against my country, I was never false to the crown of England. I have spent 4000 pounds of my own against the Spanish Faction, for the good of my country. Do you bring the words of these hellish spiders, Clark, Watson, and others, against me?

*Attorney.* Thou hast a Spanish heart, and thyself art a Spider of Hell; for thou confessest the king to be a most sweet and gracious prince, and yet hast conspired against him.

*Watson's Examination read.*

"He said, that George Brook told him twice, That his brother, the lord Cobham, said to him, that you are but on the bye, but Raleigh and I are on the main."

*Brook's Examination read.*

"Being asked what was meant by this Jargon, the Bye and the Main? he said, That the lord Cobham told him, that Grey and others were in the Bye, he and Raleigh were on the Main. Being asked, what exposition his brother made of these words? He said, he is loath to repeat it. And after saith, by the main was meant the taking away of the king and his issue; and thinks on his conscience, it was infused into his brother's head by Raleigh."

*Cobham's Examination read.*

"Being asked, if ever he had said, 'It will never be well in England, till the king and his cubs were taken away;' he said, he had answered before, and that he would answer no more to that point."

*Raleigh.* I am not named in all this: there is a law of two sorts of Accusers; one of his own knowledge, another by hear-say.

*E. of Suffolk.* See the Case of Arnold.

*L. C. J.* It is the Case of sir Will. Thomas, and sir Nicholas Arnold.

*Raleigh.* If this may be, you will have any man's life in a week.

*Attorney.* Raleigh saith, that Cobham was in a passion when he said so. Would he tell his brother any thing of malice against Raleigh, whom he loved as his life?

*Raleigh.* Brook never loved me; until his brother had accused me, he said nothing.

*Ld. Cecil.* We have heard nothing that might lead us to think that Brook accused you, he was only in the surprizing Treason: for by accusing you he should accuse his brother.

*Raleigh.* He doth not much care for that.

*Ld. Cecil.* I must judge the best. The accusation of his brother was not voluntary; hepared every thing as much as he could to save his brother.

*Cobham's Examination read.*

"He saith he had a Book written against the Title of the King, which he had of Raleigh, and that he gave it to his brother Brook: and Raleigh said it was foolishly written."

*Attorney.* After the king came within 12 miles of London, Cobham never came to see him; and intended to travel without seeing the

queen and the prince. Now in this discontentment you gave him the Book, and he gave it his brother.

*Raleigh.* I never gave it him, he took it off my table. For I well remember a little before that time I received a Challenge from sir Amias Preston, and for that I did intend to answer it, I resolved to leave my estate settled, therefore laid out all my loose Papers, amongst which was this Book.

*Ld. Howard.* Where had you this Book?

*Raleigh.* In the old Lord Treasurer's Study, after his death.

*Ld. Cecil.* Did you ever shew or make known the Book to me?

*Raleigh.* No, my Lord.

*Ld. Cecil.* Was it one of the books which was left to me or my brother?

*Raleigh.* I took it out of the study in my Lord Treasurer's house in the Strand.

*Ld. Cecil.* After my father's decease, sir Walter Raleigh desired to search for some Cosmographical descriptions of the Indies, which he thought were in his Study, and were not to be had in print; which I granted, and would have trusted sir Walter Raleigh as soon as any man: though since for some infirmities, the bands of my affection to him have been broken; and yet reserving my duty to the king my master, which I can by no means dispense with, by God, I love him, and have a great conflict within myself: but I must needs say, sir Walter used me a little unkindly to take the Book away without my knowledge: nevertheless, I need make no apology in behalf of my father, considering how useful and necessary it is for privy-counsellors and those in his place to intercept and keep such kind of writings; for whosoever should then search his study may in all likelihood find all the notorious Libels that were writ against the late queen; and whosoever should rummage my Study, or at least my Cabinet, may find several against the king, our Sovereign Lord, since his accession to the throne.

*Raleigh.* The Book was in Manuscript, and the late Lord Treasurer had wrote in the beginning of it with his own Hand; these words, 'This is the Book of Robert Snugg.' And I do own, as my lord Cecil has said, that I believe they may also find in my house almost all the Libels that have been writ against the late queen.

*Att.* You were no privy-counsellor, and I hope never shall be.

*Ld. Cecil.* He was not a sworn counsellor of state, but he has been called to consultations.

*Raleigh.* I think it a very severe interpretation of the law, to bring me within compass of Treason for this Book, writ so long ago, of which nobody had read any more than the Heads of the Chapters, and which was burnt by G. Brook without my privity; admitting I had delivered the same to the lord Cobham, without allowing or approving, but discommending it, according to Cobham's first Accusation:

and put the case, I should come to my lord Cecil, as I have often done, and find a stranger with him, with a packet of Libels, and my lord should let me have one or two of them to peruse: this I hope is no Treason.

*Att.* I observe there was intelligence between you and Cobham in the Tower; for after he said it was against the king's Title, he denied it again.

*Sir W. Wade.* First, my lord Cobham confesseth it, and after he had subscribed it, he revoked it again: to me he always said, that the drift of it was against the king's Title.

*Raleigh.* I protest before God, and all his works, I gave him not the Book.

*Note,* Sir Robert Wroth speaketh, or whispereth something secretly.

*Att.* My lords, I must complain of sir Robert Wroth; he says this Evidence is not material.

*Sir R. Wroth.* I never spake the words.

*Att.* Let Mr. serjeant Philips testify whether he heard him say the words or no.

*Ld. Cecil.* I will give my word for sir R. Wroth.

*Sir R. Wroth.* I will speak as truly as you, Mr. Attorney, for by God, I never spake it.

*L. C. J.* Wherefore should this Book be burnt?

*Raleigh.* I burned it not.

*Serj. Philips.* You presented your friend with it when he was discontented. If it had been before the queen's death, it had been a less matter; but you gave it him presently when he came from the king, which was the time of his discontentment.

*Raleigh.* Here is a Book supposed to be treasonable; I never read it, commended it, or delivered it, nor urged it.

*Attorney.* Why, this is cunning.

*Raleigh.* Every thing that doth make for me is cunning, and every thing that maketh against me is probable.

*Att.* Lord Cobham saith, that Kemish came to him with a letter torn, and did wish him not to be dismayed, for one witness could not hurt him.

*Raleigh.* This poor man hath been close prisoner these 18 weeks; he was offered the rack to make him confess. I never sent any such message by him; I only writ to him, to tell him what I had done with Mr. Attorney; having of his at that time a great pearl and a diamond.

*Ld. H. Howard.* No circumstance moveth me more than this. Kemish was never on the rack, the king gave charge that no rigour should be used.

*Commissioners.* We protest before God, there was no such matter intended to our knowledge.

*Raleigh.* Was not the Keeper of the Rack sent for, and he threatened with it?

*Sir W. Wade.* When Mr. Solicitor and myself examined Kemish, we told him he deserved the Rack, but did not threaten him with it.

*Commissioners.* It was more than we knew.

*Cobham's Examination read.*

He saith, Kemish brought him a Letter from Raleigh, and that part which was concerning the Lords of the Council was rent out; the Letter contained that he was examined, and cleared himself of all; and that the lord H. Howard said, because he was discontent, he was fit to be in the action. And further, that Kemish said to him from Raleigh, that he should be of good comfort, for one witness could not condemn a man for treason.

*Ld. Cecil.* Cobham was asked, whether, and when he heard from you? He said, every day.

*Raleigh.* Kemish added more, I never bade him speak those words.

*Note,* Mr. Attorney here offered to interrupt him.

*Ld. Cecil.* It is his last Discourse; give him leave, Mr. Attorney.

*Raleigh.* I am accused concerning Arabella, concerning Money out of Spain. My L. C. Justice saith, a man may be condemned with one Witness, yea, without any Witness. Cobham is guilty of many things, *Conscientia mille testes*; he hath accused himself, what can be hope for but mercy? My lords, vouchsafe me this grace: let him be brought, being alive, and in the house; let him avouch any of these things, I will confess the whole Indictment, and renounce the king's mercy.

*Ld. Cecil.* Here hath been a touch of the lady Arabella Stuart, a near kinswoman of the king's. Let us not scandal the innocent by confusion of speech: she is as innocent of all these things as I, or any man here; only she received a Letter from my lord Cobham, to prepare her; which she laughed at, and immediately sent it to the king. So far was she from discontentment, that she laughed him to scorn. But you see how far the count of Aremberg did consent.

The Lord Admiral (Nottingham) being by in a Standing, with the lady Arabella, spake to the court: The lady doth here protest upon her salvation, that she never dealt in any of these things; and so she willed me to tell the court.

*Ld. Cecil.* The lord Cobham wrote to my lady Arabella, to know if he might come to speak with her, and gave her to understand, that there were some about the king that laboured to disgrace her; she doubted it was but a trick. But Brook saith, his brother moved him to procure Arabella to write Letters to the king of Spain; but he saith, he never did it.

*Raleigh.* The lord Cobham hath accused me, you see in what manner he hath forsworn it. Were it not for his Accusation, all this were nothing. Let him be asked, if I knew of the letter which Lawrency brought to him from Aremberg. Let me speak for my life, it can be no hurt for him to be brought; he dares not accuse me. If you grant me not this favour, I am strangely used; Campian\* was not denied to have his accusers face to face.

\* See No. 58.

*L. C. J.* Since he must needs have justice, the acquitting of his old friend may move him to speak otherwise than the truth.

*Raleigh.* If I had been the infuser of all these Treasons into him; you Gentlemen of the Jury, mark this, he said I have been the cause of all his miseries, and the destruction of his house, and that all evil hath happened unto him by my wicked counsel: if this be true, whom hath he cause to accuse and to be revenged on, but on me? And I know him to be as revengful as any man on earth.

*Attorney.* He is a party, and may not come; the law is against it.

*Raleigh.* It is a toy to tell me of law; I defy such law, I stand on the fact.

*Ld. Cecil.* I am afraid my often speaking (who am inferior to my lords here present) will make the world think I delight to hear myself talk. My affection to you, sir Walter, was not extinguished, but slaked, in regard of your deserts. You know the law of the realm (to which your mind doth not contest), that my lord Cobham cannot be brought.

*Raleigh.* He may be, my lord.

*Ld. Cecil.* But dare you challenge it?

*Raleigh.* No.

*Lord Cecil.* You say that my lord Cobham, your main accuser, must come to accuse you. You say he hath retracted: I say, many particulars are not retracted. What the validity of all this is, is merely left to the Jury. Let me ask you this, If my lord Cobham will say you were the only instigator of him to proceed in the Treasons, dare you put yourself on this?

*Raleigh.* If he will speak it before God and the king, that ever I knew of Arabella's matter, or the Money out of Spain, or of the surprising Treason; I put myself on it, God's will and the king's be done with me.

*Lord H. Howard.* How! if he speak things equivalent to that you have said?

*Raleigh.* Yes, in the main point.

*Lord Cecil.* If he say, you have been the instigator of him to deal with the Spanish king, had not the council cause to draw you hither?

*Raleigh.* I put myself on it.

*Lord Cecil.* Then, sir Walter, call upon God, and prepare yourself; for I do verily believe my lords will prove this. Excepting your faults (I call them no worse), by God, I am your friend. The heat and passion in you, and the Attorney's zeal in the king's service, makes me speak this.

*Raleigh.* Whosoever is the workman, it is reason he should give an account of his work to the work-master. But let it be proved that he acquainted me with any of his conferences with Aremberg: he would surely have given me some account.

*Lord Cecil.* That follows not: If I set you on work, and you give me no account, am I therefore innocent?

*Att.* For the lady Arabella, I said she was never acquainted with the matter. Now that Raleigh had conference in all these Treasons, it is manifest. The Jury hath heard the matter.

There is one Dyer a pilot, that being in Lisbon, met with a Portugal gentleman who asked him if the king of England was crowned yet: To whom he answered, 'I think not yet, but he shall be shortly,' Nay, saith the Portugal, that shall never be, for his throat will be cut by Don Raleigh and Don Cobham before he be crowned.

*DYER was called and sworn, and delivered this Evidence.*

*Dyer.* I came to a merchant's house in Lisbon, to see a boy that I had there; there came a gentleman into the house, and enquiring what countryman I was, I said, an Englishman. Whereupon he asked me, if the king was crowned? And I answered, No, but that I hoped he should be so shortly. Nay, saith he, he shall never be crowned; for Don Raleigh and Don Cobham will cut his throat ere that day come.

*Raleigh.* What infer you upon this?

*Att.* That your Treason hath wings.

*Raleigh.* If Cobham did practise with Aremberg, how could it not but be known in Spain? Why did they name the duke of Buckingham with Jack Straw's Treason, and the duke of York with Jack Cade, but that it was to countenance his Treason? Consider, you Gentlemen of the Jury, there is no cause so doubtful which the king's counsel cannot make good against the law. Consider my disability, and their ability: they prove nothing against me, only they bring the Accusation of my lord Cobham, which he hath lamented and repented as heartily, as if it had been for an horrible murder: for he knew that all this sorrow which should come to me, is by his means. Presumptions must proceed from precedent or subsequent facts. I have spent 40,000 crowns against the Spaniard. I had not purchased 40 pound a year. If I had died in Guiana, I had not left 300 marks a year to my wife and son. I that have always condemned the Spanish Faction, methinks it is a strange thing that now I should affect it! Remember what St. Austin says, *Sic judicate tanquam ab alio max judicandi; unus iudex, unum Tribunal.* If you would be contented on presumptions to be delivered up to be slaughtered, to have your wives and children turned into the streets to beg their bread; if you would be contented to be so judged, judge so of me.

*Serj. Philips.* I hope to make this so clear, as that the wit of man shall have no colour to answer it. The matter is Treason in the highest degree, the end to deprive the king of his crown. The particular Treasons are these: first, to raise up Rebellion, and to effect that, to procure Money; to raise up Tumults in Scotland, by divulging a treasonable Book against the king's right to the crown; the purpose, to take away the life of his majesty and his issue. My lord Cobham confesseth sir Walter to be guilty of all these Treasons. The question is, whether he be guilty as joining with him, or instigating of him? The course to prove this, was by my lord Cobham's Accusation. If that be

true, he is guilty; if not, he is clear. So whether Cobham say true, or Raleigh, that is the question. Raleigh hath no answer but the shadow of as much wit, as the wit of man can devise. He useth his bare denial; the denial of a Defendant must not move the Jury. In the Star Chamber, or in the Chancery, for matter of Title, if the Defendant be called in question, his denial on his oath is no Evidence to the Court to clear him, he doth it in *propria causa*; therefore much less in matters of Treason. Cobham's testification against him before them, and since, hath been largely discoursed.

*Raleigh.* If truth be constant, and constancy be in truth, why hath he forsworn that that he hath said? You have not proved any one thing against me by direct Proofs, but all by circumstances.

*Att.* Have you done? The king must have the last.

*Raleigh.* Nay, Mr. Attorney, he which speaketh for his life, must speak last. False repetitions and mistakings must not mar my cause. You should speak *secundum allegata et probata*. I appeal to God and the king in this point, whether Cobham's Accusation be sufficient to condemn me.

*Att.* The king's safety and your clearing cannot agree. I protest before God, I never knew a clearer Treason.

*Raleigh.* I never had intelligence with Cobham since I came to the Tower.

*Att.* Go to, I will lay thee upon thy back, for the confidentest Traitor that ever came at a bar. Why should you take 8,000 crowns for a peace?

*Lord Cecil.* Be not so impatient, good Mr. Attorney, give him leave to speak.

*Att.* If I may not be patiently heard, you will encourage Traitors, and discourage us. I am the king's sworn servant, and must speak; If he be guilty, he is a Traitor; if not, deliver him.

*Note,* Here Mr. Attorney sat down in a chafe, and would speak no more, until the Commissioners urged and intreated him. After much ado, he went on, and made a long repetition of all the Evidence, for the direction of the Jury; and at the repeating of some things, sir Walter Raleigh interrupted him, and said, he did him wrong.

*Att.* Thou art the most vile and execrable Traitor that ever lived.

*Raleigh.* You speak indiscreetly, barbarously and uncivilly.

*Att.* I want words sufficient to express thy viperous Treasons.

*Raleigh.* I think you want words indeed, for you have spoken one thing half a dozen times.

*Att.* Thou art an odious fellow, thy name is hateful to all the realm of England for thy pride.

*Raleigh.* It will go near to prove a measuring cast between you and me, Mr. Attorney.

*Att.* Well, I will now make it appear to the world, that there never lived a viler viper

upon the face of the earth than thou. And therewithal he drew a Letter, out of his pocket, saying further, 'My lords, you shall see, this is an Agent that hath writ a Treatise against the Spaniard, and hath ever so detested him; this is he that hath spent so much Money against him in service; and yet you shall all see whether his heart be not wholly Spanish. The lord Cobham, who of his own nature was a good and honourable gentleman, till overtaken by this wretch, now finding his conscience heavily burdened with some courses which the subtilty of this Traitor had drawn him into; my lords, he could be at no rest with himself, nor quiet in his thoughts, until he was eased of that heavy weight: out of which passion of his mind, and discharge of his duty to his prince, and his conscience to God, taking it upon his salvation that he wrote nothing but the truth, with his own hands he wrote this Letter. Now, sir, you shall see whether you had intelligence with Cobham, within four days before he came to the Tower. If he be wholly Spanish, that desired a Pension of 1500*l.* a year from Spain, that Spain by him might have intelligence, then Raleigh is a Traitor: He hath taken an apple, and pinned a Letter unto it, and threw it into my lord Cobham's window; the contents whereof were this, 'It is doubtful whether we shall be proceeded with or no; perhaps you shall not be tried.' This was to get a retraction. Oh! it was Adam's apple, whereby the devil did deceive him. Further, he wrote thus, 'Do not as my lord of Essex did; take heed of a Preacher; for by his persuasion he confessed, and made himself guilty.' I doubt not but this day God shall have as great a conquest by this Traitor, and the Son of God shall be as much glorified, as when it was said, *Vicisti, Galilae*; you know my meaning. What though Cobham retracted, yet he could not rest nor sleep till he confirmed it again. If this be not enough to prove him a Traitor, the king my master shall not live three years to an end.

*Nota,* Here Mr. Attorney produced the lord Cobham's Letter, and as he read it, inserted some speeches.

'I have thought fit to set down this to my lords, wherein I protest on my soul to write nothing but the truth. I am now come near the period of my time, therefore I confess the whole truth before God and his angels. Raleigh, four days before I came from the Tower, caused an apple (Eve's apple) to be thrown in at my chamber window; the effect of it was, to intreat me to right the wrong that I had done him, in saying, 'that I should have come home by Jersey;' which under my hand to him I have retracted. His first Letter I answered not, which was thrown in the same manner; wherein he prayed me to write him a Letter, which I did. He sent me word, that the Judges met at Mr. Attorney's house, and that there was good hope the proceedings against us should be stayed:

'he sent me another time a little tobacco. At Aremburg's coming, Raleigh was to have procured a pension of 1500*l.* a year, for which he promised, that no action should be against Spain, the Low Countries, or the Indies, but he would give knowledge beforehand. He told me, the States had audience with the king.—(Attorney, 'Ah! is not this a Spanish heart in an English body?') 'He hath been the original cause of my ruin; for I had no dealing with Aremburg, but by his instigation. He hath also been the cause of my discontentment; he advised me, not to be overtaken with preachers, as Essex was; and that the king would better allow of a constant denial, than to accuse any.'

*Att.* Oh, damnable atheist! He hath learned some Text of Scripture to serve his own purpose, but falsely alledged. He counsels him not to be counselled by preachers, as Essex was: He died the child of God, God honoured him at his death; thou wast by when he died\*: *Et lupus et turpes instant morientibus Urse.* He died indeed for his offence. The king himself spake these words; 'He that shall say, Essex died not for Treason, is punishable.'

*Raleigh.* You have heard a strange tale of a strange man. Now he thinks, he hath matter enough to destroy me; but the king and all of you shall witness, by our deaths, which of us was the ruin of the other. I bid a poor fellow throw in the Letter at his window, written to this purpose; 'You know you have undone me, now write three lines to justify me.' In this I will die, that he hath done me wrong: Why did not he acquaint him with my dispositions?

*L. C. J.* But what say you now of the Letter, and the Pension of 1500*l.* per annum?

*Raleigh.* I say, that Cobham is a base, dishonourable, poor soul.

*Att.* Is he base? I return it into thy throat on his behalf: But for thee he had been a good subject.

*L. C. J.* I perceive you are not so clear a man, as you have protested all this while; for you should have discovered these matters to the king.

*Nota,* Here Raleigh pulled a Letter out of his pocket, which the lord Cobham had written to him, and desired my lord Cecil to read it, because he only knew his hand; the effect of it was as follows:

*Cobham's Letter of Justification to Raleigh.*

'Seeing myself so near my end, for the discharge of my own conscience, and freeing myself from your blood, which else will cry vengeance against me; I protest upon my salvation I never practised with Spain by your procurement; God so comfort me in this my affliction, as you are a true subject, for any thing that I know. I will say as Daniel, *Purus sum à sanguine hujus.* So

\* See vol. 1. p. 1359.

God have mercy upon my soul, as I know no Treason by you.

*Raleigh.* Now I wonder how many souls this man hath! He damns one in this Letter, and another in that.

[Here was much ado: Mr. Attorney alledged, that his last Letter was politicly and cunningly urged from the lord Cobham, and that the first was simply the truth; and that lest it should seem doubtful that the first Letter was drawn from my lord Cobham by promise of mercy, or hope of favour, the Ld. C. J. willed that the Jury might herein be satisfied. Whereupon the earl of Devonshire delivered, that the same was mere voluntary, and not extracted from the lord Cobham upon any hopes or promise of Pardon.]

This was the last Evidence\*: whereupon a marshal was sworn to keep the Jury private. The Jury departed, and staid not a quarter of an hour, but returned, and gave their verdict, Guilty.

*Serj. Heale* demanded Judgment against the Prisoner.

*Clerk of the Crown.* Sir Walter Raleigh, Thou hast been indicted, arraigned, and pleaded Not Guilty, for all these several Treasons; and for Trial thereof, hast put thyself upon thy country; which country are these, who have found thee Guilty. What canst thou say for thyself, why Judgment and Execution of Death should not pass against thee?

*Raleigh.* My lords, the Jury have found me Guilty: they must do as they are directed. I can say nothing why Judgment should not proceed. You see whereof Cobham hath accused me: you remember his Protestations, that I was never Guilty. I desire the king should know of the wrongs done unto me since I came hither.

*L. C. J.* You have had no wrong, sir Walter.

*Raleigh.* Yes, of Mr. Attorney. I desire my lords to remember three things to the king. 1. I was accused to be a practiser with Spain: I never knew that my lord Cobham meant to go thither; I will ask no mercy at the king's hands, if he will affirm it. 2. I never knew of the practice with Arabella. 3. I never knew of my lord Cobham's practice with Aremberg, nor of the surprizing Treason.

*L. C. J.* In my conscience, I am persuaded that Cobham hath used you truly. You cannot deny, but you were dealt with to have a Pension to be a spy for Spain; therefore you are not so true to the king as you have protested yourself to be.

*Raleigh.* I submit myself to the king's

mercy; I know his mercy is greater than my offence. I recommend my wife, and son of tender years, unbrought up, to his compassion.

*L. C. J.* I thought I should never have seen this day, to have stood in this place to give Sentence of Death against you; because I thought it impossible, that one of so great parts should have fallen so grievously. God hath bestowed on you many benefits. You had been a man fit and able to have served the king in good place. You had brought yourself into a good state of living; if you had entered into a good consideration of your estate, and not suffered your own wit to have intrapped yourself, you might have lived in good comfort. It is best for man not to seek to climb too high, lest he fall; nor yet to creep too low, lest he be trodden on. It was the Poesy of the wisest and greatest Counsellor of our time in England, *In medio spatio mediocria firma locantur.* You might have lived well with 3000*l.* a year, for so I have heard your Revenues to be. I know nothing might move you to be discontented; but if you had been down, you know fortune's wheel, when it is turned about, riseth again. I never heard that the king took away any thing from you, but the Captainship of the Guard, which he did with very good reason, to have one of his own knowledge, whom he might trust, in that place. You have been taken for a wise man, and so have shewed wit enough this day. Again, for Monopolies for Wine, &c. if the king had said, It is a matter that offends my people, should I burden them for your private good? I think you could not well take it hardly, that his subjects were eased, though by your private hindrance. Two vices have lodged chiefly in you; one is an eager ambition, the other corrupt covetousness. Ambition, in desiring to be advanced to equal grace and favour, as you have been before time; that grace you had then, you got not in a day or year. For your covetousness, I am sorry to hear that a gentleman of your wealth should become a base Spy for the enemy, which is the vilest of all other; wherein on my conscience Cobham hath said true: by it you would have increased your living 1500*l.* a year. This covetousness is like a canker, that eats the iron place where it lives. Your case-being thus, let it not grieve you, if I speak a little out of zeal, and love to your good. You have been taxed by the world, with the Defence of the most heathenish and blasphemous Opinions, which I list not to repeat, because Christian ears cannot endure to hear them, nor the authors and maintainers of them be suffered to live in any Christian Commonwealth. You know what men said of Harpool. You shall do well, before you go out of the world, to give satisfaction therein, and not to die with these imputations on you. Let not any devil persuade you to think there is no eternity in Heaven: for if you think thus, you shall find eternity in Hell-fire. In the first accusation of my lord Cobham, I observed his manner of

\* Kennett says that "Upon the trial, sir Walter Raleigh denying the fact, pleaded, That though it were proved, it could not amount to Treason against king James, being done in the reign of the late queen; and no acts of parliament made to entail the crown upon him after her death."

speaking; I protest before the living God, I am persuaded he spoke nothing but the truth. You wrote, that he should not in any case confess any thing to a Preacher, telling him an example of my lord of Essex, that noble earl that is gone; who, if he had not been carried away with others, had lived in honour to this day among us: he confessed his offences, and obtained mercy of the Lord; for I am verily persuaded in my heart, he died a worthy servant of God. Your conceit of not confessing any thing, is very inhuman and wicked. In this world is the time of confessing, that we may be absolved at the Day of Judgment. You have shewed a fearful sign of denying God, in advising a man not to confess the truth. It now comes in my mind, why you may not have your Accuser come face to face: for such an one is easily brought to retract, when he seeth there is no hope of his own life. It is dangerous that any Traitors should have access to, or conference with one another; when they see themselves must die, they will think it best to have their fellow live, that he may commit the like Treason again, and so in some sort seek revenge.—Now it resteth to pronounce the Judgment, which I wish you had not been this day to have received of me: for if the fear of God in you had been answerable to your other great parts, you might have lived to have been a singular good subject. I never saw the like Trial, and hope I shall never see the like again;

*The Judgment.*

But since you have been found guilty of these horrible Treasons, the judgment of this court is\*, That you shall be had from hence to the place whence you came, there to remain until the day of execution; and from thence you shall be drawn upon a hurdle through the open streets to the place of execution, there to be hanged and cut down alive, and your body shall be opened, your heart and bowels plucked out, and your privy members cut off, and thrown into the fire before your eyes; then your head to be stricken off from your body, and your body shall be divided into four quarters, to be disposed of at the king's pleasure: And God have mercy upon your soul.

Sir Walter Raleigh besought the earl of Devonshire, and the lords, to be suitors on his behalf to the king; that in regard of places of estimation he did bear in his majesty's time, the rigour of his Judgment might be qualified, and his death be honourable, and not ignominious. Wherein after they had promised him to do their utmost endeavours, the court rose, and the prisoner was carried up again to the castle.

Fourteen years sir Walter had spent in the

\* As to the Judgment for Treason and the difference between the Judgment pronounced and that entered on the record, see Lord Derwentwater's Case, *infra*, A. D. 1715, and East's Pleas of the Crown, ch. 2. s. 78.

Tower, and being weary of a state wherein he could be only serviceable by his pen, but not in a capacity of serving and enriching his country any other way, (of whom prince Henry would say, 'that no king but his father would keep such a bird in a cage;') at length he fell upon an enterprize of a golden mine in Guiana in the Southern parts of America. The proposition of this was presented and recommended to his majesty by sir Ralph Winwood, Secretary of State, as a matter not in the air, or speculative, but real, and of certainty: for that sir Walter had seen of the ore of the mine, and tried the richness of it, having gotten a pound from thence by the hands of Captain Kemish's ancient servant.—Sir Ralph's recommendations of the design, and the earnest solicitations for his enlargement by the queen and prince, and the French Leiger, (with much affection to his deserts, not without some politic designs on Spain) together with the asseverations of sir Walter of the truth of the mine, worked upon his majesty, who thought himself in honour obliged, nay, in a manner engaged, as the Declaration which he published after the death of sir Walter tells us, not to deny unto his people the adventure and hope of so great riches to be sought and achieved at the charge of volunteers, especially since it stood so well with his majesty's politic and magnanimous courses in these his flourishing times of peace to nourish and encourage noble and generous enterprizes for plantations, discoveries, and opening of a new trade.—Count Gondomar, an active and subtle instrument to serve his master's ends, took alarm at this, and represented to his majesty the Enterprize of sir Walter to be hostile, and predatory, intending a breach of the peace between the two crowns. But notwithstanding, power at last is granted to sir Walter to set forth ships and men for that service. However, the king commanded him upon pain of his allegiance, to give him under his hand, promising, on the word of a king, to keep it secret, the number of his men, the burden and strength of his ships, together with the country and river which he was to enter: Which being done accordingly by sir Walter, that very original Paper was found in the Spanish governor's closet at St. Thomas's. So active were the Spanish ministers, that advertisement was sent to Spain, and thence to the Indies, before the English Fleet got out of the Thames.—But as we have just cause to admire the more than usual activity of the Spanish agents, so may we wonder no less at the miscarriage of his majesty's present ministers, who, notwithstanding he had passed his royal word to the contrary, yet they did help count Gondomar to that very Paper; so much both king and court were at Gondomar's service. A Commission\* indeed is granted, but by Gondomar's means is limited, That the

\* This Commission bears date Aug. 26, 1616, and is to be found in 1 Rymer's *Fœdera*, 789, wherein no mention is made of the king of Spain, or his subjects, notwithstanding it is so

Fleet should commit no outrages upon the king of Spain's subjects by land, unless they began first. With this commission, and the company of several brave captains, and other knights and gentlemen of great blood and worth, he set out in quest of the Mine with a compleat fleet of 12 sail; letting fall a Speech at his departure, which was rather an argument of his wit than his wisdom; 'That his whole History of the World had not the like precedent, of a king's prisoner to purchase freedom, and his bosom favourite to have the halter, but in Scripture, Mordecai and Haman;' meaning himself and the earl of Somerset. To which he was told, that the king replied, 'He might die in that deceit.' Which he did, for Somerset was saved. Of whom was made good what sir Walter used to say of Favourites, 'That minions were not so happy as vulgar judgments thought them, being frequently commanded to uncomely, and sometimes to unnatural employments.' On the 17th of Nov. he arrived at Guiana having been much retarded by contrary winds, and having lost several of his volunteers in the voyage, by a violent calenture. When sir Walter was returned to Plymouth, sir Lewis Steukly, Vice-Admiral of the county of Devon, seized him, being commissioned by his majesty to bring him to London; which could add no terror to a person who could expect nothing less. When he was brought to London, he was permitted the confinement of his own house: but finding the court wholly guided by Gondomar, he could hope for little mercy; therefore he wisely contrived the design of an escape into France; which sir Lewis Steukly betrayed.

The Voyage proving unsuccessful, king James was willing to sacrifice the life of sir Walter\* to the advancement of peace with Spain, but not upon such grounds as the ambassador had designed; for he desired a Judgment upon the pretended breach of peace, that by this occasion he might silyly gain from the English an acknowledgment of his master's right in those places, and hereafter both stop their mouths, and quench their heat and valour.

Hence they resolved to proceed against him upon his old condemnation †, for having had experience upon a former Trial, they cared not to run the hazard of a second. Accordingly upon Wednesday, the 28th of Oct. 1613, the Lieutenant of the Tower, in pursuance of a Writ of *Habeas Corpus* to him directed, brought sir Walter Raleigh from the Tower to the King's-bench bar at Westminster. Where Mr. Attorney (Mr. Henry Yelverton,) spake in effect thus: My lords, sir Walter Raleigh, the prisoner at the bar, was 15 years since, convicted of High-Treason, by him committed against the person of his majesty, and the state

insinuated in the king's Proclamation against sir Walter Raleigh, June 11, 1618, which is extant in 1 Rym. Fœdera, 92.

\* 1 Rush. col. 9.

† See the Order for his Execution, 1 Rym. Fœd. 115.

of this kingdom, and then received the Judgment of death to be hanged, drawn, and quartered; his majesty, of his abundant grace, hath been pleased to shew mercy upon him 'till now, that justice calls unto him for Execution. Sir Walter hath been a statesman, and a man, who, in regard of his parts and quality, is to be pitied: he hath been as a star, at which the world hath gazed; but stars may fall, nay they must fall, when they trouble the sphere wherein they abide. It is therefore his majesty's pleasure now to call for Execution of the former Judgment, and I now require order for the same.

Then Mr. Fanshaw, Clerk of the Crown, read the Record of the Conviction and Judgment, and called to the Prisoner, to hold up his hand, which he did. Then was the Prisoner asked, What he could say for himself, why execution should not be awarded against him?

*Sir Walter Raleigh.* My lords, my voice is grown weak, by reason of my late sickness, and an ague, which I now have; for I was even now brought hither out of it.

*L. C. Justice (sir Edw. Coke).* Sir Walter, your voice is audible enough.

*Sir Walter.* Then, my lord, all I can say is this; That the Judgment which I received to die so long since, I hope it cannot now be strained to take away my life; for that since it was his majesty's pleasure to grant me a commission to proceed in a Voyage beyond the seas, wherein I had power as marshal, on the life and death of others, so, under favour, I presume I am discharged of that Judgment: for, by that Commission I departed the land, and undertook a Journey, to honour my sovereign, and to enrich his kingdom with gold, of the ore whereof this hand hath found and taken in Guiana; but the Voyage, notwithstanding my endeavour, had no other success, but what was fatal to me, the loss of my son, and wasting of my whole estate.

Being about to proceed, he was by the L. C. Justice interrupted, who spake:

*L. C. J.* Sir Walter Raleigh, this which you now speak, touching your Voyage, is not to the purpose, neither can your Commission any way help you, by that you are not pardoned; for by words of a special nature, in case of treason, you must be pardoned, and not implicitly. There was no word tending to Pardon in all your Commission, and therefore you must say something else to the purpose; otherwise, we must proceed to give execution.

*Sir Walter Raleigh.* If your opinion be so, my lord, I am satisfied, and so put myself on the mercy of the king, who I know is gracious; and, under favour, I must say I hope he will be pleased to take commiseration upon me, is concerning that judgment, which is so long past, and which, I think, here are some could witness, nay, his majesty was of opinion, that I had hard measure therein.

*L. C. J.* Sir Walter Raleigh, you must remember yourself; you had an honourable Trial, and so were justly convicted; and it were wisdom in you now to submit yourself, and to confess your Offence did justly draw upon you



that Judgment which was then pronounced against you; wherefore I pray you attend what I shall say unto you. I am here called to grant Execution upon the Judgment given you 15 years since; and which time you have been as a dead man in the law, and might at any minute have been cut off, but the king in mercy spared you. You might think it heavy, if this were done in cold blood, to call you to Execution, but it is not so; for new Offences have stirred up his majesty's justice, to remember to revive what the law hath formerly cast upon you. I know you have been valiant and wise, and I doubt not but you retain both these virtues, for now you shall have occasion to use them. Your faith hath heretofore been questioned, but I am resolved you are a good Christian; for your Book, which is an admirable work, doth testify as much. I would give you counsel, but I know you can apply unto yourself far better than I am able to give you; yet will I, with the good neighbour in the Gospel, who finding one in the way, wounded and distressed, poured oil into his wounds, and refreshed him, I give unto you the oil of comfort; though, in respect that I am a minister of the law, mixed with vinegar. Sorrow will not avail you in some kind: for, were you pained, sorrow would not ease you; were you afflicted, sorrow would not relieve you; were you tormented, sorrow could not content you; and yet, the sorrow for your sins would be an everlasting comfort to you. You must do as that valiant captain did, who perceiving himself in danger, said, in defiance of death; 'Death, thou expectest me, but maugre thy spite, I expect thee.' Fear not death too much, nor fear not death too little: not too much, lest you fail in your hopes; not too little, lest you die presumptuously. And here I must conclude with my prayers to God for it; and that he would have mercy on your soul.—And so the L. C. Justice ended with these words: 'Execution is granted'.

*Sir Walter Raleigh.* My lord, I desire thus much favour, that I may not be cut off suddenly; for I have something to do in discharge of my conscience, and something to satisfy his majesty in, something to satisfy the world in; and I desire I may be heard at the day of my death. And here I take God to be my judge, before whom I shall shortly appear, I was never disloyal to his majesty, which I will justify where I shall not fear the face of any king on earth: and so I beseech you all to pray for me.

The Court having awarded Execution, the Sheriffs of Middlesex were commanded for that purpose to take him into their custody, who presently carried him to the Gatehouse. The following is a Copy of the Warrant for his Execution:

*De Warranto speciali pro decollatione WALTERI RALEIGH, militis.*

'JAMES, by the grace of God, king of England, Scotland, France, and Ireland, defender of the faith, &c. To our right trusty and well-

beloved Counsellor Frances lord Verulam, our chancellor of England; greeting.—Whereas sir Walter Raleigh, knight, late of the parish of Saint Martin in the Fields, in the county of Middlesex, with others, hath been indicted of divers High Treasons by him committed against us, and thereupon hath been tried, and found Guilty of the same, before our dear cousin and counsellor, Thomas earl of Suffolk, then Chamberlain of our Household, Gilbert late earl of Shrewsbury, Charles late earl of Devon, Henry lord Howard, Robert lord Cecil, of Essington, then our principal Secretary, Edward lord Wotton then our Comptroller of our Household, and other our Justices of Oyer and Terminer, at our city of Winchester, in our county of Southampton, concerning Treasons, and other offences, lately assigned; which said sir Walter Raleigh was, for the same his Treasons, by them adjudged to be drawn, hanged, and quartered, according to the laws and customs of this our realm of England, in that case provided; which said Commission, with the said Judgment, indictment, and the Trial and proceedings thereupon, were returned, and do remain in our said Court of Pleas, before us to be holden; and although the said sir Walter Raleigh be adjudged to die as aforesaid; yet we, minding to dispense with that manner of Execution of Judgment, do therefore, by these presents, pardon, remit, and release the said sir Walter Raleigh, of and from such Execution of his Judgment to be drawn, hanged, and quartered, as abovesaid, and instead thereof, our pleasure is to have the head only of the said sir Walter Raleigh cut off, at, or within our palace of Westminster, in, or upon some fit and convenient place, or scaffold, to be provided in that behalf, and that in such sort and order, as in such cases have been heretofore done; the said Judgment to be drawn, hanged, and quartered, or any law, or other thing, or matter, whatsoever, to the contrary notwithstanding: willing, charging, and hereby expressly commanding you our said Chancellor, That, upon receipt hereof, you do forthwith direct, under our great seal of England, two several Writs, one to the Lieutenant of our Tower of London, or his deputy there, for the delivery of the said Walter Raleigh to the sheriff of Middlesex, at, or within our said palace of Westminster aforesaid; and another Writ to the said sheriff of Middlesex, for the receiving the said sir Walter Raleigh of and from the hands of our said Lieutenant, or his deputy, and for the executing of him there, at some fit and convenient place, to be there, by our said sheriff, erected and provided for that purpose, in such manner and form as in such cases hath heretofore been done, or used to be done; and these presents shall be your warrant and discharge for the same, against us, our heirs and successors for ever. Witness our self at Westminster, the 28th day of October 1618.

*Per Breve de Privato Sigillo.*

But all persons have wondered how that old Sentence, that had lain dormant 16 years and upwards against sir Walter, could have been made use of to take off his head afterwards: considering the then Lord Chancellor Verulam told him positively, (as sir Walter was acquainting him with that proffer of sir Wm. St. Geon for a Pecuniary Pardon, which might have been obtained for a less sum than his Guiana preparations amounted to) in these words: 'Sir, the knee-timber of your Voyage is Money; spare your purse in this particular, for upon my life you have a sufficient Pardon for all that is passed already, the king having, under his broad-seal, made you admiral of your fleet, and given you power of the martial law, over the officers and soldiers.'

It was the opinion of most lawyers, That he, who by his majesty's patent had power of life and death over the king's liege people, should be esteemed or judged *Rectus in curia*, and free from all old convictions. But sir Walter hath made the best defence for his Guiana actions, in his letter to his majesty, which is here inserted.

'May it please your most excellent majesty; In my Journey outward-bound, I had my men murdered at the island, and yet spared to take revenge: if I did discharge some Spanish barques taken without spoil; if I did forbear all parts of the Spanish Indies, wherein I might have taken 20 of their towns on the sea-coasts, and did only follow the Enterprize I undertook for Guiana, where, without any directions from me, a Spanish village was burnt, which was new set up within three miles of the Mine, by your majesty's favour, I find no reason why the Spanish Ambassador should complain of me. If it were lawful for the Spaniards to murder 26 Englishmen, binding them back to back, and then cutting their throats, when they had traded with them a whole month, and came to them on the land without so much as one sword; and that it may not be lawful for your majesty's subjects, being charged first by them, to repel force by force; we may justly say, O miserable English! If Parker and Metham took Campench and other places in the Honduræes, seated in the heart of the Spanish Indies, burned towns, killed the Spaniards, and had nothing said to them at their return, and myself forbore to look into the Indies because I would not offend; I may justly say, O miserable sir W. Raleigh! If I spent my poor estate, lost my son, suffered by sickness, and otherwise, a world of miseries; if I have resisted with the manifest hazard of my-life, the robberies and spoils which my company would have made; if when I was poor, I might have made myself rich; if when I had gotten my liberty, which all men, and nature itself do so much prize, I voluntarily lost it; if, when I was sure of my life, I rendered it again; if I might elsewhere have sold my ship and goods, and put 5 or 6000*l.* in my pocket, and yet have brought her into England: I beseech your majesty to

'believe, that all this I have done, because it should not be said to your majesty, that your majesty had given liberty and trust to a man whose end was but the recovery of his liberty, and who had betrayed your majesty's trust. My mutineers told me, that if I returned for England I should be undone; but I believed in your majesty's goodness, more than in all their arguments. Sure I am, that I am the first that being free, and able to enrich myself, have embraced poverty and peril: and as sure I am, that my example shall make me the last. But your majesty's wisdom and goodness I have made my judge; who have ever been, and shall ever be, your majesty's most humble vassal, WALTER RALEIGH.'

But this Apology, though never so persuasive, could not satisfy Gondomar's rage, who was resolved to sacrifice the only favourite left of queen Elizabeth, to the Spanish interest: and who, as Osburn remarks, was the only person of Essex's enemies that died lamented; and the only man of note left alive, that had helped to beat the Spaniard in the year 1588.

*Sir WALTER RALEIGH's Letter to the King the Night before his Execution.*

THE night before the Execution, sir Walter wrote the following Letters, the one to the King, the other to his Wife:

'The life which I had, most mighty prince, the law hath taken from me, and I am now but the same earth and dust, out of which I was made. If my offence had any proportion with your majesty's mercy, I might despair, or if my deserving had any quantity with your majesty's unmeasurable goodness, I might yet have hope; but it is you that must judge, and not I. Name, blood, gentility, or estate, I have none; no not so much as a being, no not so much as a *vitam plantæ*: I have only a penitent soul in a body of iron, which moveth towards the loadstone of death, and cannot be withheld from touching it, except your majesty's mercy turn the point towards me that expelleth. Lost I am for hearing of vain man, for hearing only, and never believing nor accepting: and so little account I made of that speech of his, which was my condemnation (as my forsaking him doth truly witness) that I never remembered any such thing, till it was at my trial objected against me. So did he repay my care, who cared to make him good, which I now see no care of man can effect. But God (for my offence to him) hath laid this heavy burden on me, miserable and unfortunate wretch that I am! But for not loving you (my sovereign) God hath not laid this sorrow on me; for he knows (with whom I am not in case to lie) that I honoured your majesty by fame, and loved and admired you by knowledge; so that whether I live, or die, your majesty's loving servant I will live and die. If now I write what seems not well-favoured, most merciful prince, vouchsafe to ascribe it to the counsel of a dead heart, and to a mind that sorrow

‘hath confounded. But the more my misery  
‘is, the more is your majesty’s mercy, if you  
‘please to behold it, and the less I can de-  
‘serve, the more liberal your majesty’s gift  
‘shall be: herein you shall only imitate God,  
‘by giving free life; and by giving it to such a  
‘one, from whom there can be no retribution,  
‘but only a desire to pay a lent life with the  
‘same great love, which the same great good-  
‘ness shall bestow on it. This being the first  
‘letter that ever your majesty received from a  
‘dead man: I humbly submit myself to the  
‘will of God, my supreme lord, and shall wil-  
‘lingly and patiently suffer whatsoever it shall  
‘please your majesty to afflict me withal.

‘WALTER RALEIGH.’

*Sir WALTER RALEIGH’s Letter to his Wife.*

‘YOU shall now receive, my dear wife, my  
‘last words in these my last lines. My love I  
‘send you, that you may keep it when I am  
‘dead; and my counsel, that you may re-  
‘member it when I am no more. I would not  
‘by my Will present you with sorrows, dear  
‘Besse, let them go into the grave with me,  
‘and be buried in the dust. And seeing that  
‘it is not God’s will that I should see you any  
‘more in this life, bear it patiently, and with a  
‘heart like thyself. First, I send you all the  
‘thanks which my heart can conceive, or my  
‘words can rehearse, for your many travails,  
‘and care taken for me; which though they  
‘have not taken effect as you wished, yet my  
‘debt to you is not the less; but pay it I never  
‘shall in this world. Secondly, I beseech you,  
‘for the love you bare me living, do not hide  
‘yourself many days, but by your travels seek  
‘to help your miserable fortunes, and the right  
‘of your poor child. Thy mourning cannot  
‘avail me, I am but dust. Thirdly, you shall  
‘understand that my land was conveyed *bona  
‘fide* to my child: the Writings were drawn at  
‘Midsummer was 12 months, my honest cousin  
‘Breit can testify so much, and Dolberry too  
‘can remember somewhat therein. And I  
‘trust my blood will quench their malice that  
‘have cruelly murdered me, and that they will  
‘not seek also to kill thee and thine with ex-  
‘treme poverty. To what friend to direct thee  
‘I know not, for all mine have left me in the  
‘true time of trial. And I perceive that my  
‘death was determined from the first day.  
‘Most sorry I am, God knows, that being thus  
‘surprised with death I can leave you in no  
‘better estate. God is my witness, I meant  
‘you all my office of wines, or all that I could  
‘have purchased by selling it, half my stuff,  
‘and all my jewels, but some one for the boy;  
‘but God hath prevented all my resolutions,  
‘that great God that ruleth all in all: but if  
‘you can live free from want, care for no more,  
‘the rest is but vanity. Love God, and begin  
‘betimes to repose yourself upon him, and  
‘therein shall you find true and lasting riches,  
‘and endless comfort: for the rest, when you  
‘have travelled and wearied your thoughts  
‘over all sorts of worldly cogitations, you shall  
‘but sit down by sorrow in the end. Teach

‘your son also to love and fear God whilst he  
‘is yet young, that the fear of God may grow  
‘with him; and then God will be a husband  
‘to you, and a father to him; a husband and  
‘a father which cannot be taken from you.  
‘Bailey oweth me 200*l.* and Adrian 600*l.* in  
‘Jersey. I also have much owing me besides.  
‘The arrearages of the wines will pay your  
‘debts. And howsoever you do, for my soul’s  
‘sake, pay all poor men. When I am gone, no  
‘doubt you shall be sought to, for the world  
‘thinks that I was very rich. But take heed  
‘of the pretences of men, and their affections,  
‘for they last not but in honest and worthy  
‘men; and no greater misery can befall you in  
‘this life than to become a prey, and after-  
‘wards to be despised. I speak not this, God  
‘knows, to dissuade you from marriage, for it  
‘will be best for you both in respect of the  
‘world and of God. As for me, I am no more  
‘yours, nor you mine, death hath cut us  
‘asunder; and God hath divided me from the  
‘world, and you from me. Remember your  
‘poor child for his father’s sake, who chose  
‘you, and loved you in his happiest times. Get  
‘those Letters, if it be possible, which I writ  
‘to the lords, wherein I sued for life: God is  
‘my witness, it was for you and yours that I  
‘desired life; but it is true that I disdained  
‘myself for hegging of it: for know it, my dear  
‘wife, that your son is the son of a true man,  
‘and who, in his own respect, despiseth death,  
‘and all his misshapen and ugly forms. I  
‘cannot write much, God he knows how hardly  
‘I steal this time while others sleep, and it is  
‘also time that I should separate my thoughts  
‘from the world. Beg my dead body, which  
‘living was denied thee; and either lay it at  
‘Sherburne (and if the land continue) or in  
‘Exeter church by my father and mother. I  
‘can say no more, Time and Death call me  
‘away; the everlasting, powerful, infinite, and  
‘omnipotent God, that Almighty God, who is  
‘goodness itself, the true life and true light,  
‘keep thee and thine, have mercy on me, and  
‘teach me to forgive my persecutors and accu-  
‘sers, and send us to meet in his glorious king-  
‘dom. My dear wife, farewell. Bless my  
‘poor boy. Pray for me, and let my good God  
‘hold you both in his arms. Written with the  
‘dying hand of sometime thy husband, but  
‘now alas overthrown. WALTER RALEIGH.”

*His EXECUTION.*

Upon Thursday the 29th of Oct. 1618, sir  
Walter Raleigh was conveyed by the Sheriffs of  
London to a scaffold in the Old Palace-Yard  
at Westminster, about 9 in the morning of the  
same day. Whereupon, when he came, with a  
cheerful countenance he saluted the lords,  
knights, and gentlemen there present. After  
which, a Proclamation was made for silence,  
and he addressed himself to speak in this man-  
ner, ‘I desire to be borne withal, for this is  
‘the third day of my fever; and if I shall shew  
‘any weakness, I beseech you to attribute it to  
‘my malady, for this is the hour in which it is  
‘wont to come.’

Then pausing a while, he sat, and directed himself towards a window, where the lords of Arundel, Northampton, and Doncaster, with some other lords and knights, sate, and spake as followeth: 'I thank God, of his infinite goodness, that he hath brought me to die in the light, and not in darkness;' (but by reason that the place where the lords, &c. sat, was some distance from the scaffold, that he perceived they could not well hear him, he said) 'I will strain my voice, for I would willingly have your honours hear me.'

But my lord of Arundel said, Nay, we will rather come down to the scaffold; which he and some others did. Where being come, he saluted them severally, and then began again to speak as followeth, viz.

'As I said, I thank God heartily, that he hath brought me into the light to die, and that he hath not suffered me to die in the dark prison of the Tower, where I have suffered a great deal of misery and cruel sickness; and I thank God that my fever hath not taken me at this time, as I prayed to God it might not. —Here are two main points of Suspicion that his majesty, as I hear, hath conceived against me. To resolve your lordships wherein his majesty cannot be satisfied, which I desire to clear, and to resolve your lordships of: One is, That his majesty hath been informed that I have often had Plots with France, and his majesty had good reason to induce him thereunto. One Reason that his majesty had to conjecture so was, that when I came back from Guiana, being come to Plymouth, I endeavoured to go in a bark to Rochel, which was, for that I would have made my peace before I had come to England. Another reason was, That upon my flight, I did intend to fly into France, for the saving of myself, having had some terror from above. A third reason, that his majesty had reason to suspect, was the French agent's coming to me; besides, it was reported that I had a Commission from the French king at my going forth: These are the Reasons that his majesty had, as I am informed, to suspect me.—But this I say, for a man to call God to witness to a falsehood at the hour of death, is far more grievous and impious, and that a man that so doth cannot have salvation, for he hath no time of repentance; then what shall I expect, that am going instantly to render up my account? I do therefore call God to witness, as I hope to be saved, and as I hope to see him in his kingdom, which I hope I shall within this quarter of an hour, I never had any Commission from the French king, nor never saw the French king's hand-writing in all my life; neither knew I that there was a French Agent, nor what he was, till I met him in my gallery at my lodging unlooked for: If I speak not true, O lord! let me never enter into thy kingdom.—The second Suspicion was, That his majesty had been informed, that I should speak dishonourably and disloyally of my sovereign; but my Accuser was a base French-

man, and runnagate fellow, one that hath no dwelling, a kind of a chymical fellow, one that I knew to be perfidious; for being by him drawn into the action of fearing myself at Winchester, in which I confess my hand was toucht, he being sworn to secrecy over-night, revealed it the next morning.—But this I speak now, what have I to do with kings? I have nothing to do with them, neither do I fear them; I have only now to do with my God, in whose presence I stand; therefore to tell a lye, were it to gain the king's favour, were vain: Therefore, as I hope to be saved at the last Judgment-day, I never spoke dishonourably, disloyally, or dishonestly of his majesty in all my life; and therefore I cannot but think it strange that that Frenchman, being so base and mean a fellow, should be so far credited as he hath been.—I have dealt truly, as I hope to be saved, and I hope I shall be believed; I confess I did attempt to escape, I cannot excuse it, but it was only to save my life.—And I do likewise confess, that I did feign myself to be ill-disposed and sick at Salisbury; but I hope it was no sin, for the prophet David did make himself a fool, and suffered spittle to fall down upon his beard, to escape from the hands of his enemies, and it was not imputed unto him: so, what I did, I intended no ill, but to gain and prolong till his majesty came, hoping for some commiseration from him.—But I forgive this Frenchman and sir Lewis Steukley, with all my heart, for I have received the Sacrament this morning of Mr. Dean of Westminster, and I have forgiven all men; but that they are perfidious, I am bound in charity to speak, that all men may take heed of them.—Sir Lewis Steukley, my keeper and kinsman, hath affirmed that I should tell him, that my lord Carew, and my lord of Doncaster here, did advise me to escape; but I protest before God, I never told him any such thing, neither did the lords advise me to any such matter, neither is it likely that I should tell him any such thing of two privy counsellors; neither had I any reason to tell him or he to report it; for it is well known he left me 6, 7, 8, 9, and 10 days together alone, to go whither I listed, whilst he rode himself about the country.—He further accused me, that I should shew him a Letter, whereby I did signify unto him that I would give him 10,000*l.* for my Escape; but God cast my soul into everlasting fire, if I made any such proffer of 10,000*l.* or 1000*l.* but indeed I shewed him a Letter, that if he would go with me, there should be order taken for his Debts when he was gone; neither had I 10,000*l.* to give him; for if I had had so much I could have made my peace better with it other way, than in giving it to Steukley.—Further, When I came to sir Edw. Pelham's house, who had been a follower of mine, and who gave me good entertainment; he gave out that I had there received some draue of poison, when I answered him that I feared no such thing, for I was well assured

of them in the house, and therefore wisht him for no such thought. Now God forgive him, for I do, and I desire God to forgive him: I will not only say, God is a God of Revenge; but I desire God, to forgive him, as I do desire to be forgiven of God.

Then looking over his note of remembrance, Well, said he, thus far I have gone; a little more, a little more, and I will have done by and by.—It was told the king that I was brought per force into England, and that I did not intend to come again; but sir C. Parker, Mr. Tresham, Mr. Leake, and divers know how I was dealt withal by the common soldiers, which were 150 in number, who mutinied, and sent for me to come into the ship to them, for unto me they would not come, and there I was forced to take an Oath that I would not go into England till that they would have me; otherwise they would have cast me into the sea, and therewithal they drove me into my cabbin, and bent all their forces against me.—Now after I have taken this Oath, with wine and other things such as I had about me, I drew some of the chiefest to desist from their purposes; and at length I persuaded them to go into Ireland, which they were willing unto, and would have gone into the North parts of Ireland, which I dissuaded them from, and told them that they were Red-Shankes that inhabited there: and with much ado I persuaded them to go into the south parts of Ireland, promising them to get their pardons, and was forced to give them 125*l.* at Kinsale, to bring them home, otherwise I had never got from them.—I hear likewise there was a report that I meant not to go to Guiana at all, and that I knew not of any Mine, nor intended any such thing or matter, but only to get my liberty, which I had not the wit to keep. But I protest it was my full intent, and for Gold; for Gold, for the benefit of his majesty and myself, and of those that ventured and went with me, with the rest of my countrymen: but he that knew the head of the Mine would not discover it, when he saw my son was slain, but made away himself.” And then turning to the earl of Arundel, he said, ‘My Lord, being in the gallery of my ship, at my departure, I remember your honour took me by the hand, and said, You would request one thing of me, which was, That whether I made a good voyage or a bad, I should not fail, but to return again into England; which I then promised you, and gave you my faith I would; and so I have.’

To which my Lord answered, and said, It is true I do very well remember it, they were the very last words I spake unto you.

Another slander was raised of me, That I would have gone away from them, and left them at Guiana. But there were a great many worthy men that accompanied me always; as my serj. major, George Raleigh, and divers others, which knew my intent was nothing so.—Another opinion was held of me,

that I carried with me to sea 16,000 piece and that was all the Voyage I intended, on to get money into my hands. As I shall answer it before God, I had not in all the world in my hands, or others to my use, either directly or indirectly, above a 100*l.*, where when I went I gave my wife 25*l.* thereof but the error thereof came, as I perceived, looking over the Scrivener’s Books, where they found the Bills of Adventure arising to great sum, and so raised that false report.—Only I will borrow a little time of Mr. Sheriff to speak of one thing, that doth make me bound to bleed to hear that such an imputation should be laid upon me; for it is said, that should be a persecutor of the death of the earl of Essex, and that I stood in a window over-against him when he suffered, and puff out tobacco in disdain of him. God I take my witness, I shed tears for him when he died and as I hope to look God in the face hereafter, my lord of Essex did not see my face when he suffered, for I was afar off in the Armory where I saw him, but he saw not me.—I confess indeed I was of a contrary faction but, I know my lord of Essex was a noble gentleman, and that it would be worse wisdom when he was gone; for I got the hatred of those which wished me well before, and those that set me against him, afterward set themselves against me, and were my greatest enemies, and my soul hath many times been grieved that I was not nearer him when he died because, as I understood afterwards, that he asked for me at his death, to have been recalled unto me.—And these be the matters which points I thought good to speak of, and I am now at this instant to render up an account to God; and I protest, as I shall appear before him, this that I have spoken is true, and I hope I shall be believed.’

Then a Proclamation being made, that a man should depart the scaffold, he prepared himself for death; giving away his hat, his cap with some money, to such as he knew, that stood near him. And then taking his leave of the lords, knights, gentlemen, and others of his acquaintance, and amongst the rest, taking his leave of my lord of Arundel, he thanked him for his company, and intreated him to desire the king that no scandalous Writing to defame him might be published after his death; saying further unto him, I have a long journey to go, and therefore I will take my leave.—And then putting off his doublet and gown, desired the head man to shew him the ax; which not being suddenly granted unto him, he said, I pray thee let me see it, dost thou think that I am afraid of it? So it being given unto him, he felt along upon the edge of it, and smiling, spake unto Mr. Sheriff, saying, ‘This is a sharp medicine but it is a physician that will cure all diseases.’

Then going to and fro upon the scaffold every side, he intreated the company to pray God to give him strength.

Then having ended his Speech, the executioner kneeled down and asked him forgiveness

the which laying his hand upon his shoulder he forgave him. Then being asked which way he would lay himself on the block, he made answer and said, So the heart be straight, it is no matter which way the head lieth: So laying his head on the block, his face being towards the east, the headsman throwing down his own cloak, because he would not spoil the prisoner's gown, he giving the headsman a sign when he should strike, by lifting up his hands, the Executioner struck off his head at two blows, his body never shrinking nor moving. His head was shewed on each side of the scaffold, and then put into a red leather bag, and his wrought velvet gown thrown over it, which was afterwards conveyed away in a mourning coach of his lady's.—He was 66 years old.

"This Conspiracy of sir Walter Raleigh's," writes Bishop Kennett in a note to Wilson's *Life of James the first*, "is variously represented by the Historians and Writers of that time, but acknowledged by all of them to have been a Riddle of State. I have seen most of the Accounts that have been published on this subject; and from them and from some sheets of Cecil earl of Salisbury, and a Manuscript of one Buck, who it seems was secretary to Chancellor Egerton, I take the case to have been this:—The earl of Salisbury and sir Walter Raleigh had been open and declared enemies of the unhappy earl of Essex, and the chief promoters of his ruin: Though king James could easily digest the death of queen Mary Stuart his mother, it is notoriously known he never heartily forgave any of Essex's enemies; which both Cecil and Raleigh were aware of, but took contrary measures to avoid his resentment. Raleigh trusting in the justice of his procedure in that affair, made no steps towards the making his peace with her successor, contenting himself with the favour of that mistress who raised him, which he enjoyed to her death. On the contrary, Cecil, by the mediation of Hume, that was afterwards earl of Dumbard, had been long before entirely reconciled to king James, had done him important services, and kept a correspondence with him, while queen Elizabeth was alive.—When king James came into England, Cecil was not only

continued in his places, but, contrary to all men's expectations, was indeed made the first minister of state, and Raleigh neglected. The latter knowing the former to be at least equally concerned with him in the fall of Essex, his great mind could not bear the distinction made between them by their new master; and the rather, that Cecil acted the courtier, in frowning upon his old friend and acquaintance, and giving him fresh mortifications upon every occasion. In Buck's Manuscript there is mentioned a Memorial of Raleigh's to king James, wherein he reflects heavily upon Cecil in the matter of Essex, and vindicating himself, throws the whole blame upon the other. At the end of that Memorial, he lays open the conduct of Cecil and his father the lord Burleigh, in the matter of queen Mary Stuart, and, with a singular bitterness of style, not only vindicates the memory of queen Elizabeth, but lays the death of that unfortunate queen chiefly at the door of Cecil and his father; for which he appeals to Davison, then in prison, the man that had dispatched the Warrant for her Execution, contrary to queen Elizabeth's express command. All this had no influence on king James, and irritated Cecil the more against Raleigh; which helped to sour a temper that of itself was impatient of injuries, and for all his other excellent qualities, was not fitted for this reverse of fortune.—This brought him into the acquaintance and familiarity of other men, as discontented as himself, though of different religions and interests; and occasioned probably more discourses than one, of having recourse to foreign powers to mend their present fortunes. It is also not unlikely, that the lady Arabella's name might, upon these occasions, be mentioned by sir Walter Raleigh, as one that had a near title to the crown: but that he ever entered into any form or design of altering the established religion, (as was said at his Trial) no body then nor since did ever believe."

The eminent merits, high reputation, and uncommon fate of sir Walter Raleigh, together with the obscurity of the transactions concerning him, will justify the insertion of the following Articles which throw light on his interesting story:

TWO LETTERS of Sir Dudley Carleton (afterwards Viscount Dorchester) concerning Sir WALTER RALEIGH'S PLOT; inclosed in the following Letter from Mr. Dudley Carleton to Philip Lord Wharton.

[Extracted from the *Hardwicke State Papers*, vol. 1. p. 377.]

MY noble lord; The two letters inclosed are those, of which, when I told your lordship, you shewed yourself very desirous to have sight and therefore I have sent them to you. That Dudley Carleton, whose name you will find subscribed to them, was my uncle, who died secretary to his late majesty, who had likewise honoured him with the title of viscount Dorchester; and I suppose you knew him. He was, at the time he wrote them, secretary to my lord

of Northumberland's father, and both an ear and eye witness of most that passed in the Arraignment and Execution at Winchester, in anno 1603. I wish they may serve your Lordship to such use as you desire; and if I could give you any farther light, I should be most ready to serve you, as being your Lordship's, &c.

DUDLEY CARLETON.

London,  
Feb. 14th, 1651.

*Sir Dudley Carleton, to Mr. John Chamberlain.*

Sir; I was taking care how to send unto you, and little looked for so good a means as your man, who came to me this morning; and though he would in all haste be gone, I have stayed him this night, to have time to discourse unto you these tragical Proceedings. I was not present at the first or second Arraignment, wherein Brooke, Markham, Brookesby, Copley, and the two Priests were condemned, for practising the surprize of the king's Person, the taking of the Tower, the deposing of Counsellors, and proclaiming Liberty of Religion. They were all condemned upon their own Confessions, which were set down under their own hands, as Declarations; and compiled with such labour and care, to make the matter they undertook seem very feasible, as if they had feared they should not say enough to hang themselves. Pirra was acquitted, being only drawn in by the priests as an assistant, without knowing the purpose; yet had he gone the same way as the rest (as it is thought), save for a word the lord Cecil cast in the way as his cause was in handling, That the king's glory consisted as much in freeing the innocent, as condemning the guilty.

The Commissioners for this Trial were, the Lord Chamberlain, lord of Devon, lord Henry Howard, lord Cecil, lord Wotton, the Vice Chamberlain, the two Chief Justices, Justice Gawdy, and Warburton. Of the King's Council, none were employed in that, or the arraignment, but the Attorney (Coke,) Heals, and Philips; and in effect, none but the Attorney. Sir Walter Raleigh served for a whole act, and played all the parts himself. His cause was disjoined from the Priests, as being a practice only between himself and the lord Cobham,\* to have brought in the Spaniard, to have raised Rebellion in the realm, by fastening money upon discontents, to have set up the lady Arabella, and to have tied her to certain conditions; as to have a perpetual peace with Spain; not to have bestowed herself in marriage but at the direction of the Spaniard; and to have granted Liberty of Religion. The Evidence against him, was only Cobham's Confession, which was judged sufficient to condemn him; and a Letter was produced, written by Cobham the day before, by which he accused Raleigh as the first practiser of the Treason betwixt them: which served to turn against him; though he shewed, to countervail this, a Letter written by Cobham, and delivered to him in the Tower, by which he was clearly acquitted. After Sentence given, his request was, to have his Answers related to the king, and pardon begged; of which, if there were no hope, then that Cobham might die first. He answered with that temper, wit, learning, courage and judgment, that save that it went with the hazard

\* It does not appear what proceedings had been had against Cobham.

of his life, it was the happiest day that ever he spent. And so well he shifted all advantages that were taken against him, that were not *fama multum gravior quam res*, and an ill name half hanged, in the opinion of all men, he had been acquitted.—The two first that brought the news to the king, were Roger Ashton and a Scotchman; whereof one affirmed, That never any man spoke so well in times past, nor would do in the world to come; and the other said, That whereas when he saw him first, he was so led with the common hatred, that he would have gone a hundred miles to have seen him hanged, he would, ere he parted, have gone a thousand to have saved his life. In one word, never was man so hated, and so popular, in so short a time. It was thought the lords should have been arraigned on Tuesday last, but they were put off till Friday and Saturday; and had their trials apart before the Lord Chancellor (Ellesmere, as Lord Steward for both those days), eleven earls, nineteen barons. The duke<sup>o</sup>, the earl of Marr, and many Scottish lords, stood as spectators; and of our ladies, the greatest part, as the lady Nottingham, the lady Suffolk, and the lady Arabella, who heard herself much spoken of these days. But, the arraignment before, she was more particularly remembered, as by sir Walter Raleigh, for a woman, with whom he had no acquaintance, and one, whom, of all that he ever saw, he never liked; and by Serj. Hale, as one that had no more right to the crown than himself; and for any claim that he had to it, he utterly disavowed it. Cobham led the way on Friday, and made such a fasting day's piece of work of it, that he discredited the place to which he was called; never was seen so poor and abject a spirit. He heard his indictment with much fear and trembling, and would sometimes interrupt it, by forswearing what he thought to be wrongly inserted; so as, by his fashion, it was known ere he spake, what he would confess or deny. In his first answer, he said, he had changed his mind since he came to the bar; for whereas he came with an intention to have made his confession, without denying any thing, now seeing many things inserted in this indictment with which he could not be charged, being not able in one word to make distinction of many parts, he must plead to all not guilty. For any thing that belonged to the lady Arabella, he denied the whole accusation; only said, she had sought his friendship, and his brother Brooke had sought her's. For the other purposes, he said, he had hammered in his brains some such imaginations: but never had purpose to bring them to effect. Upon Raleigh, he exclaimed as one who had stirred him up to discontent, and thereby overthrown his fortunes. Against him he said, that he had once propounded to him a means for the Spaniard to invade England, which was, to bring down an army to the Groyne, under pretence to send them into the Low Countries, and land them at Milford Haven: that he had made

\* Of Lenox, then the only one of that degree.

himself a pensioner to Spain for 1500 crowns by the year, to give intelligence; and, for an earnest of his diligence, had already related to the Count D'Aremberg, the particularities of what passed in the states audiences at Greenwich. His brother's confession was read against him, wherein he accused him of a contract made with Aremberg for 500,000 crowns to bestow amongst discontents, whereof Raleigh was to have had 10,000, Grey as much, and Brooke 1000; the rest, as they should find fit men to bestow it on. He excepted against his brother as an incompetent accuser, baptizing him with the name of a viper; and laid to his charge (though far from the purpose) the getting of his wife's sister with child; in which it is thought he did young Coppinger some wrong.

A letter was produced which he wrote to Aremberg's for so much money; and Aremberg's answer, consenting for the furnishing of that sum. He then flew to his former retreat, that in this likewise he had no ill meaning, and excused Aremberg as one that meant only thereby to further the peace. When particularities were farther urged, that, in his intended travel, he meant to have gone into the Low Countries to the archduke; from thence into Savoy; so into Spain; then have returned by Jersey; and there to have met Raleigh, and to have brought some money from the well-spring where it was to be had, he confessed imaginations, but no purposes, and still laid the fault upon his own weaknesses, in that he suffered himself to be misled by Raleigh. Being asked of his two letters to different purposes, the one excusing, the other condemning Raleigh; he said, the last was true, but the other was drawn from him by device in the Tower, by young Harvey the lieutenant's son, whom Raleigh had corrupted, and carried intelligence betwixt them (for which he is there committed, and is likely to be arraigned at the King's-bench). Having thus accused all his friends, and so little excused himself, the peers were not long in deliberation what to judge; and after sentence of condemnation given, he begged a great while for life and favour, alleging his confession as a meritorious act. Grey, quite in another key, began with great assurances and alacrity: spake a long and eloquent speech, first to the lords, and then to the judges, and lastly to the king's council; and told them well of their charges, and spake effectually for himself. He held them the whole day, from eight in the morning till eight at night, in subtle traverses and scapes; but the evidence was too perspicuous, both by Brooke's and Markham's confessions, that he was acquainted with the surprize;\* yet the lords were long ere they could all agree, and loth to come out with so hard censure against him. For though he had some heavy enemies, as his old antagonist, who was mute before his face, but spake within very unnotably against him; yet most of them strove with themselves, and would fain (as it

seemed) have dispensed with their consciences to have shewed him favour. At the pronouncing of the opinion of the lords, and the demand whether he had any thing to say why sentence of death should not be given against him, these only were his words, "I have nothing to say;" there he paused long; "and yet a word of Tacitus comes in my mind, *Non eadem omnibus decora*: the house of the Wiltons had spent many lives in their prince's service, and Grey cannot beg his. God send the king a long and prosperous reign, and to your lordships all honour."

After sentence given, he only desired to have one Travers,\* a divine, sent for to come to him, if he might live two days. If he were to die before that, then he might have one Field, whom he thought to be near. There was great compassion had of this gallant young lord; for so clear and fiery a spirit had not been seen by any that had been present at like trials. Yet the Lord Steward condemned his manner much, terming it Lucifer's pride, and preached much humiliation; and the judges liked him as little, because he disputed with them against their laws. We cannot yet judge what will become of him or the rest; for all are not like to go one way. Cobham is of the surest side, for he is thought least dangerous, and the lord Cecil undertakes to be his friend. They say the priests shall lead the dance tomorrow; and Brooke next after: for he proves to be the knot that tied together the three conspiracies; the rest hang indifferent betwixt mercy and justice, wherein the king hath now subject to practise himself. The lords are most of them returned to the court. The Lord Chancellor and Treasurer remain here till Tuesday, to shut up the term. My lord goeth from hence to Petworth; but I pick quarrel to stay behind, to see an end of these matters.

I do call to mind a pretty secret, that the lady of Pembroke hath written to her son Philip, and charged him, of all her blessings, to employ his own credit, his friends, and all he can do, for Raleigh's pardon: and though she does little good, yet she is to be commended for doing her best, in shewing *veteris vestigia flammæ*. And thus being come round where I began, it is time to leave you, desiring you to excuse me to my cousin sir Rowland Litton, for not writing; and so you well may, for you have enough for yourself and all my kindred and friends, to make you all weary. Sir Walter Cope is in this town, and sir Hugh Beston likewise, who often asks for you as your friend, and therefore you are the more to lament that he is untimely come to a night-cap. Many marvel at his sudden breaking, but most ascribe it to a thought he took at a word which sir Walter Raleigh spoke at his examinations: who asked if sir Hugh Beston was not apprehended and tortured, because he was always of his chieftest council. I shall never end, unless I abruptly bid you farewell. From Winchester, the 27th

\* Of the court.

\* A Puritan, the antagonist of Hooker.



of November, 1603. Your's, &c. DUDLEY CARLETON.\*

*The Same to the Same.*

Sir: I know not when or how to send to you; yet here happening an accident worth your knowledge, I cannot but put it in record whilst the memory of it is fresh; and for the rest, stand to the venture. But because I have taken a time of good leisure, and it is likely this letter will take his leisure, ere it come at you; I may as well leap in where I left, when I wrote to you by your man, and proceed in an order by narration; since this was a part of the same play, and that other acts came betwixt, to make up a tragical comedy.

The two priests that led the way to the execution, were very bloodily handled; for they were both cut down alive; and Clarke, to whom more favour was intended, had the worse luck; for he both strove to help himself, and spake after he was cut down. They died boldly both; and Watson (as he would have it seem) willing: wishing he had more lives to spend, and one to lose, for every man he had by his treachery drawn into this treason. Clarke stood somewhat upon his justification, and thought he had hard measure: but imputed it to his function, and therefore thought his death meritorious, as a kind of martyrdom. Their quarters were set on Winchester gates, and their heads on the first Tower of the castle. Brooke was beheaded in the castle-yard, on Monday last; and to double his grief, had Sr. Croftes in his sight, from the scaffold, which drove him first to discontent\*. There was no greater assembly than I have seen at ordinary executions; nor no man of quality more than the lord of Arundel and young Somerset; only the bishop of Chichester who was sent from the court two days before, to prepare him to his end, could not get loose from him; but, by Brooke's earnest entreaty was fain to accompany him to the scaffold, and serve for his ghostly father. He died constantly (and, to seeming, religiously); spake not much; but what he said was well and assured. He did somewhat extenuate his offences, both in the treasons, and the course of his life; naming these rather errors than capital crimes; and his former faults, sins; but not so heinous as they were traduced; which he referred to the God of truth and time to discover; and so left it, as if somewhat lay yet hid, which would one day appear for his justification. The bishop went from him to the lord Cobham; and at the same time, the bishop of Winchester was with Raleigh: both by express order from the king; as well to prepare them for their ends, as likewise to bring them to liberal confessions, and by that means reconcile the contradictions of the one's open accusation, and the other's peremp-

\* This Letter contains other matter; which is not here inserted as having no relation to Raleigh or his associates.

† Missing, I suppose, the mastership.

tory denial. The bishop of Chichester had soon done what he came for, finding in Cobham a willingness to die, and readiness to die well; with purpose at his death to affirm as much as he had said against Raleigh; but the other bishop had more to do with his charge; for though, for his conscience, he found him well settled, and resolved to die a Christian and a good Protestant, for the point of confession, he found him so strait-laced, that he would yield to no part of Cobham's accusation; only the pension, he said, was once mentioned, but never proceeded in. Grey in the mean time, with his minister Field, having had the like summons for death, spent his time in great devotions; but with that careless regard of, that with which he was threatened, that he was observed neither to eat or sleep the worse, or be any ways distracted from his accustomed fashions. Markham was told he should likewise die: but by secret message from some friends at court, had still such hope given him, that he would not believe the worst news till the last day; and though he could be content to talk with the preacher which was assigned him, it was rather to pass time, than for any good purpose; for he was catholicly disposed; to think of death no way disposed. Whilst these men were so occupied at Winchester, there was no small doings about them at court, for life or death; some pushing at the wheel one way, some another. The lords of the council joined in opinion and advice to the king, now in the beginning of his reign to shew as well examples of mercy as severity, and to gain the title of Clemens, as well as Justus; but some others, led by their private spleen and passions, drew as hard the other way; and Patrick Galloway, in his sermon on Tuesday, preached so hotly against remissness and moderation of justice, in the head of justice, as if it were one of the seven deadly sins. The king held himself upright betwixt two waters; and first let the lords know, that since the law had passed upon the prisoners, and that they themselves had been their judges, it became not them to be petitioners for that, but rather to press for execution of their own ordinances; and to others, gave as good reasons, to let them know that he would go no whit the faster for their driving; but would be led as his own judgment and affections would move him; but seemed rather to lean to this side than the other, by the care he took to have the law take his course, and the execution hastened.

Warrants were signed, and sent to sir Benjamin Tichborne, on Wednesday last at night, for Markham, Grey, and Cobham, who in this order were to take their turns, as yesterday, being Friday, about ten of the clock. A fouler day could hardly have been picked out, or fitter for such a tragedy. Markham being brought to the scaffold, was much dismayed, and complained much of his hard hap, to be deluded with hopes, and brought to that place unprepared. One might see in his face the very picture of sorrow; but he seemed not to

want resolution; for a napkin being offered by a friend that stood by, to cover his face, he threw it away, saying, he could look upon death without blushing. He took leave of some friends that stood near, and betook himself to his devotions, after his manner; and those ended, prepared himself to the block. The sheriff, in the mean time, was secretly withdrawn, by one John Gib, a Scotch groom of the bedchamber; whereupon the execution was stayed, and Markham left upon the scaffold to entertain his own thoughts, which, no doubt, were as melancholy as his countenance, sad and heavy. The sheriff, at his return, told him, that since he was so ill prepared, he should yet have two hours respite, so led him from the scaffold, without giving him any more comfort, and locked him into the great hall, to walk with prince Arthur. The lord Grey, whose turn was next, was led to the scaffold by a troop of the young courtiers, and was supported on both sides by two of his best friends; and coming in this equipage, had such gaiety and cheer in his countenance, that he seemed a dapper young bridegroom. At his first coming on the scaffold, he fell on his knees, and his preacher made a long prayer to the present purpose, which he seconded himself with one of his own making, which, for the phrase, was somewhat affected, and suited to his other speeches; but, for the fashion, expressed the fervency and zeal of a religious spirit. In his confession, he said, though God knew this fault of his was far from the greatest, yet he knew, and could but acknowledge his heart to be faulty; for which he asked pardon of the king; and thereupon entered into a long prayer for the king's good estate, which held us in the rain more than half an hour; but being come to a full point, the sheriff stayed him, and said, he had received orders from the king, to change the order of the execution, and that the lord Cobham was to go before him; whereupon he was likewise led to prince Arthur's hall, and his going away seemed more strange unto him, than his coming thither; for he had no more hope given him, than of an hour's respite; neither could any man yet dive into the mystery of this strange proceeding.

The lord Cobham, who was now to play his part, and by his former actions promised nothing but *matiere pour rire*, did much cozen the world; for he came to the scaffold with good assurance, and contempt of death. He said some short prayers after his minister, and so outprayed the company that helped to pray with him, that a stander-by said, 'He had a good mouth in a cry, but was nothing single.' Some few words he used, to express his sorrow for his offence to the king, and craved pardon of him and the world; for sir Walter Raleigh, he took it, upon the hope of his soul's resurrection, that what he had said of him was true; and with those words would have taken a short farewell of the world, with that constancy and boldness, that we might see by him, it is an easier matter to die well than live well.

He was stayed by the sheriff, and told, that there resteth yet somewhat else to be done; for that he was to be confronted with some other of the prisoners, but named none. So as Grey and Markham being brought back to the scaffold, as they then were, but nothing acquainted with what had passed, no more than the lookers-on with what should follow, looked strange one upon the other like men beheaded, and met again in the other world. Now all the actors being together on the stage (as use is at the end of a play,) the sheriff made a short speech unto them, by way of the interrogatory of the heinousness of their offences, the justness of their trials, their lawful condemnation, and due execution there to be performed; to all which they assented; then, saith the sheriff, see the mercy of your prince, who, of himself, hath sent hither to countermand, and given you your lives. There was then no need to beg a *plaudite* of the audience, for it was given with such hues and cries, that it went from the castle into the town, and there began afresh, as if there had been some such like accident. And this experience was made of the difference of examples of justice and mercy; that in this last, no man could cry loud enough, 'God save the King;' and at the holding up of Brookes's head, when the executioner began the same cry, he was not seconded by the voice of any one man, but the sheriff. You must think, if the spectators were so glad, the actors were not sorry; for even those that went best resolved to death, were glad of life. Cobham vowed openly, if ever he proved traitor again, never so much as to beg his life; and Grey, that since he had his life, without begging, he would deserve it. Markham returned with a merrier countenance than he came to the scaffold. Raleigh, you must think (who had a window opened that way), had hammers working in his head, to beat out the meaning of this stratagem. His turn was to come on Monday next; but the king has pardoned him with the rest, and confined him with the two lords to the Tower of London, there to remain during pleasure. Markham, Brooksby and Copley, are to be banished the realm. This resolution was taken by the king without man's help, and no man can rob him of the praise of yesterday's action; for the lords knew no other, but that execution was to go forward, till the very hour it should be performed; and then, calling them before him, he told them, how much he had been troubled to resolve in this business; for to execute Grey, who was a noble young, spirited fellow, and save Cobham, who was as base and unworthy, were a manner of injustice. To save Grey, who was of a proud insolent nature, and execute Cobham, who had shewed great tokens of humility and repentance, were as great a solecism; and so went on with Plutarch's comparisons in the rest, till travelling in contrarieties, but holding the conclusion in so different balance, that the lords knew not what to look for till the end came out, and therefore I have saved them all. The

miracle was as great there, as with us at Winchester, and it took like effect; for the applause that began about the king went from thence into the presence, and so round about the court.

I send you a copy of the king's letter, which was privately written the Wednesday night, and the messenger dispatched the Thursday about noon. But one thing had like to have marred the play; for the letter was closed, and delivered him unsigned; which the king remembered himself, and called for him back again.

And at Winchester, there was another cross adventure; for John Gib could not get so near the scaffold, that he could speak to the sheriff, but was thrust out amongst the boys, and was fain to call out to sir James Hayes, or else Markham might have lost his neck. There were other by-passages, if I could readily call them to mind; but here is enough already for *un petit mot de lettre*, and therefore I bid you heartily farewell. From Salisbury this 11th of Dec. 1603. Your's, &c.

DUDLEY CARLTON.

Account of the GUIANA EXPEDITION; with a Character of Sir Walter Raleigh.

[*Extracted from Howell's Familiar Letters, pp. 21, 383.*]

To Sir James Crofts, kt. at St. Osith.

"THE news that keeps greatest noise here now, is the return of sir Walter Raleigh from his Mine of Gold in Guiana, the South parts of America, which at first was like to be such a hopeful boon Voyage, but it seems that that golden mine is proved a mere Chimera, an imaginarily airy mine; and indeed his majesty had never any other conceit of it: But what will not one in captivity (as sir Walter was) promise, to regain his freedom? who would not promise; not only mines, but mountains of gold, for liberty? and it is pity such a knowing well-weighted knight had not had a better fortune; for the Destiny (I mean that brave ship which he built himself of that name, that carried him thither) is like to prove a Fatal Destiny to him, and to some of the rest of those gallant Adventurers which contributed for the setting forth of 13 ships more, who were most of them his kinsmen and younger brothers, being led into the said Expedition by a general conceit the world had of the wisdom of sir Walter Raleigh; and many of these are like to make shipwreck of their estates by this Voyage. Sir Walter landed at Plymouth, whence he thought to make an escape; and some say he hath tampered with his body by physic, to make him look sickly, that he may be the more pitied, and permitted to lie in his own house. Count Gondamar the Spanish ambassador speaks high language; and sending lately to desire audience of his majesty, he said he had but one word to tell him; his majesty wondering what might be delivered in one word when he came before him, he said only, 'Pirates, Pirates, Pirates,' and so departed.

It is true that he protested against this Voyage before, and that it could not be but for some predatory design: And that if it be as I hear, I fear it will go very ill with sir Walter, and that Gondamar will never give him over, till he hath his head off his shoulders; which may quickly be done, without any new Arraignment, by virtue of the old Sentence that lies still dormant against him, which he could never get off by Pardon, notwithstanding that he mainly laboured in it before he went: but his majesty could never be brought to it, for he said he would keep this as a curb to hold him

within the bounds of his commission, and the good behaviour.

Gondamar cries out, that he hath broke the sacred Peace betwixt the two kingdoms; That he hath fired and plundered Santo Thoma, a colony the Spaniards had planted with so much blood, near under the line, which made it prove such hot service unto him, and where, besides others, he lost his eldest son in the action: And could they have preserved the magazine of Tobacco only, besides other things in that town, something might have been had to countervail the charge of the Voyage. Gondamar allegeth farther, That the enterprize of the Mine failing, he propounded to the rest of his fleet to go and intercept some of the plate Gallies, with other designs which would have drawn after them apparent acts of hostility; and so demands justice: besides other disasters which fell out upon the dashing of the first design, captain Remish, who was the main instrument for discovery of the mine, pistoled himself in a desperate mood of discontent in his cabin, in the Convertine.

This return of sir Walter Raleigh from Guiana, puts me in mind of a facetious tale I read lately in Italian (for I have a little of that language already) how Alphonso king of Naples sent a Moor, who had been his captive a long time, to Barbary, with a considerable sum of money to buy horses, and return by such a time. Now there was about the king a kind of Bulboon or jester, who had a table-book or Journal, wherein he was used to register any absurdity, or imperiannce, or merry passage that happened upon the court. That day the Moor was dispatched for Barbary, the said Jester waiting upon the king at supper, the king called for his Journal, and asked what he had observed that day; thereupon he produced his Table-Book, and among other things, he read how Alphonso king of Naples had sent Beltrame the Moor, who had been a long time his prisoner, to Morocco (his own country) with so many thousand crowns, to buy horses. The king asked him why he inserted that: Because, said he, I think he will never come back to be a prisoner again, and so you have lost both man and money. But if he do come, then your Jest is marred, quoth the king: 'No sir: for if he

return I will blot out your name, and put him in for a fool.' The application is easy and obvious: But the world wonders extremely, that so great a wise man as sir Walter Raleigh would return to cast himself upon so inevitable a rock, as I fear he will; and much more, that such choice men, and so great a power of ships, should all come home and do nothing."

*To the Honourable Master CAR. RA.*

"Sir: Whereas you seem to except against something in one letter that reflects upon sir Walter Raleigh's voyage to Guiana, because I term the gold mine he went to discover, an airy and suppositious mine, and so infer, that it toucheth his honour; truly, sir, I will deal clearly with you in that point, that I never harboured in my brain the least thought to expose to the world any thing that might prejudice, much less traduce in the least degree that could be that rare renowned knight, whose fame shall contend in longevity with this Island itself, yea, with that great World which he historiseth so gallantly. I was a youth about the town when he undertook that expedition, and I remember most men suspected that Mine then to be but an imaginary politic thing; but at his return; and missing of the enterprize, these suspicions turned in most to real beliefs that it was no other. And K. James, in that Declaration which he commanded to be printed and published afterwards, touching the circumstance of this action, (upon which my letter it grounded, and which I have still by me) terms it no less. And if we may not give faith to such public regal instruments, what shall we credit? Besides, there goes another printed kind of remonstrance annexed to that declaration which intimates as much: and there is a worthy captain in this town, who was co-adventurer in that expedition, who upon the storming of St. Thomas, heard young Mr. Raleigh encouraging his men in these words: Come on, my noble hearts, this is the mine we come for; and they who think there is any other are fools. Add hereunto, that sir Richard Baker, in his last historical collections, intimates so much. Therefore, it was far from being any opinion broached by myself, or bottomed upon weak grounds; for I was careful of nothing more, than that those letters being to breath open air, should relate nothing but what should be derived from good fountains. And truly, sir, touching that apology of sir Walter Raleigh's you write of, I never saw it, I am very sorry I did not; for it had let in more light upon me of the carriage of that great action, and then you might have been assured, that I would have done that noble knight all the right that could be.

"But, sir, the several arguments that you urge in your Letters are of that strength, I confess, that they are able to rectify any indifferent man in this point, and induce him to believe that it was no chimera, but a real mine; for you write of divers pieces of gold brought thence by sir Walter himself, and capt. Kemys, and of some nugots that were found in the governor's closet at

St. Thomas's, with divers crucibles, and other refining instruments: yet, under favour, that might be, and the benefit not countervail the charge, for the richest mines that the king of Spain hath upon the whole continent of America, which are the mines of Potosi, yield him but six in the hundred, all expences defrayed. You write how K. James sent privately to sir Walter, being yet in the Tower, to intreat and command him, that he would impart his whole design to him under his hand, promising upon the word of a king to keep it secret; which being done accordingly by sir Walter Raleigh, that very original paper was found in the said Spanish governor's closet at St. Thomas's: whereat, as you have just cause to wonder, and admire the activeness of the Spanish agents about our court at that time, so I wonder no less at the miscarriage of some of his late majesty's ministers, who notwithstanding that he had passed his royal word to the contrary, yet they did help Count Gondomar to that paper; so that the reproach lieth more upon the English than the Spanish ministers in this particular. Whereas you alledge, that the dangerous sickness of sir Walter being arrived near the place, and the death of (that rare spark of courage) your brother, upon the first landing, with other circumstances, discouraged capt. Kemys from discovering the mine, but would reserve it for another time; I am content to give as much credit to this as any man can; as also that sir Walter, if the rest of the fleet, according to his earnest motion, had gone with him to revictual in Virginia, (a country where he had reason to be welcome unto, being of his own discovery) he had a purpose to return to Guiana the spring following to pursue his first design. I am also very willing to believe that it cost sir W. Raleigh much more to put himself in equipage for that long intended Voyage, than would have paid for his liberty, if he had gone about to purchase it for reward of money at home; though I am not ignorant that many of the co-adventurers made large contributions, and the fortunes of some of them suffer for it at this very day. But although Gondomar, as my letter mentions, calls sir Walter Pirate, I for my part am far from thinking so; because, as you give an unanswerable reason, the plundering of St. Thomas was an act done beyond the equator, where the articles of peace betwixt the two kings do not extend. Yet, under favour, though he broke not the peace, he was said to break his patent by exceeding the bounds of his commission, as the foresaid declaration relates: For K. James had made strong promises to Count Gondomar, that this fleet should commit no outrages upon the king of Spain's subjects by land, unless they began first; and I believe that was the main cause of his death, though I think if they had proceeded that way against him in a legal course of trial, he might have defended himself well enough.

"Whereas you alledge, that if that action had succeeded, and afterwards been well prosecuted, it might have brought Gondomar's

great catholic master to have been begged for at the church-doors by friars, as he was once brought in the latter end of queen Elizabeth's days: I believe it had much damnified him, and interrupted him in the possession of his West-Indies, but not brought him, under favour, to so low an ebb. I have observed, that it is an ordinary thing in your popish countries, for princes to borrow from the altar, when they are reduced to any straits; for they say, The riches of the church are to serve as anchors in time of a storm. Divers of our kings have done worse, by pawning their plate and jewels. Whereas my letter makes mention that sir W. Raleigh mainly laboured for his pardon before he went, but could not compass it; this is also a passage in the foresaid printed relation: But I could have wished with all my heart he had obtained it; for I believe, that neither the transgression of his commission, nor any thing that he did beyond the Line, could have shortened the line of his life otherwise; but in all probability we might have been happy in him to this very day, having such an heroic heart as he had, and other rare helps, by his great knowledge, for the preservation of health. I believe without any scruple what you write, that sir Wm. St. Geon made an overture to him of procuring his pardon for 1500*l.* but whether he could have effected it, I doubt a little, when he had come to negotiate it really. But I extremely wonder how that old sentence which had lain dormant above sixteen years against sir W. Raleigh, could have been made use of to take off his head afterwards, considering that the Lord Chancellor Verulam, as you write, told him positively (as sir Walter was acquainting him with that proffer of sir Wm. St. Geon for a pecuniary pardon) in these words, Sir, the knee-timber of your voyage is money; spare your purse in this particular, for upon my life you have a sufficient pardon for all that is passed already, the king having under his broad-seal made you admiral of your fleet, and given you power of the martial law over your officers and soldiers. One would think that by this royal patent, which gave him power of life and death over the king's liege people, sir W. Raleigh should become *rectus in curia*, and free from all old convictions. But, sir, to tell you the plain truth, count Gondomar at that time had a great stroke in our court, because there was more than a mere overture of a match with Spain; which makes me apt to believe, that that great wise knight being such an anti-Spaniard, was made a sacrifice to advance the matrimonial treaty. But I must needs wonder, as you justly do, that one and the same man should be condemned for being a friend to the Spaniard, (which was the ground of his first condemnation) and afterwards lose his head for being their enemy by the same sen-

tence. Touching his return, I must confess I was utterly ignorant that those two noble earls, Thomas of Arundel, and William of Pembroke, were engaged for him in this particular; nor doth the printed relation make any mention of them at all: Therefore I must say, that envy herself must pronounce that return of his, for the acquitting of his fiduciary pledges, to be a most noble act; and waving that of king Alphonso's Moor, I may more properly compare it to the act of that famous Roman commander, Regulus, as I take it, who to keep his promise and faith, returned to his enemies where he had been prisoner, though he knew he went to an inevitable death. But well did that faithless cunning knight, who betrayed sir W. Raleigh in his intended escape, being come a-shore, fall to that contemptible end, as to die a poor distracted beggar in the isle of Lundy, having for a bag of money falsified his faith, confirmed by the tie of the holy sacrament, as you write; as also before the year came about, to be found clipping the same coin in the king's own house at Whitehall, which he had received as a reward for his perfidiousness; for which being condemned to be hanged, he was driven to sell himself to his shirt, to purchase his pardon of two knights.

"And now, sir, let that glorious and gallant cavalier sir W. Raleigh (who lived long enough for his own honour, though not for his country, as it was said of a Roman consul) rest quietly in his grave, and his virtues live in his posterity, as I find they do strongly, and very eminently in you. I have heard his enemies confess that he was one of the weightiest and wisest men that this island ever bred. Mr. Nath. Carpenter, a learned and judicious author, was not in the wrong when he gave this discreet character of him: 'Who hath not known or read of this prodigy of wit and fortune, sir Walter Raleigh, a man unfortunate in nothing else but in the greatness of his wit and advancement, whose eminent worth was such both in domestic policy, foreign expeditions, and discoveries in arts and literature, both practick and contemplative, that it might seem at once to conquer example and imitation!'"

See also "A Declaration of the demeanour and carriage of sir Walter Raleigh, knt. as well in his Voyage as in and sithence his return, and of the true Motives and Inducements which occasioned his majesty to proceed in doing justice upon him as hath been done. Printed by the kings printers in 1618;" republished, 3 Harl. Mis. 1745: and "A Brief Relation of sir Walter Raleigh's Troubles, with the taking away the Lands and Castle of Sherbourn in Dorset, from him and his heirs," 4 Harl. Mis. 57; and for farther particulars, the 2d Volume of Cuyley's Life of Sir Walter Raleigh may be consulted.

75. The Trial of Sir GRIFFIN MARKHAM, knt. Sir EDWARD PARHAM, knt. GEORGE BROOKE, esq. BARTHOLOMEW BROOKESBY, esq. ANTHONY COPLEY, WILLIAM WATSON, Priest; WILLIAM CLARKE, Priest, for High Treason, at Winchester: 1 JAC. I. Nov. 15, A. D. 1603. [From a MS. in the Bodleian Library, Rotulæ in Archivo. A. 3033. 44. 8.]

THE Commissioners were, the earl of Suffolk, Lord-Chamberlain, Charles earl of Devonshire, Henry lord Howard, Robert lord Cecil, Secretary; Edward lord Wotton, Comptroller; John Staunpe, Knight and Chamberlain; Lord-Chief-Justice of England, Lord-Chief-Justice of the Common-Pleas, Justice Gawdy, Justice Walmedey, Justice Warburton, sir William Wade, knight.

On Tuesday the 15th of November, were arraigned at Winchester, George Brooke, esq. sir Griffin Markham, knight, Bartholomew Brookesby, esq. Anthony Copley, gent. Wm. Watson, priest; Wm. Clarke, priest, and sir Edward Parham, knt.

*The Effect of the INDICTMENT.*

For consulting with the lord Gray and others, traitorously to surprize the king and young prince at Greenwich, to carry them to the Tower guarded with some, that after the slaughter of many of the guards, should put on the guards coats, and so bring them, sending the Lord-Admiral before to signify the distress where the king was, and escape be made by the guards from Greenwich; and therefore desired to be taken in there for more safety. Which, if they could have effected, the treasures and jewels in the Tower should serve the turn for the effecting of their further purposes; that some of those of the privy-council, viz. the Lord-Chancellor, treasurer Cecil, Chief-Justice, should be removed and cut off: and Mr. Watson should be chancellor, Brooke lord treasurer, and Markham secretary; Gray lord marshal and master of the horse, if the now master of the horse were otherwise preferred; but for the lord-chief-justice no man named. If their project for bringing them to the Tower failed, then to convey the king to Dover, where George Brooke presumed upon his interest with Thomas Vands; but Mr. Attorney justified his assurance of the lord Cobham. In one of these places they meant to have kept the king for the space of three months, and at their first entrance, they should require three things. 1. A general pardon of all their purposes and intentions against the king and prince. 2. The king should yield to a toleration of religion; with an equality of all counsellors and other officers, as well papists as protestants, within his court or otherwise. 3. That he should remove and cut off the fore-mentioned counsellors, and others who

should be thought to hinder this designment, for which purpose Watson named Veale, alias Cole, to alledge sufficient matter against them.—And for the better effecting of this their purpose, Watson had devised under writing an oath should be administered for the preservation of the king's person, for the advancement of the catholic religion, and for the concealing of all secrets that should be revealed unto them. That all the actions should be proceeded withal in the king's name, and they meant to send for the lord-mayor and aldermen of London, that the king would speak with them: whom they meant to keep in safe custody, till they had delivered hostages to them not to withstand their assignments, and to furnish them with all such necessaries as they should require from them. Watson was the villainous hatcher of these Treasons; and Brooke, upon the learning of them, was as eager a prosecutor; and the lord Gray more eager and violent than he, purposing to make a suit to the king for carrying over a regiment for the relief of Ostend, which he would have ready for the defence of his own person in this action, fearing the greatness of the catholic forces according to the promises of George Brooke, Markham and Watson, and knowing not how he might be dealt withal amongst them.

Mr. George Brooke said little or nothing in his own defence, only he made a ridiculous argument or two in the beginning: viz. that, that only could be the judge, and examiner of any action, which was the rule of the action; but the Common Law was not the rule of the action, *ergo*, it could not be judge or ruler of the action: and therefore appealed to the person of the king. 2. That the Commissioners or Common Law had no authority over them; because it is a maxim in the law, *ejus esse condemnare, cujus est absolere*: but the Common Law could not absolve him, being guilty, therefore could not condemn him.

Mr. Attorney to this would have answered particularly, but was by the Commissioners and Judges willed to reduce himself to his own element.

Lord Henry Howard undertaking to have answered him, my L. C. Justice told him, that the king, by reason of his many causes, had many under him to execute the law of justice; but he kept in his own hands the key of mercy, either to bind or loose the proceedings, as in his own princely wisdom he should think fit.

Therefore said Mr. Attorney, you, Mr. Brooke, professing yourself to be learned, cannot be ignorant that both your ancestors have been, and you must be liable and subject yourself to the trial of the law of this nation, wherein you were born, and under which you live, & *ignorantia juris non excusat*. These treasons were termed by the lord Cobham 'The Bye,' as Mr. George Brooke confessed to Watson and the lord Gray; but, said he, Walter Raleigh\* and I are chanced at the Main. Whereupon Mr. Attorney gave a touch of the Treasons of the lord Cobham and Raleigh, who had procured from Aremberg five or 600,000 crowns, to be disposed by the lord Cobham, who should therewith raise forces for the extirpation of the King and his Cubbes, and putting both

\* Sir John Hawles (Solicitor-General temp. Will. 3.) in his reply to sir Bart. Shower's "Magistracy and Government of England vindicated, &c." pag. 32, says, the king came to London in May, and in July following was the pretended plot discovered; and in November following, the pretended delinquents were tried at Winchester, together with Watson and Clarke. Their Accusations were in general, 1. To set the Crown on the lady Arabella's head, and to seize the king. 2. To have a toleration of Religion. 3. To procure Aid and assistance from foreign princes. 4. To turn out of court such as they disliked, and place themselves in offices.—Of these the first Article is Treason; what crimes the rest are, is doubtful. What of them was proved against the lords Cobham and Gray, Watson and Clarke, or how their Trials were managed, doth not appear: but sir Walter Raleigh's Trial does appear, and is much like the lord Russel's, and therefore of some circumstances of it, I think, it is fit to take notice. Instead of Consults, &c. in the lord Russel's Trial, the cant words of the surprizing *the Bye*, and *the Main*, were made use of in sir Walter's, interpretable as the Council thought fit; at least it was astonishing to the Jury, which was all that was designed by the Council, and fatal to the prisoners. I have no mind to run through all the ramble of sir Walter Raleigh's Trial, as it is printed before his History of the World, because the parallel is too exact, and sticks too close to the memory of persons gone: only I will say, That if sir Walter Raleigh was guilty of the thing he was accused of by the Witnesses, though the accusation did not amount to a legal proof, it was High-Treason; but if the lord Russel was guilty of the thing he was accused of, he was not guilty of High-Treason.—And the same author, says, p. 35, "I think it is plain at this day, that of sir Walter Raleigh's is thought a sham Plot; what the lord Russel's is thought, let the author say, I am loath to enumerate all, but if any person will give himself the trouble of reading and comparing the Trial of the lord Russel with that of sir Walter Raleigh, they will find them exactly parallel in a number of other particulars."

Scotland and England in combustion; and so upon Cobham's return out of Spain, to meet Raleigh at the isle of Jersey, and so to put on foot both titles, both within and without the land.

Mr. George Brooke, after his first arguments, spake little or nothing for himself, more than his own Confession led him otherwhiles to excuse or qualify his own offence; only he gave cast of a Letter, which, he said, he received from his majesty, wherein he had liberty and authority to deal in the sounding out of these practices; but neither at any time before nor at his Arraignment, could shew the said letter. And the king being by some of the Lords Commissioners questioned withal on that point, requireth his Letter to be produced, and denieth he wrote any such letter.

Sir Griffin Markham answered exceeding well, and truly to all things; denying nothing for his fault of Treason; but that he deserved death upon the persuasion of Watson, by whom he was misled, and assured that the king before his coronation was not an actual, but a political king: only he desired to avoid the imputation of effusion of blood in that enterprize, and (if it were possible) the brand of a Traitor for his house and posterity, protesting how careless he was of his own life, which he desired to be exposed to any hazard or sacrifice (though it was never so desperate;) which if the king would not (in mercy) yield him, yet he desired their lordships to be intercessors, that he might die under the axe, and not by the halter.

Watson spake very absurdly and deceivingly, without grace, or utterance, or good deliverance; which (added to his foresaid villainy) made him more odious and contemptible to all the hearers.

Clarke, the other Priest (an excellent nimble-tongued fellow), of good speech, more honest in the carriage of the business, of an excellent wit and memory, boldly, and in well-bebecoming terms, uttering his mind, not unwilling to die, but desireth to avoid the imputation of a traitor.

Copley, a man of a whining speech, but a shrewd invention and resolution.

Brookesby drawn in merely by Watson to take the Oath before-mentioned, for some of the particularities, as the bringing the king to the Tower for the advancement of Religion; but spake with nobody to incite them to the business nor came himself according to his time appointed by Watson, the 23rd or 24th of June, but at that instant attended upon the queen.

Sir Edward Parham was also by that villain Watson dealt withal after he had tendered him the oath to this purpose: that he understood the lord Gray meant with forces to set upon the king, and to surprize him, that against that time, whether he would not draw his sword against the lord Gray with the King's servants and friends? And if the king's servants were discomfited, whether with the rest of the Catholics he would not encounter the lord Gray, and if he could bring him to the Tower for his

relief and the advancement of the Catholic religion?

Parham told him, that he would so, if he was persuaded that his intendment of the lord Gray were true, which at that time Watson could not assure him of; for he did but hear of so much: but said he, when I have better assurance thereof, which will be within these three days, you shall further hear of me. He staying the time, Watson came not, and so Parham's proceedings went no further: but being urged in the point for bringing the king to the Tower, for the advancement of the Catholic religion, he said, he made no doubt, but that he with others, adventuring their lives for the rescuing the king from the lord Gray, and bringing him for his safety to the Tower; this then would not but merit some grace from the king, for the advancement of the Catholic religion.

Sir Francis Darcy being Foreman of the Jury, and excellently commended for this day's carriage and behaviour, made two or three doubts concerning sir Edward Parham's Case, and received resolution from the Bench in some points, and the rest left to his conscience and understanding, went with the rest of the Jury, and found all Guilty, saving Parham, and so he was discharged; and upon the rest Sentence of death was pronounced by the Lord-Chief-Justice.

The Copie of a LETTER written from master T. M. neere Salisbury, to Master H. A. at London, concerning the Proceeding at Winchester; where the late lord Cobham, lord Gray, and sir Griffin Markham, all attainted of his Treason, were ready to be executed, on Friday the 9th of Dec. 1603. At which time his majesties Warrant, all written with his own hand, (whereof the true Copie is here annexed) was deliuered to sir Benjamin Tichbourne, High Sheriffe of Hampshire, commanding him to suspend their execution till further order. Imprinted at London, 1603.

Sir; I have receiued a letter from you; by which I perceiue howe much you desire to be particularly enfourmed of the cause and manner of the stay of the late lord Cobham's, lord Gray's, and sir Griffin Markham's Execution, appointed at Winchester; wherein, although there are many better able to discourse at large of such an action then myselfe, yet I conceiue when you have perused this plaine and true relation, of that which all men there behelde that day, and many more since haue heard, from persons of the best qualitie and knowledge, you will thanke me more, for suffering the truth to shew itself vnclouted, then if I had laboured to haue deliuered you a tale well painted with curious words and fine phrases.— You must therefore vnderstand, that as soone as the Arraignments were passed at Winchester, his majesties Priue-counsel (to the number of 14 or 15, of which companie all of them had either bene tryers of the noblemen

as their peers, or sitten as high Commissioners vpon the gentlemen) were called before his majestie (in his Priue-chamber, at Wilton, where he commanded them to deliuer (without respect to any person) the true narration onely; of the order in the Triall of these persons that had bene condemned by the lawe, and of the nature and degree of their offences, as had appeared in every one of them, by their seuerall answeres.—All which being cleerely and justly reported by them (each speaking in the hearing of the rest) his majestie for his part, used himself so grauely and reseruedly in all his speeches, as well to himselfes at that time, as also to all other persons after, in priuate or publique, as neither any of his priue-counsel, nobilitie, or any that attended nearest to his sacred person, durst presume to mediate for any, or so much as to enquire what should be the conclusion of this proceeding.

In the meane time, while the Court was full of variety of discourse, some speaking out of probabilitie, others arguing out of desire, what was like to be the fortune of all, or of any of these Offendours, his majestie hauing concluded onely in his own secret heart (which is the true oracle of grace and knowledge) in what manner to proceed; and that without asking counsel of any earthly person it pleased him to resolute betweene God and himselfe, that their execution should be stayed, euen at the instant when the axe should be layde to the trees rootes. For the secret and orderly carriage whereof, his majestie was careful to preuent all cause or colour of suspicion, of that judicious, royall, and vnexpected course which followed. And therefore, after the two Priests were executed, on Tuesday the 29th of Nov. and master George Brooke on Monday following, his majestie on the same day, being the 1st of Dec. signed three Warrants, for the execution of the late lord Cobham, lord Gray, and sir Griffin Markham, knt. with particular direction to the Sheriffe, to performe it on Friday after, before ten a clocke in the morning.—All these directions being now become notorious, both by the Writs of Execution (which passed vnder the great seale) and by the making readie the Scaffolds at Winchester, his majestie verry secretly (as now appeareth by the sequele) drewe himselfe into his cabinet, on Wednesday before the day of execution, and there priuately framed a Warrant, written all with his own hand, to the Sheriffe, by vertue whereof he countermaunded all the former directions, alledging the Reasons therein mentioned. Of which seeing no man's pen can so well expresse, as his owne, I send you the Copie verbatim, as I took it out of the originall, which many read in my cousin sir Benjamin Tichbourne's hand.

And now to come to the ordering of this business; among many other circumstances, it is verry remarkable, with what discretion and foresight that person was elected, which must be vsed in carriage of the Warrant. First, his majestie resolved it should be a Scottishman;



being thereby like to be freest from particular dependencie vpon any nobleman, counsellors, or others, their friends or allies. Next hee resolved, to send a man of no extraordinarie ranke, because the standers-by should not obserue any alteration, nor the delinquents themselves should take any apprehension of such a man's being there at that time: this being his majesties speciall desire, that euery one of them (being generally brought vpon the scaffold) might quietly breath forth their last wordes, and true Confession of his secretest conscience. And so, to be short, his majestie made choice of Mr. John Gibb, a Scottishman, as aforesaid, a man that had never dealt with any counsellor, or other, for suite or businesse, but one that had, within short while after the king's first entrie, bene sent backe into Scotland, from whence he was but freshly arriued at Wilton, some fewe dayes before.

This party being by the king approoued for an ancient, trustie, and secret seruant, as a groome of his majesties bed-chamber, and a man, as is said before, little knowne, and less bound to any subject in England for any benefit, receiuing the Warrant secretly, on Thursday, from the king's owne hand, and telling his fellowes (who would otherwise haue missed him) that he must lie that night at Salisbury vpon some priuate businesse of his owne, he rode directly to Winchester, and there, keeping himselfe priuate all night, rose early in the morning on Friday, and went obscurely to the Castle-greene, where the people flocking in all the morning, as the time drewe neere, he put himselfe with the throng, close by the Scaffold, and there leaned till the Sheriffe brought up sir Griffin Markham to the place, who was the man appointed first to die.

There, the sayd sir Griffin Markham, hauing ended his prayer, and made himselfe readie to kneele downe, Mr. John Gibb finding it fit time, while the axe was preparing, to giue some secret notice of his charge, called to my cousin Tichbourne, the Sheriffe, to speake with him, and then deliuered him (priuately) his majesties Warrant, with further directions uerballly, how he should vse it.

Herevpon the Sheriffe, perceiuing fully his majesties intention, so warily and discreetly marshalled the matter, as hee onely called sir Griffin Markham vnto him on the Scaffold, and told him, that he must withdraw himselfe into the Hall, to be confronted (before his death) before those two lords, that were to follow him, about some points that did concern his majesties seruice; and so carrying Markham into the Hall, he left him there, and went vp hastily, for the lord Gray, to the Castle, who being likewise brought vp to the Scaffold, and suffered to powre out his prayers to God, at great length, and to make his last Confession, as he would answere it upon his soule, when he was readie to kneele downe, to receiue the stroke of death, Master Sheriffe caused him to stay, and told him that he must goe downe for a while into the Hall, where finding

sir Griffin Markham, he willed him to tarry there till he returned.

Last of all, he went for the lord Cobham, who hauing also ended his deuotion to God, and making himselfe ready to receiue the same blow, the Sheriffe finding the time come to publish the king's mercie to the worlde, and to reueale his mysterie, he caused both the lord Gray and sir Griffin Markham to be brought backe to the Scaffold, and there, before them all three that were condemned, and in the hearing of all the company, notified his majesties Warrant, by which he was authorised to stay the Execution. Which strange and vnderdeserved grace and mercie, proceeding from a prince, so deeply wounded without cause, or colour of cause giuen by himselfe toward them in any thing, but meereley contrary (to both the lords especially) bred in the hearts, as well of the offenders as of the standers-by, such sundry passions, according to the diuers tempers of their minds, as to some that shall receiue those things by report, which others did behold with their eyes, my relation may rather seeme to be a description of some ancient History, expressed in a well-acted comedy, than that it was euer possible for any other man to represent, at one time, in a matter of this consequence, so many liuely figures of justice and mercy in a king, of terror and penitence in offenders, and of so great admiration and applause in all others, as appeared in this action, carried only and wholly by his majesties owne direction.

The lord Cobham (holding his hand to heaven) applauded this incomparable mercie of so gracious a soueraigne, aggrauating his owne fault, by comparing it with the princes clemencie, wishing confusion to all men aliue, that should euer thinke a thought against such a prince, as neither gaue cause of offence, nor tooke reuenge of ingratitude.

The lord Gray, finding in what measure this rare king had rewarded good for euill, and forborne to make him an example of discouragement and terror to all men that hereafter might attempt to break the bonds of loyalty, vpon the passions of any ambition, began to sob and weep for a great while, with most deep contrition, protesting now, that such was his zeale and desire to redeeme his fault by any meanes of satisfaction, as he could easily sacrifice his life, to prevent the losse of one finger of that royall hand, that had dealt so mercifully wih him, when he least looked for it.

Sir Griffin Markham (standing like a man astouished) did nothing but admire and pray. The people that were present witnessed, by infinite applause and shooting, the joy and comfort which they took in these wonderfull effects of grace and mercy, from a prince whome God had inspired with so many royall gifts for their conseruation, and would conserue for his owne glorie.

The crie being carried out of the Castle-gates into the town, was not onely sounded with acclamation of all sexes, qualities and affection,

but the true report, diuulged since in all partes, hath bred in the woorst disposed mindes, such remorse of iniquitie, in the best such encouragement to loyaltie, and in those that are indifferent such feare to offend, and generally such affection to his majesties person, as perswades the whole world, that Nathan himselfe can neuer so far prevail with any, as to make them lift vp their hearts or hands against a prince, from whom they receive such true effects of justice and goodness.

To conclude, therefore, I haue now done my best to satisfy your desire, though I feele to my griefe, how short I come to my own wish; because I would haue expressed to the life, if it had been possible, both the matter and the forme of this proceeding; of both which the wisest men, that haue seene and vnderstoode all particular circumstances, are at the ende of their wits, to giue an absolute censure, whether of them both deserue greater recondemnation: this being most assured, that there is no record extant, wherein so great wisdome and vnderstandinge, so solid judgement, so perfect a resolution, to giue way to no request, or mediation: so inscrutable a heart, so royall and equal a tempered mercie, after so clear and publike justice, haue euer concurred so demonstratiuely as in this late action, wherein this blessed king hath not proceeded after the manner of men and of kings, *Sed caelestis Iudicis, aeternique Regis more*, whereof he shall be most assured to reape these lasting fruites, of being beloued and feared of all men, obeyed with comfort, and serued with continuall joy and admiration. And so forbearing to hold you any longer at this time, I end. From my house, neere Salisbury, the 15th of Dec. 1603. Your lovin cousin and friend, T. M.

*His Majesties WARRANT, written with his own hand.*

‘ Although it be true, that all vell gouernid  
‘ and flourishing kingdomes and common  
‘ wealths are established by iustice, and that  
‘ these tuo noblemen by birthe, that aire nou-

‘ upon the point of Execution, aire for thair  
‘ treasonable practices condemnid by the lawe,  
‘ and adiudgit worthy of the Execution thaireof,  
‘ to the example and terror of otheris; the one  
‘ of thaim hauing filthily practised the ouer-  
‘ throw of the quhole kingdome, and the other  
‘ for the surprise of our owin personne; yet  
‘ in regaird that this is the first yeere of our  
‘ raigne, in this kingdome, and that neuer king  
‘ was so farre oblisheid to his people as ve haue  
‘ bene to this, by our entrie heere with so  
‘ hairtie and generall an applause of all sorts;  
‘ among quhom all the kinne, friendis, and allies  
‘ of the saidis condemnid personnis vaire as  
‘ forduart and duetifull as any other our good  
‘ subiects, as also that at the very time of thair  
‘ arraignment none did more freely and reddily  
‘ giue thair assent to their conuiction, and to  
‘ deliuer thaim into the handis of iustice, then  
‘ so many of thair nearest kinsmen and allies  
‘ (as being peeris) vaire vpon thair iurie; as  
‘ likeuaise in regard that iustice hath in some  
‘ sort gottin course already, by the execution  
‘ of the tuo priestis, and George Brooke, that  
‘ vaire the principall plotteris and intisairs of  
‘ all the rest, to the embracing of the saidis  
‘ treasonabill machinations; vee thairfore (be-  
‘ ing resoluid to mix clemencie with iustice)  
‘ aire contented, and by these presentis com-  
‘ mand you, our sheriffe of Hampshire, to su-  
‘ perseide the execution of the saidis tuo noble-  
‘ men, and to take thaim backe to thair prison  
‘ againe, quhile our further pleasure be knowin.  
‘ And since vee will not haue our lawis to haue  
‘ respect to persounis, in spairing the great, and  
‘ strikking the meaner sort; it is our pleasure,  
‘ that the like course be also taken with Mark-  
‘ ham, being sorry from our hairt, that such is,  
‘ not only the heynous nature of the saidis con-  
‘ demnid personnis crime, but euen the corrup-  
‘ tion is so great of thair naturall disposition, as  
‘ the care vee haue for the safety and quiet of  
‘ our state, and good subiectis, will not permit  
‘ vs to vse that clemencie towardis thaim,  
‘ quhich, in our owin naturall inclination, vee  
‘ might very easily be persuadit vnto.’

76. Proceedings in a CONFERENCE at Hampton Court, respecting REFORMATION of the CHURCH: \* 1 JAC. A. D. 1604. [Fuller's Church Hist. 673. 2 Neal. 5. 2 Kennett's Compl. Hist. 665.]

AND now, because there was a general expectation of a parliament, suddenly to succeed, the Presbyterian party, that they might not be surprised, before they had their tackling about them, went about to get hands of the mi-

\* Bishop Kennett says, "This Conference at Hampton-Court was but a blind to introduce Episcopacy in Scotland, all the Scotch noblemen then at Court being designed to be present, and others, both noblemen and ministers, being called up from Scotland to assist at it, by the King's Letter.

nisters to a petition, which they intended seasonably to present to the king and parliament. Mr. Arthur Hildersham, and Mr. Stephen Egerton, with some others were chosen, and chiefly intrusted to manage this important business. This was called The Millenary Petition,\* as, One of a thousand, though indeed there were but seven hundred and fifty preachers hands set thereunto: but those all collected only out of five and twenty counties. However, for the

\* The Petition is inserted at the end of the proceedings at this Conference.

more rotundity of the number, and grace of the matter, it passeth for a full thousand; which, no doubt, the collectors of the names (if so pleased) might easily have completed. I dare not guess what made them desist before their number was finished; whether they thought that these were enough to do the deed, and more were rather for ostentation than use; or, because disheartened by the intervening of the Hampton-court Conference, they thought, that these were even too many to petition for a denial. It is left as yet uncertain, whether this Conference was by the king's favour graciously tendered, or by the mediation of the lords of his council powerfully procured; or by the bishops, as confident of their cause, voluntarily proffered; or by the ministers importunity effectually obtained. Each opinion pretends to probability, but the last most likely. And, by what means soever this Conference was compassed, Hampton-court was the Place, the 14th of January the time, and the following Nuncios the persons which were employed therein.

FOR CONFORMITY.—Archbishop of Canterbury, Whitgift.—Bishops of London, Bancroft; Durham, Mathew; Winchester, Bilson; Worcester, Babington; St. David's, Rudd; Chester, Watson; Carlisle, Robinson; Peterborough, Dove.—Deans of the Chapel,\* Christ-Church; Worcester; Westminster, Andrewes; St. Paul's, Overall; Chester, Barlow; Salisbury, Bridges; Windsor.—Drs. Field; King.

Moderator, king James.—Spectators, All the Lords of the Privy Council, whereas some at times, interposed a few words.—Place, A withdrawing room within the Privy chamber.

AGAINST CONFORMITY, Doctors Reynolds; Sparks.—Messrs. Knewstubs; Chaderton.—These remaining in a room without, were not called in the first day.

To omit all gratulatory preambles, as necessary, when spoken, as needless, if now repeated, we will present only the substance of this day's Conference, his majesty thus beginning it:

*His Majesty.* It is no novel device, but according to the example of all Christian princes, for kings to take the first course for the establishing of the Church, both in doctrine and policy. To this the very Heathen related in their proverb, *a Jove principium*, particularly in this land, king Henry the 8th, towards the end of his reign, altered much, king Edward the 6th more, queen Mary reversed all, and lastly, queen Elizabeth, (of famous memory) settled religion as now it standeth.—Herein I am happier than they, because they were fain to alter all things they found established, whereas I see yet no such cause to change, as confirm what I find well settled already. For blessed be God's gracious goodness, who hath brought me into the promised Land, where religion is purely professed,

\* Though all these Deans were summoned by letters, and present in the Presence-chamber; yet only five. (viz. of the Chapel; Westminster, Paul's, Chester and Salisbury) on the first day were called in.

where I sit amongst grave, learned, and reverend men, not as before, elsewhere, a king without state, without honour, without order, where beardless boys would brave us to the face.—And I assure you, we have not called this Assembly for any innovation, for we acknowledge the government ecclesiastical, as now it is, to have been approved by manifold blessings from God himself, both for the increase of the Gospel, and with a most happy and glorious peace. Yet because nothing can be so absolutely ordered, but that something may be added thereunto, and corruption in any state (as in the body of man) will insensibly grow either through time or persons; and because we have received many complaints since our first entrance into this kingdom of many disorders, and much disobedience to the laws, with a great falling away to popery; our purpose therefore is, like a good physician, to examine and try the complaints, and fully to remove the occasions thereof, if scandalous; cure them, if dangerous; and take knowledge of them, if but frivolous, thereby to cast a sop into Cerberus's mouth, that he bark no more. For this cause we have called you bishops and deans in, severally by yourselves, not to be contented by the contrary opponents, that if any thing should be found meet to be redressed, it might be done without any visible alteration.—Particularly there be some special points wherein I desire to be satisfied, and which may be reduced to three heads: 1. Concerning the Book of Common-prayer, and divine service used in the Church. 2. Excommunication in ecclesiastical courts. 3. The providing of fit and able ministers for Ireland. In the Common-prayer Book I require satisfaction about three things:—First about Confirmation: For the very name thereof, if arguing a Confirming of Baptism, as if this sacrament without it were of no validity, is plainly blasphemous. For though at the first use thereof in the Church, it was thought necessary, that baptised infants, who formerly had answered by their *patrini*, should, when come to years of discretion, after their profession made by themselves, be confirmed with the blessing of the bishop, I abhor the abuse wherein it is made a sacrament, or corroboration to Baptism.—As for Absolution, I know not how it is used in our Church, but have heard it likened to the pope's pardons. There be indeed two kinds thereof from God: One general, all prayers and preaching importing an Absolution. The other particular to special parties, having committed a scandal, and repenting: otherwise, where Excommunication precedes not, in my judgment there needs no Absolution.—Private Baptism is the third thing wherein I would be satisfied in the Common-prayer: If called private from the place, I think it agreeable with the use of the primitive Church; but if termed private, that any, besides a lawful minister, may baptise, I utterly dislike it. [And here his Majesty grew somewhat earnest in his expressions, against the baptising by women and laicks.]

“ In the second Head of Excommunication,

I offer two things to be considered of: first the Matter, secondly the Persons. For the first, I would be satisfied, whether it be executed (as it is complained of to me) in light causes, and that too commonly, which causeth the undervaluing thereof. For the Persons, I would be resolved, why Chancellors and Commissaries, being laymen, should do it, and not rather the bishops themselves, or some minister of gravity and account, deputed by them for the more dignity to so high and weighty a censure. As for providing ministers for Ireland, I shall refer it in the last days Conference to a consultation.

*Abp. of Canterbury.* Confirmation hath been used in the Catholic Church ever since the Apostles; and it is a very untrue suggestion (if any have informed your highness) that the Church of England holds Baptism imperfect without it, as adding to the virtue and strength thereof.

*Bishop of London.* The authority of Confirmation depends not only on antiquity, and the practice of the Primitive Church, but is an Apostolical Institution, named in express words, Heb. vi. 2. and so did Mr. Calvin expound the very place, earnestly wishing the restitution thereof in the reformed Churches. [The bishop of Carlisle is said gravely and learnedly to have urged the same, and the bishop of Durham noted something out of S. Matthew for the imposition of hands on children.]

The conclusion was this, For the fuller explanation that we make Confirmation, neither a Sacrament nor a Corroboration thereof, their lordships should consider whether it might not without alteration (whereof his majesty was still very wary) be intitled an Examination with a Confirmation.

*Abp. of C.* As for the point of Absolution (wherein your majesty desires satisfaction) it is clear from all abuse or superstition, as it is used in our Church of England, as will appear on the reading both of the Confession and Absolution following it, in the beginning of the Communion book. [Here the king perused both, and returned]

*His Maj.* I like, and approve them, finding it to be very true what you say.

*Bp. of Lond.* It becometh us to deal plainly with your Majesty. There is also in the book a more particular and personal Absolution in the Visitation of the Sick. [Here the dean of the chapel turned unto it and read it.]

*Bp. of Lond.* Not only the confessions of Augusta, Boheme, and Saxon, retain and allow it, but Mr. Calvin also doth approve, both such a general, and such a private (for so he terms it) Confession and Absolution.

*His Maj.* I exceedingly well approve it, being an Apostolical and Godly Ordinance, given in the name of Christ, to one that desireth it, upon the clearing of his conscience.

The conclusion was this, That the bishops should consult, whether unto the rubric of the general Absolution, these words, Remission of Sins, might not be added for explanation sake.

*Abp. of C.* To the point of Private Baptism,

the administration thereof by women and laypersons is not allowed in the practise of the Church, but enquired of, and censured by bishops in their visitations.

*His Maj.* The words of the Book cannot but intend a permission of women and private persons to baptise.

*Bp. of Worc.* The doubtful words may be pressed to that meaning; yet the Compilers of the Book did not so intend them, as appeareth by their contrary practice. But they propounded them ambiguously, because otherwise (perhaps) the Book would not (then) have passed the parliament.

*Bp. of Lond.* Those reverend men intended not by ambiguous terms to deceive any, but thereby intended a permission of private persons to baptise, in case of necessity. This is agreeable to the practice of the ancient Church, Act. ii. when three thousand being baptised in a day, (which for the Apostles alone to do, was [at the least] improbable) some being neither priests nor bishops, must be presumed employed therein, and some Fathers are of the same opinion. Here he spake much, and earnestly about the necessity of Baptism.

*His Maj.* That in the Acts was an act extraordinary, and done before a Church was settled and grounded, wherefore no sound reasoning thence to a Church established and flourishing. I maintain the necessity of Baptism, and always thought the place John iii. 5. "Except one be born again of water," &c. was meant thereof. It may seem strange to you, my lords, that I think you in England give too much to Baptism, seeing fourteen months ago in Scotland, I argued with my divines there, for attributing too little unto it; Inso-much that a pert minister asked me, if I thought Baptism so necessary, that, if omitted, the child should be damned. I answered, no: But if you, called to baptise a child, though privately, refuse to come, I think you shall be damned.—But, this necessity of Baptism I so understand, that it is necessary to be had, if lawfully to be had, that is, ministered by lawful ministers, by whom alone, and no private person in any case, it may be administered: though I utterly dislike all Re-baptization on those whom women or laics have baptised.

*Bp. of Winch.* To deny private persons to baptise in case of necessity, were to cross all antiquity, and the common practice of the Church, it being a rule agreed on amongst divines, that the minister is not of the essence of the sacrament.

*His maj.* Though he be not of the essence of the sacrament, yet is he of the essence of the right, and lawful ministry thereof, according to Christ's commission to his disciples, "Go preach and baptise," &c.

The result was this, To consult, whether in the rubric of Private Baptism, which leaves it indifferently to all, these words, Curate, or lawful Minister, may not be inserted.—For the point of Excommunication, his majesty propounded, whether in causes of lesser moment

the name might not be altered, and the same censure retained. Secondly, whether in place thereof another coercion, equivalent thereunto, might not be invented? Which all sides easily yielded unto, as long and often desired; and so was the end of the first day's Conference.

On Monday Jan. 16, they all met in the same place, with all the deans and doctors above mentioned; (Patrick Galloway, minister of Perth in Scotland, admitted also to be there) And hopeful prince Henry sat on a stool by his father. The king made a pithy Speech to the same purpose which he made the first day, differing only in the conclusion thereof, being an address to the four opposers of conformity, there present, whom he understood the most grave, learned, and modest of the aggrieved sort, professing himself ready to hear at large what they could object, and willed them to begin.

*Dr. Reyn.* All things disliked or questioned, may be reduced to these four heads;

1. That the Doctrine of the Church might be preserved in purity, according to God's Word.—2. That good pastors might be planted in all Churches to preach the same.—3. That the Church-government might be sincerely ministered according to God's Word.—4. That the Book of Common-Prayer might be fitted to more increase of piety.—For the first, may your majesty be pleased, that the Book of Articles of Religion concluded on 1562, may be explained where obscure, enlarged where defective, viz. Whereas it is said, Arr. 16. "After we have received the Holy Ghost, we may depart from grace." Those words may be explained with this or the like addition, Yet neither totally, nor finally. To which end it would do very well, if the nine orthodoxal Assertions, concluded on at Lambeth, might be inserted into the Book of Articles.—Secondly, whereas it is said in the 23rd article, "that it is not lawful for any in the congregation to preach, before he be lawfully called:" these words ought to be altered, because implying one out of the congregation may preach, though not lawfully called.—Thirdly, in the 25th article there seemeth a contradiction, one passage therein confessing Confirmation, to be a depraved imitation of the Apostles, and another grounding it on their example.

*Bp. of Lond.* May your majesty be pleased, that the ancient Canon may be remembered, *Schismatici contra Episcopos non sunt audiendi.* And, there is another Decree of a very ancient council, That no man should be admitted to speak against that whereunto he hath formerly subscribed.—And as for you doctor Reynolds, and your sociates, how much are ye bound to his majesty's clemency, permitting you contrary to the statute 1 Eliz. so freely to speak against the Liturgy, and Discipline established. Fain would I know the end you aim at, and whether you be not of Mr. Cartwright's mind, who affirmed, that we ought in ceremonies rather to conform to the Turks than to the Papists. I doubt you approve his position, because here appearing before his majesty in

Turkey-gowns, not in your scholastic habits, according to the order of the universities.

*His Majesty.* My Lord Bishop, something in your passion I may excuse, and something I must mislike. I may excuse you thus far, That I think you have just cause to be moved, in respect that they traduce the well-settled government, and also proceed in so indirect a course, contrary to their own pretence, and the intent of this meeting. I mislike your sudden interruption of doctor Reynolds, whom you should have suffered to have taken his liberty; For, there is no order, nor can be any effectual issue of disputation, if each party be not suffered, without chopping, to speak at large. Wherefore, either let the doctor proceed, or frame your answer to his motions already made, although some of them are very needless.

*Bp. of Lond.* Upon the first motion concerning Falling from Grace, may your majesty be pleased to consider how many in these days neglect holiness of life, presuming on persisting in Grace upon Predestination, "If I shall be saved, I shall be saved." A desperate doctrine, contrary to good divinity, wherein we should reason rather *ascendendo* than *descendendo*, from our obedience to God, and love to our neighbour, to our election and predestination. As for the Doctrine of the Church of England, touching Predestination, it is in the very next paragraph, viz. "We must receive God's promises in such wise as they be generally set forth to us in Holy Scripture, and in our doings the will of God is to be followed, which we have expressly declared unto us in the Word of God."

*His Majesty.* I approve it very well, as consonant with the place of Paul, "Work out your salvation with fear and trembling." Yet let it be considered of, whether any thing were meet to be added for clearing of the doctor's doubt, by putting in the word often, or the like. Mean time, I wish that the doctrine of Predestination may be tenderly handled, lest on the one side God's omnipotency be questioned by impeaching the doctrine of his eternal Predestination, or on the other side a desperate presumption arreared, by inferring the necessary certainty of persisting in Grace.

*Bp. of Lond.* The second Objection of the doctor's is vain, it being the doctrine and practice of the Church of England, that none but a licensed minister may preach, nor administer the Lord's Supper.

*His Majesty.* As for Private Baptism, I have already with the bishops taken order for the same.

Then came they to the 2nd point of Confirmation, and upon the perusal of the words of the Article, his majesty concluded the pretended contradiction a cavil.

*Bp. of Lond.* Confirmation is not so much founded on the place in the Acts of the apostles, but upon Heb. vi. 2. which was the opinion, besides the judgment of the Fathers, of Mr. Calvin, and doctor Fulk; neither needeth there any farther proof, seeing (as I suppose) he that

objected this holds not confirmation unlawful; but he and his party are vexed that the use thereof is not in their own hands, for every pastor to confirm his own parish; for then it would be accounted an Apostolical institution, if Dr. Reynolds were pleased but to speak his thoughts therein.

*Dr. Reyn.* Indeed seeing some diocese of a bishop hath therein six hundred Parishes, it is a thing very inconvenient to permit Confirmation to the bishop alone; and I suppose it impossible that he can take due examination of them all which come to be confirmed.

*Bp. of Lond.* To the matter of fact, I answer, that bishops in their Visitations appoint either their chaplains, or some other ministers, to examine them which are to be confirmed, and lightly confirm none but by the testimony of the parsons and curates, where the children are bred and brought up.—To the Opinion I answer, that none of all the Fathers ever admitted any to confirm but bishops alone. Yea, even St. Jerome himself (otherwise no friend to bishops) confesseth the execution thereof was restrained to bishops only.

*Bp. of Winch.* Dr. Reynolds, I would fain have you, with all your learning, shew wherever Confirmation was used in ancient times by any other bishops; These used it partly to examine children, and after examination by imposition of hands (the Jewish ceremony of blessing) to bless and pray over them; and partly to try whether they had been baptised in the right form or no. For in former ages some baptised (as they ought) in the name of the Father, Son, and Holy Ghost. Some (as the Arians) in the name of the Father as the greater, and the Son as the less. Some in the name of the Father by the Son, in the Holy Ghost. Some not in the name of the Trinity, but only in the Death of Christ. Whereupon Catholic bishops were constrained to examine them who were baptised *in remotis*, concerning their Baptism, if right to confirm them, if amiss to instruct them.

*His Majesty.* I dissent from the judgment of St. Jerome in his assertion, that bishops are not of divine ordination.

*Bp. of Lond.* Unless I could prove my Ordination lawful out of the Scriptures, I would not be a bishop four hours longer.

*His Majesty.* I approve the calling and use of bishops in the Church, and it is my aphorism, 'No Bishop, No King;' nor intend I to take Confirmation from the bishops, which they have so long enjoyed. Seeing as great reason that none should confirm, as that none should preach without the bishop's license. But let it be referred, whether the word Examination ought not to be added to the rubrick in the title of Confirmation in the Communion-book. And now Dr. Reynolds you may proceed.

*Dr. Reyn.* I protest I meant not to gail any man, though I perceive some took personal exceptions at my words, and desire the imputation of schism may not be charged upon me. To proceed on the 37th Article, wherein are these words, "The Bishop of Rome hath no

authority in this land." These are not sufficient, unless it were added, nor ought to have any.

*His Majesty.* *Habemus jure, quod habemus,* and therefore in as much as it is said he hath not, it is plain enough that he ought not to have.

Here passed some pleasant discourse betwixt the king and lords about puritans, till returning to seriousness: There began the

*Bp. of Lond.* May it please your majesty to remember the Speech of the French ambassador, monsieur Regnee, upon the view of our solemn service and ceremony, viz. That if the Reformed Churches in France had kept the same order, there would have been thousands of Protestants more than there are.

*Dr. Reyn.* It were well if this proposition might be added to the Book of Articles. 'The intention of the minister is not of the essence of the sacrament,' the rather, because some in England have preached it to be essential; and here again I could desire that the nine orthodox Assertions concluded at Lambeth, may be generally received.

*His Maj.* I utterly dislike the first part of your motion, thinking it unfit to thrust into the Book of Articles every position negative, which would swell the book into a volume as big as the Bible, and confound the reader. Thus one M. Craig in Scotland with his, I renounce and abhor his multiplied detestations and abrenunciations, so amazed simple people, that not able to conceive all their things, they fell back to popery, or remained in their former ignorance. If bound to this form, the confession of my faith must be in my table-book, not in my head.—Because you speak of Intention, I will apply it thus. If you come hither with a good intention to be informed, the whole work will sort to the better effect: But if your intention be to go as you came, whatsoever shall be said, it will prove the intention is very material and essential to the end of this present action.—As for the nine Assertions you speak of, I cannot suddenly answer, not knowing what those Propositions of Lambeth be.

*Bp. of Lond.* May it please your majesty, this was the occasion of them, by reason of some controversies arising in Cambridge about certain points of divinity, my lord's grace assembled some divines of special note to set down their Opinions, which they drew into nine Assertions, and so sent them to the University for the appeasing of those quarrels.

*His Maj.* When such questions arise amongst scholars, the quietest proceedings were to determine them in the University, and not to stuff the Book of Articles, with all Conclusions theological.—Secondly, the better course would be to punish the broachers of false doctrine, than to multiply Articles, which, if never so many, cannot prevent the contrary opinions of men till they be heard.

*Dean of Pauls.* May it please your majesty, I am nearly concerned in this matter, by reason of a Controversy betwixt me and some other in Cambridge, upon a Proposition, which

I there delivered, namely, that whosoever (though before justified) did commit any grievous sin, as adultery, murder, &c. do become *ipso facto*, subject to God's wrath, and guilty of damnation, *quoad presentiam statum*, until they repent. Yet, so that those who are justified according to the purpose of God's Election (though they might fall into grievous sin, and thereby into the present estate of damnation) yet never totally nor finally from Justification; but were in time renewed by God's spirit unto a lively faith and repentance. Against this doctrine some did oppose, teaching that persons once truly justified, though falling into grievous sins, remained still in the state of Justification, before they actually repented of these sins; yea, and though they never repented of them through forgetfulness or sudden death, they nevertheless were justified and saved.

*His Maj.* I dislike this doctrine, there being a necessity of conjoining repentance and holiness of life with true faith, and that is hypocrisy, and not justifying faith, which is severed from them. For although Predestination and Election depend not on any qualities, actions, or works of man which are mutable, but on God's eternal Decree: yet such is the necessity of Repentance after known sins committed, that without it no Reconciliation with God, or Remission of Sins.

*Dr. Reyn.* The Catechism in the Common Prayer-Book is too brief, and that by Mr. Nowel (late dean of Pauls) too long for novices to learn by heart. I request therefore that one uniform Catechism may be made, and none other generally received.

*His Maj.* I think the doctor's request very reasonable, yet so, that the Catechism may be made in the fewest and plainest affirmative terms that may be, not like the many ignorant Catechisms in Scotland, set out by every one who was the Son of a good man; insomuch that what was Catechism-doctrine in one congregation, was scarcely received as orthodox in another; and herein I would have two rules observed: First, That curious and deep questions be avoided in the fundamental instruction of a people, secondly, That there should not be so general a departure from the papists, that every thing should be accounted an error wherein we agree with them.

*Dr. Reyn.* Great is the profanation of the Sabbath day, and contempt of your majesty's Proclamation, which I earnestly desire may be reformed.

This motion found an unanimous consent.

*Dr. Reyn.* May your majesty be pleased that the Bible be new translated, such as are extant not answering the original, and be instanced in three particulars.

Gal. iv. 25.—In the original, *συνεχῆ*; ill-translated, Bordereth.—Ps. cv. 28. Orig. They were not disobedient; ill-trans., They were not obedient.—Ps. cvi. 30. Orig. Phinehas executed judgment; ill-trans., Phinehas prayed.

*Bp. of Lond.* If every man's humour might be

followed, there would be no end of translating.

*His Maj.* I profess I could never yet see a Bible well translated in English; but I think, that of all, that of Geneva is the worst. I wish some special pains were taken for an uniform translation; which should be done by the best learned in both Universities, then reviewed by the bishops, presented to the privy council, lastly ratified by royal authority, to be read in the whole church, and no other.

*Bp. of Lond.* But it is fit that no marginal notes should be added therunto.

*His Maj.* That caveat is well put in, for in the Geneva translation, some notes are partial, untrue, seditious, and savouring of traitorous conceits: As; when from Exodus i. 19. Disobedience to kings is allowed in a marginal note. And 2 Chron. xv. 16, king Asa taxed in the note for only deposing his mother for idolatry, and not killing her. To conclude this point, let errors, in matters of faith, be amended, and indifferent things be interpreted, and a gloss added unto them. For as Bartolus de Regno saith, that a king with some weakness, is better than still a change; so rather a Church with some faults, than an innovation. And surely, if these were the greatest matters that grieved you, I need not have been troubled with such importunate complaints.

*Dr. Reyn.* May it please your majesty, that unlawful and seditious books be suppressed, such as Ficerus, a Papist, *De Jure Magistratus in Subditos*, applied against the late queen for the Pope.

*Bp. of Lond.* There is no such licentious divulging of those books, and none have liberty, by authority, to buy them, except such as Dr. Reynolds, who was supposed would confute them. And, if such books come into the realm by secret conveyances, perfect notice cannot be had of their importation. Besides, Ficerus was a great disciplinarian, whereby it appears what advantage that sort gave unto the Papists, who, *mutatis personis*, apply their own arguments against princes of their religion, though for my part I detest both the author and applier alike.

*The Ld. Cecil.* Indeed the unlimited liberty of dispersing Popish and seditious pamphlets in Pauls Church-yard, and both the Universities, hath done much mischief; but especially one called *Speculum Tragicum*.

*His Maj.* That is a dangerous book indeed.

*L. H. Howard.* Both for matter and intention.

*L. Chan.* Of such Books, some are Latin, some are English, but the last dispersed do most harm.

*Secret. Cecil.* But my lord of London (and no man else) hath done what he could to suppress them.

*His Maj.* Dr. Reynolds, you are a better college-man than a states-man, if meaning to tax the bishop of London for suffering those books, between the Secular Priests and Jesuits, to be published, which he did by warrant from the council, to flourish a schism betwixt them.

*Ld. Cecil.* Such books were tolerated, because by them the title of Spain was confuted.

*Ld. Treasurer.* And because therein it appears, by the testimony of the priests themselves, that no Papists are put to death for conscience only, but for treason.

*Dr. Reyn.* Indeed I meant not such books as were printed in England, but only such as came from beyond the seas. And now to proceed to the second general point, concerning the planting of learned ministers, I desire they be in every parish.

*His Maj.* I have consulted with my bishops about it, whom I have found willing and ready herein: but, as *sabita evacuatio* is *periculosa*; so *sabita mutatio*: It cannot presently be performed, the Universities not affording them. And yet they afford more learned men, than the realm doth maintenance, which must be first provided. In the mean time, ignorant ministers, if young, are to be removed, if there be no hope of amendment; if old, their death must be expected, because Jerusalem cannot be built up in a day.

*Bp. of Winch.* Lay patrons much cause the insufficiency of the clergy, presenting mean clerks to their cures (the law admitting of such sufficiency) and, if the bishop refuseth them, presently a *quare impedit* is sent out against him.

*Bp. of Lond.* Because this I see is a time of moving Petitions, may I humbly present two or three to your majesty: First, That there may be amongst us a praying ministry, it being now come to pass, that men think it is the only duty of ministers to spend their time in the pulpit. I confess, in a Church newly to be planted, preaching is most necessary, not so in one long established, that prayer should be neglected.

*His Maj.* I like your motion exceeding well, and dislike the hypocrisy of our time, who place all their religion in the ear, whilst prayer (so requisite and acceptable, if duly performed) is accounted and used as the least part of religion.

*Bp. of Lond.* My second motion is, that until learned men may be planted in every congregation, godly homilies may be read therein.

*His Maj.* I approve your motion, especially where the living is not sufficient for the maintenance of a learned preacher. Also, where there be multitudes of sermons; there I would have homilies read divers times. [Here the king asked the assent of the plaintiffs, and they confessed it.]

A preaching ministry is best, but where it may not be had, godly prayers and exhortations do much good.

*Ld. Chan.* Livings rather want learned men, than learned men livings; many in the Universities pining for want of places. I wish therefore some may have single coats (one living) before others have doublets (pluralities). And this method I have observed in bestowing the king's benefices.

*Bp. of Lond.* I commend your honourable  
VOL. II.

care that way; but a doublet is necessary in cold weather.

*Ld. Chan.* I dislike not the liberty of our church, in granting to one man two benefices, but speak out of mine own purpose and practice, grounded on the aforesaid reason.

*Bp. of Lond.* My last motion is, that Pulpits may not be made Pasquils, wherein every discontented fellow may traduce his superiors.

*His Maj.* I accept what you offer, for the Pulpit is no place of personal reproof, let them complain to me, if injured.

*Bp. of Lond.* If your majesty shall leave yourself open to admit of all complaints, your highness shall never be quiet, nor your under-officers regarded, whom every delinquent, when censured, will threaten to complain of.

*His Maj.* I mean they shall complain to me by degrees, first to the Ordinary, from him to the Archbishop, from him to the lords of the council; and, if in all these no remedy be found, then to myself.

*Dr. Reyn.* I come now to Subscription, as a great impeachment to a learned ministry, and therefore intreat it may not be exacted as heretofore: for which many good men are kept out, though otherwise willing to subscribe to the Statutes of the Realm, Articles of Religion, and the King's Supremacy. The reason of their backwardness to subscribe, is, because the Common-prayer enjoineth the Apocrypha books to be read in the church, although some chapters therein contain manifest errors repugnant to Scripture. For instance, Eccclus. xlviii. 10. Elias in person is said to come before Christ, contrary to what is in the New Testament, Mat. xi. 14. Luke i. 17. of Elias in resemblance, that is, John the Baptist.

*Bp. of Lond.* Most of the objections against those books, are the old cavils of the Jews, renewed by S. Jerome (who first called them Apocrypha) which opinion, upon Ruffinus his challenge, he, after a sort, disclaimed.

*Bp. of Winch.* Indeed S. Jerome saith, *Canonici sunt ad informandos mores non ad confirmandam fidem.*

*His Maj.* To take an even order betwixt both, I would not have all canonical books read in the church, nor any chapter out of the Apocrypha, wherein any error is contained; wherefore let Dr. Reynolds note those chapters in the Apocrypha books, wherein those offences are, and bring them to the abp. of Canterbury against Wednesday next; and now Doctor, proceed.

*Dr. Reyn.* The next scruple against Subscription, is, because it is twice set down in the Common-prayer-book, Jesus said to his disciples, when by the text in the original, it is plain, that he spake to the Pharisees.

*His Maj.* Let the word Disciples be omitted, and the words, Jesus said, be printed in a different letter.

*Mr. Knewstub.* I take exceptions at the Cross in Baptism, whereat the weak brethren are offended, contrary to the counsel of the apostle, Romans xiv. 2 Corinth. viii.



*His Maj.* *Distingue tempora, & concordant Scriptura*, great the difference betwixt those times and ours. Then, a Church not fully settled; now, ours long established. How long will such brethren be weak? Are not forty-five years sufficient for them to grow strong in? Besides, who pretends this weakness? We require not Subscriptions of laicks and ideots, but of preachers and ministers, who are not still (I trow) to be fed with milk, being enabled to feed others. Some of them are strong enough, if not head-strong; conceiving themselves able enough to teach him who last spake for them, and all the bishops in the land.

*Mr. Kncwest.* It is questionable whether the Church hath power to institute an outward significant sign.

*Bp. of Lond.* The Cross in Baptism is not used otherwise than a ceremony.

*Bp. of Winch.* Kneeling, lifting up of the hands, knocking of the breast, are significant ceremonies, and these may lawfully be used.

*D. of the Chup.* The Rabbins write, That the Jews added both signs and words at the institution of the Pas-sover, viz. when they eat sour herbs, they said, 'Take and eat these in remembrance,' &c. When they drank wine, they said, 'Drink this in remembrance,' &c. Upon which addition, and tradition, our Saviour instituted the Sacrament of his last Supper, thereby approving, a Church may institute and retain a sign significant.

*His Maj.* I am exceedingly well satisfied in this point, but would be acquainted about the antiquity of the use of the Cross.

*Dr. Reyn.* It hath been used ever since the Apostles time; but the question is, how ancient the use thereof hath been in Baptism.

*D. of Westm.* It appears out of Tertullian, Cyprian, and Origen, that it was used in *immortali lacro*.

*Bp. of Winch.* In Constantine's time it was used in Baptism.

*His Maj.* If so, I see no reason but that we may continue it.

*Mr. Kncwest.* Put the case the Church hath power to add significant signs, it may not add them where Christ hath already ordained them, which is as derogatory to Christ's institution, as if one should add to the great seal of England.

*His Maj.* The case is not alike, seeing the Sacrament is fully finished, before any mention of the Cross is made therein.

*Mr. Kncwest.* If the Church hath such a power, the greatest scruple is, how far the ordinance of the Church bindeth, without impeaching Christian liberty.

*His Maj.* I will not argue that point with you, but answer as kings in parliament, *Le Roy s'avisera*; This is like Mr. John Black, a beardless boy, who told me, the last Conference in Scotland, (Dec. 1602,) that he would hold conformity with his majesty in matters of Doctrine: but every man for Ceremonies was to be left to his own liberty. But I will have none of that, I will have one Doctrine, one Discipline,

one Religion, in substance, and in ceremony. Never speak more to that point, how far you are bound to obey.

*Dr. Reyn.* Would that the Cross, being superstitiously abused in Popery, were abandoned, as the Brazen Serpent was stamped to powder by Hezekias, because abused to idolatry.

*His Maj.* In as much as the Cross was abused to superstition in time of Popery, it doth plainly imply that it was well used before. I detest their courses, who peremptorily disallow of all things, which have been abused in Popery, and know not how to answer the objections of the Papists, when they charge us with novelties, but by telling them, we retain the primitive use of things, and only forsake their novel corruptions. Secondly, no resemblance betwixt the Brazen Serpent, a material visible thing, and the sign of the Cross, made in the air. Thirdly, Papists (as I am informed) did never ascribe any spiritual Grace to the Cross in Baptism. Lastly, material Crosses, to which people fell down in time of Popery (as the idolatrous Jews to the Brazen Serpent) are already demolished, as you desire.

*Mr. Kncwest.* I take exception at the wearing of the Surplice, a kind of garment used by the priests of Isis.

*His Maj.* I did not think, till of late, it had been borrowed from the Heathen, because commonly called a rag of Popery. Seeing now we border not upon heathens, neither are any of them conversant with, or commorant amongst us, thereby to be confirmed in Paganism; I see no reason but for comeliness-sake, it may be continued.

*Dr. Reyn.* I take exception at these words in the Marriage, 'with my body I thee worship.'

*His Maj.* I was made believe, the phrase imported no less than divine adoration, but find it an usual English term, as when we say, 'a gentleman of worship,' and it agreeth with the Scriptures, 'giving honour to the wife.' As for you, Dr. Reynolds, many men speak of Robin Hood, who never shot in his bow. (This the king spake smiling.) If you had a good wife yourself, you would think all worship and honour you could do her, were well bestowed on her.

*D. of Sarum.* Some take exception at the Ring in Marriage.

*Dr. Reyn.* I approve it well enough.

*His Maj.* I was married with a Ring, and think others scarce well married without it.

*Dr. Reyn.* Some take exceptions at the Churching of Women, by the name of Purification.

*His Maj.* I allow it very well, women being loath of themselves to come to church, I like this, or any other occasion to draw them thither.

*Dr. Reyn.* My last exception is against committing Ecclesiastical Censures to lay-chancellors, the rather, because it was ordered, anno 1571, that lay-chancellors, in matters of

Correction, and anno 1589, in matters of Instance, should not excommunicate any, but be done, only by them who had power of the Keys, though the contrary is commonly practised.

*His Maj.* I have conferred with my bishops about this point, and such order shall be taken therein as is convenient. Mean time go on to some other matter.

*Dr. Reyn.* I desire, that according to certain provincial constitutions, the clergy may have meetings every three weeks.—1. First in Rural Deaneries, therein to have prophesying, as arch-bishop Griadall, and other bishops, desired of her late majesty.—2. That such things, as could not be resolved on there, might be referred to the arch-deacons visitations.—3. And so to the Episcopal Synod, to determine such points before not decided.

*His Maj.* If you aim at a Scottish Presbytery, it agreeth as well with monarchy, as God and the Devil. Then Jack, and Tom, and Will, and Dick, shall meet and censure me and my council. Therefore I reiterate my former speech, *Le Roy s'aviserà*; Stay, I pray, for one seven years, before you demand, and then if you find me grow pury and fit, I may, perchance, hearken unto you, for that government will keep me in breath, and give me work enough. I shall speak of one matter more, somewhat out of order, but it skilleth not; Dr. Reynolds, you have often spoken for my Supremacy, and it is well: but know you any here, or elsewhere, who like of the present government ecclesiastical, and dislike my Supremacy?

*Dr. Reyn.* I know none.

*His Maj.* Why then I will tell you a tale: after that the religion restored by king Edward the sixth, was soon overthrown by queen Mary here in England, we in Scotland felt the effect of it. For thereupon Mr. Knox writes to the queen regent (a virtuous and moderate lady) telling her that she was the supreme head of the Church; and charged her, as she would answer it at God's tribunal, to take care of Christ his Evangel, in suppressing the Popish prelates, who withstood the same; but how long trow you did this continue? Even till by her authority, the Popish bishops were repressed, and Knox, with his adherents, being brought in, made strong enough. Then began they to make small account of her supremacy, when, according to that more light, wherewith they were illuminated, they made a farther reformation of themselves. How they used the poor lady my mother, is not unknown, and how they dealt with me in my minority. I thus apply it. My lords, the bishops, I may [This he said putting his hand to his hat] thank you that these men plead thus for my Supremacy. They think they cannot make their party good against you, but by appealing unto it; but if once you were out, and they in, I know what would become of my Supremacy, *for No Bishop, No King*. I have learned of what cut they have been, who, preaching before me, since my coming into England, passed

over, with silence, my being Supreme Governor in causes ecclesiastical. Well, doctor, have you any thing else to say?

*Dr. Reyn.* No more if it please your majesty.

*His Maj.* If this be all your party hath to say, I will make them conform themselves, or else I will harrie them out of the land, or else do worse.

Thus ended the second day's Conference, and the third began on the Wednesday following, Jan. 18, many knights, civilians, and doctors of the law, being admitted thereunto, because the High Commission was the principal matter in debate.

*His Maj.* I understand, that the parties named in the High Commission are too many, and too mean, and the matters they deal with, base, such as ordinaries at home in their courts might censure.

*Abp. of Cant.* It is requisite their number should be many, otherwise I should be forced often-times to sit alone, if in the absence of the lords of the council, bishops, and judges at law, some deans and doctors were not put into that Commission, whose attendance I might command with the more Authority: I have often complained of the meanness of matters handled therein, but cannot remedy it. For though the offence be small, that the Ordinary may, the offender oft-times is so great, and contumacious, that the Ordinary dare not punish him, and so is forced to crave help at the High Commission.

*A nameless Lord.* The proceedings in that court, are like the Spanish Inquisition, wherein men are urged to subscribe more than law requireth, and by the oath *ex officio*, forced to accuse themselves, being examined upon twenty, or twenty four Articles on a sudden, without deliberation, and for the most part against themselves.—In proof hereof, he produced a Letter of an ancient honourable counsellor, An. 1584, verifying this usage to two ministers in Cambridgeshire.

*Abp. of Cant.* Your lordship is deceived in the manner of proceeding; for, if the Article touch the party for life, liberty, or scandal, he may refuse to answer; I can say nothing to the particulars of the Letter, because twenty years since, yet doubted not, but at leisure, to give your lordship satisfaction.

*Lord Chan.* There is necessity, and use of the oath *ex officio*, in divers courts, and causes.

*His Maj.* Indeed civil proceedings only punish facts; but it is requisite that Fame and Scandals be looked unto in courts ecclesiastical, and yet great moderation is to be used therein.

1. *In gravius criminibus*. 2. In such whereof there is a public fame, caused by the inordinate demeanour of the offender.—And here he soundly described the oath *ex officio*, for the ground thereof, the wisdom of the law therein, the manner of proceeding thereby, and profitable effect from the same.

*Abp. of Cant.* Undoubtedly your majesty speaks by the special assistance of God's spirit.

*Bp. of Lond.* I protest my heart melteth with joy, that Almighty God, of his singular mercy, hath given us such a king, as, since Christ's time, the like hath not been.

Then passed there much discourse between the king, the bishops, and the lords, about the quality of the persons, and causes in the High Commission, rectifying Excommunications in matters of less moment, punishing Recusants, providing Divines for Ireland, Wales, and the Northern Borders. Afterwards the four preachers were called in, and such alterations in the Liturgy were read unto them, which the bishops, by the king's advice, had made, and to which, by their silence, they seemed to consent.

*His Maj.* I see the exceptions against the Communion-book, are matters of weakness, therefore if the persons reluctant be discreet, they will be won betimes, and by good persuasions: if indiscreet, better they were removed, for by their factions many are driven to be Papists. From you Dr. Reynolds and your associates, I expect obedience and humility (the marks of honest and good men) and that you would persuade others abroad by your example.

*Dr. Reyn.* We here do promise to perform all duties to bishops, as reverend fathers, and to join with them against the common adversary for the quiet of the Church.

*Mr. Chaderton.* I request the wearing of the Surplice, and the Cross in Baptism may not be urged on some godly ministers in Lancashire, fearing, if forced unto them, many won by their preaching of the Gospel will revolt to Popery, and I particularly instance in the vicar of Ratsdale.

*Abp. of Cant.* You could not have light upon a worse, for not many years ago (as my lord chancellor knows) it was proved before me, that by his unreverent usage of the Eucharist (dealing the bread out of a basket, every man putting in his hand, and taking out a piece) he made many loath the Communion, and refuse to come to Church.

*His Maj.* It is not my purpose, and I dare say it is not the bishops intent, presently, and out of hand, to enforce these things, without fatherly admonitions, conferences, and persuasions, premised; but I wish it were examined, whether such Lancashire ministers, by their pains and preaching, have converted any from Popery, and withal be men of honest life, and quiet conversation. If so, let letters be written to the bishop of Chester [Rich. Vaughan, afterwards bishop of London] (who is a grave and good man) to that purpose, that some favour may be afforded unto them, and let the lord archbishop write the letters.

*Bp. of Lond.* If this be granted, the copy of these Letters will fly all over England, and then all non-conformists will make the like request, and so no fruit follow of this Conference, but things will be worse than they were before. I desire therefore a time may be limited, within the compass whereof they shall conform.

*His Maj.* I assent thereunto, and let the bishop of the diocese set down the time.

*Mr. Kneast.* I request the like favour of forbearance to some honest ministers in Suffolk. For it will make much against their credits in the country, to be now forced to the Surplice, and Cross in Baptism.

*Abp. of Cant.* Nay, sir—

*His Maj.* Let me alone to answer him. Sir, you shew yourself an uncharitable man. We have here taken pains, and, in the end, have concluded on unity and uniformity, and you, forsooth, must prefer the credits of a few private men before the peace of the Church. This is just the Scotch argument, when any thing was concluded, which disliked some humours. Let them either conform themselves shortly, or they shall hear of it.

*Ld. Cecil.* The indecency of Ambulating Communion, is very offensive, and hath driven many from the Church.

*Bp. of Lond.* And Mr. Chaderton, I could tell you of Sitting Communion in Emanuel college.

*Mr. Chad.* It is so, because of the seats so placed as they be, and yet we have some kneeling also in our chapel.

*His Maj.* No more hereof for the present, seeing they have jointly promised hereafter to be quiet and obedient.—Whereat he rose up to depart into an inner chamber.

*Bp. of Lond.* God's goodness be blessed for your majesty, and give health and prosperity to your highness, your gracious queen, the young prince, and all the royal issue.

Thus ended the three days Conference, wherein how discreetly the king carried himself, posterity (out of the reach of flattery) is the most competent judge, such matters being most truly discerned at distance. It is generally said, that herein he went above himself; that the bishop of London appeared even with himself, and Dr. Reynolds fell much beneath himself. Others observed that abp. Whitgift spake most gravely; Bancroft (when out of passion) most politely; Bilson, most learnedly. And of the divines, Mr. Reynolds most largely; Kneestubs most affectionately; Chaderton most sparingly. In this scene, only Dr. Sparks was *ἀφρον πρόσωπον*, making use of his hearing, not speech, converted (it seems) to the truth of what was spoken, and soon after setting forth a Treatise of Unity and Uniformity.—But the nonconformists complained, that the king sent for their divines, not to have their scruples satisfied, but his Pleasure propounded; nor that he might know what they could say, but they what he would do, in the matter. Besides, no wonder if Dr. Reynolds a little lost himself, whose eyes were partly dazzled with the light of the king's majesty, partly daunted with the heat of his displeasure. Others complain, that this Conference is partially set forth only by Dr. Barlow, dean of Chester, their professed adversary, to the great disadvantage of their divines. And when the Israelites go down to the Philistines, to what all

their iron tools, no wonder if they set a sharp edge on their own, and a blunt one on their enemies weapons.—This Conference produced some alterations in the Liturgy, womens baptizing of infants, formerly frequent, hereafter forbidden; in the rubric of Absolution, Remission of Sins inserted, Confirmation termed also an Examination of Children, and some words altered in the Dominical Gospels, with a resolution for a new Translation of the Bible. But whereas it was hitherto disputable, whether the north, where he long lived, or the south, whither he lately came, should prevail most, on the king's judgment, in Church-government; this doubt was now clearly decided. Hence forward many cripples in conformity, were cured of their former halting therein, and such, who knew not their own, till they knew the king's mind in this matter, for the future, quietly digested the Ceremonies of the Church.

*The following is the MILLENNARY PETITION.*

“The humble Petition of the Ministers of the Church of England, desiring Reformation of certain Ceremonies, and Abuses of the Church.

“To the most christian, and excellent prince, our gracious and dread sovereign, James by the grace of God, &c. We the Ministers of the Church of England, that desire Reformation, wish a long, prosperous, and happy reign over us in this life, and in the next everlasting salvation.

“Most gracious and dread Sovereign; Seeing it hath pleased the Divine Majesty, to the great comfort of all good Christians, to advance your highness, according to your just title, to the peaceable government of this Church and Common-wealth of England: We the Ministers of the Gospel in this land, neither as factious men, affecting a popular parity in the Church, nor as schismatics aiming at the dissolution of the state ecclesiastical; but as the faithful servants of Christ, and loyal subjects to your majesty, desiring and longing for the redress of divers abuses of the Church; could do no less, in our obedience to God, service to your majesty, love to his Church, than acquaint your princely majesty, with our particular griefs: for, as your princely pen writeth, The king, as a good physician, must first know what peccant humours his patient naturally is most subject unto, before he can begin his cure. And, although divers of us that sue for Reformation, have formerly, in respect of the times, subscribed to the Book, some upon protestation, some upon exposition given them, some with condition, rather than the Church should have been deprived of their labour, and ministry; yet now, we, to the number of more than a thousand, of your majesty's subjects and ministers, all groaning, as under a common burden, of human rights and ceremonies, do, with one joint consent, humble ourselves at your majesty's feet, to be eased and relieved in this behalf. Our humble suit then unto your majesty is, that these offences following, some

may be removed, some amended, some qualified.—1. In the Church Service. That the Cross in Baptism, Interrogatories ministered to infants, Confirmation, as superfluous, may be taken away. Baptism not to be ministered by women, and so explained. The Cap and Surplice not urged. That Examination may go before the Communion. That it be ministered with a sermon. That divers terms of Priests, and Absolution, and some other used, with the Ring in Marriage, and other such like in the Book, may be corrected. The long-someness of Service abridged. Church songs, and Music moderated to better edification. That the Lord's day be not profaned. The rest upon Holy days not so strictly urged. That there may be an uniformity of doctrine prescribed. No Popish opinion to be any more taught, or defended. No ministers charged to teach their people to bow at the name of Jesus. That the canonical Scriptures only be read in the Church.—2. Concerning Church Ministers. That none hereafter be admitted into the ministry, but able and sufficient men, and those to preach diligently, and especially upon the Lord's day. That such as be already entered, and cannot preach, may either be removed, and some charitable course taken with them for their relief; or else to be forced, according to the value of their livings, to maintain preachers. That Non-Residence be not permitted. That king Edward's statute, for the lawfulness of Ministers Marriage, be revived. That ministers be not urged to subscribe, but, according to the law, to the Articles of Religion, and the king's supremacy only.—3. For Church Livings, and Maintenance. That bishops leave their Commendams; some holding prebends, some parsonages, some vicarages with their bishoprics. That double beneficed men be not suffered to hold, some two or three Benefices with Cure: and some, two, three, or four Dignities besides. That Impropropriations annexed to bishoprics and colleges, be demised only to the preachers incumbents, for the old rent. That the Impropropriations of Laymen's fees may be charged with a sixth or seventh part of the worth, to the maintenance of the preaching minister.—4. For Church Discipline. That the Discipline, and Excommunication may be administered according to Christ's own institution; or at the least, that enormities may be redressed. As namely, That excommunication come not forth under the name of lay-persons, chancellors, officials, &c. That men be not excommunicated for trifles, and twelve-penny matters. That none be excommunicated without consent of his pastor. That the officers be not suffered to extort unreasonable fees. That none, having jurisdiction, or registers places, put out the same to farm. That divers Popish Canons (as for restraint of marriage at certain times) be reversed. That the long-someness of suits in ecclesiastical courts (which hang sometimes two, three, four, five, six, or seven years) may be restrained. That the oath *ex officio*, whereby men are forced to accuse themselves,

be more sparingly used. That Licenses for Marriage, without Banns asked, be more cautiously granted.—These, with such other abuses, yet remaining, and practised in the Church of England, we are able to shew, not to be agreeable to the scriptures, if it shall please your highness farther to hear us, or more at large by writing to be informed, or by conference among the learned to be resolved. And yet we doubt not, but that, without any farther process, your majesty (of whose Christian judgment we have received so good a taste already) is able of yourself, to judge of the equity of this cause: God, we trust, hath appointed your highness our physician to heal these diseases. And we say with Mordecai to Hester, “who knoweth, whether you are come to the kingdom for such a time?” Thus your majesty shall do that, which, we are persuaded, shall be

acceptable to God, honourable to your majesty in all succeeding ages, profitable to his Church, which shall be thereby increased, comfortable to your ministers, which shall be no more suspended, silenced, disgraced, imprisoned for men's traditions; and prejudicial to none, but to those that seek their own quiet, credit, and profit in the world. Thus, with all dutiful submission, referring ourselves to your majesty's pleasure, for your gracious answer, as God shall direct you: we most humbly recommend your highness to the Divine Majesty: whom we beseech for Christ his sake to dispose your royal heart to do herein, what shall be to his glory, the good of his Church, and your endless comfort.—Your majesty's most humble subjects, the Ministers of the Gospel, that desire not a disorderly Innovation but a due and godly Reformation.

77. The CASE between Sir FRANCIS GOODWIN and Sir JOHN FORTESCUE, relative to a Return for the County of Buckingham; as it stands upon the Journals of the House of Commons: 1 JAC. I. A. D. 1604.

INTRODUCTION.

*From 1 Cobb. Parl. Hist. 997.*

ON the 26th of March 1604, upon a motion of the lord Cecil, a Conference was agreed upon to be had with a certain number of the Lower House, concerning the public State of the Nation; and on two things, in particular, Purveyors and Respite of Homage. To which the Commons desired might be added another article concerning the matter of Wards: answer was returned back, by the Lords, “That they liked well the motion for a Conference, touching the last mentioned matter. But, with all, because there were several other things that did concern the public state; of which it was likewise proper to have conference, before hand, for the better furtherance of the public service; and, in regard, the said matters were of importance, their lordships desire them to increase the number of their committee as they intended to do theirs.” A large Committee of lords were accordingly appointed, consisting of nine earls, one viscount, six bishops, and 13 barons; who were to be attended by the two lord chief justices, four judges, Mr. Serjeant Crook, and Mr. Attorney-General. The commons deputed about 60 knights and burgeses of their house; and this is all that the Journals of the Lords mention of this matter. But the Journals of the Commons are not so silent; for it was, indeed, a business of importance to the Liberties and Privileges of that House. Rapin, (from Coke) represents this affair as another instance of this king's aiming at absolute power. In order to introduce this matter, we shall give a paragraph from this author's History of England, (v. ii, p. 168) and then subjoin the whole Account, as it

stands in the Journals of the Commons at this day. “Immediately after the opening of the Parliament the Commons examining according to custom, the contested Elections, there was a debate in the house about the return of sir Francis Goodwin, and sir John Fortescue, for knight of the shire for the county of Bucks, and upon a full hearing, sir Francis was declared duly elected. Three days after, the Lords sent a Message to the Commons, that there might be a Conference about Goodwin's election. The Commons, surprized at so extraordinary a Message, answered, They did not think themselves obliged to give an account of their proceedings, and therefore could not grant the Conference required. The Lords replied, the king having been acquainted with what had passed in Goodwin's Case, thought himself engaged in honour to have the affair debated again, and had ordered them to confer with the Commons upon it. Whereupon, the Commons, by their Speaker, gave their Reasons to the king, why they could not admit of this innovation. But all they could obtain was, that instead of a Conference with the Lords, the king commanded them to confer with the Judges. This pleased them no more than the other. They set down their Reasons in writing, and delivered them at the Council-Chamber, to desire their lordships to intercede for them to the king, not to violate their privileges. The Answer was, the king absolutely commanded them to have a Conference with the Judges. The Commons were extremely surprized at so absolute an order. Meanwhile, fearing to be accused of too easily engaging in a quarrel with the King, they thought it more proper to yield, than stand out, fully bent however to adhere to what had been de-

terminated in the Case of the contested election. Certainly, the king had engaged in a very nice affair, and probably would not have come off with honour, had he not been disengaged by Goodwin's moderation. Sir Francis, chusing to forfeit his right rather than occasion a quarrel between the King and the Commons, desired the house to order the County of Bucks to elect another knight in his stead. The King and Commons equally accepted of this expedient, which prevented them from coming to extremities; but the king found from hence, that no great account was made of the proclamation upon calling the parliament whereby he meant to be master of the elections." Thus far Mr. Rapin. This Case of sir Francis Goodwin was printed, by order of the House of Commons, in 1704, under the direction of Robert Harley, esq. (afterwards earl of Oxford) then Speaker, on occasion of the famous Debate, at that time, upon the Aylesbury Election.

#### THE CASE.

*Die Jovis 22 Martii, 1603-4.*

THE first motion was made by sir William Fleetwood, one of the knights returned for the County of Bucks, on the behalf of sir Francis Goodwin, knight; who, upon the first Writ of Summons directed to the Sheriff of Bucks, was elected the first Knight for that shire: but the Return of his Election being made, it was refused by the Clerk of the Crown (*quia utlagatus*): and because sir John Fortescue, upon a second Writ, was elected, and entered in that place, his desire was, that this Return might be examined, and sir Francis Goodwin received as a member of the house. The House gave way to the motion; and for a more deliberate and judicial proceeding in a case of privilege so important to the house,

Ordered, 'That the Serjeant (the proper officer of the house) should give warning to the Clerk of the Crown to appear at the bar at eight o'clock the next morning, and to bring with him all the Writs of Summons, Indentures, and Returns of Election for the county of Bucks, made and returned for this Parliament; and to give warning also to sir Francis Goodwin to attend in person, whom their pleasure was to hear, *ore tenus*, to deliver the state of his own cause, and the manner and reasons of the proceeding in the Election of the Knights of the Shire for that County.'

This being a motion tending to Matter of Privilege, was seconded with another by Mr. Serjeant Shirley, touching an arrest of sir Tho. Riley, &c.

*Die Veneris 23 Martii, 1603-4.*

Sir George Copping, knight, Clerk of the Crown in the Chancery, this day, (according to former order) being attended by the Serjeant of the House with his mace, appeared at the bar, and produced all the Writs of Summons, Indentures, and Returns made of the Knights for Buckinghamshire for this Parliament; which were severally read by the Clerk of the

House, and then the Clerk of, the Crown commanded to retire to the door: And after, sir Francis Goodwin himself (whom it specially concerned) attending to know the pleasure of the house, was called in, to deliver the state of his own cause, *ore tenus*; wherein he was heard at large, and commanded again to retire until the house had determined what to do.

In this mean time the whole case was at large opened, and argued *pro et contra* by sundry learned and grave Members of the house, and after much dispute the question was agreed upon, and made.

Quest. 'Whether sir Francis Goodwin were lawfully elected and returned one of the Knights for Bucks; and ought to be admitted and received as a Member of this House?'

Upon this question it was, Resolved in the affirmative, "That he was lawfully elected and returned, and, *de jure*, ought to be received." Hereupon the Clerk of the Crown was commanded to file the first Indenture of Return: and order was given, that sir Francis should presently take the Oath of Supremacy usual, and his place in the House; which he did accordingly.

*Die Martis 27 Martii 1604.*

Sir Francis Bacon, in reporting a conference with the lords, touching Wardship and other things, reported that a lord touched the Case of sir Francis Goodwin as a thing he had heard at large, but did not understand it; and therefore desired to know it more particularly from this house.

Answer was made, That they had no Warrant from the house to speak of it.

Sir Edward Coke, his majesty's attorney-general, and Mr. Dr. Hone, bring a Message from the lords, expressing with what acceptance their lordships entertained their motion yesterday, not only for the matter being of very great weight and consequence, but especially for the manner; namely, That, touching Wardship, they would not petition for ease in it as a matter of wrong, but of grief; and pray to be relieved by grace, and not by justice. And their lordships for answer were desirous, and moved at that time to couple in the same petition the matter of grievance, of Respite of Homage, which his majesty, out of his gracious favour and love to his people, had himself taken knowledge of. 'And as they conceive it to be likely, that the conference may continue between the two houses, touching the said matters: as they are very zealous of the furtherance of their purpose, so are they jealous of any impediment that may breed lett, or hindrance therein: therefore they desire, for a more clear proceeding and removing of all stumbling-blocks, that the former committees may, in a second conference to be had, have authority to treat touching the Case of sir Francis Goodwin, the Knight for Buckinghamshire, first of all, before any other matter were farther proceeded in.'

A. The answer to this Message, (as in such

cases is for the more part usual) 'That they would return answer by messengers of their own.'

Upon this Message it was argued by some, 'That in no sort they should give account to the lords of their proceedings in the house; but that Mr. Speaker should from the house be a suitor to his majesty, to have access, and as their common mouth give his highness satisfaction by direction from the house: 'That now the Judgment of sir Francis Goodwin's case having passed the house, it could not, nor ought not, to be reversed by them. 'A Precedent, 27 Eliz. cited; where a Bill brought down from the lords, upon the first reading was rejected; the lords sent messengers to demand a reason of their Judgment. 'It was denied to yield any reason.'

This Argument brought forth this Question, which Mr. Speaker was ordered by the house presently to make, viz.

Quest. 'Whether they should confer with the lords, touching the Case of sir Francis Goodwin the Knight for Buckinghamshire?' And Resolved, That they should not.'

It was then considered as fit to return some Answer of the Message from the lords; and Mr. Secretary Herbert, with some other of the Committees, were appointed to deliver to their lordships, from the house; 'That they did conceive it did not stand with the Honour and Order of the house, to give account of any their proceedings or doings: but if their lordships have any purpose to confer for the residue, that then they will be ready at such time and place, and with such number as their lordships shall think meet.'

Upon the last Message to the lords, the messengers return, 'That their lordships would presently send answer by messengers of their own.'

Sir Edward Coke, his majesty's Attorney-General, Mr. Dr. Carew, Mr. Dr. Hone, and Mr. Tyndall, delivered from the lords, 'That their lordships taking notice in particular of the Return of the Sheriff of Bucks; and acquainting his majesty with it, his highness conceived himself engaged and touched in honour that there might be some conference of it between the two houses: and to that end, signified his pleasure unto them, and by them to this house.'

Upon this Message, so extraordinary and unexpected, the house entered in some consideration what were fit to be done; and Resolved, 'That his majesty might be moved for access the next day.' And afterwards they understood his pleasure to be, 'That they should attend at Whitehall at eight the next morning.' But because the time was then somewhat far spent, they Ordered, 'That the House with Mr. Speaker, should meet at six the next morning in the house.'

Yet afore their rising, they thought fit to name a Committee, to set down the effect of that which Mr. Speaker was to deliver from the house to the king, viz. sir Francis Bacon,

Mr. Wentworth, Mr. Martin, Mr. Serj. Sing, sir Rob. Wroth, Mr. Fr. Moore, sir Henry Mountague, sir Wm. Fleetwood, Mr. Fuller, Mr. Serj. Tanfield, Mr. Serj. Hubbard, sir Robert Wingfield, Mr. Hide, Mr. Diet, Mr. Winch, sir Edwin Sandis, sir Fr. Hastings, Mr. Wiseman, sir Geo. Moore, sir Edw. Hobby, sir Rob. Cotton, sir Tho. Lake, sir Oliver St. John, sir Edw. Stafford, Mr. Anthrobus, Mr. Serj. Dodridge, sir Roger Wilbraham, Mr. Solicitor, sir Edw. Tyrrel, to meet at 4 o'clock this afternoon at the Parliament-Chamber in the Middle-Temple.

*Die Mercurii, viz. 28 die Martii.*

Mr. Speaker, with a great number of the house, assembled at 6 a-clock this morning, with a purpose to treat and resolve what should be delivered to his majesty, (being appointed to attend him the same morning at 8 a-clock) touching the Reasons of their Proceedings in sir Francis Goodwin's Case: but because the house was not then thought full enough for a matter of that consequence, they proceeded to the reading of Bills.

Upon motion touching Mr. Speaker's attendance on the king, a Committee was named to accompany him, viz. All the Privy-Council, being members of the house: Sir George Carew, Vice-Chamberlain to the queen, sir Francis Bacon, Mr. Serj. Dodridge, sir Henry Mountague, Mr. Serj. Hubbard, Mr. Serj. Lee, Mr. Fuller, Mr. Hide, Mr. Francis Moore, Mr. Winch, Mr. Tate, Mr. Rd. Martin, Mr. Serj. Shirley, Mr. Serj. Tanfield, sir John Heigham, sir Rob. Oxenbridge, sir Wm. Fleetwood, sir Edw. Sandis, sir Rob. Wroth, sir George Fleetwood, sir John Scott, sir Herbert Crofts, sir James Scudamore, sir Jerome Horsey, sir Edw. Radcliffe, sir Tho. Holcroft, sir Anthony Rowse, sir Henry Nevill, sir Edw. Mountague, sir Tho. Hobby, sir Michael Sandis, Mr. Tho. Benson, sir Fr. Fane, sir Fr. Hastings, sir Geo. Moore, sir Edw. Hobby, sir Robert Wingfield, sir Maurice Berkley, sir Edw. Tyrrell, sir Wm. Killegrew, sir Fr. Popham, Mr. Fr. Clifford, sir John Savill, sir Tho. Waller, sir Wm. Lower, Mr. Nath. Bacon, sir Rd. Verney, sir George Fane, Mr. Toby Matthew, sir Tho. Ridgway, Mr. Edw. Scymour, sir Wm. Bourlacy, sir Rob. Moore, sir Jona. Trelawney, sir Edw. Denny, sir Tho. Walsingham, sir Fr. Barrington, sir Robert Nappier, sir Valentine Knightley, sir George Carew, Master of the Chancery, sir Nich. Halswell, sir John Thynne, sir Tho. Frenke, sir Jerome Bowes, sir Edw. Herbert, sir John Leveson, Mr. Dudley Carleton.

Mr. Speaker, together with these Committees, were this day, at 8 in the morning, appointed to attend his majesty, and to relate the Reasons of the Proceeding of the house in sir Francis Goodwin's Case; where, upon Answer or Reply, such lawyers as be of the Committee are to give their assistance.

*Die Jovis, viz. 29 die Martii, 1603.*

Mr. Speaker relateth what he had delivered to the king by warrant from the house the day

before, touching their Proceeding in sir Francis Goodwin's Case, and his majesty's Answer; whereof, because part was afterwards penned by select Committees, read in the house, and offered in writing to the king, "I have but touched the Heads, omitting many circumstances." He said, he first delivered, 1. The Manner and Matter. 2. Then such Precedents as had been vouched and stood upon. 3. He opened the body of the Law for Election.—The first Writ of Summons, dated *ultimo Januarii* before the Parliament: the Writ issued duly; the liberty was free, by that writ, to chuse *in plano comitatu*: the Election was made according to that writ, and the Indenture duly returned; and therefore adjudged by the house, "That this first election being good, the second was consequently void."—For the matter of Utlawry against sir Francis Goodwin, there was one prosecuted against him at the suit of Johnson, 31 Eliz. for 60*l.* and was laid and proceeded in the Hustings, London. Another, at the suit of one Hacker, for 16*l.* 39 Eliz. That sir Francis had since been chosen, admitted, and served as a member of this house, in the several parliaments holden 39 and 43 Eliz. That the Utlawry remained in the Hustings, so as the law could not take notice of it; neither was it pleadable.—1 Eliz. One Smith was found utlawed, and privileged by the house.—23 Eliz. One Vaughan utlawed; and, upon the question and division of the house, privileged: being carried with the difference of six voices.—35 Eliz. Three precedents vouched.—39 Hen. 6.\* Fitz-Herbert. —Mr. John Killebrew having 52 utlawries returned against him, was admitted to serve in the house. Sir Wm. Harecourt was found 18 times utlawed, and yet was admitted to serve.—The manner of the Election is limited by the Statute. The supposed Utlawry, 31 Eliz. against sir Francis, was no utlawry at all; for wheresoever a man is sued, the proclamation ought to go into the country where the party dwelleth; or else the utlawry is not good.—39 & 43 Eliz. The general Pardon is good for Utlawries, against all, saving the party at whose suit.—31 Eliz. It was Franciscus Goodwin, Gen.—39 Eliz. Franciscus Goodwin, Armig. The sheriff is no judge of the utlawry, neither could take notice it was the same man; and therefore could not properly return him utlawed."

His Majesty answered, "He was loth he should be forced to alter his tune; and that he should now change it into matter of grief, by way of contestation. He did sample it to the murmur and contradiction of the people of Israel.—He did not attribute the cause of his

\* Here the accurate Editor of the printed Journals makes this remark, "The words (39 H. 6.) seem to be improperly inserted here, and are, in the Book of Notes, placed before the citation of Smyth's Case, 1 Eliz. and in the margin of the Journal itself against these words is written Quære."

grief to any purpose in the house to offend him; but only to a mistaking of the law. For matters of fact, he answered them all particularly. That, for his part, he was indifferent which of them were chosen, sir John, or sir Francis: that they could suspect no special affection in him, because this was a Counsellor not brought in by himself.—That he had no purpose to impeach their privilege; but since they derived all matters of privilege from him, and by his grant, he expected they should not be turned against. That there was no Precedent did suit this case fully: Precedents in the times of Minors, of Tyrants, of Women, of Simple Kings, not to be credited; because for some private ends. By the law this house ought not to meddle with Returns, being all made into the Chancery, and are to be corrected or reformed by that court only, into which they are returned. 35 Hen. 6. it was the Resolution of all the Judges, that matter of Utlawry was a sufficient cause of dismissal of any member out of the house. That the Judges have now resolved, That sir Francis Goodwin standeth utlawed according to the laws of this land. In conclusion, it was his majesty's special charge unto us;—That, 1. The course already taken, should be truly reported. 2. That we should debate the Matter, and resolve among ourselves. 3. That we should admit of Conference with the Judges. 4. That we should make report of all the Proceedings unto the Council."

This Relation being made, the House did not enter into any further consideration of the matter at that time; but Resolved and Ordered, "That it should be the first matter moved the next morning."

*Die Veneris, viz. 30 die Martii, 1604.*

Moved and urged by one, touching the Difference now on foot between the King and the House, "That there is just fear of some great abuse in the late Election. That in his conscience the King hath been much misinformed; and that he had too many misinformers, which, he prayed God, might be removed or lessened in their number. That now the Case of sir John Fortescue and sir Francis Goodwin was become, the case of the whole Kingdom. That old Lawyers forget, and commonly interpret the law according to the time.—That by this course the free Election of the country is taken away, and none shall be chosen but such as shall please the King and Council. Let us therefore, with fortitude, understanding and sincerity, seek to maintain our Privilege; which cannot be taken or construed any contempt in us, but merely a maintenance of our common right, which our ancestors have left us, and is just and fit for us to transfer to our posterity."

Another, for a law to be made, "That never any man outlawed, should shew his face here again. The difference, he observed, was some unrespective carriage towards his majesty in this matter; and therefore let our proceeding be dutiful and careful towards him, in advising of some speedy course to give his majesty



satisfaction; that is (as he conceived) according to the king's project, first, to advise amongst ourselves, and then to confer with the Judges, not as Parliament-men, but as Counsellors; not as though they were to reverse our errors, but that we might be better informed; not now the Case of sir John and sir Francis, but a Case of great difference between the king and us, wherein we are deeply to consider the consequence if this pique be bruited in the country, abroad or beyond the seas. It is fit we let the king see how much we take to heart this matter, since our affections have so much appeared in the passing and present expediting of the Act of Recognition, &c."

*Conclus.* That we should tender our humble Petition to his majesty, for leave to make a Law for the banishing of all Outlaws hereafter from the Parliament, and pray, that we may hold all our Privileges entire.

A Third, "That we ought not to contest with the king; that it is fit to have a Conference: that by it we shall lose no Privilege, but rather gain; for the matters of the Conference will be two, satisfaction of the king, and putting in certainty our Privilege. All is not yet said that may be said; we are not to dispute with one that is governor of thirty legions. *Confitemur est ne frustra interrogasset.* Let us deal plainly and freely with the Lords, and let them know all the reasons. They are jealous of the Honour of a Privy-Counsellor, we of the Freedom of Election. It is fit great men maintain the Prerogative; so is it fit that we maintain our Privileges. This is a Court of Record, therefore ought we by all means seek to preserve the honour and dignity of it. If a burges be chosen for two places, the burges makes his choice for which he will serve, and a warrant shall be directed from Mr. Speaker, in the name of the house, to the Clerk of the Crown to send forth a Writ for a new Election for the other place left; which is a direct proof that it is a Court of Power and Record. We have a Clerk and a Register; all matters that pass here are entered of Record, and preserved. As they stand for the honour of a Counsellor, so we for our Privileges. It is to be wished, that we had a law to declare our Privileges, that we have a Court of Record and a Register."

*Obj.* We (they say) are but half of the body, and the Lords are the parts nearest the head.

*Ans.* Nothing ascends to the Head but by the Breasts, &c.—*Concl.* That we may pray it may be explained by a law what our Privileges are; and that no man outlawed may hereafter be admitted.—There must be a Judge of the Return before we sit; and this is now judged according to the positive laws of the realm by the king, which infringeth not our liberty, since we judge after the court is set, according to discretion.—No precedent, that any man was put out of the house for outlawry; therefore it had been fit we should have desired to inform the king that he was informed.—Let us now leave this particular Case

to the king, and consider and resolve of the material Questions that will fall out in the debate of it. 1. Whether this Court hath power to take notice of Returns made before we sit here? 2. Whether men outlawed may be of the house? 3. Whether a man pardoned, having not sued forth a writ of *Scire facias*, may be called in question? 4. Whether the Writ were returned the 17th of Feb. or no, upon oath of the sheriff?"

Some others were strong in opinion, That we ought not to confer nor to commit; saying, "That majesty had conferred with Justice; yet majesty had left the stopping of the wound to us. We should taint ourselves with three great blemishes, if we should alter our Judgment, levity, cruelty and cowardice. There be three degrees of upright Judgment, motion, examination, judgment: all these have passed us. No Court can reform their own judgment. Every day a Term here. Every act that passeth this house is an Act of Parliament. Shall justice float up and down? Shall he be a member to-day, and shall we tear him off to-morrow? If the member be sound, it is violence: if the hand tear the rest, it is cruelty. No part torn, but it may bleed to the ruin of the whole. Let sir Francis Goodwin stand as he is: duty and courage may stand together; let not the house be inveigled by suggestions. This may be called a *Quo Warranto* to seize our Liberties.

There hath been three main Objections.

1. The King's Exception. 'We could shew no precedent in this kind.'

*Ans.* 'The King could show no such Writ before. Our hands were never sought to be closed before, nor we prevented. It opens a gap to thrust us all into the Petty-Bag. A Chancellor may call a Parliament of what persons he will by this course. Any suggestion by any person, may be cause of sending a new Writ.'

2 *Obj.* by the Lord-Chief-Justice. 'By the Law we had nothing to do to examine Returns.'

*Ans.* 'Judges cannot take notice of private Customs or Privileges: but we have a Privilege which stands with the law.' The Judges informed the king of the law, but not of a case of privilege. It is true, 35 Hen. 6. all the Judges resolved, That no outlawed man ought to be admitted; but that was controlled by parliament. It is the same Opinion now; let us control it as then: we have done no offence to the state; let us therefore be constant in our own Judgment.

3 *Obj.* Another, 'The king's pleasure, that we should deliver the Reasons of that we have done to be just.'

If we clear our contempt, we have discharged ourselves. The king's Bench cannot reverse their Judgment the same Term; therefore not the Parliament. Let us send a message to the lords, that we are ready so to do, as we do not undo this house.

Others, *Non coronabitur qui non legitime*

*certaverit.* Not to be termed a difference between his majesty and the commons. *Rogamus, Auguste, non pugnamus.* The Question is not of matter of Privilege, but of Judgment. Let us attend them as lords of the council, and not as lords of parliament.—We do no ways contest or contend with his majesty. The king is no way bound in honour. If writs go forth unduly, they may be controlled without impeachment to the king's honour. It is the act of his inferior officers. It is now come to this question, 'Whether the Chancery or Parliament ought to have authority?'

Quest. Whether we ought to satisfy the king in his commandment?

The King's message was that we should consider within ourselves, and resolve of ourselves; then no need to confer with the Judges: if we cannot, then it is fit to be resolved by the Judges. The Judges have judged, and we have judged: what need then of Conference? Let there be no spark of that grace taken from us, which we have had already from his majesty. Let our reasons be put into Articles, and delivered in all humbleness unto him.

Upon the conclusion of this Debate in this manner, the House proceeded to question; and the first was,

1. Quest. Whether the House was resolved in the matter?

And the Question was answered by general voice, That the whole house was resolved.

2. Quest. Whether the Reasons of their proceeding shall be set down in writing?

Resolved, That they shall be set down in writing: and ordered further, That a Committee should be named for that purpose, and appointed first to set them down in writing, and to bring them to the House, there to be published, and to receive their allowance.

The Committees were instantly named, viz. sir Rob. Wingfield, sir Geo. Moore, sir Fr. Bacon, Mr. Yelverton, Mr. Dyett, sir Fr. Hastings, Mr. Hedley, Mr. Recorder of London, sir Edw. Hobby, sir Fr. Barrington, Mr. Wiseman, Mr. Hide, Mr. Fuller, sir Edw. Mountague, Mr. Ravenscroft, sir W. Fleetwood, Mr. Winch, sir Tho. Challoner, Mr. Solicitor, sir Roger Wilbraham, sir John Thynne, Mr. Martin, sir Arthur Atye, Mr. Francis Tate, sir Roland Litton, sir Henry Nevill, Mr. Attorney of the Wards, sir John Hollis, sir Rob. Wroth, sir John Scott, Mr. Hitcham, sir Edw. Stafford, sir John Mallory, sir Herbert Crofts, sir Fr. Fane, sir Rd. Molyneux, sir John Hungerford, sir Edw. Herbert. All the Serjeants at Law. Mr. Nath. Bacon, Mr. Hext. To meet this afternoon in the Exchequer-Chamber.

The authority given unto them by the House, was this:

"The House being resolved upon the question, That the Reasons of their precedent Resolution, touching the Return, Admittance and Retaining of sir Francis Goodwin as a member of this house, should be set down in writing: these Committees were specially appointed to perform that service, and have Warrant from the

house to send for any officer, to view and search any Record, or other thing of that kind, which may help their knowledge or memory in this particular service: And having deliberately by general consent set down all such reasons, they are to bring them in writing into the house, there to be read and approved, as shall be thought fit."

*Die Luna, viz. 2 die Aprilis, 1604.*

It was then moved, That Committees might be named to take the examination of the sheriff of Buckinghamshire, who was by former order sent for, and now come. And to that end were named, Mr. Solicitor, sir Rob. Wroth, sir W. Fleetwood, sir Tho. Challoner, sir Rob. Wingfield, Mr. Serj. Tanfield, Mr. Serj. Lee, Mr. Yelverton, Mr. Fr. Moore. Who were appointed to take his Examination presently.

Sir Charles Cornwallis moveth in excuse of sir Francis Goodwin's absence from the house, and prayeth, "That they would as well in their own judgment pardon it, as witness and affirm his care and modesty upon all occasions to the king, in that he hath forborne, during all the time of this question, to come into the house."

The Examination was presently taken by these Committees, and returned in this form.

Interr. 1. Why he removed the county from Aylesbury to Brickhill?

He saith, It was by reason of the Plague being at Aylesbury, the county being the 25th of Jan. at which time three were dead of the plague there. This was the only motive of removing his county.

Interr. 2. Whether he were present at the first Election?

Saith, He was present; and was as faithful to wish this second place to sir Francis Goodwin, as the first to sir John Fortescue: sent sir Francis Goodwin word, before the election, he should not need to bring any freeholders, for the election he thought would be without scruple for them both; first to sir John, second to sir Francis. About 8 of the clock he came to Brickhill; was then told by sir George Throckmorton, and others, that the first voice would be given for sir Francis; he answered, He hoped it would not be so, and desired every gentleman to deal with his freeholders. After eight of the clock went to the election a great number, there being at the county, \* \* \* After the Writ read, he first intimated the points of the Proclamation; then jointly propounded sir John Fortescue and sir Francis Goodwin. The Freeholders cried first, 'A Goodwin, a Goodwin!' Every Justice of Pence on the Bench said, 'A Fortescue, a Fortescue!' and came down from the Bench before they named any for a second place, and desired the Freeholders to name sir John Fortescue for the first. Sir Francis Goodwin being in a chamber near, was sent for by the Sheriff and Justices; and he came down and earnestly persuaded with the Freeholders, saying, Sir John was his good friend, had been his father's, and that they would not do sir John that injury: notwithstanding the Freeholders

would not desist, but all cried, 'A Goodwin, a Goodwin!' some crying, 'A Fortescue,' to the number of 60, or thereabouts; the other for sir Francis Goodwin, being about 2 or 300: and sir Francis Goodwin, to his thinking, dealt very plainly and earnestly in this matter for sir John Fortescue; for that sir Francis Goodwin did so earnestly protest it unto him.

*Interr.* 3. Who laboured him to make the Return so long before the day of the Parliament?

He being here in London, Mr. Attorney General, the 2nd of March, at his chamber in the Inner Temple, delivered him two *Cap. Utlagat.* against sir Francis Goodwin; and before he made his Return, he went and advised with Mr. Attorney about his Return, who penned it, and so it was done by his direction: and the Return being written, upon Friday after the king's coming through London, near about my Lord Chancellor's Gate, in the presence of sir John Fortescue, he delivered the Writ to sir George Coppin: and at this time (it being about 4 in the afternoon) and before they parted, sir John Fortescue delivered him the second Writ sealed; sir John Fortescue, sir George Coppin, and himself, being not above an hour together at that time, and never had but this new Writ of Parliament to him delivered. Subscribed, FRANCIS CHLYNE.

This was returned by the Committee to the hands of the Clerk, but not at all read in the house.—Mr. Speaker remembereth the matter of Conference with the Judges, and offered to repeat and put again the Questions that were formerly made; being before uncertainly and imperfectly left (as he said) in the Case of Buckinghamshire, viz. 1. Whether the House were resolved in the matter? 2. Whether they should confer with the Judges? And at length induced the house to entertain the latter Question; and being made, was carried by general voice in the negative, no conference.

Upon this passage, it was urged for a rule, That a Question being once made, and carried in the affirmative or negative, cannot be questioned again; but must stand as a Judgment of the house.

It was thought fit that Mr. Speaker should attend the Committee for penning the Reasons in sir Francis Goodwin's Case, not by commandment, but voluntary of himself.

*Die Martis 3 die Aprilis, 1604.*

The Reasons of the proceeding of the house in sir Francis Goodwin's Case, penned by the Committee, were, according to former order, brought in by Mr. Francis Moore, and read by the Clerk, directed in form of a petition.

"To the King's most excellent Majesty, The humble Answer of the Commons House of Parliament to his Majesty's Objections in sir Francis Goodwin's Case.

"Most gracious, our dear and dread sovereign; Relation being made to us by our Speaker, of your majesty's royal clemency and patience in hearing us, and of your princely prudence in

discerning; shewing affectionate desire rather to receive satisfaction to clear us, than cause to pardon us: we do in all humbleness render our most bounden thanks for the same; protesting, by the bond of our allegiance, that we never had thought to offend your majesty; at whose feet we shall ever lie prostrate, with loyal hearts, to sacrifice ourselves and all we have for your majesty's service: and in this particular, we could find no quiet in our minds, that would suffer us to entertain other thoughts, until we had addressed our answer to your most excellent majesty; for which nevertheless we have presumed of the longer time, in respect we have prepared some precedents, requiring search, to yield your majesty better satisfaction.

There were objected against us by your majesty and your reverend Judges, four things to impeach our proceedings, in receiving Francis Goodwin, knight, into our house.

Objection 1st, 'The first, That we assume to ourselves power of examining of the Elections and returns of knights and burgesses, which belonged to your majesty's Chancery, and not to us: for that all Returns of Writs were examinable in the courts wherem they are returnable; and the parliament writs being returnable into the Chancery, the returns of them must needs be there examined, and not with us.'

Our humble Answer is. That until the 7th Hen. 4. all Parliament-Writs were returnable into the parliament; as appeareth by many precedents of record ready to be shewed, and consequently the returns there examinable: in which year a Statute was made, That thenceforth every Parliament-Writ, containing the day and place where the parliament shall be holden, should have this clause, viz. 'Et electionem tuam in pleno comitatu factam distincte et aperte sub sigillo tuo et sigillis eorum qui electioni illi interuerint nobis in Cancellarium nostram ad diem et locum in breui content' certifies indilate.'

By this, although the form of the Writ be somewhat altered, yet the power of the parliament, to examine and determine of elections remaineth; for so the statute hath been always expounded ever since, by use to this day: and for that purpose, the Clerk of the Crown hath always used to attend all the Parliament-time, upon the Commons House with the Writs and Returns; and also the commons, in the beginning of every parliament, have ever used to appoint special committees, all the parliament-time, for examining controversies concerning elections and returns of knights and burgesses: during which time, the writs and Indentures remain with the Clerk of the Crown, and after the Parliament ended, and not before, are delivered to the Clerk of the Petty-bag in Chancery, to be kept there; which is warranted by reason and precedents: Reason, for that it is fit that the returns should be in that place examined, where the appearance and service of the writ is appointed. The appearance and

service is in parliament, therefore the return examinable in parliament.

Precedents: One in the 29th of the late queen Eliz. where, after one Writ awarded into Norfolk for choice of knights, and elections made and returned, a second was before the Parliament-day awarded by the Lord Chancellor, and thereupon another election and return made; and the Commons being attended with both Writs and Returns by the Clerk of the Crown, examined the cause, allowed the first, and rejected the second. So anno 23 Eliz. a Burgess was returned dead, and a new chosen, and returned by a new Writ, the party returned dead appeared; the Commons, notwithstanding the Sheriff's return, admitted the first chosen, and rejected the second. Also, the said 23d year, a Burgess chosen for Hull was returned a lunatic, and a new chosen upon a second writ: the first claimed his place; the Commons examined the cause, and finding the return of Lunacy to be true, they refused him; but if it had been false, they would have received him. Anno 43 Eliz. the Sheriff of Rutlandshire returned himself elected; the Commons finding that he was not eligible by law, sent a Warrant to the Chancery for a new writ to choose a new. Anno 43 Eliz. also a Burgess was chosen for two Boroughs; the Commons, after he had made election which he would serve for, sent Warrant to the Chancery for a Writ to choose a new for the other borough: of which kind of precedents there are many other, wherewith we spare to trouble your majesty. All which together, viz. Use, Reason and Precedents, do concur to prove the Chancery to be a place appointed to receive the returns, as to keep them for the Parliament, but not to judge of them; and the inconvenience might be great, if the Chancery might, upon suggestions or sheriffs returns, send Writs for new elections, and those not subject to examination in parliament: for, so, when fit men were chosen by the counties and boroughs, the Lord-Chancellor, or the sheriffs, might displace them, and send out new Writs, until some were chosen to their liking; a thing dangerous in precedents for the time to come, howsoever we rest securly from it at this present by the now Lord Chancellor's integrity.

*Objection 2.* 'That we dealt in the cause with too much precipitation, not seemly for a council of gravity, and without respect to your most excellent majesty, our sovereign, who had directed the writ to be made; and being but half a body, and no court of record alone, refused conference with the lords, the other half, notwithstanding they prayed it of us.'

Our humble answer is, to the precipitation, That we entered into this cause, as in other parliaments of like cases hath been accustomed, calling to us the clerk of the crown, and viewing both the writs, and both returns; which in cases of \* \* \* and motions, though not of bills requiring three readings, hath been warrant by continual usage amongst us: and thereupon,

well finding that the latter writ was awarded and sealed before the Chancery was repossessed of the former, which the clerk of the crown, and the sheriff of the county, did both testify, and well held to be a clear fault in law, proceeded to sentence with the less respect of the latter election. For our lack of respect to your majesty, we confess, with grief of our hearts, we are right sorry it shall be so conceived; protesting that it was no way made known unto us before that time, that your majesty had taken to yourself any special notice, or directed any course in that cause, other than the ordinary awarding writs by your highness's officers in that behalf: but if we had known as much as some will have, by your majesty's royal mouth, we would not, without your majesty's privity, have proceeded in that manner. And further, it may please your majesty to give us leave to inform you, That in the examination of the cause of the sheriff avouched unto us, That Goodwin agreed to yield the first place of the two knights to sir John Fortescue, and in his own person, at the time of election, with extraordinary earnestness, entreated the electors it might so be, and caused the indentures to be made up to that purpose; but the electors utterly refused to seal them. Concerning our refusing conference with the lords, there was none desired until after our sentence passed; and then we thought, That in a matter private to our house, which, by rules of order, might not be by us revoked, we might, without any imputation, refuse to confer. Yet understanding by their lordships, That your majesty had been informed against us, we made haste (as in all duty we were bound) to lay open to your majesty, our good and gracious sovereign, the whole manner of our proceeding; 'not doubting, though we were but part of a body, as to make new laws, yet for any matter of privileges of our house, we are and ever have been a court of ourselves, of sufficient power to discern and determine without their lordships, as their lordships have used always to do for theirs without us.'

*Objection 3.* 'That we have, by our sentence of receiving Goodwin, admitted, That outlaws may be makers of laws; which is contrary to all laws.'

Our humble Answer, That notwithstanding the precedents which we truly delivered, of admitting and retaining outlaws in personal actions in the commons house, and none remitted for that cause; yet we received so great satisfaction delivered from your royal majesty's own mouth, with such excellent strength and light of reason, more than before, in that point, we heard or did conceive, as we forthwith prepared an act to pass our house, That all outlaws henceforth shall stand disabled to serve in parliament: but as concerning Goodwin's particular, it could not appear unto us, having thoroughly examined all parts of the proceedings against him, that he stood an outlaw, by the laws of England, at the time of the election

made of him by the county; and that for two causes: the first is, That where the party outlawed ought to be five times proclaimed to appear in the sheriff's county court; and then not appearing, ought to be adjudged outlawed by the judgment of the coroners of the county; there appeareth no record made in the Hustings of London that Goodwin was five times proclaimed, or that the coroners gave judgment of outlawry against him: but a clerk, lately come to that office, hath now, many years after time, and since this election, made entries, interlined with a new hand, that he was outlawed: to which new entries we could give no credit, for that the parties, at whose suit Goodwin was sued, have testified in their writings of release, That they never proceeded further than to take out the writ of Exigent for an outlawry; and being then paid their money desisted there: by which we find, That Goodwin was not five times proclaimed, nor adjudged outlawed, being a thing usual in London to spare that proclamation and judgment, if the party call not upon it; and no record being made for many years together, that either of them was done.

The second Cause was, for that the Writ of Exigent by which the sheriff was commanded to proclaim him five times, was never lawfully returned, nor certified by *Certiorari*; without which, we take it, That Goodwin stood not disabled as an outlaw.

To this, adding the two general Pardons by Parliament, which had cleared the outlawry in truth and substance, (if any were) and that Goodwin could not apply the pardons by *Scire fa.* for that no record nor return was extant of the outlawry, wherupon he might ground a *Scire fa.* we were of opinion, and so your majesty's most reverend judges would have been if they had known thus much, That Goodwin stood not disabled by outlawry to be elected or serve in parliament: but when we considered further, That the course taken against Goodwin for drawing him into this outlawry of purpose to disable him to serve in this place, whereto the county had freely elected him, was unusual; we could not, with the reputation of our places, serving as a council of gravity, in allowance or continuance of that course, censure him to be rejected as an outlaw: the particulars of which were these, viz.—Two exigents awarded, \* \* \* the other seven years past to the Hustings in London; no entry made of five proclamations; nor of any judgment of the coroners; nor any return of the exigents made or endorsed; the party plain if satisfied; the pretended outlawries being but upon a mean process; and as to your majesty's duties and contempts pardoned now since Goodwin was elected knight, the exigent now sought out since the election procured to be returned in the name of the sheriffs that then were, and are long since dead, and new entry made of the five proclamations and coroners judgment; and now a return made of that old exigent, which could be of no use, but only for a purpose to disable him for that place. Upon

all which we could do no less in true discretion than certify the election made *secundum equum et bonum.*

*Objection 4.* 'That we proceeded to examine the truth of the fact of Outlawry, and gave our Sentence upon that: whereas we ought to have been bound by the Sheriff's return of the Outlawry from farther examining, whether the party were outlawed or not.'

Our humble Answer is, That the Precedents cited before, in our answer to the first objection, do prove the use of the Commons House to examine *veritatem facti* in elections, and returns, and have not been tied peremptorily to allow the return; as if a knight or burgesse be untruly returned dead or lunatic, yet when he appeared to the house to be living and sound, they have, contrary to the return, received him into the house, preferring the truth manifest before the return. By which discreet proceeding there is avoided that great inconvenience above-mentioned of giving liberty to Sheriffs, by untrue returns, to make and remove whom they list to and from the parliament service, how meet soever the parties be in the judgment of the county or borough that elected them.—Thus, in all humility, we have presented to your most excellent majesty the grounds and reasons of our late action, led with no affections, but guided by truth, warranted in our consciences, imitating precedents, maintaining our ancient privileges, honouring your excellent majesty in all our services; to which in all loyalty and devotion we bind us and ours for ever, praying daily on the knees of our hearts, to the majesty of the Almighty, that your majesty and your posterity may in all felicity reign over us and ours to the end of the world."

These Reasons so set down and published to the House, Mr. Secretary Herbert was sent with message to the lords, That the house had resolved of their Answer to his majesty, (in sir Francis Goodwin's Case) and had set it down in writing, and that it should be sent to their lordships before 4 of the clock in the afternoon; who immediately returned their Lordships Answer, That they would be ready at that time in the Council-Chamber at Whitehall, with 30 of the lords, to receive what then should be delivered. Then were named threestore to attend the delivery of the said Reasons at the time and place aforesaid.

*Eodem die, p. m.*

The House entering seriously into consultation what course was to be held with the lords; as also falling into more length of disputation touching the Bill of Merchants, than were expected, sent some messengers to the lords, to excuse their long tarrying, viz. Sir Edward Hobby, sir Ro. Wilbraham, sir Hen. Nevil, sir Fr. Hastings, Mr. Martyn.

This afternoon about 5 o'clock the Committee appointed did attend to deliver the Reasons aforesaid at the Council-Chamber according to appointment and order of both houses; and they were delivered by sir Francis

Bacon, one of the Committee, with desire, That their lordships would be mediators in the behalf of the house, for his majesty's satisfaction.

*Die Mercurii, viz. 4 die Aprilis 1604.*

Sir Francis Bacon having the day before delivered to the lords in the Council-Chamber of Whitehall, (according to the Direction of the house) the Reasons in writing, penned by the Committee, touching sir Francis Goodwin's Case, maketh report of what passed at the time of the said delivery. First, That though the Committees employed were a number specially deputed and selected; yet that the lords admitted all burgeses without distinction; that they offered it with testimony of their own speed and care in the business, so as they said no one thing had precedency, but only the Bill of Recognition; that they had such respect to the weight of it, as they had not committed it to any frailty of memory, or verbal relation, but put it into writing for more permanent memory of their duty and respect to his majesty's grace and favour: that in conclusion they 'prayed their lordships, sithence they had nearer access, they would co-operate with them for the king's satisfaction; and so delivered the Writing to the Lord-Chancellor, who receiving it, demanded, Whether they should send it to the king, or first peruse it? To which was answered, That since it was the king's pleasure they should concur; they desired their lordships would first peruse.

The lord Cecil demanded, Whether they had Warrant to amplify, explain, or debate any doubt or question made upon the reading? To which it was said, They had no Warrant. And so the writing was read, and no more done at that time.

*Die Jovis, viz. 5 die Aprilis, 1604.*

Mr. Speaker by a private commandment attended the King this morning at eight o'clock, and there staid till ten.

Mr. Speaker excuseth his absence, by reason he was commanded to attend upon his majesty. And bringeth Message from his majesty to this effect: That the King had received a parchment from the house. Whether it were an absolute resolution, or reason to give him satisfaction, he knew not: He thought it was rather intended for his satisfaction. His majesty protested, by that love he bare to the house as his loving and loyal subjects, and by the faith he did ever owe to God, he had as great a desire to maintain their privileges, as ever any prince had, or as themselves. He had seen and considered of the manner and the matter; he had heard his judges and council; and that he was now distracted in judgment. Therefore, for his further satisfaction, he desired, and commanded, as an absolute king, that there might be a Conference between the House and the Judges; and that for that purpose there might be a Select Committee of grave and learned persons out of the house: that his Council might be present, not as Umpires to determine, but to report indifferently on both sides.

Upon this unexpected Message there grew some amazement and silence. But at last one stood up and said: The Prince's command is like a thunder-bolt; his command upon our Allegiance like the roaring of a lion. To his command there is no contradiction; but how, or in what manner we should now proceed to perform obedience, that will be the question.

Another answered, Let us Petition to his majesty, that he will be pleased to be present, to hear, moderate, and judge the case himself. Whereupon Mr. Speaker proceeded to this question:

*Quæst.* Whether to confer with the Judges in the presence of the king and council? Which was resolved in the affirmative. And a select Committee presently named for the conference; viz. Lawyers; Serjeants Tanfield, Hobbard, Leigh, Shirley, Dodridge, sir Tho. Hesketh, sir Fr. Bacon, Mr. Recorder of London, Mr. Yelverton, Mr. Crewe, Mr. Lawrence Hide, Mr. Fr. Moore, Mr. Rd. Martin, Mr. Winche, Mr. Dyett, Mr. Fuller, sir Roger Wilbraham, Mr. Fr. Tate, Mr. Dr. James, sir Daniel Dunn, sir John Bennet.—Gentlemen; sir George Carew, Vice-Chamberlain to the Queen; sir Fr. Hastings, sir Edw. Hobby, sir Robert Wroth, sir Henry Nevill, sir John Savile, sir George Moore, Mr. Nath. Bacon, sir Edw. Stafford, sir Wm. Fleetwood, sir Tho. Chalonner, sir Roger Aston, sir Robert Wingfield, sir Edw. Mountague, sir Edwyn Sandis, sir Robert Cotton.

These Committees were selected and appointed to confer with the Judges of the Law, touching the Reasons of proceeding in sir Francis Goodwin's Case, set down in Writing, and delivered to his majesty in the presence of the lords of his majesty's Council, according to his highness's pleasure, signified by Mr. Speaker this day to the house.—It was further Resolved and Ordered by the house. (upon the motion to that end by Mr. Laurence Hide) that the aforesaid Committee should insist upon the fortification, and explaining of the Reasons and Answers delivered unto his majesty; and not proceed to any other Argument or Answer, what occasion soever moved in the time of that debate.

*Die Mercurii, viz. 11 die Aprilis, 1604. Upon Adjournment.*

Sir Francis Bacon was expected, and called to make a Report of the late Conference with the Judges in the presence of his majesty and the lords of the Council: but he made excuse, saying, He was not warranted to make any Report; and *tantum permissum quantum commissum*: nevertheless, upon a Question, he was over-ruled to make a Report; and a motion thereupon made, That the Committees might first assemble in the Court of Wards, and confer among themselves, and then the report to be made.

Sir Francis Bacon, after the meeting of the Committees in the Court of Wards, reporteth

what had passed in Conference in the presence of his Majesty and his Council :

The king said, He would be president himself. This attendance renewed the remembrance of the last, when we departed with such admiration. It was the voice of God in man : the good spirit of God in the mouth of man. I do not say, the voice of God, and not of man. I am not one of Herod's flatterers. A curse fell upon him that said it : a curse on him that suffered it. We might say as was said to Solomon, We are glad, O king ! that we give account to you, because you discern what is spoken.—We let pass no moment of time, until we had resolved and set down an answer in writing, which we now had ready. That sithence we received a message from his majesty by Mr. Speaker, of two parts : 1. The one paternal. 2. The other royal. 1. That we were as dear unto him as the safety of his person, or the preservation of his posterity. 2. Royal, that we should confer with his Judges, and that in the presence of himself and his council. 'That we did more now to king James than ever was done since the conquest, 'in giving account of our judgments.' That we had no intent, in all our proceedings, to encounter his majesty, or to impeach his honour or prerogative.

This was spoken by way of preamble by him who employed.

How to report his majesty's Speech he knew not ; the eloquence of a king was inimitable. The King addressed himself to him as deputed by the house, and said, He would make three parts of what he had to say. The cause of the meeting was to draw to an end the difference in sir Francis Goodwin's Case. If they required his absence, he was ready ; because he feared he might be thought interested, and so breed an inequality on their part. He said, That he would not hold his Prerogative or honour, or receive any thing of any or all his subjects. This was his magnanimity. That he would confirm and ratify all just Privileges. This his bounty and amity. As a king, royally : as king James, sweetly and kindly out of his good-nature.—One point was, Whether we were a Court of Record, and had power to judge of Returns. As our court had power, so had the Chancery ; and that the court that first had passed their judgment should not be controlled.—Upon a surnise, and upon the sheriff's return, there grew a difference. That there are two powers. 1. Permanent : the other, transitory. That the Chancery was a confidenciary court to the use of the parliament during the time.—Whatever the Sheriff inserts beyond the authority of his mandate, a negation. The parliaments of England not to be bound by a sheriff's return.—That our Privileges were not in question. That it was private jealousies without any kernel or substance. 'He granted it was a Court of Record, and a Judge of Returns.' He moved, That neither sir John Fortescue, nor sir Francis Goodwin might have

place ; sir John losing place, his majesty did meet us half-way. That when there did arise a schism in the church between a Pope and an Antipope, there could be no end of the difference until they were both put down.

Upon this Report, a motion was made, That it might be done by way of warrant ; and therein to be inserted, That it was done at the request of the king : and was further said, (as anciently it hath been said) That we lose more at a Parliament than we gain at a battle. That the authority of the committee was only to fortify what was agreed on by the house for answer, and that they had no authority to consent.—It was further moved by another, That we should proceed to take away our dissention, and to preserve our Liberties ; and said, that in this we had exceeded our commission ; and that we had drawn upon us a note of inconstancy and levity. But the acclamation of the house, was, That it was testimony of our duty, and no levity. So as the question was presently made.

Quest. Whether sir John Fortescue and sir Francis Goodwin shall both be secluded ; and a warrant for a new writ directed ? And upon the question resolved, That a writ should issue for a new choice, and a warrant directed accordingly.

A motion made, That thanks should be presented by Mr. Speaker to his majesty, for his presence and direction in this matter ; and thereupon ordered, That his majesty's pleasure should be known, by sir Roger Aston for their attendance accordingly.

Because it hath been conceived by some, that sir Francis Goodwin being the member specially interested, it were fit he should give testimony of his liking and obedience in this course : being dealt withal to that end, he writ his letter to Mr. Speaker ; which, before this question made, for better satisfaction of the house, was read in these words :

'Sir ; I am heartily sorry to have been the least occasion either of question between his majesty and that honourable house, or of interruption to those worthy and weighty causes, which by this time, in all likelihood, had been in very good furtherance : wherefore, understanding very credibly, that it pleased his majesty, when the committees last attended him, to take course with them for a third writ and election for the knightship of the county of Buckingham : I am so far from giving any impediment thereunto, that contrariwise, I humbly desire his majesty's direction in that behalf to be accomplished and performed. So praying you, according to such opportunity as will be ministered, to give furtherance thereunto, I take my leave, and rest yours, most assured to be commanded, FRA. GOODWIN. Westminster, 11 Apr. 1604.'

*Die Jovis, viz. 12 die Aprilis.*

A motion made, That Mr. Speaker, in behalf of the house, should pray access to his majesty, and present their humble Thanks for his gracious presence and direction, upon the hearing of

sir Francis Goodwin's cause; which was assented unto; and sir Roger Aston, a servant of his majesty's bed-chamber, and one of the members of the house, was presently appointed to know his majesty's pleasure; which he did accordingly; and returned, That his majesty was willing to give them access in the gallery at Whitehall, at two o'clock in the afternoon, the same day. Thereupon a Committee was named to attend Mr. Speaker to the king, with a general warrant to all others that should be pleased to accompany them.

*Die Veneris, viz. 13 die Aprilis.*

Mr. Speaker returneth to the house the effect of his Message of Thanks, delivered the last day in the name of the house to his majesty; as also his Majesty's answer, viz. "That he related to this house the humble and dutiful acceptance of what his majesty had done, together with the humble thanks of the house for his zealous and paternal delivery of his grace unto us, by his own mouth: what wonder they conceived in his judgment, what joy in his grace, what comfort they had in his justice, what approbation they made of his prudence, and what obedience they yielded to his power and pleasure. That his direction gave all men satisfaction. That they were determined to pursue the course he had prescribed. That now they were become suitors, he would be pleased to receive a representation of the humble thanks and service of the house."

His majesty answered. "That upon this second access, he was forced to reiterate what he had said before. That this question was unhappily cast upon him, for he carried as great a respect to our privileges as ever any prince did; he was no ground searcher; he was of the mind that our privileges were his strength: that he thought the ground of our proceeding was our not understanding that he had intermeddled before we had decided: that he thought also we had no wilful purpose to derogate any thing from him, for our answer was a grave, dutiful, and obedient answer. But as the devil had unhappily cast this question between them, so he saw God had turned it to two good ends and purposes, One, That he knew, and had approved our loyalty. Another; That he had so good an occasion to make testimony of his bounty and grace. That as we came

to give him thanks, so did he redouble his thanks to us. That he had rather be a king of his subjects, than to be a king of many kingdoms."

The second part of his Speech directed to the Lords and Us, "That this Parliament was not like to be long: that we would treat of such matters as most concerned the Commonwealth; and the last, of any thing that concerned himself. Three main businesses in our hands. 1. The Union. 2. Sundry public and commonwealth-Bills. 3. Matter of religion, and reformation of Ecclesiastical discipline. For the Union, that it might be now prepared, and prosecuted the next session. That Union which with the loss of much blood could never be brought to pass, as now it is. That the better to bring it to pass, we should be in affections united. That we should first with all care proceed in such laws as concern the general good. That all heresies and schisms might be rooted out, and care taken to plant and settle God's true religion and discipline in the church. That this wish above all things was at his death to leave, 1. One Worship to God. One Kingdom entirely governed. One Uniformity in Laws. Lastly, That his occasions were infinite, and much beyond those of his predecessors; and therefore that in this first parliament we would not take from him that which we had yielded to others. That in his affections he was no ways inferior to others, nor in his desire to ease us."

The Warrant for a new Election of a knight for Bucks, read and allowed in this form:

Whereas the right honourable sir John Fortescue, knight, Chancellor of his majesty's Dutchy of Lancaster, and sir Francis Goodwin, knight, have been severally elected and returned knights of the Shire for the county of Bucks, to serve in this present parliament: upon deliberate consultation, and for some special causes moving the commons house of parliament, It is this day ordered and required by the said house, That a Writ be forthwith awarded for a new election of another knight for the said Shire: And this shall be your Warrant.'

Directed, 'To my very loving friend, sir George Coppin knight, Clerk of the Crown in his majesty's High Court of Chancery.'

## 78. The CASE of MIXED MONEY in Ireland, Trin. 2 JAMES I. A. D. 1605. [Davies's Reports.]

["As the following Case relates to the King's Prerogative of regulating the Coinage\* and Value of Money, in which the whole State is so immediately and essentially interested, it

\* The royal prerogatives of regulating the Coinage and Value of Money, and the history of the exercise of those prerogatives are well exhibited in the earl of Liverpool's Treatise on the Coins of this realm.

VOL. II.

properly falls within the scope of this Collection. It is taken from the English edition of sir John Davies's Reports." Hargrave.]

QUEEN Elizabeth in order to pay the royal army which was maintained in this kingdom for several years, to suppress the rebellion of Tyrone, caused a great quantity of Mixed Money, with the usual stamp of the arms of the crown, and inscription of her royal stile, to be



coined in the Tower of London, and transmitted this money into this kingdom, with a Proclamation, bearing date 24 May, in the 43d. year of her reign, by which her majesty declared and established this Mixed Money, immediately after the said proclamation, to be the lawful and current money of this kingdom of Ireland, and expressly commanded that this money should be so used, accepted and reputed by all her subjects and others, using any traffic or commerce within this kingdom; and that if any person or persons should refuse to receive this Mixed Money according to the denomination or valuation thereof, viz. shillings for shillings, sixpenny pieces for sixpenny pieces, &c. being tendered for payment of any wages, fees, stipends, debts, &c. they should be punished as contemners of her royal prerogative and commandment. And to the intent that this Mixed Money should have the better course and circulation, it was further declared by the same proclamation, that after the 10th day of June immediately following, all other money which had been current within this kingdom, before the said proclamation, should be cried down and annulled and esteemed as bullion, and not as lawful and current money of this kingdom.

In April, before this Proclamation was published, when the pure coin of England was current within this kingdom, one Brett of Drogheda, merchant, having bought certain wares of one Gilbert in London, became bound to the said Gilbert in an obligation of 200*l.* on condition that he should pay to the said Gilbert, his executors or assigns, 100*l.* sterling, current and lawful money of England, at the tomb of earl Strongbow in Christ-church, Dublin, at a certain day to come; at which day and place, Brett made a tender of the 100*l.* in the Mixed Money of the new standard, in performance of the condition of the obligation; and whether this tender was sufficient to save the forfeiture of the obligation, or whether the said Brett should now, upon the change or alteration of money within this kingdom, be compelled to pay the said 100*l.* in other or better coin than in the Mixed Money, according to the rate and valuation of it, at the time of the tender, was the question at the council table, where the said Gilbert, who was a merchant of London, exhibited his Petition against the said Brett, for the speedy recovery of his debt aforesaid.

And, inasmuch as this case related to the kingdom in general, and was also of great importance in consideration and reason of state, sir George Carew, then Lord Deputy and also Treasurer, required the Chief Judges, (being of the privy council) to confer on and consider this Case, and to return to him their Resolution touching it; who upon conference and consideration on all the points of the said Proclamation, resolved, That the tender of the 100*l.* in the Mixed Money, at the day and place aforesaid, was good and sufficient in the law, to save the forfeiture of the said obligation, and that Brett should not be obliged at any time after, to pay other money in discharge of the debt,

than this Mixed Money, according to the rate and valuation that it had, at the time of the tender; and this Resolution was certified by them to the Lord-Deputy, and the certificate entered in the Council-Book. And in this case divers Points were considered and resolved.

First, it was considered, that in every commonwealth, it is necessary to have a certain standard of money. [Cotton 4.] For no Commonwealth can subsist without contracts, and no contracts without equality, and no equality in contracts without money. For although in the first societies of the world, permutation of one thing for another was used, yet that was soon found cumbersome, and the transportation and division of things was found difficult and impossible; and therefore money was invented, as well for the facility of commerce, as to reduce contracts to an equality. 'Cum non facile concurrebat, ut cum tu haberes quod ego desiderarem, ego invicem haberem quod tu accipere velles, electa materia est, cujus publica et perpetua mensuratio difficultatibus permutationem subveniret.' Paul. lib. 1. ff. de contrahendis empt. and therefore money is said by Bodin to be *mensura publica*; and Budelius lib. 1. De re nummariâ, ca. 3. saith 'moneta est justum medium et mensura rerum commutabilium, nam per medium monetæ fit omnium rerum, quæ in mundo sunt, conveniens et justa æstimatio.' And to this purpose Keble saith, 12 H. 7. 23: b. that every thing ought to be valued *per argent*; by which word *argent*, he meaneth money coined. And the great utility of a certain standard of money and of measures is well expressed by Budelius in this verse,

Una fides, pondus, mensura, moneta sit una,  
Et status illæsus totius orbis erit.

Secondly, it was resolved, That it appertaineth only to the king of England, to make or coin Money within his dominions; [2 Ro. ab. 166. 1 Co. 146. 5 Co. 114. 1 H. H. P. C. 188.] so that no other person can do it without special license or commandment of the king; and if any person presume to do it of his own head, it is treason against the person of the king by the common law; and this appears by the stat. of 25 Edw. 3, c. 2, (which is only a declaration of the common law,) and by Glanvil, Britton and Bracton, before that statute, Stamford fol. 2 and 3. And in the case of Mines, Plowd. 316, a. this point is expressed more clearly, where it is said, That the king shall have mines of gold and silver; for if a subject had them, he by law could not coin such metals, nor stamp a print or value upon them, for it appertaineth to the king only to put a value upon coin, and make the price of the quantity, and to put a print to it; which being done the coin is current; and if a subject doth this it is high treason at common law, as appears, 23 Ass. p. 2. and it is high treason to the king, because he hath the sole power of making Money, &c.

And in this book three things are expressed, which are requisite to the making of lawful money, viz. The authority of the Prince, the Stamp, and the Value. But upon the consi-

deration of the case in question, it was observed, that six things or circumstances ought to concur, to make lawful and current money, viz. 1. Weight. 2. Fineness. 3. Impression. 4. Denomination. 5. Authority of the Prince. 6. Proclamation. [See 1 H. H. P. C. 196, that Proclamation is not always necessary] For every piece of money ought to have a certain proportion of weight or poise, and a certain proportion of purity or fineness, which is called alloy. Also every piece ought to have a certain form of impression, which may be knowable and distinguishable; for as wax is not a seal without a stamp, so metal is not money without an impression: 'Et moneta dicitur a monendo, quia impressione nos monet, cujus sit moneta. Cujus imago est hæc? Cæsaris: Date Cæsari quæ sunt Cæsaris.' Also every piece of money ought to have a denomination or valuation for how much it shall be accepted or paid, as for a penny, a groat or a shilling. And all this ought to be by authority and commandment of the prince, for otherwise the money is not lawful; and it ought to be published by the proclamation of the prince, for before that, the money is not current.—These circumstances appear in the antient ordinances made by the king for the coining of money, as well in this kingdom as in England, which are to be found in the Tower of London there, and in the Castle of Dublin here. Also the indentures between the king and the masters of the mint prescribe the proportion of weight, fineness, and alloy, the impression or inscription, the name and the value. See the stat. 2 Hen. 6, c. 12, where mention is made of these indentures; see also Wade's case, 5 Co. 114. b. that the king by his proclamation may make any coin lawful money of England; *à fortiori*, he may, by his proclamation only, establish the standard of money coined by his authority within his own dominions.

And that the king by his Prerogative may also put a price or valuation on all coins, appears by a remarkable case, 21 Edw. 3, 60, b. In the time of Will. the Conqueror, the abbot of St. Edmundsbury complained to the king in parliament, that whereas he was exempted from the jurisdiction of the ordinary by divers antient charters, the bishop of Norwich had visited his house, contrary to those charters of exemption; upon which it was granted and ordained in parliament, that if from thenceforward the bishop of Norwich or any of his successors should go against the aforesaid exemption, they should pay to the king or his heirs thirty talents or besants. Afterwards in the time of Edw. 3, the bishop of Norwich visited the house again, against the ordinance aforesaid; and this contempt being found in the King's-beach, a *scire facias* issued against the bishop to shew why he should not pay to the king the thirty talents or besants; and upon an insufficient plea pleaded by the bishop, the court awarded that they should recover the talents or besants, and that it should be inter-

preted by the king himself of what value they should be, more or less; by which it is manifest that where talents or besants, or such other pieces or quantities of gold or silver are of uncertain value, for Budelius saith that 'tanta lenta sunt varia, et pondera sunt, potius quam numismata', the king hath a power to put a certain value upon them, according to the rule well known to the civilians, 'monetæ æstimationem dat, qui cudendi potestatem habet.' And in this point the common law of England agrees well with the rules of the civil law, 'jus cudendæ monetæ ad solam principem, hoc est, imperatorem, de jure pertinet. Monetandi jus principum ossibus inhæret. Jus monetæ comprehenditur in regalibus, quæ nunquam a regio sceptro abdicantur.'—Yet by antient charters, this privilege or prerogative hath been communicated to some subjects in England; as, to the archbishop of Canterbury by charter of king Athelstan, Lamb. peramb. Kant. fol. 291. The archbishop of York and bishop of Durham had mines and power of coining money, as appears by the statute of 14 Hen. 8, c. 12; and the dean of St. Martin's-le-grand had the same privilege, as is manifest from the stat. of 19 Edw. 4, c. 1. And this right of coining money hath been granted to several great personages in France heretofore, as Choppinus relates, lib. de Dominio Franc. fol. 217, a. And this prerogative at this day is imparted too generally to all the inferior princes and states of Germany by grant or permission of the emperor; for it is a law of the empire, 'Jus cudendæ monetæ, nisi cui ab imperatore concessum fuerit, nemo usurpato.'

Thirdly it was resolved that as the king by his prerogative [1 H. H. P. C. 192] may make money of what matter and form he pleaseth, and establish the standard of it, so may he change his money in substance and impression, and enhance or debase the value of it, or entirely decay and annul it, so that it shall be but bullion at his pleasure. And note, that bullion, which in Latin is called *bullio*, 'est moneta defensa et prohibita, quæ videlicet usu caret.' And that the king hath used this Prerogative in England, appears, by several notorious changes of money, made in the time of several kings since the Norman conquest. 26 Hen. 2, 'Monetâ veteri reprobata, nova successit.' Matt. Paris Hist. mag. fol. 35. a.—Anno 7 Joh. a new money was coined, at which time the first sterling money was coined, according to the opinion of Camden, where he speaketh of Sterling-Castle in Scotland, fol. 700 b.—32 Hen. 3, the king was obliged to make new money, 'cum moneta Angliæ circumcidetur batur à circumcisis Judæis,' as Matt. Paris saith, fol. 703. a.—7 Ed. 1, the standard of money was renewed, when the sterling penny was established to contain 'vicesimum partem uncie,' as appears by the old *Magna Charta*, in the ordinance called *Compositio Mensurarum*, where it is ordained, 'quod viginti denarii faciant unciam.'—Anno 29 Ed. 1. when the

money called Pollards was cried down, a new sterling money was also coined; see 6 Ed. 6. Dyer 82. b. et lib. rubr. Scacc. Dubl. part 2. fol. 1. b. After this new monies were made, 9 Ed. 3, and 13 Hen. 4, and 5 Ed. 4, and 19 Hen. 7, and 36 Hen. 8; and lastly 2 Eliz., when all mixed and base money was cried down, and the standard of pure silver established, which continues to this day, of which Bodin maketh honourable mention, Libro 6 de Republica, cap. 3.

And it seems these changes of money in England were made by the authority of the king without Parliament: although several acts of parliament have been made for the ordering of exchange, and to prohibit the exportation of money made and ordained by the king, and the importation and utterance of foreign and false money, under certain pains and penalties, of which some were capital and some pecuniary. And several ordinances of the king made without the parliament are called statutes; as Statutum de Monetâ magnum, et Statutum de Monetâ parvum: which are called statutes, because the ordinance of the king with proclamation in such case hath the force of an act of parliament.

And as the king hath used to change the standard of his money, to wit, the form and the substance, so hath he used by his prerogative to enhance or debase the value of it, notwithstanding that the form and substance continueth as it was before. [1 H. H. P. C. 192.] And this was done, 5 Ed. 4, as appears by the book, of 9 Ed. 4. 49, where Danby saith, that a Noble was better then, than it was anno 20 of that king, by 20*d.* in each Noble. And king Hen. 8, by special commission dated 24 July, anno 18 of his reign, authorised cardinal Wolsey, with the advice of other of the privy council, to put a value on all the moneys of England, from time to time, according to the rates and values of the monies of foreign nations, which were then too much enhanced, especially by the emperor and the king of France, as is expressed in the said commission. See also 6 and 7 Ed. 6. Dyer 82 and 83. several cases on the debasement of money.—And it is to be observed, that between the 36 of Hen. 8, when several sorts of debased money were coined in England, and 2 Eliz., when the pure standard of silver money was established, there were three notorious falls or cry-downs, of base monies, published by proclamation: the first, 9 July, 5 Ed. 6.; the second, 17 August, the same year, as is mentioned, Dyer 83, a.; the third, 28 Sep. 2 Eliz.

And as the king hath always used to make and change the money of England, he hath also used the same prerogative in Ireland ever since the 12th year of king John; when the first standard of English money was established in this kingdom, as is recorded by Matt. Paris, Magn. Hist. 220. b. where it is said, that this king being in Ireland, 'constituit ibidem leges et consuetudines Anglicanas, ponens ibidem vicecomites, aliosque ministros, qui populum

'regni illius juxta leges Anglicanas judicarent. Præfeci autem ibidem Johannem de Gray episcopum Norwicensem, justiciarium, qui denarium terræ illius ad pondus numismatis Angliæ fecerat publicari, et tam obolum quam quadrantem rotundum fieri præcepit: jussit quoque rex, ut illius monetæ usus tam in Angliâ quam in Hiberniâ communis ab omnibus haberetur, et utriusque regni denarius in thesauris suis indifferenter poneretur.'—By which it appeareth that the standard of money in England and in Ireland was equal at first, and that the English money was not a fourth part better in value than the Irish, as it hath been since the time of Ed. 4., for before that, as there was one and the same standard of money in both kingdoms, so always when the money was changed in England, it was also changed in Ireland. As in the year 1279, viz. 7 Ed. 1. when that king established new money in England, as is shewn before, there was likewise a change of money in Ireland, as is observed in the annals of this kingdom, published by Camden in his Britannia, where it is said, that in the year 1279, 'Dominus Robertus de Ufford justiciarius Hiberniæ intravit Angliam, et constituit loco fratrem Robertum de Fulborne episcopum Waterford, cujus tempore mutata est moneta.' So 29 Ed. 1. when by special ordinance of the king the Pollards and Crockards were decried and annulled, the same ordinance was transmitted into this kingdom and enrolled in the Exchequer here, as is found in Lib. Rubr. Scacc. part 2, fol. 2. b. Also in the annals aforesaid it is observed in the same year, 'numisma pollardarum prohibetur in Angliâ et Hiberniâ. And as the standard of the monies was equal, so the mints and coinage in this kingdom were ordered and governed in the same manner as in England, as appears by the account of Donat and Andrew de Sperdshols, assay masters in Dublin, 9 and 10 Ed. 1. in Archivis Castri Dublin, and in Libr. Rubr. Scacc. hic part 2. fol. 1. and in Rot. Parl. in Castri Dublin, 12 Ed. 4. c. 60. See also several ordinances there touching the mint and monies, 7 Ed. 4. c. 9. 10 Ed. 4. c. 4. 16 Ed. 4. c. 2. 19 Ed. 4. c. 1. 1 R. 3. c. 7.

But the first difference and inequality between the standard of English and Irish monies, is found in 5 Ed. 4. for then it was declared in parliament here, that the Noble made in the time of Ed. 3, Rich. 2, Hen. 4, Hen. 5, and Hen. 6, should be from that time forth current in this kingdom for 10*s.* and so of the demynoble, and all other coins according to the same rate. See Rot. Parl. 5 Ed. 4. c. 40. and 11 Ed. 4. c. 6. and 15 Ed. 4. c. 5. in the Roll's-office in the Castle of Dublin. After which time the money made in Ireland or for Ireland was always less in value than the money of England, and the usual proportion of the difference was the fourth part only, viz. the Irish shilling was only 9*d.* English. See the proclamation aforesaid, dated the 24 of May, 43 Eliz. enrolled in the Chancery here, where the queen makes mention of this difference

made by her progenitors between the standard of money made for this kingdom; and the money of England. And note, that that which is called the standard of money in this case, is the same which is called by the French *piéd de money*, by Bodin *pes monetarum*; as if the prince there *pedem figat*, having established the weight and purity of money in a certain proportion, which should not be transgressed by the moneyers.

And so it is manifest, that the kings of England have always had and exercised this prerogative of coining and changing the form, and when they found it expedient of enhancing and abasing the value of money within their dominions: and this prerogative is allowed and approved not only by the common law, but also by the rules of the imperial law. Budeus de re nummariâ, libr. 1. c. 5. 'Princeps ad arbitrium suum, irrequisito assensu subditorum; valorem monetæ constituere potest; quia populus, quantum ad hoc, omnem potestatem et jurisdictionem in principem seu imperatorem transtulisse dicitur.' And a little after in the same chapter, although some doctors are of opinion, 'principem sine assensu populi monetam mutare non posse,' yet he concludes, 'si princeps consuevisset mutare monetam auctoritate propriâ, sine consensu populi, a tempore cuius initii memoria non existit, tunc libere imposterum eum hoc facere posse. L. hoc jure Paragr. ductus aquæ. ff. de aqua quotid. &c.' And Covarruvias, libro de collatione veterum numismatum, cap. De mutatione monetæ, saith, 'princeps potest mutare monetam ratione publicæ utilitatis, viz. tempore belli, vel si alias utile populo sit futurum, ita etiam, ut ex corio fieri possit.' And it is observed by Molineus, libro de mutatione monetæ, cap. 100, that the state of Rome in the first Punick war, when Hannibal had possession of a great part of Italy, and all their treasure was exhausted, enhanced base money to a great value, for the payment of their armies; and yet the justice of that state was then famous throughout the world. But 'nihil est magis justum, quam quod necessarium,' by which it appears, that the mixed money was made by queen Eliz. on a just and honourable cause.

Fourthly, it was resolved, that the said mixed money having the impression and inscription of the queen of England, and being proclaimed for lawful and current money within this kingdom of Ireland, ought to be taken and accepted for sterling money; and on consideration of this point, the name and the nature of Sterling Money were enquired and discovered. As to the name of Sterling some doctors of the civil law, being deceived by the erroneous report of Polydore Virgil, have conceived, that this English money was called Sterling, because the form of a *stare*, the diminutive of which is *sterling*, was imprinted or stamped upon it, and therefore Covarruvias, lib. de collatione veterum numismatum, c. 2. 'sterling' (saith he) 'est argenteus nummus

'Anglicus ex vicesima sexta parte uncie, nam viginti sex nummi argentei sterlingi pendebant unciam, autore Polydore Virgilio, in Hist. Anglicâ, lib. 16. Dicitur autem est hic nummus, ut idem author tradit, sterling, quod sturnus avis, Anglice a sterling, in altera parte nummi esset impressa.' To the same purpose Choppinus de Domano Franc. lib. 2. tit. 7. hath this note, ceterum Errico 3. Britannie rege, primum percussa est nunc usitatissima sterlingorum moneta, ab effigie sturni sic dicta, anno 1249.' These doctors being strangers, were, it seems, misinformed by Polydore Virgil, who was also an alien and a stranger. But our Liwood also (who made his Gloss on the provincial constitutions of England, in the time of Hen. 6.) tit. de testam. C. Item, quia, verbo, Centum solidos, saith, 'sterling nomen erat argentæ monetæ, et habebat similitudinem denarii usualis, hoc salvo, quod in unâ quartâ habebat effigiem avis, quæ vocatur sturnus, Anglice, sterling.'

Others have been of opinion, that this English money had the name of Sterling, because the first money of this standard was coined in the Castle of Sterling in Scotland by king Ed. 1. But this is also an erroneous opinion, as is noted by Cambden in Scotia, pag. 700. where speaking of Sterling-Castle, he saith, that 'quidam monetam probam Angliæ quæ sterling money dicitur, hinc debominatam volunt, frustra sunt; a Germanis enim, quos Angli Esterlingos ab orientali situ vocarunt, facta est appellatio; quos Johannes rex, ad argentum in suam puritatem redigendum, primus evocavit; et ejusmodi nummi, Esterlingi, in antiquis scripturis semper reperuntur.'

And this latter opinion, without doubt, is the better and more probable, by the judgment of all the most learned antiquarians of England. For in all the antient statutes which make mention of this money, it is called *esterling*. As 9 Ed. 3. c. 2. &c. 'no false money counterfeit *esterling* shall be imported into our realm;' and the same year c. 3. 'no *esterling* halfpenny or farthing shall be molten to make vessel,' &c. and 25 Ed. 3. c. 13. 'the money of gold and silver, which is now current, shall not be impaired in weight or alloy, but shall be put in the antient state as in the *esterling*.' And Matt. Paris, Magn. Hist. fol. 403. where he expresses the form of the obligation made by the clergy of England to the pope's bankers resident in London, makes mention of this money by the name of *esterling*; 'Noveritis nos recipisse ab (A. and B. &c.) centum uncias bonorum et legalium esterlingorum, tresdecim solidis et quatuor sterlingis pro qualibet uncia computatis.' And the same author, fol. 710, saith, 'eodem tempore moneta Esterlingorum, propter sui materiam desiderabilem, detestabili circumcissione cæpit deteriorari et corrumpi.' And fol. 575. 'Comitissa de Biarde venit ad regem cum 60 militibus, ducta cupidine Esterlingorum, quibus noverat regem Angliæ abundare, et accepit a rege

'qualibet die pro stipendio tresdecim libras Esterlingorum, &c.' And Hoveden, in Rich. 1. fol. 377. b. makes mention of this money in these words, 'videns igitur Galfridus Eboracensis electus, quod nisi mediante pecuniâ amorem regis fratris nullatenus habere possit, promisit ei tria millia librarum Sterlingorum pro amore ejus habendo;' and this was before the time of king John; from whence it seems, that the time when this money was first coined is uncertain; for some say that it was made by Osbriht a king of the Saxons 160 years before the Norman Conquest. And so as Nummus is called from Numa, who was the first king who made money in Rome, so Sterling is called from the Esterlings who first made the money of this standard in England, by a metonymia, substituting the name of the inventor for the thing invented, as Ceres pro frumento, Bacchus pro vino, &c.

And it is to be observed, that the Esterlings were the first founders of the four principal cities of Ireland, viz. Dublin, Waterford, Cork and Limerick, and of the other maritime towns in this kingdom, and were the sole maintainers of traffic and commerce, which was utterly neglected by the Irish. These cities and towns were under the protection of king Edgar and Edward the Confessor before the Norman Conquest: and these Esterlings in the antient records of this kingdom are called *Ostmanni*. And therefore, when Hen. 2. upon the first conquest, thought it better to people these cities and towns with English colonies taken from Bristol, Chester, &c. he assigned to these *Ostmen* certain proportion of land next adjoining to each of these cities, which portion is called in the records of antient times, *Cantreda Ostmannorum*. And all this was observed on the name of Sterling.

For the nature or substance of this money, first it was observed, that the coin which was properly called the Sterling was the denier or silver penny, as appears in the ordinance called *compositio mensurarum* made in the time of E. 1. where it is said, 'denarius Angliæ, qui nominatur sterlingus rotundus, sine tonsura, ponderabitur triginta et duo grana in medio spicæ,' &c. and every other coin or piece of silver was measured by the sterling penny, as the groat contained the value of four sterlings, and the half groat the value of two sterlings, 25 Edw. 3. c. 6. and the shilling consisted of twelve sterlings, Linwood de Testamentis, C. item quia, verb. Centum solidos; and the Mark consisted of 13s. and four sterlings, as before is shewn from Matt. Paris; and the maile (half-penny) was the half of a sterling; and the farthing the fourth part of a sterling. See an ordinance without date in the Magna Charta printed by Tottel, anno 1556, fol. 167, and in Rastall's old Abridgment, money 52, 'quia multorum regum temporibus provisum fuit, quod propter pauperes denarius argenti, viz. sterlingus, divideretur in obolum et quadrantem, ex parte domini regis precipitur, quod quicumque recusaverit obolum vel quadrantem

'debitam habentem formam, capiatur.' See 6 and 7 Ed. 6. Dyer 82, in the case of Pollards, where it appears that a sterling and a denier were the same; for there it is said that two pollards passed for one sterling, and accordingly two sterlings\* were paid for one denier. And indeed in antient time, every sort of money, made of the several metals of which money was usually coined, was properly called a denarius; and therefore the French and Italians speak properly, when they call all money deniers and denarii, for coins (nummi) were either copper, silver or gold: each silver one was worth ten of copper, and so was called a denier; and each gold one was worth ten of silver, and in this respect these were likewise deniers. And the antient proportion of gold to silver was as ten to one; and this proportion, as it seems, David observed in the treasure of gold and silver which he prepared for the building of the temple; for the text says, Chron. chap. xxii. ver. 14, 'that he provided for that purpose 100,000 talents of gold, and 1,000,000 talents of silver.' So the first and proper sterling coin was a denier.

And for the substance of this denier or sterling penny in Weight and Purity: as to the Weight, it was at first the 20th part of an ounce, viz. an ounce was cut into 20 sterling deniers and no more. See the *compositio mensurarum* made in the time of Ed. 1. 'in veteri libro de magnâ chartâ,' fol. 113. b. and in Rastall's old abridgment, tit. weights and measures, 4. where it is said, that 'viginti denarii faciunt unciam, et duodecim uncie faciunt libram;' and so it was until 9 Ed. 3. at which time the ounce of silver was cut into 26 pence. Annal. de Rob. de Avesbury MS. See several ordinances touching the new sterling money, made 9 Ed. 3. Rastall, money 345. And such proportion was continued until 2 Hen. 6. when the ounce of silver made 32 pence; and this appears by the statute of 2 Hen. 6. c. 13, and also by Linwood, 'de testamentis, cap. item quia, verb. cent. solid. 'Hic solidus,' saith he, 'sumitur pro duodecim denariis Anglicanis; horum 26 ponderabant unciam, cum tamen jam 32 denarii vix faciunt unciam.' And this gloss was wrote in the beginning of the reign of Hen. 6. as it is mentioned in the preface to his book. This standard was continued until the 5 Ed. 4. and then the ounce of silver made 40 pence; 9 Ed. 4. 49. a. and 12 Ed. 4. c. 60. in Rot. Parl. Dublin. And this continued until 36 Hen. 8. when the king prepared for his journey to Bullogne; and then an ounce of silver was cut into 60 pence, and that standard remains to this day. And so the sterling penny, which was at first the 20th part of an ounce, is now the 60th part of an ounce; and by consequence, the antient sterling penny contained as much silver as is contained in the three-penny piece that is now current.

And as to the purity of this sterling [1 H. H.

\* So in the original; but quæ, whether it should not be pollards?

P. C. 190.] money, 18s. 5 $\frac{1}{2}$ d. of the purest silver was contained in each pound, and each pound of sterling money had 1s. 6d $\frac{1}{2}$ . alloy of copper, and no more; and of this alloy of sterling money, the ordinances or statutes of 25 Ed. 3. c. 13. and 2 Hen. 6. c. 13. make mention. But this is well known to all moneyers, and is contained in all the indentures made between the king and the masters of the mint.

Then the Sterling Money being of such weight and fineness, the doubt *primâ facie*, was, how this Mixed Money should be said to be sterling. And for the clearing of this doubt, it was said, that in each common piece of Money, there is 'bonitas intrinseca, et bonitas extrinseca: intrinseca consistit in præiositate materie et pondere,' viz. fineness and weight; 'extrinseca bonitas consistit in valuatione seu denominatione, et in formâ seu caractere.' Budel. de re nummariâ, lib. 11. cap. 7. And this *bonitas extrinseca*, which is called 'estimatio sive valor impositivus, est formalis et essentialis monetæ,' and this form giveth name and being to money; for without such form, the most precious and pure metal that can be is not money; and therefore, Molinæus, lib. de mutat. Monetæ, saith, 'non materia naturalis corporis monetæ, sed valor impositivus est forma et substantia monetæ, quæ non est corpus physicum sed artificiale,' as Aristotle saith, Ethic. lib. 5. And so Polit. lib. 1. he saith to this effect, that money was first signed and imprinted with a certain character, to the intent, that the people might accept it on the credit of the prince or state who publishes it, without examination or trial of the weight or purity. And to this purpose Molinæus hath this rule, Q. 99. 'de jure non refert sive plus sive minus argenti insit, modo publica, proba, et legitima monetæ sit.' Et Balau. l. singulari, saith, 'in pecunia potius attenditur usus et curâ sus quam materia.' And Seneca, lib. 5. de beneficiis, 'Æs alienum habere dicitur, et qui aureos debet, et qui corium formâ publicâ percussus.' And it was said that the king hath the same prerogative to give value to base metal by his impression or character, as he hath to give estimation to a mean person by imparting the character of honour to him; 'sic fiet viro quem rex honorare desiderat.'

And so it was concluded, that after the Esterlings, by command of the king of England, had made this pure English money, which from the name of the makers was called esterling or sterling money, the standard of which hath been always the most fixed and unchanged in all the world, (which hath been a great honour to our nation, for in all other kingdoms and states, the standards of their money are more unsteady and variable,) all money coined by the authority of the king of England, and having his character and impression, not only in England, but also in Scotland and Ireland, hath been sterling money, and so called, reputed and taken by all people, whether the matter of it were mixed or pure. And this appears by the ordinance which is called 'sta-

tutum de moneta magnum,' by which all money is prohibited, only the money of England, of Ireland and of Scotland, which was properly the sterling money. And therefore Freherus, lib. de re nummariâ, where he enumerates the different money of different nations; 'sterlingi,' saith he, 'habentur in Angliâ, Scotia et Hiberniâ.' And Bodin, lib. 6. de republ. c. 3. speaking of the money of Scotland; in Scotland, saith he, are two pounds, (livres) very different; one of esterlings, the other customary. And certainly the usual Scottish pound (livre) is like the French livre, and the pound (livre) esterling current there is that of England. And that base or Mixed Money may be current for sterling, appears by the said case of Pollards, Dyer 82. b. where it is said, 'quod currebat quædam moneta in Angliâ loco sterlingi quæ vocabatur pollards, viz. duo pollardi pro uno sterlingo.'

Fifthly, it was resolved, that although this Mixed Money was made to be current within this kingdom of Ireland only, yet it may well be said, current and lawful money of England, for two causes.—1. Because this kingdom is only a member of the imperial crown of England; and this appears 3 Hen. 7. 10. a. where a question was propounded to the justices by Hobart, Attorney general, 'si quis sciens monetam ad similitudinem monetæ regis Angliæ contrafactam, talem monetam in Angliam extra Hiberniam deferat, si sit proditio necne: et dixerunt quod Hibernia est quasi membrum Angliæ, et ibidem legibus Angliæ utuntur, et autoritate regia faciunt monetam.' And to this purpose it is recited in the statute of faculties, enacted in this kingdom, 28 Hen. 8. c. 19. 'that this the king's land of Ireland is a member appendant, and rightfully belongeth to the imperial crown of the realm of England, and united unto the same.' And in the act of 33 Hen. 8. c. 1. by which the stile and title of king of Ireland was given to Hen. 8. his heirs and successors, it is moreover enacted, that the king shall enjoy that stile and title, and all other royal pre-eminences, prerogatives and dignities, 'as united and annexed to the imperial crown of the realm of England.'—2. It is called lawful money of England, in respect to the place of coinage which was in England, viz. in the Tower of London. For although in antient times the king had several mints in this kingdom, as he had in England, yet since the commencement of the reign of queen Elizabeth, all the mints have been reduced to one place, viz. The Tower of London; and this was done upon good reason of state, to prevent the falsification of money. And therefore, before the Norman conquest, all money was coined in monasteries; for it was presumed, that in such places no falsity or corruption would be found. And this agrees with the prudence of the Roman state, which had but one mint for all Italy, and that was in the temple of Juno at Rome, who for this cause was called 'Juno moneta.' And for this purpose, the emperor Charlemain made a

law, in these words, viz. 'de falsis monetis, quia in diversis locis contra justitiam fiunt, volumus, ut in nullo alio loco moneta, nisi in patrio nostro, fiat.' Choppinus de Domino Franciæ, 217. a. Yet in 38 Ed. 1. this prudent king, for the facility of exchange, caused several mints to be established in several towns in England; one in the Tower of London with thirty furnaces, another at Canterbury with eight furnaces, another at Kingston upon Hull with four furnaces, another at Newcastle upon Tyne with two furnaces, another at Bristol with four furnaces, and another at Exeter with four furnaces. Tractat. de monetâ Angliæ, made in the time of Ed. 1. which I found in the library of sir Robert Cotton, which was the book of lord Burleigh, late lord high treasurer of England. See also the close rolls of 29 Ed. 1. in the Tower of London. And this appears also by the inscription of divers ancient coins, on which are expressed the names of the cities where they were coined, according to a verse made in the time of Ed. 1. and taken by Stow out of Robert le Brun, an ancient manuscript: 'Edward did smite round penny, half-penny, farthing.'

And then followed,

'On the king's side, was his head and his name written,

'On the cross side, the city where it was smitten.'

And this same king having established a mint at Dublin with four furnaces, and having constituted Alexander Norman of Lusk master of the mint there, as appears in several records in the archives of the Castle of Dublin; afterwards, viz. 32 Ed. 1, when he had altered the form of the coin, he caused divers stamps consisting of two parts, of which the one contained the pile, and the other the cross, to be transmitted to the treasurer of this kingdom, as is recorded in the red book of the Exchequer here in this manner. 'Magister Gulielmus de Wilmundham, custos cambiorum domini regis in Anglia, de precepto venerabilis patris Bathon. et Wellensis episcopi, thesaurarij ejusdem domini regis, misit domino Gulielmo de Esenden, thesaurario in Hibernia, viginti quatuor pecias cuneorum, pro moneta ibidem faciende, viz. tres pilas cum sex crucellis pro denarijs, tres pilas cum sex crucellis pro obolis, et duas pilas cum quatuor crucellis pro ferlingis, per Johannem le Minor, Thomas Dowle, et Johannem de Shorditch, clericos, de societate operariorum et monetariorum London, per eosdem ad monetam prædictam operandam et monetandam.' And there it is likewise mentioned, before what witnesses the said stamps were delivered; for 'cuneus monetæ tanquam sigillum regni custodiri debet,' as it is said in the treatise 'de moneta Angliæ' before mentioned; and the reason is, because to counterfeit the one or the other is high treason.

And at this time there was but one mint in Ireland, to wit, at Dublin. But long afterwards, viz. 3 Ed. 4. a mint was established at Waterford, another at Trim, and another at

Galway; Rot. Parl. 3 Ed. 4. in Castro Dublin. And 12 Ed. 4. Rot. Parl. ibid. it is ordained, that the masters of the mint in Ireland should make, in the castles of Dublin and Trim, and in the town of Drogheda, five sorts of coin, the groat, the half-groat, the penny, half-penny and farthing; by which it is manifest that in former times, there were five several mints in Ireland, in the several towns aforesaid. But all these were discontinued in the time of Ed. 6, so that since the reign of that king, all the money made in Ireland hath been coined in England; and therefore this mixed money, coined in the Tower of London, may be properly called current and lawful money of England.

Sixthly and lastly, it was resolved, that although at the time of the contract and obligation made in the present case, pure money of gold and silver was current within this kingdom, where the place of payment was assigned; yet the mixed money, being established in this kingdom before the day of payment, may well be tendered in discharge of the said obligation, and the obligee is bound to accept it; and if he refuses it, and waits until the money be changed again, the obligor is not bound to pay other money of better substance, but it is sufficient if he be always ready to pay the mixed money according to the rate for which they were current at the time of the tender. And this point was resolved on consideration of two circumstances, viz. the time and the place of the payment; for the time is future, viz. that if the said Brett shall pay or cause to be paid 100*l.* sterling, current money, &c. and therefore such money shall be paid as shall be current at such future time; so that the time of payment, and not the time of the contract, shall be regarded.

Also, the future time is intended by the words current money; for a thing which is passed is not in cursu; and therefore all the doctors, who write 'de re nummaria,' agree in this rule, 'verba currentis monetæ tempus solutionis designant.' And to this purpose are several cases ruled in our books, 6 and 7 Ed. 6. Dyer 81. b. After the fall and embasement of money, 5 Ed. 6. debt was brought against the executors of lessee for years, for rent in arrear for two years, ending Mich. 2 Ed. 6. at which time the shilling (which at the time of the action brought, was cried down to 6*d.*) was current for 12*d.* the defendants pleaded a tender of the rent on the days when it became due, 'in peciis monetæ Angliæ vocat. shillings, qualibet pecia vocat. shilling, ad tunc solubili pro 12*d.*' and that neither the plaintiff nor any other for him was ready to receive it, &c. and concluded that they are still ready to pay the arrears 'in dictis peciis vocat. shillings, secundum ratam,' &c. On this plea, although the plaintiff demurred, yet he was content to take the money at the rate aforesaid, without costs or damages. To the same purpose is the case of Pollards adjudged, 29 Ed. 1. and reported by Dyer 82. b. where in debt on an obligation for payment of 2*l.* at two

several days, the defendant pleads, that, at the days limited for payment of the debt in demand 'currebat quædam moneta quæ vocabatur Pollards, loco sterlingi,' &c. and that the defendant at the first day of payment tendered the moiety of the debt in the money called Pollards, which the plaintiff refused, and that he is still ready, &c. and offered it in court, which is not denied by the plaintiff; *ideo concessum est*, that he recovered one moiety in Pollards, and the other in pure sterling money. See 9 Ed. 4. 49. a remarkable case on the change of money, where it is said, that if a man in an action of debt demands 40*l.* it shall be intended money which is current at the time of the writ purchased. And there a case in the time of Ed. 1. is put, which is directly to this purpose. In debt brought upon a deed for 30 quarters of barley, price 20*l.* it was found for the plaintiff, and the jury was charged to enquire of the price at the time of the payment, and it was said that at the time of the payment a quarter was at 13*s.* but at the time of the making of the deed, it was only at 3*s.* and the plaintiff recovered 18*l.* for the corn according to the price of it at the time of the payment. To this purpose also, Linwood hath a notable gloss on the constitution of Simon Mepham, lib. 3. de Testamentis cap. item quia. For where the constitution is such, 'pro publicatione testamenti pauperis, cujus inventarium bonorum non excedit centum solidos sterlingorum, nihil penitus exigatur,' he maketh this gloss, 'hic solidus sumitur pro duodecim denarijs Anglicanis, &c. Sed quæro,' saith he, 'numquid circa hos centum solidos debeat considerari valor in moneta jam currente, vel valor sterlingorum qui currebant tempore statuti; and there he resolveth, 'quod ubi dispositio surgit ex statuto, ut hic, licet moneta sit diminuta in valore, tamen debet considerari respectu monetæ novæ currentis, et non respectu antiquæ. Nam mutata moneta, mutari videtur statutum, ut scilicet intelligatur de nova, et non de veteri.' See Reg. st. 50. a. and 54. b. where the king issues his writ, to be certified of the value of a church. The words of the writ are *secundum taxationem decimæ jam currentis*. And 31 Ed. 3. Fitz. H. Annuity 28. an annuity was granted to I. S. until he was promoted by the grantor to a sufficient benefice; I. S. brings a writ of annuity against the grantor, who pleads that he had tendered to the plaintiff a sufficient benefice; and there issue was taken on the value of the benefice at the time of the tender.

But it was said that, although in contracts

these words 'currentis monetæ' shall relate to the time of the payment; yet in wills, they shall relate to the time of making the will; for the bequest is in the present tense, 'I give and bequeath,' &c. and therefore legacies shall be paid in such money as is current at the time of the making the testament, or according to the rate thereof. It was also said, that if a man hath 1000*l.* of pure silver in marriage with his wife, and afterwards they are divorced *causa præcontractus*, by which the wife is to receive her portion: or if a man recovers by an erroneous judgment 100*l.* in debt, and hath execution in pure silver money, and afterwards the judgment is reversed, so that he is to be restored to all that he hath lost, although base money be established in the mean time, restitution shall be in such money as was current at the time of the marriage, and at the time of the recovery. But these latter cases were not resolved.

And as to the circumstance of place, it was resolved, that although the contract was made in London, yet, the place of payment being appointed in Dublin, of necessity the obligor must make his tender in the mixed money at the time of the payment; for all other money was cried down and made bullion by the proclamation aforesaid, and this money only established; so that if the obligor had refused this mixed money, he had committed a contempt, for which he might be punished. Also the judges are not bound to take notice of any money, that is not current by proclamation. And therefore Prisot saith, 34 Hen. 6. 12. a. 'we are not apprised of 6*l.* Flemish, as we are of 100 nobles;' and therefore in all contracts of merchants, 'consuetudo et statuta loci, in quem est destinata solutio, respicienda sunt.' Budelius de re nummariâ, lib. 2. c. 21. And it was said, that if at this day the law should be taken, as it was taken in the time of Ed. 1. that upon judgment in debt given in England, on a *testatum* that the defendant hath nothing in England, but that he hath goods and lands in Ireland; a writ of execution shall be awarded to the chief justice or deputy of Ireland, to levy the debt there, (which writ is found in Registro Brev. Jud. 43. b.) the sum in such case shall be levied according to the rate of Irish money, and not of English money, and in such coin as shall be current in this kingdom, at the time of the execution.

And according to this Resolution, several other Cases on the same point were afterwards ruled and adjudged in the several Courts of Record in Dublin.



79. **ARTICULI CLERI:** Articles (so intitled by Lord Coke) of Complaint against the Judges of the Realm; exhibited by RICHARD BANCROFT, Archbishop of Canterbury, in the Name of the whole Clergy: Michaelmas Term, 3 JAC. A. D. 1605. Together with the ANSWERS thereunto by all the Judges and Barons. [Lord Coke's 2d Inst. 601.]

LORD Coke, in treating of the Stat. 9 Ed. 2. called **ARTICULI CLERI**, says:

“ Long before the making of this statute, that is, anno 42 H. 3. A. D. 1258, Boniface younger sonne of Thomas earle of Savoy, archbishop of Canterbury, uncle of Elianor queen of England, who was daughter of Reymond earle of Provence by Beatrix daughter of Thomas earle of Savoy, and sister to the said Boniface, made divers and many canons and constitutions provinciall directly against the lawes of the realme, which canons begun thus: ‘Universis Christi fidelibus ad quos præsens pagina pervenerit, Bonifacius miseracione divina Cantuariensis archiepiscopus, totius Angliæ primas, et sui suffraganei in verbo salutari salutem.’ And ending thus: ‘Actum apud Westm’, sexto iduum Junii A. D. 1258. In quorum omnium robor et testimonium, &c.’ which being exceeding long, we could not here insert. But the effect of them is, so to usurp and inroach upon many matters, which apparently belonged to the common law, as, amongst many others, the tryall of limits and bounds of parishes, and right of patronage, against tryall of right of tithes (by *indicavit*) against writs to the bishop upon a recovery in a *quare impedit*, &c. in the king’s courts. That none of their possessions or liberties, which any of the clergy had in the right of their church, should be tryed before any secular judge; (so as they would not have consurance of things spirituall, but of temporall also) and concerning distresses and attachments within their fees, and in effect, that no *quo warranto* should be brought against them, when they had been long in possession, with an invective against the perverse interpretation by the judges of the realme (so they termed it) of charters, &c. granted to them, and in substance against the ancient and just writs of prohibition in cases, where by the lawes of the realme they are maintainable: and commandement given to admonish the king and interdict his lands and revenues, and thundred out excommunications against the judges and others if they violated, or obeyed not the said canons and constitutions. And this was the principall ground of the controversies between the judges of the realme and the bishops: for this caused ecclesiasticall judges to usurp and inroach upon the common law. But notwithstanding the greatnesse of the archbishop Boniface, and that divers of the judges of the realm were of the clergy, and all the great officers of the realm, as chancellor, treasurer, privie seale, &c. were prelates; yet the judges proceeded according to

the lawes of the realm, and still kept, though with great difficulty, the ecclesiasticall courts within their just and proper limits. The courts by pretext of these canons being at variance, at length at a parliament holden in the 51 yeare of Henry the third, Boniface, and the rest of the clergy, complained (which was *ultimum refugium*, and yet the right way) and exhibited many Articles as grievances, called *Articuli Cleri*. The Articles exhibited by the clergy either by accident or industry are not to be found; some of the Answers are extant, viz. ‘Ad 16 Articulum de usuris, respondetur, quod licet episcopus, &c.—Ad 17 articulum de defamacione, &c. respondetur, si aliquis defamatus, &c. si autem certæ personæ nominatæ fuerint, per quas rei veritas melius scire poterit, nominantur, ad proband’ matrimonium vel testamentum: et similiter in accusationibus tales personæ impediendæ non sunt, quia testimonium perhibent veritati, sed propter hoc non est congregatio laicorum faciend’, quia per congregationem hujusmodi servitia domus possit deperire.—Ad 18 Artic’ dominas possit remedium.—Ad 19 Artic’ respondetur, quod archiepiscopus de episcopatu vacante non se intronittat quantum ad temporalia, sed tantum se de spiritualibus intronittat, &c.—Ad 20 Artic’ respondetur, quod de clericis occisis, et de hiis qui forsan occidi contigerit, in futurum fiat justitia, secundum legem et consuetudinem terræ, &c.—Ad 21 Artic’ respondetur, quod excommunicatus per ordinarium, aut alium judicem competentem, et denunciatus taliter, debet ab aliis evitari, nisi forsan excommunicatus conqueratur se esse injuste excommunicatum pro aliqua re temporali, de qua non debeat coram ordinario respondere, ad cujus probationem debet admitti, sed in cæteris quæ proponit, ut actor, est interim evitandus.—Ad 22 Artic’ mandabitur justiciariis, quod non fiant aliquæ prisæ per totam terram de bonis aliquorum, nisi debitæ prisæ et consuetæ.—Ad 23 Artic’ respondetur, quod cum aliqui teneant aliquod de rege in capite unde custodia debeatur, custodiæ omnium terrarum de quibuscunque tenentes illi tenementa illa teneant cum acciderint (si inde custodia habere debeatur) hactenus ex consuetudine approbata spectarant ad regem, sed episcopi si expedire videant, inhibeant tenentibus suis, ne aliqua tenementa sibi perquirant de feodis regis.’

These Answers are yet extant of record, and are worthy to be read at large as they yet remaine; whereunto we referre the reader.

This is to be observed, that none of Boniface's Canons against the laves of the realm, and the crowne and dignity of the king, and the birth-right of the subject, are here confirmed.

What the residue of the Articles and the Answers were, may be collected by that act of parliament entitled 'Prohibitio formata de statuto Articuli Cleri,' which was made in the time of Edward the first, about the beginning of his reign, which beginneth thus: *Edwardus, &c. prelati, &c.* wherein divers points are to be observed against the canons of Boniface:

1. Quod cognitiones placitorum super feodalibus et libertatibus feodalium, districtioibus, officii ministrorum, executionibus contra pacem nostram factis, felonum negotiationibus, consuetudinibus secularibus, attachiamentis, vi laica malefactoribus rectatis, robberiis, arrestationibus, maneriis, advocacionibus ecclesiarum, sufficientibus as sisis juratis, recognitionibus laicam feodum contingentiibus, et rebus aliis, et causis pecuniarum, et de aliis catallis et debitis que non sunt de testament' vel matrimon' ad coronam et dignitatem regiam pertinent, et de regno de consuetud' ejusdem regni approbata, et hactenus observata. 2. Et proceres, et magnates, aut alii de eodem regno temporibus nostrorum predecessorum regum Angliæ, seu nostra autoritate alicujus non consueverunt contra consuetudinem illam super hujusmodi rebus in causa trahi vel compelli ad comparandum coram quocunque judice ecclesiastico. 3. Et quod vicecomes non permittant, quod aliqui laici in baliva sua conveniant ad aliquas recognitiones per sacramenta sua faciend', nisi in causis matrimonialibus et testamentariis. Of the substance of this prohibition, Britton speaketh in these words, 'et queux ount suffert plender en court christian auters pleas, que de testament on matrimonie, et de pure spirituelte sans deniers prender de lay home. Ou suffert lay home iorred de vant lordinary.'

After this the Clergy, at a Parliament holden in the reign of the same king E. 1. preferred Articles intituled 'Articuli contra prohibitionem regis,' fearing lest by reason of some general words therein they might be prohibited in causes, which of right belonged to the ecclesiastical jurisdiction, in these words, 'sub hac forma impetrant laici prohibitionem in genere super decimis, oblationibus, obventionibus, mortuariis, redemptionibus penitentiarum, violenta manuum injectione in clericum vel commissarium, et in causa defamationis, in quibus casibus agitur ad penam canonicam imponendam.' And a just and legall Answer was made thereunto, as thereby appeareth. But it is to be observed, that they claimed nothing which was against the true meaning of the said act, called 'Prohibitio formata de statuto Articuli Cleri,' nor any of Boniface's canons to be confirmed; and so these matters rested, untill the parliament holden at Lincoln in the ninth yeare of Edw. 2, where Walter Reynolds bishop of Canterbury (whom the king favoured, saith one, singularly for the opinion he had

of his fidelity and great wisdom, and 'Walterus archiepiscopus Cantuariensis regi gratiosissimus fuit, hæc regis æquissima responsa ad prelatorum petita obtinuit') in the name of himselfe and of the clergy, preferred these 16 Articles, and by authority of parliament had the Answers here following *seriatim* to every one of them.—And now it may seeme high time that we should descend to the perusal of the preamble, and the Articles and Answers. But before we come to it, it shall conduce much to the right understanding of divers parts of this act of parliament, to report unto you what Articles Richard Bancroft archbishop of Canterbury exhibited in the name of the whole clergy in Michaelmas terme anno 3 Jacob. regis to the lords of the privie counsell against the judges of the realm, intituled,

*Certain ARTICLES of ABUSES, which are desired to be reformed, in granting of Prohibitions, and the Answers thereunto:*

Upon mature deliberation and consideration, in Easter terme following, by all the Judges of England, and the barons of the exchequer, with one unanimous consent under their hands (resolutions of highest authorities in law) which were delivered to the lords of the counsell. And we for distinction sake (because we shall have occasion often to cite them) call them *Articuli Cleri 3 Jacobi.*

1. His majesty hath power to reforme abuses in Prohibitions.

*Objection.* The clergy well hoped, that they had taken a good course in seeking some redresse at his majesties hands concerning sundry abuses offered to his ecclesiasticall jurisdiction, by the over frequent and undue granting of prohibitions; for both they and we supposed (all jurisdiction, both ecclesiasticall and temporall being annexed to the imperial crowne of this realme) that his highnesse had been held to have had sufficient authority in himselfe, with the assistance of his counsell, to judge what is amisse in either of his said jurisdictions, and to have reformed the same accordingly; otherwise a wrong course is taken by us, if nothing may be reformed that is now complained of, but what the temporall judges shall of themselves willingly yeeld unto. This is therefore the first point, which upon occasion lately offered before your lordships by some of the judges, we desire may be cleared, because we are strongly perswaded as touching the validity of his majesties said authority, and doe hope that we shall be able to justify the same, notwithstanding any thing that the judges, or any other can alledge to the contrary.

*Answer of the Judges.* No man maketh any question, but that both the jurisdictions are lawfully and justly in his majesty, and that if any abuses be, they ought to be reformed: but what the law doth warrant in cases of prohibitions to keep every jurisdiction in his true limits, is not to be said an abuse, nor can be altered but by parliament.

2. The formes of Prohibitions prejudiciall to his majesties authority in causes ecclesiasticall.

*Objection.* Concerning the forme of prohibitions, forasmuch as both the ecclesiasticall and temporall jurisdictions be now united in his majestie, which were heretofore *de facto*, though not *de jure* derived from severall heads, we desire to be satisfied by the judges, whether, as the case now standeth, the former manner of prohibitions heretofore used importing an ecclesiasticall court to be *aliud forum à foro regio*, and the ecclesiasticall law not to be *legem terra*, and the proceedings in those courts to bee *contra coronam et dignitatem regiam*, may now without offence and derogation to the kings ecclesiasticall prerogative be continued, as though either the said jurisdictions remained now so distinguished and severed as they were before, or that the lawes ecclesiasticall, which wee put in execution, were not the kings and the realmes ecclesiasticall lawes, as well as the temporall lawes.

*Answer.* It is true, that both the jurisdictions were ever *de jure* in the crowne, though the one sometimes usurped by the see of Rome; but neither in the one time, nor in the other hath ever the forme of prohibitions been altered, nor can bee but by parliament. And it is *contra coronam et dignitatem regiam* for any to usurp to deale in that, which they have not lawfull warrant from the crowne to deale in, or to take from the temporall jurisdiction that which belonged to it. The prohibitions doe not import, that the ecclesiasticall courts are *aliud* then the kings, or not the kings courts, but doe import, that the cause is drawne into *aliud examen* then it ought to be: and therefore it is alwaies said in the propositions (be the court temporall or ecclesiasticall, to which it is awarded) if they deale in any case which they have not power to hold plea of, that the cause is drawn *ad aliud examen* then it ought to be; and therefore *contra coronam et dignitatem regiam*.

3. A fit time to be assigned for the defendant, if he will seek a Prohibition.

*Objection.* As touching the time when Prohibitions are granted, it seemeth strange to us, that they are not onely granted at the suit of the defendant in the ecclesiasticall court after his answer (whereby hee affirmeth the jurisdiction of the said court, and submitteth himselfe unto the same;) but also after all allegations and proofes made on both sides, when the cause is fully instructed and furnished for sentence: yea, after sentence, yea after two or three sentences given, and after execution of the said sentence or sentences, and when the party for his long continued disobedience is laid in prison upon the writ of *excommunicato capiendo*, which courses, forasmuch as they are against the rules of the common law in like cases, as we take it, and doe tend so greatly to the delay of justice, vexation, and charge of the

subject, and the disgrace and discredit of his majesties jurisdiction ecclesiasticall, the judges, as we suppose, notwithstanding their great learning in the lawes, will be hardly able in defence of them to satisfie your lordships.

*Answer.* Prohibitions by law are to be granted at any time to restraine a court to intermeddle with, or execute any thing, which by law they ought not to hold plea of, and they are much mistaken that maintaine the contrary. And it is the folly of such as will proceed in the ecclesiasticall court for that, whereof that court hath not jurisdiction; or in that, whereof the kings temporall courts should have the jurisdiction, And so themselves, by their extraordinary dealing, are the cause of such extraordinary charges, and not the law: for their proceedings in such case are *coram non iudice*. And the kings courts that may award prohibitions, being informed either by the parties themselves, or by any stranger, that any court temporall or ecclesiasticall doth hold plea of that, whereof they have not jurisdiction, may lawfully prohibit the same, as well after judgement and execution, as before.

4. Prohibitions unduly awarded heretofore in all causes almost of ecclesiasticall cognizance.

*Objection.* Whereas it will be confessed, that causes concerning testaments, matrimony, benefices, churches, and divine service, with many offences against the 1, 2, 3, 4, 5, 7, 9, and 10 commandements, are by the lawes of this realm of ecclesiasticall cognizance, yet there are few of them, wherein sundry prohibitions have not been granted, and that more ordinarily of latter times, then ever heretofore, not because we that are ecclesiasticall judges doe give greater cause of such granting of them, then before have been given, but for that the humour of the time is growne to be too eager against all ecclesiasticall jurisdiction. For whereas, for examples sake, during the raigne of the late queen of worthy memory, there have been 488 prohibitions, and since his majesties time 82 sent into the court of the arches; we humbly desire your lordships, that the judges may be urged to bring forth one prohibition of ten, nay the twentieth prohibition of all the said 488, and but 2 of the said 82, which upon due considerations with the libels in the ecclesiasticall court, they shall be able to justifie to have been rightly awarded: we suppose they cannot; our predecessors, and we our selves have ever been so carefull not to exceed the compasse and limits of the ecclesiasticall jurisdiction: which if they shall refuse to attempt, or shall not be able to performe, then we referre our selves to your lordships wisdomes, whether we have not just cause to complaine, and crave restraint of this over lavish granting of prohibitions in every cause without respect. That which we have said of the prohibitions in the court of the arches, we verily perswade our selves may be truly affirmed of all the ecclesiasticall courts in England,

which doth so much the more aggravate this abuse.

*Answer.* It had been fit they should have set downe some particular cases, in which they find the ecclesiasticall courts injured by the temporall (as their lordships did order) unto which we would have given a particular answer; but upon these generalities nothing but clamour can be concluded. And where they speake of multitudes of Prohibitions; for all granted to, or in respect of any ecclesiasticall court, we have heretofore caused diligent search to be made in the kings bench and common pleas, from the beginning of his majesties raigne, unto the end of Hilary term, in the third yeare of his raigne; in which time we find, that there were granted unto all the ecclesiasticall courts in England out of the kings bench but 251; whereof 149, were *de modo decimandi*, upon unity of possession, for trees of 20 yeares growth and upwards, and for barren and heath ground; and all out of the common pleas, but 62, whereof 31 were such as before, and the rest grounded upon the bounds of parishes, or such other causes as they ought to be granted for; but for that which was done in the late queenes time, it would be too long a search for us to make, to deliver any certainty thereof. And for his majesties time, they requiring to have but two to be lawfully warranted upon the libell in the ecclesiasticall court, we have six to shew to be lawfully warranted upon the libell there, and so are all the rest of like kind, by which it will appeare, that this suggestion is not onely untrue, but also, that the extraordinary charges growing unto poore men, are of necessity by meanes of the undue practices of ecclesiasticall courts.

5. The multiplying of Prohibitions in one and the same cause, the libell being not altered.

*Objection.* Although it hath been anciently ordained by a statute, that when a consultation is once duly granted upon a prohibition made to the judge of holy church, the same judge may proceed in the cause, by vertue of that consultation, notwithstanding any other prohibition to him delivered, provided that the matter in the libell of the same cause be not engrossed, enlarged, or otherwise changed; yet notwithstanding prohibitions and consultations in one and the same cause, the libell being no waies altered according to the said statute, are lately so multiplied, as that in some one cause, as aforesaid, two, in some three, in some other six prohibitions, and so many consultations have been awarded, yea divers are so granted out of one court: as for example, when after long suit a consultation is obtained, it is thought a sufficient cause to send out another prohibition in revocation of the said consultation, upon suggestion therein contained, that the said consultation *minus commode emanavit*. By which pretty devide the judges of those courts which grant prohibitions, may, notwithstanding the said statute, upon one libell not altered, grant as many prohibitions as they list, commanding the ecclesiasticall judges in his majesties name,

not to proceed in any cause that is so divers times by them prohibited, whereby the poore plaintifes doe not know when their consultations (procured with great charge) will hold, and so finding such and so many difficulties, are driven to goe home in great grieve, and to leave the causes in Westminster-hall, the ecclesiasticall judges not daring to hold any plea of them. Now may it please your lordships, the premisses being true, we humbly desire to heare what the judges are able to produce for the justifying of these their proceedings.

*Answer.* It were fit they should set downe particular causes, whereupon this grievance is grounded, and then we doubt not but to answer it sufficiently, without using any pretty device, such as is set downe in this article.

6. The multiplying of Prohibitions in divers causes, but of the same nature, after consultations formerly awarded.

*Objection.* We suppose, that as well his majesty's ecclesiasticall jurisdiction, as also very many of his poore, but dutifull subjects, are greatly prejudiced by the granting of divers severall prohibitions, and consultations in causes of one and the same nature and condition, and upon the selfe same suggestions: for example, in case of beating a clerke, the prohibition being granted upon this suggestion, that all pleas *de vi et armis* belong to the crowne, &c. notwithstanding a consultation doth thereupon ensue, yet the very next day after, if the like suggestion be made upon the beating of another clerke, even in the same court another prohibition is awarded. As also, where 570 prohibitions have been granted since the late queenes time into the court of arches (as before is mentioned) and but 113 consultations afterwards upon so many of them obtained: yet it is evident by the said consultations, that (in effect) all the rest of the said prohibitions ought not to have been awarded, as being grounded upon the same suggestions, whereupon consultations have been formerly granted: and so it followeth, that the causes why consultations were awarded upon the rest of the said prohibitions, were for that either the plaintifes in the court ecclesiasticall were driven for saving of furtlier charge, to compound, to their losse, with their adversaries, or were not able to sue for them; or being able, yet through strength of opposition against them, were constrained to desist; which is an argument to us, that the temporall judges doe wittingly and willingly grant prohibitions, whereupon they know, before hand, that consultations are due: and if we mistake any thing in the premisses, we desire your lordships, that the judges, for the justification of their courses, may better enforme us.

*Answer.* It shall be good, the ecclesiasticall judges doe better enforme themselves, and that they put some one or two particular cases to prove their suggestions, and thereupon they will find their owne error; for the case may be so, that two severall ministers suing in the ecclesiasticall court for beating of them in one and the selfe

same forme, that the one may and ought to have a consultation, and the other not. And so it is in cases of prohibitions, *de modo decimandi*; and hereof groweth the oversight in making this objection. And we assure our selves, that they shall not find 570 prohibitions granted into the arches since her late majesties death; for we find (if our clerkes affirme truly upon their search) that out of the kings bench have been granted to all the ecclesiasticall courts in England but 251 prohibitions (as before is mentioned) from the beginning of his majesties raigne, unto the end of Hilary terme last; and out of the common pleas not 63. And therefore it cannot be true, that so many have passed to the arches in that time, as is set downe in the article; and this article in that point doth exceed that which is set downe in the fourth article by almost 500, and therefore whosoever set this downe, was much forgetfull of that which was before set downe in the fourth article, and might well have forborne to lay so great a scandall upon the judges, as to affirme it to be a witting and willing error in them, as is set downe in this article.

7. New formes of Consultations, not expressing the cause of the granting of them.

*Objection.* Whereas upon the granting of Consultations, the judges in times past did therein expresse and acknowledge the causes so remitted to be of ecclesiasticall cognizance, which were presidents and judgements for the better assurance of ecclesiasticall judges, that they might afterward hold plea in such cases, and the like; and were also some barre as well to the temporall judges themselves, as also to many troublesome and contentious persons from either granting or seeking prohibitions in such cases, when so it did appeare unto them upon record, that consultations had been formerly granted in them; they the said temporall judges have now altered that course, and doe onely tell us, that they grant their consultations *certis de causis ipsos apud Westm<sup>o</sup> moventibus*, not expressing the same particularly, according to their ancient presidents. By meanes whereof the temporall judges leave themselves at liberty without prejudice, though they deny a consultation; at another time upon the same matter contentious persons are animated, finding no cause expressed, why they may not at another time seeke for a prohibition in the same cause; and the ecclesiasticall judges are left at large to thinke what they list, being no way instructed of the nature of the cause which procured the consultation: the reason of which alteration in such consultations, we humbly intreat your lordships, that the judges, for our better instruction, may be required to expresse.

*Answer.* If we find the declaration upon the surmise, upon which the prohibition is granted, not to warrant the surmise, then we forthwith grant a consultation in that forme which is mentioned, and that matter being mentioned in the consultation would be very long and cumbersome, and give the ecclesiasticall court little in-

formation, to direct them in any thing thereafter; and therefore in such cases, for brevity sake, it is usuall: but when the matter is to receive end by demurrer in law, or tryall, the consultation is in another forme. And it is their ignorance in the arches, that will not understand this, and we may not supply their defects with changing our formes of proceedings, wherein if they would take the advice of any learned in the lawes, they might soon receive satisfaction.

8. That Consultations may be obtained with lesse charge and difficulty.

*Objection.* The great expences and manifold difficulties in obtaining of Consultations are become very burthensome to those that seeke for them; for now a dayes, through the malice of the plaintifes in the temporall courts, and the covetous humours of the clerkes, Prohibitions are so extended and enlarged, without any necessity of the matter (some one prohibition containing more words and lines then forty prohibitions in ancient times) as by meanes thereof the party in the ecclesiasticall court, against whom the prohibition is granted, becomes either unwilling, or unable to sue for a consultation, it being now usuall and ordinary, that in the consultations must be recited *in eadem verbis* the whole tenour of the prohibition, be it never so long; for the which (to omit divers other fees, which are very great) he must pay for a draught of it in paper viii. d. the sheet, and for the entry of it xii. d. the sheet. Furthermore, the Prohibition is quicke and speedy; for it is ordinarily granted out of court by any one of the judges in his chamber, whereas the Consultation is very slowly and hardly obtained, not without (oftentimes) costly motions in open court, pleadings, demurrers, and sundry judiciall hearings of both parties, and long attendance for the space of two or three, nay, sometimes of eight or nine yeares before it be obtained. The inconvenience of which proceedings is so intolerable, as we trust, such as are to grant consultations will by your lordships meanes not onely doe it expeditely, and moderate the said fees; but also reforme the length of the said consultations, according to the formes of consultations in the Register.

*Answer.* It were fit the particular cause were set downe, whereupon the generall grievance, that is mentioned in this article, is grounded; and that done, it may have a full answer: for a Prohibition is grounded upon the libell, and the Consultation must agree therewith also; and therefore we doubt not, but the ground of this grievance, when it is well looked into, will grow from themselves in interlacing of much nugatory and unnecessary matter in their libells: and for the fees taken; wee assure our selves, none are taken, but such as are anciently due and accustomed; and it will appeare, that we have abridged the fees, and length of pleadings, and use no delays, but such as are of necessity, and we wish they would doe the like, and upon examination it will appeare of which side it grows,

that the fees or delays are so intolerable. And where in ancient time such as sued for tithes, would not sue but for things questionable, and never sought at their parishioners hands their tithes in other kinds then anciently they had been used to have been paid; how many turbulent ministers do infinitely vex their parishioners for such kinds of tithes as they never had, whereby many parishes have been much impoverished: and for example, we shall shew one record, wherein the minister did demand seventeen severall kinds of tithes, whereupon the partie suing a prohibition had eight or nine of them adjudged against the minister upon demurrer in law, and other passed against him by tryall, and this must of necessity grow to a matter of great charge; but where is the fault, but in the minister that gave occasion? and we will shew one other record, wherein the party confessed to some of us, that hee was to sue his parishioner but for a calfe and a goose; and that his proctor neverthelesse put in the libell or demand of tithes, of seven or eight things more then he had cause to sue for: this enlarged the Prohibition, and gave occasion of more expence then needed; and where is the fault of this, but in the ecclesiasticall courts? and as in these, so can wee approve in many others; and therefore wee must retort the cause and ground of this grievance upon themselves, as more particularly may appeare by the severall presidents to be shewed in this behalfe.

9. Prohibitions not to be granted upon frivolous suggestions.

*Objection.* It is a prejudice and derision to both his majesties ecclesiasticall and temporal jurisdictions, that many prohibitions are granted upon trifling and frivolous suggestions, altogether unworthy to proceed from the one, or to give any hinderance or interruption to the other: as upon a suit of tithes brought by a minister against his parishioner, a Prohibition flyeth out upon suggestion, that in regard of a special receipt, called a cup of butted beare, made by the great skill of the said parishioner to cure a grievous disease called a cold, which sorely troubled the said minister, all his tithes were discharged. And likewise a woman being convicted for adultery committed with one that suspiciously resorted to her house in the night time, the suggestion of a Prohibition in this case was, that 'omnia placita de nocturnis ambulationibus' belong to the king, &c. Also where a legatary sued for his legacy given in a will, the prohibition was, 'Quia omnia placita de donis et consessionibus spectant ad forum regium, et non ad forum ecclesiasticum, dummodo non sint de testamento et matrimonio;' as if a legacy were not *donatio de or in testamento*, with many other of like sort. The reformation of all which frivolous proceedings, so chargeable notwithstanding to many poore men, and the great hinderance of justice, we humbly referre to your lordships consideration.

*Answer.* We grant none upon frivolous suggestions, but for the case put, it is ridiculous

in the minister to make such a contract (if any such were) but that maketh not the contract void, but discovereth the unworthiness of the party that made the same, and yet no fault in granting the prohibition; but when it shall appeare unto us, that such a matter is suggested by fraud of any clerke or counsellor at law, we will not remit such offences, but will exclude such attorney from the court, and such counsellors from their practice at the barre. And if they will suggest adultery to one, against whom they prove but night walking, and doe adjudge him for it, we are in such a case to prohibite their proceedings: for that is a matter meerly pertinent to the temporall court; so, if it appeare hee hath entred the house as a thiefe, or a burglarer, and so in many other cases also. And if any surmise a legacy from the dead, where it was but a promise of payment in his life time, in that case such a suit is to be prohibited: but if in these cases the parties were named, then we might see the record, and thereupon be directed to shew upon what consideration these prohibitions were granted, otherwise we shall think that these are cases newly invented.

10. No Prohibition to be granted at his suit, who is plaintife in the spirituall court.

*Objection.* We suppose it to be no warrantable nor reasonable course, that prohibitions are granted at the suit of the plaintife in the ecclesiasticall court, who having made choice thereof, and brought his adversary there into tryall, doth by all intendment of law and reason, and by the usage of all other judiciall places conclude himself in that behalfe; and although he cannot be presumed to hope for helpe in any other court by way of prohibition, yet it is very ussual for every such person so proceeding onely of meere malice for vexation of the party, and to the great delay and hinderance of justice, to find favour for the obtaining of prohibitions, sometimes after two or three sentences, thereby taking advantage (as he must plead) of his owne wrong, and receiving aide from that court, which by his owne confession, he before did contemne; touching the equity whereof, we will expect the answer of the judges.

*Answer.* None may pursue in the ecclesiasticall court for that which the kings courts ought to hold plea of, but upon information thereof given to the king's courts, either by the plaintife, or by any meere stranger, they are to be prohibited, because they deale in that which appertaineth not to their jurisdiction, where if they would be carefull not to hold plea of that which appertaineth not to them, this needed not: and if they will proceed in the kings courts against such as pursue in the ecclesiasticall courts for matter temporall, that is to be inflicted upon them, which the quality of their offence requireth; and how many sentences howsoever are given, yet prohibitions thereupon are not of favour, but of justice to be granted.

11. No Prohibition to be granted, but upon due consideration of the libell.

*Objection.* It is (we are perswaded) a great abuse, and one of the chiefe grounds of the most of the former abuses, and many other, that prohibitions are granted without sight of the libell in the ecclesiasticall court; yea, sometimes before the libell be there exhibited, whereas by the lawes and statutes of this realme (as we thinke) the libell (being a briefe declaration of the matter in debate betweene the plaintife und defendant) is appointed as the only rule and direction for the due granting of a prohibition, the reason whereof is evident, viz. upon diligent consideration of the libell it will easily appeare, whether the cause belong to the temporall or ecclesiasticall cognizance, as on the other side without sight of the libell, the prohibition must needs range and roave with strange and forraigne suggestions at the will and pleasure of the devisor, nothing pertinent to the matter in demand: whereupon it cometh to passe, that when the judge ecclesiasticall is handling a matter of simony, a prohibition is grounded upon a suggestion, that the court tryeth 'placita de advocacionibus ecclesiarum, et de jure patronatus.' And when the libell containeth nothing but the demand of tithes wooll, and lamb, the prohibition surmiseth a custome of paying of tithes pigeons. So that if it may be made a matter of conscience to grant prohibitions only, where they doe rightly lye, or to preserve the jurisdiction ecclesiasticall united to his majesties crowne, it cannot (we hope) but seem necessary to your lordships, that due consideration be first had of the libell in the ecclesiasticall court, before any prohibition be granted.

*Answer.* Who hath an advowson granted to him for money, being sued for simony, shall have a Prohibition; and it is manifest, that though in the libell there appeare no matter to grant a prohibition, yet upon a collateral surmise the prohibition is to be granted: as where one is sued in a spirituall court for tithes of *silva cadua*, the party may suggest, that they were grosse or great trees, and have a prohibition, yet no such matter appeareth in the libell. So if one bee sued there for violent hands laid on a minister by an officer, as a constable, hee being sued there may suggest, that the plaintife made an affray upon another, and he to preserve the peace laid hands on him, and so have a prohibition. And so in very many other like cases, and yet upon the libell no matter appeareth why a prohibition should be granted: and they will never shew, that a custome to pay pigeons was allowed to discharge the payment of wooll, lamb, or such like.

12. No Prohibition to be granted under pretence, that one witness cannot be received in the ecclesiasticall court, to ground a judgment upon.

*Objection:* There is a new devised suggestion in the temporall courts commonly received and allowed, whereby they may at their will and

pleasure draw any cause whatsoever from the ecclesiasticall court: for example, many prohibitions have lately come forth upon this suggestion, that the lawes ecclesiasticall do require two witnesses, where the common law accepteth of one; and therefore it is *contra legem terra*, for the ecclesiasticall judge to insist upon two witnesses to prove his cause: upon which suggestion, although many consultations have been granted (the same being no way as yet able to warrant and maintaine a prohibition) yet because we are not sure, but that either by reason of the use of it, or of some future construction, it may have given to it more strength then is convenient, the same tending to the utter overthrow of all ecclesiasticall jurisdiction, we most humbly desire, that by your lordships good meanes, the same may be ordered to be no more used.

*Answer.* If the question be upon payment, or setting out of tithes, or upon the proove of a legacy, or marriage, or such like incidence, we are to leave it to the tryall of their law, though the party have but one witness; but where the matter is not determinable in the ecclesiasticall court, there lyeth a prohibition either upon, or without such a surmise.

13. No good suggestion for a Prohibition, that the cause is neither testamentary, nor matrimoniall.

*Objection.* As the former device last mentioned endeavoureth to strike away at one blow the whole ecclesiasticall jurisdiction; so there is another as usuall, or rather more frequent then the former, which is content to spare us two kind of causes to deale in, viz. testamentary, and matrimoniall: and this device insulteth mightily in many prohibitions, commanding the ecclesiasticall judge, that he the cause never so apparently of ecclesiasticall cognizance, yet hee shall surcease; for that is neither a cause testamentary, nor matrimoniall: which suggestion, as it grew at the first upon mistaking, and omitting, the words, *de bonis et catallis*, &c. as may appeare by divers ancient prohibitions in the Register; so it will not be denied, but that, besides those two, divers and sundry other causes are notoriously knowne to be of ecclesiasticall cognizance, and that consultations are as usually awarded, if suit in that behalfe be prosecuted, notwithstanding the said suggestion, as their prohibitions are easily granted; which, as an injury, marching with the rest to wound poore men, protract suits, and prejudice the courts ecclesiasticall, we desire that the judges will be pleased to redresse.

*Answer.* If they observe well the answer to the former objections, they may be thereby satisfied, that we prohibit not so generally as they pretend, nor doe in any wise deale further then we ought to doe, to the prejudice of that which appertaineth to that jurisdiction; but when they will deale with matters of temporall contracts, coloured with pretended ecclesiasticall matter, wee ought to prohibit them with that forme of prohibitions, mentioning, that it com-

cerneth not matter of marriage, nor testamentary: and they shall not find that we have granted any, but by form warranted, both by the Register, and by law: And when suggestions, carrying matter sufficient, appeare to us judicially to be untrue and insufficient, we are as ready to grant consultations as prohibitions: and we may not alter the forme of our prohibitions upon the conceits of ecclesiasticall judges, and prohibitions granted in the forme set downe in the article, are of that forme which by law they ought to be, and cannot be altered but by parliament.

14. No Prohibition upon surmise onely to be granted, either out of the kings bench, or common pleas, but out of the chancery onely.

*Objection.* Amongst the causes whereby the ecclesiasticall jurisdiction is oppressed with multitude of prohibitions upon surmises onely, this hath a chiefe place, in that through incroachment (as wee suppose) there are so many severall courts, and judges in them, that take upon them to grant the same, as in the kings bench five, and in the common pleas as many, the one court oftentimes crossing the proceedings of the other, whereas wee are perswaded, that all such kinds of prohibitions, being originall writs, ought onely to issue out of the chancery, and neither out of the kings bench, nor common pleas. And that this hath been the ancient practice in that behalfe, appeareth by some statutes of the realme, and sundry judgements at the common law; the renewing of which practice carrieth with it an apparent shew of great benefit and conveniency, both to the church, and to the subject: for if prohibitions were to issue onely out of one court, and from one man of such integrity, judgement, sincerity, and wisdom, as we are to imagine the lord chancellour of England to be endued with, it is not likely, that he would ever be induced to pre-judge and pester the ecclesiasticall courts with so many needlesse prohibitions; or, after a consultation, to send out in one cause, and upon one and the same libell not altered, prohibition upon prohibition, his owne act remaining upon record before him to the contrary. The further consideration whereof, when, upon the judges answer thereunto, it shall be more thoroughly debated, wee must referre to your lordships honourable direction and wisdom.

*Answer.* A strange presumption in the ecclesiasticall judges, to require that the kings courts should not doe that which by law they ought to doe, and alwayes have done, and which by oath they are bound to doe! and if this shall be holden inconvenient, and they can in discharge of us obtaine some act of parliament to take it from all other courts then the chancery, they shall doe unto us a great ease: but the law of the realme cannot be changed, but by parliament: and what reliefe or ease such an act may worke to the subject, wise men will some finde out and discern: but by these articles thus dispersed abroad, there is a generall

VOL. II.

unbeseeing aspersion of that upon the judges, which ought to have been forborn.

15. No Prohibition to be awarded under a false pretence, that the ecclesiasticall judges would hold no plea for customes for tithes.

*Objection.* Amongst many devices, whereby the cognizance of causes of tithes is drawn from ecclesiasticall judges, this is one of the chiefest, viz. concerning the tryall of customes in payment of tithes, that it must be made in a temporall court; for upon a quirke and false suggestion in Edward the fourth his time, made by some sergeants, a conceit hath risen (which hath lately taken greater strength then before) that ecclesiasticall judges will allow no plea of custome or prescription, either in *non decimando*, or in *modo decimandi*; and thereupon, when contentious persons are sued in the ecclesiasticall court for tithes, and doe perceive, that upon good prooffe judgement will be given against them, even in their owne pleas, sometimes for customes, doe presently, knowing their own strength with jurors in the country, fie unto Westminster hall, and there suggesting that they pleaded custome for themselves in the ecclesiasticall courts, but could not be heard, doe procure thence very readily a prohibition; and albeit the said suggestion be notoriously false, yet the party prohibited may not bee permitted to traverse the same in the temporall court, directly contrary to a statute made in that behalfe: neither may the judge prohibited proceed without danger of an attachment, though himselfe doe certainly know, either that no such custome was ever alledged before him, or being alledged, that he did receive the same, and all manner of proofes offered thereupon: which course seemeth the more strange unto us, because the ground thereof laid in Edward the fourth his time, as aforesaid, was altogether untrue, and cannot with any sound reason be maintained: divers statutes and judgements at the common law doe allow the ecclesiasticall courts to hold plea of such customes; all our bookes and generall learning doe therewith concurre, and the ecclesiasticall courts, both then and ever since, even until this day, have, and still doe admit the same, as both by our ancient and recent records it doth and may to any most manifestly appeare. And besides, there are some consultations to bee shewed in this very point, wherein the said surmise and suggestion, that the ecclesiasticall judges will heare no plea of customes, is affirmed to be insufficient in law to maintaine any such prohibition: and therefore we hope, that if we shall be able, notwithstanding any thing the judges shall answer thereunto, to justify the premisses, your lordships will be a meanes, that the abuses herein complained of, having so false a ground, may be amended.

*Answer.* The temporall courts have alwayes granted prohibitions as well in cases *de modo decimandi*, as in cases upon reall compositions, either in discharge of tithes, or the manner of tithing: for that *modus decimandi* had his originall ground upon some composition in the



kinde made, and all prescriptions and compositions in these cases are to be tryed at the common law, and the ecclesiasticall courts ought to be prohibited, if in these cases they had plea of tithes in kind: but if they will sue in the ecclesiasticall court *de modo decimandi*, or according to composition, then we prohibit them not: and the cause why the ecclesiasticall judges find fault herewith, is, because many ministers have growne of late more troublesome to their parishioners, then in times past; and thereby worke unto these courts more commodity, whereas in former ages they were well contented to accept that which was used to be paid, and not to contend against any prescription or composition; but now they grow so troublesome to their neighbours, as were it not for the prohibition (as may appeare by the presidents before remembred) they would soone overthrow all prescriptions and compositions that are for tithes, which doth and would breed such a generall garboile amongst the people, as were to be pitied, and not to be permitted. And where they say, there bee many statutes that take away these proceedings from the temporall courts, they are much deceived; and if they looke well unto it, they shall find even the same statutes, they pretend, to give way unto it. And it is strange they will affirme so great an untruth, as to say, they are not permitted to traverse the suggestion in the temporall court; for both the law and daily practice doth allow it.

16. The Customes for Tithes are onely to be tried in the ecclesiasticall courts, and ought not to be drawne thence by Prohibitions.

*Objection.* Although some indiscreet ecclesiasticall judges, either in the time of king Edward the 4th, or Edward the 6th, might, against law, have refused in some one cause to admit a plea of custome of tithes, to the prejudice of some person whom he favoured, and might thereby peradventure have given occasion of some one prohibition, but whether they did so or no, the suggestion of a lawyer for his fee is no good prooffe, yet forasmuch as by three statutes made since that time, wherein it is ordained, viz. both that tithes should be truly paid, according to the custome, and the tryall of such payments, according to custome upon any default or opposition, should be tryed in the kings ecclesiasticall courts, and by the kings ecclesiasticall lawes, and not otherwise, or before any other judges then ecclesiasticall, we most humbly desire your lordships, that if according to the said lawes we be most ready to heare any plea of custome your lordships would be pleased, that the judges may not be permitted hereafter to grant any prohibitions upon such false surmises; or if they shall answer, that we mistake the said statutes, that then the said three statutes may bee thoroughly debated before your lordships, lest under pretence of a right, which they challenge, to expound these kind of statutes, the truth may be

over-borne, and poore ministers still left unto country tryalls, there to justifie the rights of their tithes before unconscionable jurors in these cases.

*Answer.* The answer to the former article may serve for this; and where the objection seemeth to impeach the tryall at the common law by jurors, we hold, and shall be able to approve it to be a farre better course for matter of fact upon the testimonie of witnesses, sworne *viva voce*, then upon the conscience of any one particular man, being guided by paper prooffes; and we never heard it excepted unto heretofore, that any statute should be expounded by any other then the judges of the land; neither was there ever any so much over-seen, as to oppose himselfe against the practice of all ages to make that question, or to lay any such unjust imputation upon the judges of the realme.

17. No Prohibition to be granted, because the treble value of tithes is sued for in the ecclesiasticall court.

*Objection.* Whereas it appeareth plainly by the tenour of the statute of Edw. 6, cap. 13, that judges ecclesiasticall, and none other, are to heare and determine all suits of tithes, and other duties for the same, which are given by the said act; and that nothing else is added to former lawes by that statute, but onely certaine penalties, for example, one of treble value: forasmuch as the said penalty, being onely devised as a meane to worke the better payment of tithes, and for that there are no words used in the said statute to give jurisdiction to any temporall court, we hold it most apparant, that the said penalty of treble value, being a duty given in the said statute for non-payment of tithes, cannot bee demanded in the temporall court, but onely before the ecclesiasticall judges, according to the expresse words of the said statute: and the rather, we are so perswaded, because it is most agreeable to all lawes and reason, that where the principall cause is to bee decided, there all things incident and accessory are to bee determined. Besides, it was the practice of all ecclesiasticall courts in this realme, immediately after the making of the said statute, and hath continued so ever since, to award treble damages, when there hath been cause, without any opposition, untill about ten yeares past, when, or about which time, notwithstanding the premisses, the temporall judges began to hold plea of treble value, and doe now accompt it so proper and peculiar to their jurisdictions, as by colour thereof they admit suits originally for the said penalty, and doe make thereby, very absurdly, the penalty of treble value to bee principall, which is indeed but the accessory; and the cognizance of tithes to bee but the accessory, which in all due construction is most evident to be the principall, thereby wholly perverting the true meaning and drift of that statute, whereupon if in the spirituall court the treble value be now demanded by the libell as a duty, ac-

ording to that statute, or that sentence be awarded directly and sincerely upon the said libell, presently, as contentious persons are disposed, a prohibition is grauted, and some sharp words are further used, as if the ecclesiasticall judges were in some further danger for holding of these kind of pleas: and therefore we most humbly desire, that if the judges shall insist in their answers upon such their straining of the said statute, your lordships will be pleased to heare the same further debated by us with them.

*Answer.* If they observe well the statute, they shall find, that the ecclesiasticall court is by that statute to hold plea of no more, then that which is specially thereby limited for them to hold plea of; and the temporall court not restrained thereby, to hold plea of that which is not limited unto the ecclesiasticall court by that act, and of that they had jurisdiction of before: and the forfeiture of double value is expresly limited to be recovered before the ecclesiasticall judges; but where a forfeiture is given by an act generally not limiting where to be recovered, it is to be recovered in the kings temporall courts, and the cause why it is so divided, seemeth to be for that, where by that act, temporall men were to sue for their tithes in the ecclesiasticall court, where it was then presumed they were to have no great favour: therefore the party grieved might, if he would, pursue for the forfeiture of the treble value in the temporall court, where hee was to recover no tithes; but if he would sue where he might also recover the tithes, then hee would pursue for the double value: for that is specially appointed to be recovered in the ecclesiasticall court, but not the treble value. And although they alledge, that they sometimes used to maintaine suit for the treble value, yet as soon as thnt was complained of to the kings courts, they gave remedy unto it as appertained.

18. No Prohibition to be awarded, where the person is stopped from carrying away of his tithes by him that setteth them forth.

*Objection.* As the said statute of Edward the 6th last mentioned assigneth a penalty of treble value, if a man upon pretence of custome, which cannot be justified, shall take away his corne before he hath set out his tithes; so also in the said statute it is provided, that if any man having set out his tithes, shall not afterwards suffer the parson to carry them away, &c. he shall pay the double value thereof so carried away, the same to be recovered in the ecclesiasticall court. Howbeit the clearnesse of the statute in this point, notwithstanding meanes are found to draw this cause also from the ecclesiasticall court; for such as of hatred towards their ministers are disposed to vex them with suits at the common law (where they finde more favour to maintaine their wrangling, then they can hope for in the ecclesiasticall court) will not faile to set out their tithes before witnesses, but not with any mean-

ing or intent that the parson shall ever carry them away; for presently thereupon they will cause their owne servants to load them away to their owne barnes, and leave the parson as he can to seek his remedy; which if he do attempt in the ecclesiasticall court, out cometh a Prohibition, suggesting, that upon severance and setting forth of the tenth part from the nine, the same tenths were presently by law in the parsons possession, and being thereupon become a lay chattell, must be recovered by an action of trespasse at the common law, whereas the whole pretence is grounded upon a meere perverting of the statute, which doth both ordain, that all tithes shall be set forth truly and justly without fraud and guile; and that also the parson shall not be stopped or hindered from carrying them away, neither of which conditions are observed when the farmer doth set them forth, meaning to carry them away himselfe, for that is the fraudulent setting of them out; and also, when accordingly hee taketh them away to his own use; for thereby hee stoppeth the parson to carry them away: and consequently the penalty of this offence is to be recovered in the said ecclesiasticall courts, according to the words of the said statute, and not in any court temporall: wherefore we most humbly desire your lordships, that either the judges may make it apparant to your lordships, that we mislike this statute in this point, or that our ecclesiasticall courts may ever hereafter be freed from such kinds of prohibitions.

*Answer.* For the matter of this article it is answered before, and where the truth of the case is, that he that ought to pay prediall tithes, doth not divide out his tithes, or doth in any wise interrupt the parson or his deputy, to see the dividing or setting of them out: that appearing unto us judiciously, we maintaine no prohibition upon any suit there for the double value, but if after the tithes severed, the parson will sell the tithes to the party that divided them; upon the surmise thereof, we doe, and ought to grant a prohibition; but if that surmise doe prove untrue, we do as readily grant a consultation, and the party seeking the same, is, according to the statute, to have his double costs and damages.

19. No prohibition to be granted upon any incident plea in an ecclesiasticall cause.

*Objection.* We conceive it to be great injury to his majesties ecclesiasticall jurisdiction, that prohibitions are awarded to his ecclesiasticall courts upon every by, and every incident plea or matter alledged there in barre, or by way of exception, the principall cause being undoubtedly of ecclesiasticall cognizance: for example, in suit for tithes in kind, if the limits of the parish, agreements, compositions, and arbitrations, as also whether the minister that sueth as parson, be indeed parson or vicar; doe come in debate by way of barre, although the same particulars were of temporall cognizance (as some of them wee may boldly say are

not) yet they were in this case examinable in the ecclesiasticall court, because they are matters incident, which come not in that case finally to be sentenced and determined, but are used as a meane and furtherance for the decision of the maine matter in question. And so the case standeth in other such incident pleas by way of barre; for otherwise either party in every cause might at his pleasure, by pleading some matter temporall by way of exception, make any cause ecclesiasticall whatsoever subject to a prohibition, which is contrary to the reason of the common law, and sundry judgments thereupon given, as wee hope the judges themselves will acknowledge, and thereupon yeeld to have such prohibitions hereafter restrained.

*Answer.* Matters incident that fall out to be meere temporall, are to be dealt withall in the temporall, and not in the ecclesiasticall court, as is before particularly set downe in the eleventh article.

20. That no temporall judges, under colour of authority to interpret statutes, ought, in favour of their Prohibitions, to make causes ecclesiasticall to be of temporall cognizance.—

*Objection.* Although of late dayes it hath been strongly held by some, that the interpretation of all statutes whatsoever doe belong to the judges temporall, yet we suppose, by certain evil effects, that this opinion is to bee bounded within certaine limits; for the strong conceit of it hath already brought forth this fruit, that even those very statutes which doe concerne matters meere ecclesiasticall, and were made of purpose with great caution, to preserve, enlarge, and strengthen the jurisdiction ecclesiasticall, have been by colour thereof turned to the restraining, weakening, and utter overthrow of the same, contrary to the true intent and meaning of the said statutes: as for example (besides the strange interpretation of the statutes before mentioned, for the payment of tithes) when parties have been sued in the ecclesiasticall courts, in case of an incestuous marriage, a prohibition hath been awarded, suggesting, under pretence of a statute in the time of king Hen. 8. that it appertaineth to the temporall courts, and not to the ecclesiasticall, to determine what marriages are lawfull, and what are incestuous by the word of God. As also a minister, being upon point of deprivation for his insufficiency in the ecclesiasticall court, a prohibition was granted, upon suggestion that all pleas of the fitnessse, learning, and sufficiency of ministers belong only to the kings temporall courts, relying, as wee suppose, upon the statute of 13 Eliz. by which kind of interpretation of statutes, if the naming, disposing, or ordering of causes ecclesiasticall in a statute shall make the same to be of temporall cognizance, and so abolish the jurisdiction of the ecclesiasticall court, without any further circumstances, or expresse words to warrant the same, it followeth, that foras-

much as the common Book and Articles of religion are established and confirmed by severall acts of parliament, the temporall judges may challenge to themselves an authority to end and determine of all causes of faith and religion, and to send out their prohibitions, if any ecclesiasticall judge shall deale or proceed in any of them: which conceit, how absurd it is, needeth no prooffe, and teacheth us, that when matters meere ecclesiasticall are comprized in any statute, it doth not therefore follow, that the interpretation of the said matters doth belong to the temporall judges, who by their profession, and as they are judges, are not acquainted with that kind of learning: hereunto, when we shall receive the answer of the judges, we shall be ready to justifie every part of this article.

*Answer.* If any such have slipt, as is set downe in this article, without other circumstances to maintaine it, we make no doubt, but when that appeared to the king's temporall court, it hath been presently remitted; and yet there be cases, that we may deale both with marriages and matters of deprivation, as where they will call the marriage in question after the death of any of the parties, the marriage may not then be called in question, because it is to bastard and disinherit the issues, who cannot so well defend the marriage, as the parties both living themselves might have done; and so is it, if they will deprive a minister not for matter appertaining to the ecclesiasticall cognizance, but for that which doth meere belong to the cognizance of the king's temporall courts. And for the judges expounding of statutes that concern the ecclesiasticall government or proceedings, it belongeth unto the temporall judges; and wee thinke they have been expounded as much to their advantage, as either the letter or intencion of lawes would or could allow of. And when they have been expounded to their liking, then they could approve of it; but if the exposition be not for their purpose, then will they say, as now they doe, that it appertaineth not unto us to determine of them.

21. That persons imprisoned upon the writ of *de excommunicato capiendū* are unduly delivered, and Prohibitions unduly awarded for their greater security.

*Objection.* Forasmuch as imprisonment upon the writ of *excommunicato capiendū* is the chiefest temporall strength of ecclesiasticall jurisdiction, and that by the lawes of the realme none so committed for their contempt in matters of ecclesiasticall cognizance, ought to be delivered untill the ecclesiasticall courts were satisfied, or caution given in that behalfe, we would gladly be resolved by what authority the temporall judges do cause the sherifes to bring the said parties into their courts, and by their owne discretions set them at liberty, without notice thereof first given to the ecclesiasticall judges, or any satisfaction made either to the parties at whose suit he was imprisoned, or the eccle-

stistical court, where certaine lawfull fees are due: and after all this, why doe they likewise send out their prohibitions to the said court, commanding, that all censures against the said parties shall be remitted, and that they be no more proceeded with for the same causes in those courts. Of this our desire, we hope your lordships do see sufficient cause, and will therefore procure us from the judges some reasonable answer.

*Answer.* We affirme, if the party excommunicate be imprisoned, wee ought upon complaint to send the kings writ for the body and the cause, and if in the returne no cause, or no sufficient cause appeare, then we doe (as we ought) set him at liberty; otherwise, if upon removing the body, the matter appeare to be of ecclesiasticall cognizance, then we remit him againe; and this we ought to doe in both cases; for the temporall courts must alwaies have an eye, that the ecclesiasticall jurisdiction usurp not upon the temporall.

22. The King's authority in ecclesiasticall causes is greatly impugned by Prohibitions.

*Objection.* We are not a little perplexed touching the authority of his majestie in causes ecclesiasticall, in that we find the same to be so impeached by Prohibitions, that it is in effect thereby almost extinguished; for it seemeth, that the innovating humour is growne so rank, and that some of the temporall judges are come to be of opinion, that the commissioners appointed by his majesty for his causes ecclesiasticall, having committed unto them the execution of all ecclesiasticall jurisdiction annexed to his majesties imperiall crowne, by virtue of an act of parliament made in that behalfe, and according to the tenour and effect of his majesties letters patents, wherein they are authorised to imprison, and impose fines, as they shall see cause, cannot otherwise proceed, the said act and letters patents notwithstanding, then by ecclesiasticall censures onely: and thereupon of latter dayes, whereas certaine lewd persons (two for example sake) one for notorious adultery and other intolerable contempts, and another for abusing of a bishop of this kingdome with threatenng speeches, and sundry railing termes, no way to be endured, were thereupon fined and imprisoned by the said commissioners, till they should enter into bonds to performe further orders of the said court; the one was delivered by an *habeas corpus* out of the kings bench, and the other by a like writ out of the common pleas: and sundry other prohibitions have been likewise awarded to his majesties said commissioners upon these suggestions, viz. that they had no authority either to fine or imprison any man; which innovating conceit being added to this that followeth, That the writ of *de excommunicato capiendo* cannot lawfully be awarded upon any certificate or *significavit* made by the said commissioners, wee find his majesties said supreme authority in causes ecclesiasticall, so largely amplified in sundry statutes, to be alto-

gether destitute in effect of any meantes to uphold it, if the said proceedings by temporall judges shall be by them maintained and justified; and therefore wee most humbly desire your lordships, that they may declare themselves herein, and be restrained hereafter, if there be cause found, from using the kings name in their prohibitions, to so great prejudice of his majesties said authority, as in debating the same before your lordships will hereafter more fully appeare.

*Answer.* We doe not, neither will we in any wise impugne the ecclesiasticall authority in any thing that appertaineth unto it; but if any by the ecclesiasticall authority commit any man to prison, upon complaint unto us that he is imprisoned without just cause, we are to send to have the body, and to be certified of the cause; and if they will not certifie unto us the particular cause, but generally, without expressing any particular cause, whereby it may appeare unto us to be a matter of the ecclesiasticall cognizance, and his imprisonment be just, then we doe and ought to deliver him: and this is their fault, and not ours. And although some of us have dealt with them to make some such particular certificate to us, whereby wee may bee able to judge upon it, as by law they ought to doe, yet they will by no meanes doe it; and therefore their error is the cause of this, and no fault in us: for if we see not a just cause of the parties imprisonment by them, then we ought, and are bound by oath to deliver him.

23. No Prohibition to be granted, under pretence to reforme the manner of proceedings by the ecclesiasticall lawes, in causes confessed to be of ecclesiasticall cognizance.

*Objection.* Notwithstanding that the ecclesiasticall jurisdiction hath been much impeached heretofore through the multitude of prohibitions, yet the suggestions in them had some colour of justice, as pretending, that the judges ecclesiasticall dealt with temporall causes: but now, as it seemeth, they are subject to the same controlments, whether the cause they deale in be either ecclesiasticall or temporall, in that prohibitions of late are wrestled out of their owne proper course, in the nature of a writ of error, or of an appeal: for, whereas the true and onely use of a prohibition is to restraine the judges ecclesiasticall from dealing in a matter of temporall cognizance, now prohibitions are awarded upon these surmises, viz. that the libell, the articles, the sentence, and the ecclesiasticall court, according to the ecclesiasticall lawes, are grievous and insufficient, though the matter there dealt withall be merely ecclesiasticall: and by colour of such prohibitions, the temporall judges to alter and change the decrees and sentences of the judges ecclesiasticall, and to moderate the expences taxed in the ecclesiasticall courts, and to award consultations upon conditions: as for example, that the plaintife in the ecclesiasticall court shall except

of the one halfe of the costs awarded, and that the register shall lose his fees; and that the said plaintife shall be contented with the payment of his legacy, which was the principall sued for, and adjudged due unto him at such day, as they the said temporall judges shall appoint, or else the prohibition must stand. And also where his majesties commissioners, for causes ecclesiasticall, have not been accustomed to give a copy of the articles to any party, before he hath answered them; and that the statute of Hen. 5. touching the delivering of the libell, was not onely publikely adjudged in the kings beuch, not to extend to the deliverance of articles, where the party is proceeded with *ex officio*, but likewise imparted to his majestie, and afterwards divulged in the starre-chamber, as a full resolution of the judges, yet within 4 or 5 moneths after, a prohibition was awarded to the said commissioners out of the kings bench, upon suggestion that the party ought to have a copy of the articles, being called in question *ex officio*, before he should answer them; and notwithstanding that a motion was made in full court shortly after for a consultation, yet an order was entred, that the prohibition should stand untill the said partie had a copy of the said articles given him; which novell and extraordinary courses doe seem very strange unto us, and are contrary not onely to the whole course of his majesties lawes ecclesiasticall, but also to the very maximes and judgement of the common law, and sundry statutes of this realme, as wee shall be ready to justifie before your lordships, if the judges shall endeavour to maintaine these their proceedings.

*Answer.* To this we say, that though where parties are proceeded withall *ex officio*, there needeth no libell, yet ought they to have the cause made knowne unto them for which they are called *ex officio*, before they be examined, to the end it may appeare unto them before their examination, whether the cause be of ecclesiasticall cognizance, otherwise they ought not to examine them upon oath. And touching the rest of this article, they doe utterly mistake it.

24. That temporall Judges are sworne to defend the Ecclesiasticall Jurisdiction.

*Objection.* We may not omit to signifie unto your lordships, that, as wee take it, the temporall judges are not onely bound by their ancient oath, that they shall doe nothing to the disherison of the crown, but also by a latter oath unto the king's supremacy, wherein they doe sweare, that, to their power, they will assist and defend all jurisdictions, priviledges, preheminences, and authorities united and annexed to the imperiall crowne of this realme; in which words the ecclesiasticall jurisdiction is specially aimed at: so that whereas they doe oftentimes insist upon for their oath, for doing of justice in temporall causes, and do seldome make mention of the second oath taken by them for the defence of the ecclesiasticall juris-

dition, with the rights and immunities belonging to the church; we think, that they ought to weigh their said oaths better together, and not so farre to extend the one, as that it should in any sort prejudice the other: the due consideration whereof (which we most instantly desire) would put them in mind, any suggestion to the contrary notwithstanding, to be as careful not to doe any thing that may prejudice the lawfull proceedings of the ecclesiasticall judges in ecclesiasticall causes, as they are circumspect not to suffer any impeachment, or blemish of their owne jurisdictions and proceedings in causes temporall.

*Answer.* We are assurcd, than none can justly charge any of us with violating our oaths, and it is a strange part to taxe judges in this manner, and to lay so great an imputation upon us; and what scandall it will be to the justice of the realme to have so great levity, and so foule an imputation laid upon the judges, as is done in this, is too manifest. And we are assured it cannot be shewed, that the like hath been done in any former age; and for lesse scandalls then this of the justice of the realme, divers have been severely punished.

25. That Excommunication is as lawfull, as Prohibition, for the mutual preservation of both his majesties supreme jurisdiction.

*Objection.* To conclude, wherens for the better preserving of his majesties two supreme jurisdictions before mentioned, viz. the ecclesiasticall and the temporall, that the one might not usurp upon the other, two meanes heretofore have of auncient time been ordained, that is to say, the censure of Excommunication, and the writ of Prohibition; the one to restraine the incroachment of the temporall jurisdiction upon the ecclesiasticall, the other of the ecclesiasticall upon the temporall, we most humbly desire your lordships, that by your meanes the judges may be induced to resolve us, why excommunications may not as freely be put in ure for the preservation of the jurisdiction ecclesiasticall, as prohibitions are, under pretence to defend the temporall, especially against such contentious persons, as doe wittingly and willingly, upon false and frivolous suggestions, to the delay of justice, vexation of the subjects, and great scandall of ecclesiasticall jurisdictions, daily procure, without feare either of God or men, such undue prohibitions, as we have heretofore mentioned.

*Answer.* The excommunication cannot be gain-said, neither may the prohibition be denied upon the surmise made, that the matter pursued in the ecclesiasticall court is of temporall cognizance, but as soon as that shall appeare unto us judicially to be false, we grant the consultation.

For the better satisfaction of his majesty, and your lordships, touching the objections delivered against Prohibitions, we have thought good to set downe (as may be perceived by that which hath been said) the ordinary proceeding in his majesties courts therein: where-

by it may appeare both what the judges doe, and ought to doe in those causes; and the ecclesiastical judges may doe well to consider, what issue the course they herein hold can have in the end: and they shall find it can be no other, but to cast a scandall upon the justice of the realme; for the judges doing but what they ought, and by their oaths are bound to doe, it is not to be called in question; and if it fall out, that they erre in judgement, it cannot otherwise be reformed, but judicially in a

superiour court, or by parliament.—Subscribed by all the judges of England, and the barons of the exchequer, Pasch. 4 Jacobi, and delivered to the lord chancellour of England.

Which answers and resolutions, although they were not enacted by authority of parliament, as our statute of *Articuli Cleri* in 9 E. 2. was; yet, being resolved unanimously by all the judges of England, and barons of the exchequer, are for matters in law of highest authority next unto the court of parliament\*.

\* Mr. Justice Foster, before he was made a judge, published a Tract entitled "An Examination of the Schism of Church power, laid down in the *Codex Juris Ecclesiastici Anglicani*, &c." It is ably written, and contains much learning relative to the ecclesiastical law and history of England, but it is composed with too much spleen towards bishop Gibson, the author of the *Codex*. This Case is much considered in it, and the following passage is thought worth insertion here: "It may easily be made appear, if it shall be thought necessary, that Prohibitions have gone from the temporal to the spiritual courts, as from a superior to an inferior jurisdiction, ever since the two jurisdictions have been separated; and, indeed, the notion of a subordination of jurisdictions implies that it is the province of the one to restrain and correct the excesses of the other. This supremacy of the Courts of Westminster-hall over the Ecclesiastical, hath in all ages given great disturbance to that part of the Clergy who have affected an absolute independance on the state. The arguments, indeed, which have been employed against it, have been different, as the temper of the times and the circumstances of the Church have varied. But the point in view hath been generally the same, the independance of the Church. In popish times, when the Church could scold and thunder with impunity, this independency was claimed in direct terms; and the king and all his civil ministers were admonished not to disturb the Church in the exercise of spiritual discipline by prohibitions and attachments grounded on them, under pain of excommunication, suspension, and interdict. But since the supremacy of the crown in ecclesiastical causes hath been esteemed a fundamental principle of our constitution, that very supremacy hath been thought a sufficient argument for overthrowing the ancient jurisdiction of the temporal, over the spiritual courts. Archbishop Bancroft made this use of the regal supremacy, in the Articles he exhibited to the lords of the Privy Council against the Judges of Westminster Hall upon the head of Prohibitions. His lordship (Gibson bishop of London) hath adopted the argument, and pressed it with all the advantage it is capable of: 'The authority of spiritual courts and temporal courts of law flowing equally from the crown, and it being of so great importance to the good of the community that each be kept within its proper bounds, it seems by no means agreeable to that equality of original

and descent, nor a way in any degree likely to attain that important end, that the one should be set as a judge over the other, and prescribe bounds to it and take to itself the cognizance of whatever matters itself shall please. I shall not say how well the bounds in the present case are preserved upon that foot, but certainly it would not be thought a good expedient for preserving bounds of any other kind to empower one to judge for both (i. e. to empower him to encroach upon his neighbour and enlarge his own bounds at pleasure) as oft as any controversy shall arise.'—The force of this reasoning from the equality of original, I think lies here: the temporal and spiritual courts flow equally (or rather alike) from the crown, or are equal in point of original and descent; therefore they are or ought to be equal in point of jurisdiction; the one ought not to have a restrictive power over the other. If this be not his lordship's inference how can it be said that the setting one of the courts as judge over the other seems not agreeable to their equality of original and descent? But if his lordship intended to infer an equality in point of jurisdiction from what he is pleased to call an equality of original and descent, he will be pleased to apply the same reasoning to every other court in the kingdom from the high court of Parliament to the court of Pipowder, and if it should appear that they all flow equally or alike from the same original law and immemorial custom, I fear his argument will conclude against any manner of subordination among them in point of jurisdiction, which would be carrying the matter much farther than he intended; though, I confess, I do not know where to stop, if the argument grounded on the equality of original, with regard to the spirituals and temporals, concludes at all in favour of the former. But his lordship has favoured us with another train of reasoning against Prohibitions, grounded on the seeming absurdity and inconvenience of setting one court as judge over the other, in questions touching the bounds of their several jurisdictions: and if the case was, as his lordship represents it, the absurdity and inconvenience would be great indeed, if the temporal court might lawfully take to itself the cognizance of whatever matters itself shall please; or was empowered to encroach upon the spiritual, and to enlarge its own bounds at pleasure: if this, I say, was implied in the right claimed by the temporal courts, of giving remedy against the encroachments of the ecclesiastical,

(which is all that is intended by the writ of Prohibition) the absurdity would be as great as his lordship endeavours to represent it. But his lordship will forgive me, if I say the absurdity lies only in his state of the case. Our excellent constitution is not chargeable with it. The bounds of ecclesiastical jurisdiction are already settled by law and immemorial custom, to which the judges are obliged by oath and by the duty of their place to conform themselves. The granting Prohibitions is not a power to be exercised or not at the pleasure of the court. It is not the court's taking to itself the cognizance of whatever matters itself shall please, or enlarging its own jurisdiction, at pleasure; no, it is a matter of mere right, in which the judges are to be guided by the known laws of the land,

and not by will and pleasure."—See also "A short View of the Conduct of the English Clergy so far as relates to civil affairs from the Conquest to the Revolution," published 1737, and said to be written by sir Edmund Thomas, bart. Collier argues resolutely against the authority of these determinations of the Judges. He maintains that the questions arising out of a contest for jurisdiction between the temporal and ecclesiastical judges ought not to be determined by either of those parties. Against lord Coke, he cites lord Co. 8 Rep. 117 et seq.; and other common law authorities. See Coll. Eccl. Hist. vol. 1, 510, et seq.: vol. 2, 688. Repeated instances of a collision between the Judges, and Bishops occur in lord Coke's 12th Report.

80. The Trials of ROBERT WINTER, THOMAS WINTER, GUY FAWKES, JOHN GRANT, AMBROSE ROOKWOOD, ROB. KEYES, THOMAS BATES, and SIR EVERARD DIGBY, at Westminster, for High Treason, being Conspirators in the Gunpowder-Plot: \*  
3 JAC. I. 27th Jan. A. D. 1606.

THE Commissioners were, the Earls of Nottingham, Suffolk, Worcester, Devonshire, Northampton, and Salisbury; the Lord Chief Justice of England, sir John Popham, the Lord Chief Baron of the Exchequer, Thomas Fleming; and sir Peter Warburton, knight, one of the Justices of the Common-Pleas.

The Effect of the INDICTMENT.

THAT whereas our sovereign lord the king had, by the advice and assent of his council, for divers weighty and urgent occasions concerning his majesty, the state, and defence of the church and kingdom of England, appointed a Parliament to be holden at his city of Westminster; That Henry Garnet, Superior of the Jesuits within the realm of England, (called also by the several names of Wally, Darcy, Roberts, Farmer, and Henry Philips) Oswald Tesmond, Jesuit, otherwise called Oswald Greenwell, John Gerrard, Jesuit, (called also by the several names of Lec and Brooke) Robert Winter, Thomas Winter, gentlemen, Guy Fawkes gent. otherwise called Guy Johnson, Robert Keyes gent. and Thomas Bates yeoman, late servant to Robert Catesby esquire; together with the said Robert Catesby, and Thomas Percy esquires, John Wright and Christopher Wright gentlemen, in open Rebellion and Insurrection against his majesty, lately slain, and Francis Tresham esq. lately dead; as false Traitors against our said sovereign lord the king, did traitorously meet and assemble themselves together; and being so met, the said Henry Garnet, Oswald Tesmond, John Gerrard, and other Jesuits, did

maliciously, falsely, and traitorously move and persuade as well the said Thomas Winter, Guy Fawkes, Robert Keyes, and Thomas Bates, as the said Robert Catesby, Thomas Percy, John Wright, Christopher Wright, and Francis Tresham, That our said sovereign lord the king, the nobility, clergy, and whole commonalty of the realm of England, (papists excepted) were heretics; and that all heretics were accursed and excommunicate; and that none heretic could be a king; but that it was lawful and meritorious to kill our said sovereign lord the king, and all other heretics within this realm of England, for the advancing and enlargement of the pretended and usurped authority and jurisdiction of the bishop of Rome, and for the restoring of the superstitious Romish religion within this realm of England. To which traitorous persuasions, the said Thomas Winter, Guy Fawkes, Robert Keyes, Thomas Catesby, Robert Catesby, Thomas Percy, John Wright, Christopher Wright, and Francis Tresham, traitorously did yield their assents; And that thereupon the said Henry Garnet, Oswald Tesmond, John Gerrard, and divers other Jesuits; Thomas Winter, Guy Fawkes, Robert Keyes, and Thomas Bates, as also the said Robert Catesby, Thomas Percy, John Wright, Christ. Wright, and Francis Tresham, traitorously amongst themselves did conclude and agree, with Gunpowder, as it were with one blast, suddenly, traitorously and barbarously to blow up and tear in pieces our said sovereign lord the king, the excellent, virtuous, and gracious queen Anne, his dearest wife, the most noble prince Henry, their eldest son, and future hope and joy of England; and the lords spiritual and temporal, the reverend judges of the realm, the knights, citizens and

\* For the Proceedings in Parliament respecting this Plot, see 1 Cobb. Parl. Hist. 1052, et seq.

burgesses of parliament, and divers other faithful subjects and servants of the king in the said parliament, for the causes aforesaid to be assembled in the house of parliament; and all them, without any respect of majesty, dignity, degree, sex, age or place, most barbarously and more than beastly, traitorously, and suddenly to destroy and swallow up. And further did most traitorously conspire and conclude among themselves, That not only the whole royal issue-male of our said sovereign lord the king should be destroyed and rooted out; but that the persons aforesaid, together with divers other false traitors, traitorously with them to be assembled, should surprize the persons of the noble ladies Elizabeth and Mary, daughters of our said sovereign lord the king, and falsely and traitorously should proclaim the said lady Elizabeth to be queen of this realm: And thereupon should publish a certain traitorous Proclamation in the name of the said lady Elizabeth; wherein, as it was especially agreed by and between the said conspirators, That no mention should be made at the first, of the alteration of religion established within this realm of England; neither would the said false traitors therein acknowledge themselves to be authors, or actors, or devisers of the aforesaid most wicked and horrible treasons, until they had got sufficient power and strength for the assured execution and accomplishment of their said conspiracy and treason; and that then they would avow and justify the said most wicked and horrible treasons, as actions that were in the number of those, *quæ non laudantur, nisi peracta*, which be not to be commended before they be done: but by the said feigned and traitorous proclamation they would publish, That all and singular abuses and grievances within this realm of England, should, for satisfying of the people, be reformed. And that as well for the better concealing, as for the more effectual accomplishing of the said horrible treasons, as well the said Thomas Winter, Guy Fawkes, Robert Keyes, and Thomas Bates, as the said Robert Catesby, Thomas Percy, John Wright, Christ. Wright, and Francis Tresham, by the traitorous advice and procurement of the said Henry Garnet, Oswald Tesmond, John Gerrard, and other Jesuits, traitorously did further conclude and agree, that as well the said Thomas Winter, Guy Fawkes, Robert Keyes, and Thomas Bates, as the said Robert Catesby, Thomas Percy, John Wright, Christ. Wright, and Francis Tresham, thereupon severally and traitorously should receive several corporal Oaths upon the holy Evangelists, and the Sacrament of the Eucharist, That they the treasons aforesaid would traitorously conceal and keep secret, and would not reveal them, directly or indirectly, by words or circumstances, nor ever would desist from the execution and final accomplishment of the said treasons, without the consent of some three

VOL. II.

of the aforesaid false traitors first in that behalf traitorously had: And that, thereupon as well the said Thomas Winter, Guy Fawkes, Robert Keyes, and Thomas Bates, as the said Robert Catesby, Thomas Percy, John Wright, Christ. Wright, and Francis Tresham, did traitorously take the said several corporal Oaths severally, and did receive the Sacrament of the Eucharist aforesaid, by the hands of the said Henry Garnet, John Gerrard, Oswald Tesmond, and other Jesuits. And further, that the said Thomas Winter, Guy Fawkes, Robert Keyes, and Thomas Bates, together with the said Robert Catesby, Thomas Percy, John Wright, Christ. Wright, and Francis Tresham, by the like traitorous advice and counsel of the said Henry Garnet, John Gerrard, Oswald Tesmond, and other Jesuits, for the more effectual compassing and final execution of the said treasons, did traitorously among themselves conclude and agree to dig a certain mine under the said House of Parliament, and there secretly, under the said house, to bestow and place a great quantity of gunpowder; and that according to the said traitorous conclusion, the said Thomas Winter, Guy Fawkes, Robert Keyes, and Thomas Bates, together with the said Robert Catesby, Thomas Percy, John Wright, and Christ. Wright, afterwards secretly, not without great labour and difficulty, did dig and make the said mine unto the midst of the foundation of the wall of the said House of Parliament, the said foundation being of the thickness of three yards, with a traitorous intent to bestow and place a great quantity of gunpowder in the mine aforesaid, so as aforesaid traitorously to be made for the traitorous accomplishing of their traitorous purposes aforesaid. And that the said Thomas Winter, Guy Fawkes, Robert Keyes, and Thomas Bates, together with the said Robert Catesby, Thomas Percy, John Wright, and Christ. Wright, finding and perceiving the said work to be of great difficulty, by reason of the hardness and thickness of the said wall; and understanding a certain cellar under the said House of Parliament, and adjoining to a certain house of the said Thomas Percy, then to be letten to farm for a yearly rent, the said Thomas Percy, by the traitorous procurement, as well of the said Henry Garnet, Oswald Tesmond, John Gerrard, and other Jesuits, Thomas Winter, Guy Fawkes, Robert Keyes, and Thomas Bates, as of the said Robert Catesby, John Wright, and Christ. Wright, traitorously did hire the cellar aforesaid for a certain yearly rent and term: and then those traitors did remove twenty barrels full of gunpowder out of the said house of the said Thomas Percy, and secretly and traitorously did bestow and place them in the cellar aforesaid, under the said House of Parliament, for the traitorous effecting of the treason, and traitorous purposes aforesaid. And that afterwards the said Henry Garnet, Oswald Tesmond, John Gerrard, and other Je-

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suits, Thomas Winter, Guy Fawkes, Robert Keyes, and Thomas Bates, together with the said Robert Catesby, Thomas Percy, John Wright, and Christ. Wright, traitorously did meet with Robert Winter, John Grant, and Ambrose Rookwood, and Francis Tresham, esquires; and traitorously did impart to the said Robert Winter, John Grant, Ambrose Rookwood, and Francis Tresham, the treasons, traitorous intentions and purposes aforesaid; and did require the said Robert Winter, John Grant, Ambrose Rookwood, and Francis Tresham, to join themselves as well with the said Henry Garnet, Oswald Tesmond, John Gerrard, Thomas Winter, Guy Fawkes, Robert Keyes, and Thomas Bates, as with the said Robert Catesby, Thomas Percy, John Wright, and Christ. Wright, in the treasons, traitorous intentions and purposes aforesaid; and traitorously to provide horse, armour, and other necessaries, for the better accomplishment and effecting of the said treasons. To which traitorous motion and request, the said Robert Winter, John Grant, Ambrose Rookwood, and Francis Tresham, did traitorously yield their assents, and as well with the said Henry Garnet, Oswald Tesmond, John Gerrard, Robert Winter, Thomas Winter, Guy Fawkes, Robert Keyes, and Thomas Bates, as with the said Robert Catesby, Thomas Percy, John Wright, Christ. Wright, and Francis Tresham, in the said treasons, traitorous intentions and purposes aforesaid, traitorously did adhere and unite themselves. And thereupon several corporal Oaths, in form aforesaid, traitorously did take, and the Sacrament of the Eucharist, by the hands of the said Jesuits did receive, to such intent and purpose, as is aforesaid; and horses, armour, and other necessaries for the better effecting of the said treasons, according to their traitorous assents aforesaid, traitorously did provide. And that afterwards all the said false traitors did traitorously provide, and bring into the cellar aforesaid ten other barrels full of gunpowder, newly bought, fearing lest the former gunpowder, so as aforesaid bestowed and placed there, was become dankish; and the said several quantities of gunpowder aforesaid, with billets and faggots, lest they should be spied, secretly and traitorously did cover. And that afterwards the said false traitors traitorously provided, and brought into the cellar aforesaid, four hogsheds full of gunpowder, and laid divers great iron bars and stones upon the said four hogsheds, and the aforesaid other quantities of gunpowder: And the said quantities of gunpowder, bars, and stones, with billets and faggots, lest they should be espy'd, secretly and traitorously did likewise cover. And that the said Guy Fawkes, afterwards, for a full and final accomplishment of the said treasons, traitorous intentions and purposes aforesaid, by the traitorous procurement, as well of the said Henry Garnet, Oswald Tesmond, John Gerrard, and other je-

suits, Robert Winter, Thomas Winter, Robert Keyes, Thomas Bates, John Grant, and Ambrose Rookwood, as of the said Robert Catesby, Thomas Percy, John Wright, Christopher Wright, and Francis Tresham, traitorously had prepared, and had upon his person touchwood and match, therewith traitorously to give fire to the several barrels, hogsheds, and quantities of gunpowder aforesaid, at the time appointed for the execution of the said horrible treasons. And further, that after the said horrible treasons, were, by the great favour and mercy of God, in a wonderful manner discover'd, not many hours before it should have been executed, as well the said Henry Garnet, Oswald Tesmond, John Gerrard, Robert Winter, Thomas Winter, Robert Keyes, Thomas Bates, John Grant, and Ambrose Rookwood, as the said Robert Catesby, Thomas Percy, John Wright, and Christopher Wright, traitorously did fly and withdraw themselves, to the intent traitorously to stir up and procure such popish persons, as they could, to join with them in actual, publick, and open rebellion against our said sovereign lord the king; and to that end did publish divers feigned and false rumours, that the papists throats should have been cut; and that thereupon divers papists were in arms, and in open, publick, and actual rebellion against our said sovereign lord the king, in divers parts of this realm of England.

To this Indictment they all pleaded, Not Guilty; and put themselves upon God and the country.

Then did Sir *Edward Philips*, knight, his majesty's Serjeant at Law, open the Indictment to this effect, as followeth:

The matter that is now to be offer'd to you my lords the commissioners, and to the trial of you the knights and gentlemen of the jury, is matter of Treason; but of such horror, and monstrous nature, that before now, the tongue of man never deliver'd; the ear of man never heard; the heart of man never conceited; nor the malice of hellish or earthly devil ever practised: For, if it be abominable to murder the least; if to touch God's anointed be to oppose themselves against God; if (by blood) to subvert princes, states and kingdoms, be hateful to God and man, as all true Christians must acknowledge; then, how much more than too monstrous shall all Christian hearts judge the horror of this treason; to murder and subvert such a king; such a queen; such a prince; such a progeny; such a state; such a government, so complete and absolute, that God approves, the world admires, all true English hearts honour and reverence; the pope and his disciples only envies and maligns?—The proceeding wherein, is properly to be divided into three general heads. 1. Matter of Declaration. 2. Matter of Aggravation. 3. Matter of Probation. Myself am limited to deal only with the Matter of Declaration, and that is contain'd within the compass of the Indictment only.

For the other two, I am to leave to him to

whose place it belongeth. The substance of which declaration consisteth in four parts. 1. In the Persons and Qualities of the conspirators. 2. In the Matter conspired. 3. In the Mean and Manner of the Proceeding and Execution of the Conspiracy. And 4thly, Of the End and Purpose why it was so conspired.

As concerning the first, bring the Persons; they were, Garnet, Gerrard, Tesmond, jesuits not then taken. Thomas Winter, Guy Fawkes, Robert Keyes, Thomas Bates, Everard Digby, Ambrose Rookwood, John Grant, Robert Winter, at the bar. Robert Catesby, Thomas Percy, John Wright, Christopher Wright, slain in rebellion. Francis Tresham, lately dead. All grounded Romanists and corrupted scholars of so irreligious and traitorous a school.—As concerning the second, which is the Matter conspired; it was, 1. To deprive the king of his crown. 2. To murder the king, the queen, and the prince. 3. To stir rebellion and sedition in the kingdom. 4. To bring a miserable destruction amongst the subjects. 5. To change, alter, and subvert the religion here established. 6. To ruinate the state of the commonwealth, and to bring in strangers to invade it.—As concerning the third, which is the Mean and Manner how to compass and execute the same; they did all conclude, 1. That the king, and his people (the papists excepted) were hereticks. 2. That they were all cursed, and excommunicated by the pope. 3. That no heretick could be king. 4. That it was lawful and meritorious to kill and destroy the king, and all the said hereticks.—The mean to effect it, they concluded to be, that, 1. The king, the queen, the prince, the lords spiritual and temporal, the knights and burgesses of the parliament, should be blown up with powder. 2. That the whole royal issue male should be destroyed. 3. That they would take into their custody Elizabeth and Mary the king's daughters, and proclaim the lady Elizabeth queen. 4. That they should feign a Proclamation in the name of Elizabeth, in which no mention should be made of alteration of religion, nor that they were parties to the treason, until they had raised power to perform the same; and then to proclaim, all grievances in the kingdom should be reformed.—That they also took several oaths, and received the sacrament; first, for secrecy; secondly for prosecution; except they were discharged thereof by three of them.—That after the destruction of the king, the queen, the prince, the royal issue male, the lords spiritual and temporal, the knights and burgesses, they should notify the same to foreign states; and thereupon sir Edmund Baynam, an attainted person of treason, and styling himself prime of the damned crew, should be sent and make the same known to the pope, and crave his aid: an ambassador fit both for the message and persons, to be sent betwixt the pope and the devil.—That the parliament being prorogued till the 7th of Feb. they in December made a mine under the house of parliament, purposing to place their

powder there; but the parliament being then further adjourned till the 3d of October, they in Lent following hired the vault, and placed therein 20 barrels of powder.—That they took to them, Robert Winter, Grant, and Rookwood, giving them the oaths and sacrament as aforesaid, as to provide munition.—July 20. They laid in ten barrels more of powder, laying upon them divers great bars of iron, and pieces of timber, and great massy stones, and covered the same with faggots, &c.—September 20. They laid in more, 4 hogsheds of powder, with other stores and bars of iron thereupon.—Nov. 4. (The parliament being prorogued to the 5th) at 11 a clock at night, Fawkes had prepared, by the procurement of the rest, touchwood and match, to give fire to the powder the next day.—That the Treason being miraculously discovered, they put themselves, and procured others to enter, into open Rebellion: and gave out most untruly, it was for that the Papists throats were to be cut.

*Attorney General.* (Sir Edward Coke.) It appeareth to your lordships, and the rest of this most honourable and grave assembly, even by that which Mr. Serjeant hath already opened, that these are the greatest treasons that ever were plotted in England, and concern the greatest king that ever was of England. But when this assembly shall further hear, and see discovered the roots and branches of the same, not hitherto published, they will say indeed, *Quis hæc posteris sic narrare poterit, ut facta non ficta esse videantur?* That when these things shall be related to posterity, they will be reputed matters feigned, not done. And therefore in this so great a cause, upon the carriage and event whereof the eye of all Christendom is at this day bent; I shall desire that I may with your patience be somewhat more copious, and not so succinct, as my usual manner hath been; and yet will I be no longer than the very matter itself shall necessarily require. But before I enter into the particular narration of this cause, I hold it fit to give satisfaction to some, and those well affected amongst us, who have not only marvelled, but grieved, that no speedier expedition hath been used in these proceedings, considering the monstrousness and continual horror of this so desperate a cause.—1. It is *ordo nature*, agreeable to the order of nature, that things of great weight and magnitude should slowly proceed, according to that of the poet, *Tarda solet magnis rebus adesse fides.* And surely of these things we may truly say, *Nunquam ante dies nostros talia acciderunt;* neither hath the eye of man seen, nor the ear of man heard the like things to these.—2. *Veritas temporis filia,* Truth is the daughter of time; especially in this case, wherein by timely and often examinations, 1. Matters of greatest moment have been lately found out. 2. Some known offenders and those capital, but lately, apprehended. 3. Sundry of the principal arch-traitors before unknown, now manifested, as the Jesuits. 4. Heretical, treasonable and damnable books

lately found out; one of equivocation, and another, 'De officio Principis Christiani,' of Francis Tresham's.—3. There have been already twenty and three several days spent in Examinations.—4. We should otherwise have hanged a man unattainted, for Guy Fawkes passed for a time under the name of John Johnson: so that if by that name greater expedition had been made, and he hanged, though we had not missed of the man, yet the proceeding would not have been so orderly or justifiable.—5. The king out of his wisdom and great moderation, was pleased to appoint this trial in time of assembly in parliament, for that it concerned especially those of the parliament.—Now touching the offences themselves, they are so exorbitant and transcendent, and aggregated of so many bloody and fearful crimes, as they cannot be aggravated by any inference, argument or circumstance whatsoever; and that in three respects: First, Because this offence is *prima impressio*, and therefore *sine nomine*, without any name which might be *adequatum*, sufficient to express it, given by any legist, that ever made or writ of any laws. For the highest treason that all they could imagine, they called it only *crimen lese majestatis*, the violating of the majesty of the prince. But this treason doth want an apt name, as tending not only to the hurt, but to the death of the king, and not the death of the king only, but of his whole kingdom, *Non Regis sed Regni*, that is, to the destruction and dissolution of the frame and fabrick of this antient, famous, and ever-flourishing monarchy; even the deletion of our whole name and nation: 'And therefore hold not thy tongue, O God, keep not still silence, refrain not thyself, O God; for so lo thine enemies make a murmuring, and they that hate thee have lift up their heads: They have said, Come, and let us root them out, that they be no more a people, and that the name of Israel may be no more in remembrance.' Psal. lxxxiii. 1—5.—Secondly, It is *sine exemplo*, beyond all examples, whether in fact or fiction, even of the tragick poets, who did beat their wits to represent the most fearful and horrible murders.—Thirdly, It is *sine modo*, without all measure or stint of iniquity; like a mathematical line, which is, *divisibilis in semper divisibilia*, infinitely divisible.—It is treason to imagine or intend the death of the king, queen, or prince.—For treason is like a tree whose root is full of poison, and lieth secret and hid within the earth, resembling the imagination of the heart of man, which is so secret as God only knoweth it. Now the wisdom of the law provideth for the blasting and nipping, both of the leaves, blossoms, and buds which proceed from this root of Treason; either by words, which are like to leaves, or by some overt act, which may be resembled to buds or blossoms, before it cometh to such fruit and ripeness, as would bring utter destruction and desolation upon the whole state.—It is likewise Treason to kill the lord Chancellor, lord

Treasurer, or any justice of the one bench or other; justices of assize, or any other judge mentioned in the statute of 25 Edw. 3. sitting in their judicial places, and exercising their offices. And the reason is, for that every judge so sitting by the king's authority, representeth the majesty and person of the king; and therefore it is *crimen lese majestatis*, to kill him, the king being always in judgment of law present in court. But in the high court of parliament, every man by virtue of the king's authority, by writ under the great seal, hath a judicial place; and so consequently the killing of every of them had been a several Treason; and *crimen lese majestatis*. Besides that to their treasons were added open rebellion, burglary, robbery, horse-stealing, &c. So that this offence is such, as no man can express it, no example pattern it, no measure contain it.—Concerning foreign princes; there was here a protestation made for the clearing of them from all imputation and aspersion whatsoever.—First, For that whilst kingdoms stood in hostility, hostile actions are holden honourable and just. Secondly, It is not the king's serjeant, attorney, or solicitor, that in any sort touch or mention them: for we know that great princes and personages are reverently and respectfully to be spoken of; and that there is *lex in sermone tenenda*. But it is Fawkes, Winter, and the rest of the offenders, that have confessed so much as hath been said: and therefore the king's counsel learned doth but repeat the offender's confession, and charge or touch no other person. They have also slandered unjustly our great master king James, which we only repeat, to shew the wickedness and malice of the offenders. Thirdly, So much as is said concerning foreign princes, is so woven into the matter of the charge of these offenders, as it cannot be severed, or singled from the rest of the matter; so as it is inevitable, and cannot be premitted.—Now as this Powder-Treason is in itself prodigious and unnatural, so it is in the conception and birth most monstrous, as arising out of the dead ashes of former Treasons. For it had three roots, all planted and watered by Jesuits, and English Romish Catholicks: the first root in England, in December and March; the second in Flanders, in June; the third in Spain, in July. In England it had two branches, one in December was twelve months before the death of the late queen of blessed memory; another in March wherein she died.—First in December, A. D. 1601, do Henry Garnet superior of the jesuits in England, Robt. Tesmond, jesuit, Robt. Catesby (who was *bono subacto et versuto ingenio et profunda perfidia*) together with Francis Tresham and others, in the names, and for the behalf of all the English Romish Catholicks, imploy Thomas Winter into Spain, as for the general good of the Romish Catholick cause; and by him doth Garnet write his letters to father Creswell, jesuit, residing in Spain, in that behalf. With Thos. Winter doth Tesmond, alias Greeneway the jesuit, go as an

associate and confederate in that conspiracy. The message (which was principally committed unto the said Winter) was, that he should make a proposition and request to the king of Spain, in the behalf and names of the English Catholics, That the king would send an army hither into England, and that the forces of the Catholics in England should be prepared to join with him, and do him service. And further, that he should move the king of Spain to bestow some pensions here in England, upon sundry persons Catholics, and devoted to his service: and moreover, to give advertisement, that the said king of Spain, making use of the general discontentment that young gentlemen and soldiers were in, might no doubt, by relieving their necessities, have them all at his devotion.—And because that in all attempts upon England, the greatest difficulty was ever found to be the transportation of horses; the Catholics in England would assure the king of Spain to have always in readiness for his use and service, 1500 or 2000 horses, against any occasion or enterprise. Now Thomas Winter undertaking this negotiation, and with Teasmond the Jesuit coming into Spain, by means of father Creswell the legier Jesuit there, as hath been said, had readily speech with Don Pedro Francesa second secretary of state, to whom he imparted his message, as also to the duke of Lerma; who assured him, that it would be an office very grateful to his master, and that it should not want his best furtherance.—Concerning the place for landing of the king of Spain's army, which from the English Romish Catholics he desired might be sent to invade the land; it was resolved, That if the army were great, then Essex and Kent were judged fittest, (where note by the way, who was then lord Warden of the Cinque Ports): if the army were small, and trusted upon succour in England, then Milford-haven was thought more convenient.—Now there being at that time hostility betwixt both kingdoms, the king of Spain willingly embraced the motion, saying, that he took the message from the Catholics very kindly, and that in all things he would respect them with as great care as his proper Castilians. But for his further answer, and full dispatch, Thos. Winter was appointed to attend the progress. In the end whereof, being in summer time, count Miranda gave him this answer in the behalf of his master, That the king would bestow 100,000 crowns to that use, half to be paid that year, and the rest the next spring following; and withal required that we should be as good as our promise, for the next spring he meant to be with us, and set foot in England. And lastly, he desired on the king's behalf, of Winter, that he might have certain advertisement and intelligence; if so it should in the mean time happen that the queen did die. Thos. Winter laden with these hopes, returns into England about a month before Christmas, and delivered answer of all that had passed, to Henry Garnet, Robert Catesby, and Francis

Tresham. But soon after set that glorious light, her majesty died: 'Mira cano; Sol occubuit, Nox nulla secuta est.—Presently after whose death was Christ. Wright, another messenger, sent over into Spain by Garnet, (who likewise did write by him to Creswell, for the furtherance of the negotiation) Catesby and Tresham, in the name and behalf of all the Romish Catholics in England; as well to carry news of her majesty's death, as also to continue the aforesaid negotiation for an invasion and pensions, which by Tho. Winter had before been dealt in. And in the Spanish court, about two months after his arrival there, doth Christopher Wright meet with Guy Fawkes; who upon the 22nd of June was employed out of Flanders from Brussels by sir William Stanley, Hugh Owen, (whose finger hath been in every treason which hath been of late years detected) and Baldwyn the legier Jesuit in Flanders; from whom likewise the said Fawkes carried letters to Creswell in Spain, for the countenancing and furtherance of his affairs.—Now the end of Fawkes's employment was, to give advertisement to the king of Spain, how the king of England was like to proceed rigorously with the Catholics, and to run the same course which the late queen did; and withal to intreat that it would please him to send an army into England to Milford-haven, where the Romish Catholics would be ready to assist him; and then the forces that should be transported in Spinola's Gallies, should be landed where they could most conveniently. And these their several messages did Christopher Wright and Guy Fawkes in the end intimate and propound to the king of Spain. But the king as then very honourably answered them both, that he would not in any wise further listen to any such motion, as having before dispatched an embassy into England, to treat concerning peace. Therefore this course by foreign forces failing, they fell to the Powder-plot, Catesby and Tresham being in at all; in the treason of the earl of Essex, in the treason of Watson and Clarke seminary priests, and also in this of the Jesuits; such a greedy appetite had they to practise against the state.

The rest of that which Mr. Attorney then spake continuedly, was by himself divided into three general parts. The first containing certain Considerations concerning this Treason. The second Observations about the same. The third a Comparison of this Treason of the Jesuits, with that of the seminary priests, and that other of Raleigh and others.

For the considerations concerning the Powder-treason, they were in number eight: that is to say, 1. The persons by whom. 2. The persons against whom. 3. The time when. 4. The place where. 5. The means. 6. The end. 7. The secret contriving. And lastly, the admirable discovery thereof.

1. For the Persons offending, or by whom, they are of two sorts; either of the clergy, or laity: and for each of them there is a several

objection made. Touching those of the laity, it is by some given out, that they are such men, as admit just exception, either desperate in estate, or base, or not settled in their wits; such as are *sine religione, sine sede, sine fide, sine re, et sine spe*; without religion, without habitation, without credit, without means, without hope. But (that no man, though never so wicked, may be wronged) true it is, they were gentlemen of good houses, of excellent parts, howsoever most perniciously seduced, abused, corrupted, and jesuited, of very competent fortunes and states. Besides that Percy was of the house of Northumberland, sir William Stanley, who principally employed Fawkes into Spain, and John Talbot of Grafton, who at the least is in case of misprision of high-treason, both of great and honourable families. Concerning those of the spirituality, it is likewise falsly said, That there is never a religious man in this action. For I never yet knew a treason without a Romish priest; but in this there are very many jesuits, who are known to have dealt and passed through the whole action: three of them are legiers and statesmen, as Henry Garnet alias Walley, the superior of the jesuits, legier here in England; father Cresswell, legier jesuit in Spain, father Baldwyn legier in Flanders, as Parsous at Rome; besides their cursory men, as Gerrard, Oswald, Tesmond, alias Greeneway, Hammond, Hall, and other jesuits. So that the principal offenders are the seducing jesuits; men that use the reverence of religion, yea, even the most sacred and blessed name of Jesus, as a mantle to cover their impiety, blasphemy, treason and rebellion, and all manner of wickedness; as by the help of Christ shall be made most apparent to the glory of God, and the honour of our religion. Concerning this sect, their studies and practices principally consist in two *dd's*, to wit, in deposing of kings, and disposing of kingdoms: their profession and doctrine is a religion of distinctions, the greatest part of them being without the text, and therefore in very deed, idle and vain conceits of their own brains: not having *membra dividenda*, that is, all the parts of the division warranted by the Word of God; and 'ubi lex non distinguit, nec nos distinguere debemus.' And albeit that princes hold their crowns immediately of and from God, by right of lawful succession and inheritance inherit by royal blood; yet think these jesuits with a goose-quill, within four distinctions to remove the crown from the head of any king christened, and to deal with them, as the old Romans are said to have done with their viceroys, or petty kings, who in effect were but lieutenants unto them, to crown and uncrown them at their pleasures. Neither so only, but they will proscrib and expose them to be butchered by vassals, which is against their own canons, for priests to meddle in cause of blood. And by this means they would make the condition of a king far worse than that of the poorest creature that breatheth. First saith Simanca;

'Hæretici omnes ipso jure sunt excommunicati, et à communione fidelium diris proscriptionibus separati et quotannis in cæna Domini excommunicantur à Papa.' So then every heretick stands and is reputed with them as excommunicated and accursed, if not *de facto*, yet *de jure*, in law and right, to all their intents and purposes; therefore may he be deposed, proscribed and murdered. I, but suppose he be not a professed heretick, but dealeth reservedly, and keepeth his conscience to himself; how stands he then? Simanca answers 'Quæri autem solet an hæreticus occultus excommunicatus sit ipso jure, et in alias etiam pœnas incidat contra hæreticos statutas?' 'Cui quæstioni simpliciter jurisperiti respondent, quod etsi hæresis occulta sit, nihilominus occultus hæreticus incidit in illas pœnas.' Whether he be a known or a secret heretick, all is one, they thunder out the same judgment and curse for both; whereas Christ saith, 'Nolite judicare,' judge not, which is, saith Augustine, 'Nolite judicare de occultis,' of those things which are secret. But suppose that a prince thus accursed and deposed, will eftsoons return and conform himself to their Romish Church, shall he then be restored to his state, and again receive his kingdom? Nothing less: for saith Simanca, 'Si reges aut alii principes Christiani facti sint hæretici, protinus subjecti et vassali ab eorum dominio liberantur; nec jus hoc recuperabunt, quamvis postea reconcilientur ecclesiæ.' O but, 'sancta mater ecclesia nunquam claudit gremium redeunti;' our holy mother the church never shuts her bosom to any convert. It is true, say they, but with a distinction, *quoad animam*: therefore so he may, and shall be restored; that is, spiritually, in respect of his soul's health. *Quoad animam*, he shall again be taken into the holy church; but not *quoad regnum*, in respect of his kingdom, or state temporal, he must not be restored; the reason is, because all hold only thus far, 'Modo non sit ad damnum ecclesiæ,' so that the church receive thereby no detriment. I, but suppose that such an unhappy deposed prince have a son, or lawful and right heir, and he also not to be touched or spotted with his father's crime, shall not he at least succeed, and be invested into that princely estate? Neither will this down with them: heresy is a leprosy, and hereditary disease: 'Et ex leprosis parentibus leprosi generantur filii;' 'Of leprous parents, come leprous children.' So that saith Simanca, 'Propter hæresim regis, non solum rex regno privatur, sed et ejus filii a regni successione pelluntur, ut noster lupus' (who is indeed, 'Vir secundum nomen ejus,' a wolf as well in nature as name) 'luculentè probat.' Now if a man doubt whom they here mean by an heretick, Cresswell in his book called *Philopatèr*, gives a plain resolution; 'Regnandi jus amittit' (saith he) 'qui religionem Romanam deserit,' he is the heretick we speak of; even whosoever forsakes the religion of the Church of Rome, he is accursed, deprived,

proscribed, never to be absolved but by the pope himself, never to be restored either in himself, or his posterity.

One place amongst many out of Creswell's Philopater, shall serve to give a taste of the jesuitical spirits and doctrine; which is, sect. 2. page 109. 'Hinc etiam infert universa theologorum ac jurisconsultorum ecclesiasticorum schola (et est certum et de fide) quemcunque principem Christianum, si à Religione Catholica manifesto diflexerit, et alios advocare voluerit, excidere statim omni potestate ac dignitate, ex ipsa vi juris tum humani tum divini, hocque antedictam sententiam supremi pastoris ac judicis contra ipsum prolatam, et subditos quoscunque liberos esse ab omni juramenti obligatione, quod de obedientia tanquam principi legitimo præstitissent; posseque et debere (si vires habeant) istiusmodi hominem tanquam apostatam, hæreticum, ac Christi Domini desertorem, et reipub. suæ inimicum hostemque ex hominum Christianorum dominatu ejicere, ne alios inficiat, vel suo exemplo aut imperio à fide avertat. Atque hæc certa, definita et indubitata virorum doctissimorum sententia.' That is, this inference also doth the whole school both of divines and lawyers make, (and it is a position certain, and to be undoubtedly believed) that if any Christian prince whatsoever, shall manifestly turn from the Catholic religion, and desire or seek to reclaim other men from the same, he presently falleth from all princely power and dignity; and that also by virtue and force of the law itself, both divine and human, even before any sentence pronounced against him by the supreme pastor and judge. And that his subjects, of what estate or condition soever, are freed from all bond of oath of allegiance, which at any time they had made unto him as to their lawful prince. Nay, that they both may and ought, provided they have competent strength and force, cast out such a man from bearing rule amongst Christians, as an apostate, an heretic, a backslider and revolter from our Lord Christ, and an enemy to his own state and commonwealth, lest perhaps he might infect others, or by his example or command turn them from the faith. And this is the certain, resolute, and undoubted judgment of the best learned men. But Tresham in his book, De Officio Principis Christiani, goeth beyond all the rest; for he plainly concludeth and determineth, that if any prince shall but favour, or shew countenance to an heretick, he presently loseth his kingdom. In his fifth chapter, he propoundeth this problem, 'An aliqua possit secundum conscientiam subditis esse ratio, cur legitimo suo regi bellum sine scelere moveant?' Whether there may be any lawful cause, justifiable in conscience, for subjects to take arms without sin, against their lawful prince and sovereign? The resolution is, 'Si princeps hæreticus sit et obstinate ac pertinaciter intolerabilis, summi pastoris divina potestate deponatur, et aliud caput constituatur, cui subditi se jungant, et legitimo ordine et autoritate tyrannidem amo-

veant. Princeps indulgendo hæreticos non solum Deum offendit, sed perdit et regnum et gentem.' Their conclusion therefore is, that for heresy, as above is understood, a prince is to be deposed, and his kingdom bestowed by the pope at pleasure; and that the people, upon pain of damnation, are to take part with him whom the pope shall so constitute over them. And thus whilst they imagine with the wings of their light-feathered distinctions to mount above the clouds and level of vulgar conceits, they desperately fall into a sea of gross absurdities, blasphemy, and impiety. And surely the Jesuits were so far engaged in this treason, as that some of them stick not to say, that if it should miscarry, that they were utterly undone, and that it would overthrow the state of the whole society of the Jesuits: And I pray God that in this, they may prove true prophets, that they may become like the Order of Templarii, so called for that they kept near the sepulchre at Jerusalem, who were by a general and universal edict in one day throughout Christendom quite extinguished, as being *ordo impietatis*, an order of impiety. 'And so from all sedition and privy conspiracy, from all false doctrine and heresy, from hardness of heart, and contempt of thy word and commandment, Good Lord, deliver us.' Their protestations and pretences, are to win souls to God; their proofs weak, light, and of no value; their conclusions false, damnable, and damned heresies: The first mentioneth God, the second savoureth of weak and frail man, the last of the devil; and their practice easily appeareth out of the dealing of their holy father.

Henry 3rd of France for killing a cardinal was excommunicated, and after murdered by James Clement a monk: That fact doth Sixtus Quintus then pope, instead of orderly censuring thereof, not only approve, but commend in a long consistory oration. 'That a monk, a religious man, saith he, hath slain the unhappy French king, in the midst of his host, it is *rarum insigne, memorabile facinus*, a rare, a notable, and a memorable act: yea further, it is *facinus non sine Dei optimi maximi particulari providentia et dispositione, &c.* A fact done not without the special providence and appointment of our good God, and the suggestion and assistance of his holy spirit; yea, a far greater work than was the slaying of Holofernes by holy Judith.' *Verus monachus fictum occiderat*, A true monk had killed the false monk; for that, as was reported, Henry 3 sometimes would use that habit when he went in procession: and for France, even that part thereof which entertaineth the popish religion, yet never could of ancient time brook this usurped authority of the see of Rome, namely, that the pope had power to excommunicate kings, and absolve subjects from their oath of allegiance: which position is so directly opposite to all the canons of the church of France, and to all the decrees of the king's parliament there, as that the very body of Sorbonne, and the whole university at Paris, condemned it as a most schismatical, pestilent,

and pernicious doctrine of the Jesuits; as may appear in a treatise made to the French king, and set out 1602, intitled, 'Le franc Discours.' But to return to the Jesuits, Catesby was resolved by the Jesuits, that the fact was both lawful and meritorious; and herewith he persuaded and settled the rest, as they seemed to make doubt.

Concerning Thomas Bates, who was Catesby's man, as he was wound into this treason by his master, so was he resolved, when he doubted of the lawfulness thereof, by the doctrine of the Jesuits. For the manner, it was after this sort: Catesby noting that his man observ'd him extraordinarily, as suspecting somewhat of that which he the said Catesby went about, called him to him at his lodging in Puddle-wharf; and in the presence of Thomas Winter, asked him what he thought the business was they went about, for that he of late had so suspiciously and strangely marked them. Bates answer'd, that he thought they went about some dangerous matter, whatsoever the particular were: whereupon they asked him again what he thought the business might be; and he answer'd that he thought they intended some dangerous matter about the parliament-house, because he had been sent to get a lodging near unto that place. Then did they make the said Bates take an oath to be secret in the action; which being taken by him, they then told him that it was true, that they were to execute a great matter; namely, to lay powder under the parliament-house to blow it up. Then they also told him that he was to receive the sacrament for the more assurance, and thereupon he went to confession, to the said Tesmond the Jesuit: and in his confession told him, that he was to conceal a very dangerous piece of work, that his master Catesby and Thomas Winter had imparted unto him, and said he much feared the matter to be utterly unlawful, and therefore therein desired the counsel of the Jesuit; and revealed unto him the whole intent and purpose of blowing up the parliament-house upon the first day of the assembly; at what time the king, the queen, the prince, the lords spiritual and temporal, the judges, the knights, citizens and burgesses, should all have been there convented and met together. But the Jesuit being a confederate therein before, resolved and encouraged him in the action; and said that he should be secret in that which his master had imparted unto him, for that it was for a good cause. Adding moreover, that it was not dangerous unto him, nor any offence to conceal it: and thereupon the Jesuit gave him absolution, and Bates received the sacrament of him, in the company of his master Robert Catesby and Thomas Winter. Also when Rookwood in the presence of sundry of the traitors, having first received the oath of secrecy, had by Catesby imparted unto him the Plot of blowing up the king and state; the said Rookwood being greatly amazed thereat, answered, that it was a matter of conscience to take away so much blood: but Catesby replied, that he

was resolved, and that by good authority, as coming from the Superior of the Jesuits, that in conscience it might be done, yea, tho' it were with the destruction of many innocents, rather than the action should *quail*. Likewise father Hammond absolved all the traitors at Robert Winter's house, upon Thursday after the discovery of the Plot, they being then in open rebellion: And therefore, 'Hos O Remagne caveto:' and let all kings take heed, how they either favour or give allowance or connivance unto them.

2. The second Consideration respecteth the Persons against whom this treason was intended; which are, 1. The king, who is God's anointed. Nay, it hath pleased God to communicate unto him his own name; 'Dixi, Dii estis,' not substantially or essentially so, neither yet on the other side *Usurpativè*, by unjust usurpation, as the devil and the pope; but *Potestativè*, as having his power derived from God within his territories. 2. Their natural liege lord, and dread sovereign, whose just interest and title to this crown may be drawn from before the conquest; and if he were not a king by descent, yet deserved he to be made one for his rare and excellent endowments and ornaments both of body and mind. Look into his true and constant religion and piety, his justice, his learning above all kings christened, his acumen, his judgment, his memory; and you will say that he is indeed, 'Solus præteritis major, meliorque futuris.' But because I cannot speak what I would, I will forbear to speak what I could. Also against the queen, a most gracious and graceful lady, a most virtuous, fruitful, and blessed vine, who hath happily brought forth such olive-branches, as that 'in benedictione erit memoria ejus,' her memory shall be blessed of all our posterity. Then against the royal issue male, next under God, and after our sovereign, the future hope, comfort, joy, and life of our state. And as for preserving of the good lady Elizabeth the king's daughter, it should only have been for a time to have served for their purposes, as being thought a fit project to keep others in appetite for their own further advantage; and then God knoweth what would have become of her. To conclude, against all the most honourable and prudent counsellors, and all the true-hearted and worthy nobles, all the reverend and learned bishops, all the grave judges and sages of the law, all the principal knights, gentry, citizens and burgesses of parliament, the flower of the whole realm. *Horret animus*, I tremble even to think of it: Miserable desolation! no king, no queen, no prince, no issue male, no counsellors of state; no nobility, no bishops, no judges! O barbarous, and more than Scythian or Thracian cruelty! No mantle of holiness can cover it, no pretence of religion can excuse it, no shadow of good intention can extenuate it; God and heaven condemn it, man and earth detest it, the offenders themselves were ashamed of it; wicked people exclaim against it, and the souls of all true Christian subjects abhor it:

miserable, but yet sudden had their ends been, who should have died in that fiery tempest, and storm of gunpowder. But more miserable had they been that had escaped; and what horrible effects the blowing up of so much powder and stuff would have wrought, not only amongst men and beasts, but even upon insensible creatures, churches, and houses, and all places near adjoining; you who have been martial men best know. For my self, 'Vox faucibus hæret:' so that the king may say with the kingly prophet David; 'O Lord, the proud are risen against me, and the congregation, even synagogoga, the synagogue of naughty men have sought after my soul, and have not set thee before their eyes,' Psal. lxxxvi. 14. 'The proud have laid a snare for me, and spread a net abroad, yea, and set traps in my way.' Psal. cxl. 5. 'But let the ungodly fall into their own nets together, and let me ever escape them,' Psalm, cxli. 11. We may say, 'If the Lord himself had not been on our side; yea, if the Lord himself had not been on our side, when men rose up against us, they had swallowed us up quick, when they were so wrathfully displeas'd at us; but praised be the Lord, which hath not given us over for a prey unto their teeth. Our soul is escaped even as a bird out of the snare of the fowler, the snare is broken, and we are delivered; our help standeth in the name of the Lord which hath made heaven and earth.' Psalm cxxiv.

3. The third consideration respects the Time when this Treason was conspired; wherein note that it was primo Jacobi, even at that time when his majesty used so great lenity towards Recusants, in that by the space of a whole year and four months, he took no penalty by statute of them. So far was his majesty from severity, that besides the benefit and grace before specified, he also honoured all alike with advancement and favours; and all this was continued until the priests Treason by Watson and Clarke. But as there is *misericordia puniens*, so is there likewise *crudelitas parcens*: for they were not only by this not reclaimed but (as plainly appeareth) became far worse. Nay, the Romish Catholics did at that very time certify that it was very like, the king would deal rigorously with them, and the same do these traitors now pretend, as the chiefest motive; whereas indeed they had Treason on foot against the king, before they saw his face in England: neither afterwards, for all the lenity he used towards them, would any whit desist or relent from their wicked attempts. Nay, (that which cometh next to be remembered in this part of their arraignment) they would pick out the time of parliament for the execution of their hideous Treasons, wherein the flower of the land being assembled, for the honour of God, the good of his Church and this Commonwealth; they might as it were with one blow, not wound, but kill and destroy the whole state: so that with these men, *impunitas continuum affectum tribuit peccandi*, lenity having once bred a slope of impunity, begat not only

VOL. II.

insolency, but impenitency and increase of sin.

4. We are to consider the Place, which was the sacred senate, the house of parliament. And why there? For that, say they, unjust laws had formerly been there made against catholicks: therefore that was the fittest place of all others to revenge it, and to do justice in. If any ask who should have executed this their justice, it was justice Fawkes, a man like enough to do according to his name. If by what law they meant to proceed; it was gunpowder-law, fit for justices of hell. But concerning those laws which they so calumniate as unjust, it shall in few words plainly appear, that they were of the greatest both moderation and equity that ever were any. For from the year 1 Elizabeth, unto 11, all papists came to our church and service without scruple I myself have seen Cornwallis, Beddingfield, and others at church: so that then for the space of 10 years, they made no conscience nor doubt to communicate with us in prayer. But when once the Bull of Pope Pius Quintus was come and published, wherein the queen was accused and deposed, and her subjects discharged of their obedience and oath, yea cursed if they did obey her; then did they all forthwith refrain the Church, then would they have no more society with us in prayer: so that recusancy in them is not for religion, but in an acknowledgment of the pope's power, and a plain manifestation what their judgment is concerning the right of the prince in respect of regal power and place. Two years after, viz. 13 Elizabeth, was there a law made against the bringing in of Bulls, &c. Anno 18, came Mayne a priest to move sedition. Anno 20, came Campion the first Jesuit, who was sent to make a party here in England, for the execution of the former Bull: then follow treasonable books. Anno 23 Elizabeth, after so many years sufferance, there were laws made against recusants and seditious books: the penalty or sanction for recusancy, was not loss of life, or limb, or whole state, but only a pecuniary mulct and penalty, and that also until they would submit and conform themselves, and again come to Church, as they had done for 10 years before the Bull. And yet afterwards the Jesuits and Romish priests both coming daily into, and swarming within the realm, and infusing continually this poison into the subjects hearts, that by reason of the said Bull of Pius Quintus, her majesty stood excommunicated and deprived of her kingdom, and that her subjects were discharged of all obedience to her, endeavouring by all means to draw them from their duty and allegiance to her majesty, and to reconcile them to the Church of Rome; then 27 Eliz. a law was made, that it should be Treason for any (not to be a priest and an Englishman, born the queen's natural subject, but for any) being so born her subject, and made a Romish priest, to come into any of her dominions, to infect any of her royal subjects with their treasonable and damnable persuasions and prac-

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tices; yet so, that it concerned only such as were made priests sithence her majesty came to the crown, and not before.

Concerning the execution of these laws, it is to be observed likewise, that whereas in the quinquenny, the five years of qucen Mary, there were cruelly put to death about 360 persons for religion; in all her majesty's time by the space of 44 years and upwards, there were for treasonable practices executed, in all not 30 preests, nor above five receivers and harbourers of them; and for religion not any one. And here by the way, I desire those of parliament to observe, that it is now questioned and doubted, whether the law of recusants and reconciled persons do hold for Ireland also, and the parts beyond the seas that is, whether such as were there reconciled be within the compass of the statute or not, to the end it may be cleared and provided for.

Now against the usurped power of the see of Rome, we have of former times about 13 several acts of parliament: so that the crown and the king of England is no ways to be drawn under the government of any foreign power whatsoever, neither oweth duty to any, but is immediately under God himself. Concerning the pope, for 43 of them, namely unto Sylvester, they were famous martyrs. But 'Quicumque desiderat primatum in terris, inveniet confusionem in caelis.' He that desires primacy upon earth, shall surely find confusion in heaven.

5. The fifth Consideration is of the end, which was to bring a final and fatal confusion upon the state. For howsoever they sought to shadow their impiety with the cloke of religion, yet they intended to breed a confusion fit to get new alterations; for they went to join with Romish Catholicks, and discontented persons.

6. Now the sixth point, which is the means to compass and work these designs, were damnable: by mining, by 36 barrells of powder, having crows of iron, stones and wood laid upon the barrells to have made the breach the greater. Lord, what a wind, what a fire, what a motion and commotion of earth and air would there have been! But as it is in the book of Kings, when Elias was in the cave of the mount Horeb, and that he was called forth to stand before the Lord, behold a mighty strong wind rent the mountains, and brake the rocks: 'sed non in vento Dominus,' 'but the Lord was not in the wind.' And after the wind, came a commotion of the earth and air; 'Et non in commotione Domini,' 'the Lord was not in that commotion;' and after the commotion came fire; 'et non in igne Domini,' 'the Lord was not in the fire.' So neither was God in any part of this monstrous action. The authors whereof were in this respect worse than the very damned spirit of Dives, who, as it is in the gospel, desired that others should not come 'in locum tormentorum.'

7. The next consideration is, the secret con-

tinuing and carriage of this treason; to which purpose there were four means used:

First, Catesby was commended to the marquis for a regiment of horse in the Low-Countries, (which is the same that the lord Arundel now hath) that under that pretence he might have furnished this treason with horses without suspicion. The second means was an oath, which they solemnly and severally took, as well for secrecy, as perseverance and constancy in the execution of their plot. The form of the oath was as follows: 'You shall swear by the blessed Trinity, and by the sacrament you now purpose to receive, never to disclose directly nor indirectly, by word or circumstance, the matter that shall be proposed to you to keep secret, nor desist from the execution thereof, until the rest shall give you leave.'—This oath was, by Gerrard the Jesuit given to Catesby, Percy, Christ. Wright, and Thomas Winter at once; and by Greenwell the Jesuit, to Bates, at another time, and so to the rest.—The third, was the Sacrament; which they impiously and devilishly profaned to this end.—But the last, was their perfidious and perjurious equivocating, abetted, allowed, and justified by the Jesuits, not only simply to conceal or deny an open truth, but religiously to aver, to protest upon salvation, to swear that which themselves know to be most false; and all this, by reserving a secret and private sense inwardly to themselves: whereby they are, by their ghostly fathers, persuaded, That they may safely and lawfully elude any question whatsoever.

And here was shewed a Book written not long before the qucen's death, at what time Thomas Winter was employed into Spain, entitled, 'A Treatise of Equivocation.' Which book being seen and allowed by Garnet, the superior of the Jesuits, and Blackwel the arch-priest of England, in the beginning thereof, Garnet with his own hand put out those words in the title 'of equivocacion,' and made it thus; 'A Treatise against Lying and fraudulent Dissimulation.' Whereas in deed and truth it makes for both, 'Speciosaque nomina culpæ imponis, Garnette tuæ.' And in the end thereof, Blackwel besprinkles it with his blessing, saying, 'Tractatus iste, valde doctus et vere pius, et Catholicus est; certe S. Scripturarum, parum, doctorum, scholasticorum, canonicorum, et optimarum rationum præsidis plenissime firmat æquitatem equivocacionis; ideoque dignissimus est qui typis pagetur, ad consolationem afflictorum Catholicorum, et omnium piorum instructionem.' That is, 'This Treatise is very learned, godly, and Catholick, and doth most fully confirm the equity of equivocacion, by strong proofs out of holy Scriptures, fathers, doctors, schoolmen, canonists, and soundest reasons; and therefore worthy to be published in print, for the comfort of afflicted Catholicks, and instruction of all the godly.'

Now, in this Book there is *propositio mentalis, verbalis, scripta, and mixta*; distinguishing

of a mental, a verbal, a written, and a mixed proposition; a very labyrinth to lead men into error and falsehood.—For example, to give you a little taste of this art of eozening: A man is asked upon his oath this question, Did you see such a one to-day? He may by this doctrine answer, No, though he did see him, viz. reserving this secret meaning, not with purpose to tell my Lord Chief Justice: Or, I see him not *visiona beatifica*, or, not in Venice, &c. Likewise to answer thus; I was in the company; reserving and intending secretly as added, this word not: As Strange the Jesuit did to my Lord Chief Justice and myself. Take one or two of these out of that very book, as for purpose: A man cometh unto Coventry in time of a suspicion of plague, and at the gates the officers meet him, and upon his oath examine him: Whether he came from London or no, where they think certainly the plague to be: This man knowing for certain the plague not to be at London, or at least knowing that the air is not there infectious, and that he only rid through some secret place of London, not staying there, may safely swear, he came not from London; answering to their final intention in their demand, that is, whether he came so from London that he may endanger their city of the plague, although their immediate intention were to know, whether he came from London or no. That man, saith the book, the very light of nature would clear from perjury.—In like manner, one being convented in the bishop's court, because he refused to take such a one to his wife, as he had contracted with, *per verba de presenti*, having contracted with another privily before, so that he cannot be husband to her that claimeth him; may answer, That he never contracted with her *per verba de presenti*: understanding that he did not so contract that it was a marriage; for that is the final intention of the judge, to know whether there were a sufficient marriage between them or no.

Never did father Cranmer, fytter Latimer, futher Ridley, those blessed martyrs, know these shifts, neither would they have used them to have saved their lives. And surely let every good man take heed of such jurors or witnesses, there being no faith, no bond of religion or civility, no conscience of truth in such men; and therefore the conclusion shall be that of the prophet David, 'Domine libera animam meam a labiis iniquis et à lingua dolosa;' 'Deliver me, O Lord, from lying lips, and from a deceitful tongue.'

S. P. Q. R. was sometimes taken for these words, *Senatus Populusque Romanus*; The Senate and People of Rome: but now they may truly be expressed thus, *Stultus Populus querit Romam*; A foolish People that runneth to Rome. And here was very aptly and delightfully inserted and related the apologue or tale of the cat and the mice: The cat having a long time preyed upon the mice, the poor creatures at last, for their safety, contained themselves within their holes; but the cat finding

his prey to cease, as being known to the mice, that he was indeed their enemy and a cut, deviseth this course following, viz. changeth his hue, getteth on a religious habit, shaveth his crown, walks gravely by their holes: And yet perceiving that the mice kept their holes, and looking out, suspected the worst, he formally, and father-like, said unto them, 'Quod fueram non sum, frater; caput aspice tonsum!' 'Oh brother, I am not as you take me for, no more a cat; see my habit and shaven crown!' Hereupon some of the more credulous and bold among them, were again, by this deceit, snatched up; and therefore, when afterwards he came as before to entice them forth, they would come out no more, but answered, 'Cor tibi restat idem, vix tibi presto fidem;' 'Talk what you can, we will never believe you, you have still a cat's heart within you.' You do not watch and pray, but you watch to prey. And so have the Jesuits, yea, and priests too, for they are all joined in the tails like Sampson's foxes, Ephraim against Manasses, and Manasses against Ephraim, but both against Judah.

8. The last consideration is concerning the admirable Discovery of this treason, which was by one of themselves, who had taken the oath and sacrament, as hath been said, against his own will: the means was by a dark and doubtful Letter sent to my lord Mounteagle\*.

And thus much as touching the Considerations: the Observations follow, to be considered in this Powder-Treason, and are briefly thus: 1. If the cellar had not been hired, the mine-work could hardly, or not at all have been discovered; for the mine was neither found nor suspected until the danger was past, and the capital offenders apprehended, and by themselves, upon examination, confessed. 2. How the king was divinely illuminated by Almighty God, the only ruler of princes, like an Angel of God, to direct and point as it were to the very place, to cause a search to be made there, out of those dark words of the letter concerning a terrible blow. 3. Observe a miraculous accident which befel in Stephen Littleton's house, called Holbach in Staffordshire, after they had been two days in open rebellion, immediately before the apprehension of these traitors: for some of them standing by the fire-side, and having set two pound and an half of powder to dry in a platter before the fire, and underset the said platter with a great linen bag full of other powder, containing some fifteen or sixteen pounds; it so fell out, that one coming to put more wood into the fire, and casting it on, there flew a coal into the platter, by reason whereof the powder taking fire and blowing up, scorched those who were nearest, as Catesby, Grant, and Rookwood, blew up the roof of the house: and the linen-bag which was set under the platter being therewith suddenly carried out through the breach, fell down in the court-

\* The Letter to lord Mounteagle is inserted in King James's Account of the Discovery of the Gunpowder Plot, which follows this Case.

yard whole and unfired; which if it had took fire in the room, would have slain them all there, so that they never should have come to this trial: and 'Lex justior nulla est, quam necis artifices arte perire sua?' 4. Note, that gunpowder was the invention of a fryer, one of the Romish rabble, as printing was of a soldier. 5. Observe the sending of Bainham, one of the damned crew, to the high-priest of Rome, to give signification of this blow, and to crave his direction and aid. 6. That for all their stirring and rising in open rebellion, and notwithstanding the false rumours given out by them, That the throats of all Catholicks should be cut; such is his majesty's blessed government, and the loyalty of his subjects, as they got not any one man to take their parts besides their own company. 7. Observe, the sheriff, the ordinary minister of justice, according to the duty of his office, with such power as he on a sudden by law collected, suppressed them. 8. That God suffered their intended mischief to come so near the period, as not to be discovered, but within few hours before it should have been executed. 9. That it was in the entering of the Sun into the Tropick of Capricorn when they began their mine; noting, that by mining, they should descend; and by hanging, ascend. 10. That there never was any Protestant minister in any treason and murder as yet attempted within this realm.

I am now come to the last part, which I proposed in the beginning of this discourse; and that is, touching certain comparisons of this Powder-Treason of the Jesuits, with that of Raleigh, and the other of the priests Watson and Clarke. 1. They had all one end, and that was the Romish Catholick cause. 2. The same means, by Popish and discontented persons, priests and lay-men. 3. They all plaid at hazard; the priests were at the bye, Raleigh at the main, but these in at all; as purposing to destroy all the king's royal issue, and withal the whole estate. 4. They were all alike obliged by the same oath and sacrament. 5. The same proclamations were intended, after the fact, to be published for reformation of abuses. 6. The like army provided for invading, to land at Milford-Haven, or in Kent. 7. The same pensions of crowns promised. 8. The agreeing of the times of the treason of Raleigh and these men, which was when the constable of Spain was coming hither: and Raleigh said, there could be no suspicion of any invasion, seeing that the constable of Spain was then expected for a treaty of peace; and the navy might be brought to the Groyn under pretence of the service in the Low-Countries. And Raleigh further said, That many more were hanged for words than for deeds. And before Raleigh's treason was discovered, it was reported in Spain that Don Raleigh and Don Cobham should cut the king of England's throat.

I say not, that we have any proofs, that these of the Powder-Plot were acquainted with Raleigh, or Raleigh with them: but as before

was spoken of the Jesuits and priests, so they all were joined in the ends, like Sampson's Foxes in the tails, howsoever severed in their heads.

The conclusion shall be from the admirable clemency and moderation of the king, in that howsoever these traitors have exceeded all others their predecessors in mischief, and so 'Crescente malitia, crescere debuit et poena;' yet neither will the king exceed the usual punishment of law, nor invent any new torture or torment for them; but is graciously pleased to afford them as well an ordinary course of trial, as an ordinary punishment, much inferior to their offence. And surely worthy of observation is the punishment by law provided and appointed for High-Treason, which we call *crimen laesæ majestatis*. For first after a traitor hath had his just trial and is convicted and attainted, he shall have his judgment to be drawn to the place of execution from his prison as being not worthy any more to tread upon the face of the earth whereof he was made: also for that he hath been retrograde to nature, therefore is he drawn backward at a horse-tail. And whereas God hath made the head of man the highest and most supreme part, as being his chief grace and ornament, 'Prouaque cum spectent animalia cætera terram os homini subline dedit;' he must be drawn with his head declining downward, and lying so near the ground as may be, being thought unfit to take benefit of the common air. For which cause also he shall be strangled, being hanged up by the neck between heaven and earth, as deemed unworthy of both, or either; as likewise, that the eyes of men may behold, and their hearts condemn him. Then is he to be cut down alive, and to have his privy parts cut off and burnt before his face as being unworthily begotten, and unfit to leave any generation after him. His bowels and inlay'd parts taken out and burnt, who inwardly had conceived and harboured in his heart such horrible treason. After, to have his head cut off, which had imagined the mischief. And lastly his body to be quartered, and the quarters set up in some high and eminent place, to the view and detestation of men, and to become a prey for the fowls of the air.

And this is a reward due to traitors, whose hearts be hardened: For that it is physick of state and government, to let out corrupt blood from the heart. But, 'Pœnitentia vera nunquam, sera sed pœnitentia sera raro vera.' True repentance is indeed never too late: but late repentance is seldom found true: Which yet I pray the merciful Lord to grant unto them, that having a sense of their offences, they may make a true and sincere confession both for their souls health, and for the good and safety of the king and this state. And for the rest that are not yet apprehended, my prayer to God is, 'Ut aud convertantur ne perent, aut confundantur ne noceant;' that either they may be converted, to the end they perish not, or else confounded, that they hurt not.

After this, by the direction of master Attor-

ney-General, were their several examinations (subscribed by themselves) shewed particularly unto them and acknowledged by them to be their own, and true, wherein every one had confessed the treason. Then did master Attorney desire, That albeit that which had been already done and confessed at the bar, might be all-sufficient for the declaration and justification of the course of justice then held, especially seeing we have *reus confitentes*, the traitors own voluntary confessions at the bar; yet for further satisfaction to so great a presence and audience, and their better memory of the carrying of these treasons, the voluntary and free confessions of all the said several traitors in writing subscribed with their own proper hands, and acknowledged at the bar, by themselves to be true, were openly and distinctly read; By which, amongst other things, it appeared that Bates was absolved for what he undertook concerning the Powder-treason, and being therein warranted by the Jesuits. Also it appeared, that Hammond the Jesuit, after that he knew the Powder-treason was discovered, and that these traitors had been in actual rebellion, confessed them, and gave them absolution: and this was on Thursday the 7th of November.

Here also was mention made by master Attorney of the Confessions of Watson and Clarke, seminary priests, upon their apprehension; who affirmed, that there was some treason intended by the Jesuits, and then in hand; as might appear. 1. By their continual negotiating at that time with Spain, which they assured themselves tending to nothing but a preparation for a foreign commotion. 2. By their collecting and gathering together such great sums of money, as then they had done, therewith to levy an army when time should serve. 3. For that sundry of the Jesuits had been tampering with Catholicicks, as well to dissuade them from acceptance of the king at his first coming, saying, That they ought rather to die than to admit of any heretick (as they continually termed his majesty) to the crown; and that they might not, under pain of excommunication, accept of any but a Catholicick for their sovereigns; as also to dissuade Catholicicks from their loyalty after the state was settled. Lastly. In that they had both bought up store of great horses throughout the country, and conveyed powder and shot, and artillery secretly to their friends; wishing them not to stir, but keep themselves quiet until they heard from them.

After the reading of their several Examinations, Confessions, and voluntary Declarations as well of themselves, as of some of their dead Confederates, they were all by the Verdict of the jury found Guilty of the Treasons contained in their Indictment. And then being severally asked, What they could say, wherefore Judgment of Death should not be pronounced against them? there was not one of these (except Rookwood) who would make any continued speech either in defence or extenuation of the fact.

*Thomas Winter* only desired, that he might be hanged both for his brother and himself.

*Guy Fawkes* being asked, Why he pleaded Not Guilty, having nothing to say for his excuse: answered, That he had so done in respect of certain conferences mentioned in the indictment, which he said that he knew not of: which were answered to have been set down according to course of law, as necessarily pre-supposed before the resolution of such a design.

*Keys* said, That his estate and fortune were desperate, and as good now as at another time, and for this cause rather than for another.

*Bates* craved mercy.—*Robert Winter*, mercy.

*John Grant* was a good while mute; yet after, submissively said, he was guilty of a conspiracy intended, but never effected.

But *Ambrose Rookwood* first excused his denial of the Indictment, for that he had rather lose his life than give it. Then did he acknowledge his offence to be so heinous, that he justly deserved the indignation of the king, and of the lords, and the hatred of the whole commonwealth; yet could he not despair of mercy at the hands of a prince, so abounding in grace and mercy: and the rather, because his offence, though it were incapable of any excuse, yet not altogether incapable of some extenuation, in that he had been neither author nor actor, but only persuaded and drawn in by *Catesby*, whom he loved above any worldly man: and that he had concealed it not for any malice to the person of the king, or to the state, or for any ambitious respect of his own, but only drawn with the tender respect, and the faithful and dear affection he bare to Mr. *Catesby* his friend, whom he esteemed dearer than any thing else in the world. And this mercy he desired not for any fear of the image of death, but for grief that so shameful a death should leave so perpetual a blemish and blot unto all ages, upon his name and blood. But howsoever that this was his first offence, yet he humbly submitted himself to the mercy of the king; and prayed that the king would herein imitate God, who sometimes doth punish *corporaliter*, *non mortaliter*, corporally, yet not mortally.

Then was related how that on Friday immediately before this Arraignment, *Robert Winter* having found opportunity to have conference with *Fawkes* in the Tower, in regard of the nearness of their lodgings, should say to *Fawkes*, as *Robert Winter* and *Fawkes* confessed, that he and *Catesby* had sons, and that boys would be men, and that he hoped they would revenge the cause; nay, that God would raise up children to *Abraham* out of stones: also that they were sorry, that nobody did set forth a defence or apology of their action, but yet they would maintain the cause at their deaths.

Here also was reported *Robert Winter's* dream, which he had before the blasting with powder in *Littleton's* house, and which he himself confessed and first notified, viz. That he thought he saw steeples stand awry, and within those churches strange and unknown faces.

And after, when the foresaid blast had the day following scorched divers of the confederates, and much disfigured the faces and countenances of Grant, Rookwood, and others; then did Winter call to mind his dream, and to his remembrance thought, that the faces of his associates so scorched, resembled those which he had seen in his dream.

Then was Sir Everard Digby arraigned, and after his Indictment was read; wherein he was charged, not only to have been acquainted with the Powder-treason, and concealed it, and taken the double oath of secrecy and constancy therein, but likewise to have been an actor in this conspiracy; and lastly to have exposed, and openly showed himself in the rebellion in the country amongst the rest of the traitors. All which after he had attentively heard and marked, knowing that he had confessed it, and the strength and evidence of the proofs against him, and convicted with the testimony of his own conscience, shewed his disposition to confess the principal part of the said Indictment, and so began to enter into a discourse. But being advertised that he must first plead to the Indictment directly, either Guilty, or not Guilty; and that afterwards he should be licensed to speak his pleasure; he forthwith confessed the treason contained in the Indictment, and so fell into a speech, whereof there were two parts, viz. Motives, and Petitions. The first motive which drew him into this action, was not ambition or discontentment of his estate, neither malice to any in parliament, but the friendship and love he bare to Catesby, which prevailed so much, and was so powerful with him, as that for his sake he was ever contented and ready to hazard himself and his estate. The next motive, was the cause of religion, which alone, seeing (as he said) it lay at the stake, he entered into resolution to neglect in that behalf, his estate, his life, his name, his memory, his posterity, and all worldly and earthly felicity whatsoever; though he did utterly extirpate, and extinguish all other hopes for the restoring of the Catholick Religion in England. His third motive was, that promises were broken with the Catholicks. And lastly, that they generally feared harder laws from this parliament against recusants, as that recusants wives, and women should be liable to the mulet as well as their husbands and men. And further, that it was supposed, that it should be made a *premunire*, only to be a Catholick.

His Petitions were. That sithence his offence was confined and contained within himself, that the punishment also of the same might extend only to himself and not to be transferred either to his wife, children, sisters, or other: and therefore for his wife he humbly craved, that she might enjoy her jointure; his son the benefit of an entail made long before any thought of this action; his sisters, their just and due portions, which were in his hands; his creditors their rightful debts, which that he might more justly set down under his hand, he

requested that before his death, his man (who was better acquainted both with the men, and the particulars than himself) might be licensed to come unto him. Then prayed he pardon of the king and lords for his guilt. And lastly he entreated to be beheaded; desiring all men to forgive him, and that his death might satisfy them for his trespass.

To this speech forthwith answered sir *Everard Coke*, Attorney-General, but in respect of the time (for it grew now dark) very briefly:

1. For his Friendship with Catesby, that it was mere folly and wicked conspiracy. 2. His Religion, error, and heresy. 3. His Promises, idle and vain presumptions, as also his Fears, false alarms, concerning wives that were recusants, if they were known so to be before their husbands (though they were good Protestants) took them, and yet for outward and worldly respects whatsoever, any would match with such; great reason there is, that he or they should pay for it, as knowing the penalty and burden before: for *'volenti et scienti non sit injuria'*; no man receives injury in that, to which he willingly and knowingly agreeth and consenteth. But if she were no recusant at the time of marriage, and yet afterwards he suffer her to be corrupted and seduced, by admitting priests and romanists into his house; good reason likewise that he, be he papist or protestant, should pay for his negligence and misgovernment.—4. Concerning the Petitions for wife, for children, for sisters, &c. O how he doth now put on the bowels of nature and compassion, in the peril of his private and domestical estate! But before, when the publick state of his country, when the king, the queen, the tender princes, the nobles, the whole kingdom were designed to a perpetual destruction; where was then this piety, this religious affection, this care? All nature, all humanity, all respect of laws both divine and human, were quite abandoned; then was there no conscience made to extirpate the whole nation, and all for a pretended zeal to the Catholick Religion, and the justification of so detestable and damnable a fact.

Here did Sir *Everard Digby* interrupt Mr. Attorney, and said, that he did not justify the fact, but confessed that he deserved the vilest death, and most severe punishment that might be: but he was an humble petitioner for mercy, and some moderation of justice.—Whereupon Mr. Attorney replied, that he should not look by the king to be honoured in the manner of his death, having so far abandoned all religion and humanity in his action: but that he was rather to admire the great moderation and mercy of the king, in that for so exorbitant a crime, no new torture answerable thereunto was devised to be inflicted upon him. And for his wife and children, whereas he said that for the Catholick cause he was content to neglect the ruin of himself, his wife, his estate, and all; he should have his desire as it is in the Psalm, *'Let his wife be a widow, and his children vagabonds, let his posterity be destroyed, and*

‘in the next generation let his name be quite ‘put out.’ For the paying of your creditors, it is equal and just; but yet fit the king be first satisfied and paid, to whom you owe so much, as that all you have is too little: yet these things must be left to the pleasure of his majesty, and the course of justice and law.

*Earl of Northampton.* You must not hold it strange, sir Everard Digby, though at this time being pressed in duty, conscience and truth, I do not suffer you to wander in the labyrinth of your own idle conceits, without opposition, to seduce others, as yourself have been seduced, by false principles, or to convey yourself by charms of imputation, by clouds of error, and by shifts of lately devised equivocation, out of that straight wherein your late secure and happy fortune hath been unluckily entangled, but yet justly surprized by the rage and revenge of your own rash humours. If in this crime (more horrible than any man is able to express) I could lament the estate of any person upon earth, I could pity you; but thank yourself and your bad counsellors for leading you into a crime of such a kind, as no less benumbeth in all faithful, true and honest men, the tenderness of affection, than did in you the sense of all humanity.—That you were once well thought of and esteemed by the late queen, I can witness, having heard her speak of you with that grace, which might have encouraged a true gentleman to have run a better course. Nay, I will add further, that there was a time wherein you were as well affected to the king our master’s expectation, though perhaps upon false rumours and reports, that he would have yielded satisfaction to your unprobable and vast desires; but the seed that wanted moisture (as our Saviour, himself reporteth) took no deep root: that zeal which hath no other end or object than the pleasing of itself, is quickly spent; and Trajan, that worthy and wise emperor, had reason to hold himself discharged of all debts to those that had offended more by prevarication, than they could ever deserve by industry.—The grace and goodness of his majesty in giving honour at his first coming unto many men of your own affection, and (as I think) unto yourself; his facility in admitting all without distinction of Trojan or of Tyrian, to his royal presence, upon just occasions of access; his integrity in setting open the gate of civil justice unto all his subjects equally and indifferently, with many other favours that succeeded by the progression of peace; are so palpable and evident to all men, that have either eyes of understanding, or understanding of capacity, as yourself and many others have been driven of late to excuse and countenance your execrable ingratitude with a false and scandalous report of some further hope and comfort yielded to the Catholics for toleration or connivance, before his coming to the crown, than since hath been performed, made good or satisfied.—I am not ignorant, that this seditious and false alarm hath awaked and incited many working spirits

to the prejudice of the present state, that might otherwise have slept as before with silence and sufferance; it hath served for a shield of wax against a sword of power: it hath been used as an instrument of art to shadow false approaches, till the Trojan horse might be brought within the walls of the parliament, with a belly stuffed, not as in old time with armed Greeks, but with hellish gunpowder. But howsoever God had blinded you and others in this action, as he did the king of Egypt and his instruments, for the brighter evidence of his own powerful glory; yet every man of understanding could discern, that a prince whose judgment had been fixed by experience of so many years upon the poles of the North and the South, could not shrink upon the sudden: no nor since with fear of that combustion which Catesby that arch-traitor, like a second Phaeton, would have caused in an instant in all the elements. His majesty did never value fortunes of the world, in lesser matter than religion, with the freedom of his thoughts: he thought it no safe policy (professing as he did, and ever will) to call up more spirits into the circle than he could put down again; he knew, that *omne regnum in se divisum desolabitur*, philosophy doth teach, that whatsoever any man may think in secret thought, that where one doth hold of Cephas, another of Apollo, openly dissension ensues, *quod insitum alieno solo est, in id quo alitur natura vertente degenerat*; and the world will ever apprehend, that *Quorum est commune symbolum, facillimus est transitus*.—Touching the point itself of promising a kind of toleration to Catholics, as it was divulged by these two limbs of Lucifer, Watson and Percy, to raise a ground of practice and conspiracy against the state and person of our dear sovereign, let the kingdom of Scotland witness for the space of so many years before his coming hither, whether either flattery or fear, no, not upon that enterprize of the 17th of Nov. which would have put the patience of any prince in Europe to his proof, could draw from the king the least inclination to this dispensative indifference, that was only believed, because it was eagerly desired.—Every man doth know how great art was used, what strong wits sublimed, how many ministers suborned and corrupted many years both in Scotland and in foreign parts, to set the king’s teeth an edge with fair promises of future helps and supplies, to that happy end of attaining his due right in England, when the sun should set, to rise more gloriously in the same hemisphere, to the wonder both of this island and of the world. But all in vain; for *jacta erat alea*, the king’s compass had been set before, and by a more certain rule, and they were commonly cast off as forlorn hopes in the king’s favour, that ran a course of ranking themselves in the foremost front of foreign correspondency.—Upon notice given to his majesty from hence some years before the death of the late queen, that many men were grown suspicious of his religion, by rumours spread abroad, that some of those in fe-

reign parts, that seemed to be well affected to his future expectation, had used his name more audaciously, and spoken of his favour to the Catholics more forwardly than the king's own conscience and unchangeable decree could acknowledge or admit (either with a purpose to prepare the minds of foreign princes, or for a practice to estrange and alienate affections at home) not only utterly renounced and condemned these encroachments of blind zeal, and rash proceedings, by the voices of his own ministers, but was careful also for a caution to succeeding hopes, so far as lay in him, that by the disgrace of the delinquents in this kind, the minds of all English subjects chiefly might be secured, and the world satisfied.—No man can speak in this case more confidently than myself, that received in the queen's time, for the space of many years, directions and warnings to take heed, that neither any further comfort might be given to Catholics, concerning future favours, than he did intend, which was to bind all subjects in one kingdom to one law, concerning the religion established, howsoever in civil matters he might extend his favour as he found just cause: nor any seeds of jealousy and diffidence sown in the minds of Protestants by Semeis and Achitophels, to make them doubtful of his constancy, to whom he would confirm with his dearest blood, that faith which he had sucked from the breast of his nurse, apprehended from the cradle of his infancy, and maintained with his uttermost endeavour, affection and strength: since he was more able out of reading and disputing, to give a reason of those principles which he had now digested and turned to nutriment.—He that wrote the Book of Titles before the late queen's death, declares abundantly by seeking to possess some foreign prince of the king's hereditary crowns, when the cause should come to the proof, and may witness instead of many; what hope there was of the king's favour or affection to Catholics in the case of toleration or dispensation, with exercise of conscience. For every man may guess that it was no slight or ordinary degree of despair, that made him and other of his suit renounce their portion in the son and heir of that renowned and rare lady Mary queen of Scotland, a member of the Roman church; as some did in David, *Nulla nobis pars in David, nec hereditas in filio Isai*: For hereof by letters intercepted in their passage into Scotland, the records and proofs are evident. His majesty, so long as he was in expectation of that which by the work and grace of God he doth now possess, did ever seek to settle his establishment upon the faith of Protestants in generality, as the most assured sheet anchor. For though he found a number on the other side, as faithful and as well-affected to his person, claim and interest, as any men alive, as well in respect of their dependency upon the queen his mother, as for the taste which they had of the sweetness of himself; yet finding with what strength of blood many have been over-carried out of a fervency in zeal in former times, observing to what censures they

were subject, both in points of faith, and limitation of loyalty: And last of all, forecasting to what end their former protestation would come, when present satisfaction should shrink; he was ever fearful to embark himself for any further voyage and adventure in this strait, than his own compass might steer him, and his judgment level him.—If any one green leaf for Catholics could have been visibly discerned by the eye of Catesby, Winter, Garnet, Fawkes, &c. they would neither have entered into practice with foreign princes during the queen's time for prevention of the king's lawful and hereditary right, nor have renewed the same both abroad and at home by missions and combinations, after his majesty was both applauded and entered.—It is true, that by Confessions we find, that false priest Watson, and arch traitor Percy, to have been the first devisers and divulgers of this scandalous report, as an accursed ground, whereon they might with some advantage, as it was conceived, build the castles of their conspiracy.—Touching the first, no man can speak more soundly to the point than myself; for being sent into the prison by the king to charge him with this false alarm, only two days before his death, and upon his soul to press him in the presence of God, and as he would answer it at another bar, to confess directly whether at either of both these times he had access unto his majesty at Edinborough, his majesty did give him any promise, hope or comfort of encouragement to Catholics concerning toleration; he did there protest upon his soul that he could never win one inch of ground, or draw the smallest comfort from the king in those degrees, nor further than that he would have them apprehend, that as he was a stranger to this state, so till he understood in all points how those matters stood, he would not promise favour any way; but did protest that all the crowns and kingdoms in this world, should not induce him to change any jot of his profession, which was the pasture of his soul, and earnest of his eternal inheritance. He did confess that in very deed, to keep up the hearts of Catholics in love and duty to the king, he had imparted the king's words to many, in a better tune, and a higher kind of descant, than his book of plain song did direct; because he knew that others like sly bargemen looked that way, when their stroke was bent another way. For this he craved pardon of the king in humble manner, and for his main treasons of a higher nature than these figures of hypocrisy; and seemed penitent, as well for the horror of his crime, as for the falsehood of his whisperings.—It hindered not the satisfaction which may be given to Percy's shadow (the most desperate Bouteseu in the pack), that as he died impenitent, for any thing we know: so likewise he died silent in the particulars. For first, it is not strange that such a traitor should devise so scandalous a slander out of the malice of his heart, intending to destroy the king by any means, and to advance all means that might remove obstructions and impediments to the plot of gunpowder. The

more odious that he could make him to the party malecontent, and the more sharply that he could set the party malecontent upon the point and humour of revenge: the stronger was his hope at the giving of the last blow, to be glorified and justified. But touching the truth of the matters, it will be witnessed by many, that this traitor Percy after both the first and second return from the king, brought to the Catholicks no spark of comfort, of encouragement, of hope; whereof no stronger proof of argument doth need, than that Fawkes and others were employed both into Spain and other parts, for the reviving of a practice suspended and covered, after Percy's coming back; as in likelihood they should not have been, in case he had returned with a branch of olive in his mouth, or yielded any ground of comfort to resolve upon.—Therefore I thought it thus far needful to proceed, for the clearing of those scandals that were cast abroad, by these forlorn hopes and graceless instruments. It only remains that I pray for your repentance in this world for the satisfaction of many, and forgiveness in the next world, for the saving of yourself; having had by the king's favour so long a time to cast up your account, before your appearance at the seat of the great auditor:

Then spake the Earl of *Salisbury*, especially to that point, of his majesty's breaking of promise with Recusants, which was used and urged by sir Everard Digby, as a motive to draw him to participate in this so hideous a treason. Wherein his lordship, after acknowledgment that sir Everard Digby was his ally, and having made a zealous and religious protestation concerning the sincerity and truth of that which he would deliver: shortly and clearly defended the honour of the king herein, and freed his majesty from all imputation and scandal of irresolution in religion, and in the constant and perpetual maintaining thereof; as also from having at any time given the least hope, much less promise of toleration. To which purpose he declared how his majesty, as well before his coming to this crown, as at that very time, and always since, was so far from making of promise, or giving hope of Toleration, that he ever professed he should not endure the very motion thereof from any.—And here his lordship shewed what was done at Hampton-Court at the time of Watson's treason, where some of the greater recusants were convented: And being found then not to have their fingers in treason, were sent away again with encouragement to persist in their dutiful carriage, and with promise only of thus much favour. That those mean profits which had accrued since the king's time to his majesty for their recusancy, should be forgiven to the principal gentlemen,

who had both at his entry shewed so much loyalty, and had kept themselves so free since from all conspiracies.—Then did his lordship also (the rather to shew how little truth sir Everard Digby's words did carry in any thing which he had spoken) plainly prove, that all his protestations wherein he denied so constantly to be privy to the Plot of Powder, were utterly false, by the testimony of Fawkes (there present at the bar) who had confessed, that certain months before that session, the said Fawkes being with Digby at his house in the country, about what time there had fallen much wet: Digby taking Fawkes aside after supper, told him that he was much afraid that the powder in the cellar was grown dank, and that some new must be provided, lest that should not take fire.—Next, the said earl did justly and greatly commend the lord Mounteagle for his loyal and honourable care of his prince and country, in the speedy bringing forth of the letter sent unto him; wherein he said, that he had shewed both his discretion and fidelity. Which speech being ended, Digby then acknowledged, that he spake not that of the breach of promise out of his own knowledge, but from their relation whom he trusted; and namely from sir Tho. Tresham.

Now were the Jury returned, who having delivered their Verdict, whereby they jointly found those seven prisoners, arraigned upon the former Indictment, Guilty; Serjeant Philips craved Judgment against those seven upon their conviction and against sir Everard Digby upon his own Confession.

Then the Lord Chief Justice of England, after a grave and prudent relation and defence of the laws made by queen Elizabeth against recusants, priests, and receivers of priests, together with the several occasions, progresses and reasons of the same; and having plainly demonstrated and proved that they were all necessary, mild, equal, moderate, and to be justified to all the world: pronounced Judgment.

Upon the rising of the court, sir Everard Digby bowing himself towards the lords, said, If I may but hear any of your lordships say, you forgive me, I shall go more chearfully to the gallows.—Whereunto the lords said, God forgive you, and we do.

And so according to the Sentence, on Thursday following being the 30th of January, execution was done upon sir Everard Digby, Robert Winter, John Grant, and Thomas Bates, at the West end of Paul's church; and on Friday following, upon Thomas Winter, Ambrose Rookwood, Robert Keyes, and Guy Fawkes, within the old Palace-Yard, at Westminster, not far from the Parliament-House.



The following History of the GUNPOWDER-PLOT, written by King James himself, is extracted from the first Collection of his Works published during his life-time by Mountague, Bishop of Winchester.

WHILE this land and whole monarchy flourished in a most happy and plentiful peace, as well at home, as abroad, sustained and conducted by these two main good pillars of all good government, piety and justice, no foreign grudge, nor inward whispering of discontentment any way appearing: the king being upon his return from his hunting exercise at Royston, upon occasion of the drawing near of the parliament-time, which had been twice prorogued already, partly in regard of the season of the year, and partly of the term: as the winds are ever stillest immediately before a storm; and, as the sun bleaks often hottest to foretel a following shower; so, at that time of greatest calm, did this secretly hatched thunder begin to cast forth the first flashes, and flaming lightnings of the approaching tempest. For, the Saturday of the week immediately preceding the king's return, which was upon a Thursday, being but ten days before the parliament, the lord Monteagle, son and heir to the lord Morley, being in his own lodgings ready to go to supper, at seven of the clock at night, one of his footmen, whom he had sent of an errand over the street, was met by a man of a reasonable tall personage, who delivered him a Letter, charging him to put it in my lord his master's hands; which my lord no sooner received, but that, having broken it up, and perceiving the same to be of an unknown, and somewhat unlegible hand, and without either date or superscription, did call one of his men unto him, for helping him to read it. But no sooner did he conceive the strange contents thereof, although he was somewhat perplexed what construction to make of it, as whether of a matter of consequence, as indeed it was, or whether some foolish devised pasquil by some of his enemies to scare him from his attendance at the parliament, yet did he, as a most dutiful and loyal subject, conclude not to conceal it, whatever might come of it. Whereupon, notwithstanding the lateness and darkness of the night in that season of the year, he presently repaired to his majesty's palace at Whitehall, and there delivered the same to the earl of Salisbury, his majesty's principal secretary. Whereupon, the said earl of Salisbury having read the Letter and heard the manner of the coming of it to his hands, did greatly encourage and commend my lord for his discretion, telling him plainly, that, whatsoever the purport of the Letter might prove hereafter, yet did this accident put him in mind of divers advertisements he had received from beyond the seas, wherewith he had acquainted, as well the king himself, as divers of his privy-counsellors, concerning some business the Papists were in, both at home and abroad, making preparations for some combination amongst them against this parliament-time, for

enabling them to deliver at that time to the king some petition for toleration of religion, which should be delivered in some such order, and so well backed, as the king should be loth to refuse their requests; like the sturdy beggars, craving alms with one open hand, but carrying a stone in the other, in case of refusal. And therefore did the earl of Salisbury conclude with the lord Monteagle, that he would, in regard of the king's absence, impart the same Letter to some more of his majesty's council, whereof my lord Monteagle liked well, only adding this request, by way of protestation, That whatsoever the event hereof might prove, it should not be imputed to him, as proceeding from too light and too sudden an apprehension, that he delivered this Letter; being only moved thereunto for demonstration of his ready devotion, and care for preservation of his majesty and the state. And thus did the earl of Salisbury presently acquaint the lord chamberlain with the said Letter. Whereupon they two, in presence of the lord Monteagle, calling to mind the former intelligence already mentioned, which seemed to have some relation with this letter; the tender care which they ever carried to the preservation of his majesty's person, made them apprehended, that some perilous attempt did thereby appear to be intended against the same, which did the more nearly concern the said lord chamberlain to have a care of, in regard that it doth belong to the charge of his office to oversee, as well all places of assembly where his majesty is to repair, as his highness's own private houses. And therefore did the said two counsellors conclude, that they should join unto themselves three more of the council, to wit, the lord admiral, the earls of Worcester and Northampton, to be also particularly acquainted with this accident, who having all of them concurred together to the re-examination of the contents of the said letter, they did conclude, That, how slight a matter it might at the first appear to be, yet was it not absolutely to be contemned, in respect of the care which it behoved them to have of the preservation of his majesty's person: but, yet resolved for two reasons, first, to acquaint the king himself with the same, before they proceeded to any further inquisition in the matter, as well for the expectation and experience they had of his majesty's fortunate judgment, in clearing and solving obscure riddles and doubtful mysteries; as also, because the more time would, in the mean time, be given for the practice to ripen, if any was, whereby the discovery might be more clear and evident, and the ground of proceeding thereupon more safe, just, and easy. And so according to their determination did the said earl of Salisbury repair to the king in his gallery upon Friday, being Allallow's-day, in

the afternoon, which was the day after his majesty's arrival, and none but himself being present with his highness at that time, where, without any other speech, or judgment given of the Letter, but only relating simply the form of the delivery thereof, he presented it to his majesty. The contents whereof follow :

My Lord ; Out of the love I bear to some of your friends, I have a care of your preservation : therefore I would advise you, as you tender your life, to devise some excuse, to shift off your attendance at this parliament. For God and man have concurred to punish the wickedness of this time. And think not slightly of this advertisement, but retire yourself into your country, where you may expect the event in safety. For, though there be no appearance of any stir, yet I say, they shall receive a terrible blow this parliament, and yet they shall not see who hurts them. This counsel is not to be condemned, because it may do you good, and can do you no harm, for the danger is past so soon as you have burnt the Letter ; and I hope God will give you grace to make good use of it ; to whose holy protection I commend you.\*

The king no sooner read the letter, but after a little pause, and then reading it once again, he delivered his judgment of it in such sort, as

\* " Who it was " observes Kennett, " that wrote this Letter to the Lord Montegle was never known, or how it came that king James suspected its meaning to be what it really was, is in a great part a mystery to this day. Yet I cannot give myself leave to doubt, but king James had some light given him from Henry 4th of the designs of the Papists against him ; for in the duke of Sully's Memoirs, there is more than once mention made of some ' sudden Blow ' they intended in England about that time : and in one Letter, king James is desired to take warning from the fate of Henry 3. I am the more confirmed in this opinion, that in the Harangue pronounced at Rome in praise of Ravillac the Assassin of Henry 4, which has since been so often quoted by several authors, both Papist and Protestant, as an argument that the Jesuits approved the murder : it is there said, ' That Henry 4, was not only an inveterate enemy to the Catholick religion in his heart, but had obstructed the glorious enterprizes of those that would have restored it in England, and occasioned them to be crown'd with Martyrdom.' Now it's well known, Garnet and the rest that were executed for the Gun-Powder-Plot, were reputed Martyrs for the Catholick cause by the college of Jesuits at Rome, where that Harangue was pronounced." See also Welwood.—It is now a common opinion that the above Letter to lord Mountegle was sent by his sister Mary the wife of Thomas Habington or Abingdon. Some particulars of this family and of their concern with the treasonable transactions in the reigns of Elizabeth and James 1st. are to be found in Nash's History of Worcestershire.

he thought it was not to be contemned, for that the stile of it seemed to be more quick and pithy, than is usual to be in any pasquil or libel, the superfluities of idle brains. But the earl of Salisbury, perceiving the king to apprehend it deeper than he looked for, knowing his nature, told him, that he thought, by one sentence in it, that it was like to be written by some fool, or madman, reading to him this sentence in it : ' For the danger is past, as soon as you have burnt the letter ; ' which, he said, was likely to be the saying of a fool ; for, if the danger was past, so soon as the letter was burnt, then the warning behoved to be of little avail, when the burning of the letter might make the danger to be eschewed. But the king, on the contrary, considering the former sentence in the letter, ' That they should receive a terrible blow at this parliament, ' and yet should not see who hurt them, joining it to the sentence immediately following, already alledged, did thereupon conjecture, that the danger mentioned should be some sudden danger by blowing up of powder ; for no other insurrection, rebellion, or whatsoever other private and desperate attempt could be committed, or attempted, in time of parliament, and the authors thereof unseen, except only if it were by a blowing up of powder, which might be performed by one base knave in a dark corner : Whereupon he was moved to interpret and construe the latter sentence in the letter, alledged by the earl of Salisbury, against all ordinary sense and construction in grammar, as if by these words, ' For the danger is past, as soon as you have burnt the letter ; ' should be closely understood the suddenness and quickness of the danger, which should be as quickly performed and at an end, as that paper should be a blazing up in the fire ; turning that word of ' as soon ' to the sense of ' as quickly ; ' and therefore wished, that, before his going to the parliament, the under-rooms of the parliament-house might be well and narrowly searched. But, the earl of Salisbury wondering at this his majesty's commentary, which he knew to be so far contrary to his ordinary and natural disposition, who did rather ever sin upon the other side, in not apprehending, nor trusting due advertisements of practices and perils, when he was truly informed of them, whereby he had many times drawn himself into many desperate dangers ; and interpreting rightly this extraordinary caution at this time to proceed from the vigilant care he had of the whole state, more than of his own person, which could not but have all perished together, if this designment had succeeded, he thought good to dissemble still unto the king, that there had been any just cause of such apprehension ; and, ending the purpose with some merry jest upon this subject, as his custom is, took his leave for that time. But, though he seemed so to neglect it to his majesty, yet, his customable and watchful care of the king and the state still boiling within him, and having, with the blessed virgin Mary, laid up in his heart the king's so strange

judgment and construction of it, he could not be at rest, till he acquainted the foresaid lords what had passed between the king and him in private. Whereupon they were all so earnest to renew again the memory of the same purpose to his majesty, that it was agreed, that he should the next day, being Saturday, repair to his highness; which he did in the same privy gallery, and renewed the memory thereof, the lord chamberlain then being present with the king. At which time it was determined, That the said lord chamberlain should, according to his custom and office, view all the parliament-houses, both above and below, and consider what likelihood or appearance of any such danger might possibly be gathered by the sight of them: But yet, as well for staying of idle rumours, as for being the more able to discern any mystery, the nearer that things were in readiness, his journey thither was ordained to be deferred till the afternoon before the sitting down of the parliament, which was upon the Monday following. At which time he (according to this conclusion) went to the parliament-house, accompanied with my lord Montecagle, being, in zeal to the king's service, earnest and curious to see the event of that accident, whereof he had the fortune to be the first discoverer; where, having viewed all the lower rooms, he found, in the vault, under the upper house, great store and provision of billets, faggots, and coals; and, inquiring of Whyneard, keeper of the wardrobe, To what use he had put those lower rooms and cellars? He told him, That Thomas Percy had hired both the house, and part of the cellar, or vault, under the same; and that the wood and coal therein were the said gentleman's own provision. Whereupon, the lord chamberlain, casting his eye aside, perceived a fellow standing in a corner there, calling himself the said Percy's man, and keeper of that house for him, but indeed was Guido Fawkes, the owner of that hand, which should have acted that monstrous tragedy.

The lord chamberlain, looking upon all things with a heedful indeed, yet, in outward appearance, with but a careless and rackless eye, as became so wise and diligent a minister, he presently addressed himself to the king in the said privy gallery; where, in the presence of the lord treasurer, the lord admiral, the earls of Worcester, Northampton, and Salisbury, he made his report what he had seen and observed there; noting, that Montecagle had told him, That he no sooner heard Thomas Percy named to be the possessor of that house, but, considering both his backwardness in religion, and the old dearness in friendship between himself and the said Percy, he did greatly suspect the matter, and that the letter should come from him. The said lord chamberlain also told, That he did not wonder a little at the extraordinary great provision of wood and coal in that house, where Thomas Percy had so seldom occasion to remain; as likewise it gave him in his mind, that his man looked like a very tall and desperate fellow.

This could not but increase the king's former apprehension and jealousy; whereupon, he insisted, as before, That the house was narrowly to be searched, and that those billets and coals should be searched to the bottom, it being most suspicious, that they were laid there only for covering of the powder. Of this same mind also were all the counsellors then present; but upon the fashion of making of the search was it long debated: For, upon the one side, they were all so jealous of the king's safety, that they all agreed, That there could not be too much caution used for preventing his danger; and yet, upon the other part, they were all extreme loth and dainty, that, in case this letter should prove to be nothing but the evaporation of an idle brain, then a curious search being made, and nothing found, should not only turn to the general scandal of the king and the state, as being so suspicious of every light and frivolous toy, but likewise lay an ill-favoured imputation upon the earl of Northumberland, one of his majesty's greatest subjects and counsellors, this Thomas Percy being his kinsman and most confident familiar. And the rather were they curious upon this point, knowing how far the king detested to be thought suspicious or jealous of any of his good subjects, though of the meanest degree; and therefore, though they all agreed upon the main ground, which was to provide for the security of the king's person, yet did they much differ in the circumstances, by which this action might be best carried with least din and occasion of slander. But, the king himself still persisting, that there were divers shrewd appearances, and that a narrow search of those places could pre-judge no man that was innocent, he at last plainly resolved them, That either must all the parts of those rooms be narrowly searched, and no possibility of danger left unexamined, or else he and they all must resolve not to meddle in it at all, but plainly to go the next day to the parliament, and leave the success to fortune; which, he believed, they would be loth to take upon their conscience; for, in such a case as this, an half-doing was worse than no doing at all. Whereupon it was at last concluded, That nothing should be left unsearched in those houses; and yet, for the better colour and stay of rumour, in case nothing were found, it was thought meet, that, upon a pretence of Whyneard's missing some of the king's stuff, or hangings, which he had in keeping, all those rooms should be narrowly ripped for them. And, to this purpose, was sir Thomas Knevet, (a gentleman of his majesty's privy-chamber) employed, being a justice of peace in Westminster, and one, of whose ancient fidelity both the late queen and our now sovereign have had large proof; who, according to the trust committed unto him, went, about the midnight next after, to the parliament house, accompanied with such a small number as was fit for that errand: but, before his entry in the house finding Thomas Percy's alledged man standing without the doors, his clothes and

boots on, at so dead a time of the night, he resolved to apprehend him; as he did, and thereafter went forward to the searching of the house, where, after he had caused to be overturned some of the billets and coals, he first found one of the small barrels of powder, and afterwards all the rest, to the number of 36 barrels, great and small; and thereafter, searching the fellow, whom he had taken, found three matches, and all other instruments fit for blowing up the powder, ready upon him; which made him instantly confess his own guiltiness; declaring also unto him, That, if he had happened to be within the house, when he took him, as he was immediately before (at the ending of his work) he would not have failed to have blown him up, house and all.

Thus, after sir Thomas had caused the wretch to be surely bound, and well guarded by the company he had brought with him, he himself returned back to the king's palace, and gave warning of his success to the lord Chamberlain, and earl of Salisbury, who immediately warning the rest of the council, that lay in the house; as soon as they could get themselves ready, came, with their fellow counsellors, to the king's bed-chamber, being, at that time, near four of the clock in the morning. And at the first entry of the king's chamber-door, the lord chamberlain, being not any longer able to conceal his joy for the preventing of so great a danger, told the king, in a confused haste, that all was found and discovered, and the traitor in hands and fast bound.

Then, order being first taken for sending for the rest of the council that lay in the town, the prisoner himself was brought into the house, where, in respect of the strangeness of the accident, no man was stayed from the sight, or speaking with him. And, within a while after, the council did examine him; who, seeming to put on a Roman resolution, did, both to the council, and to every other person that spoke with him that day, appear so constant and settled upon his grounds, as we all thought we had found some new Mutius Scævola born in England. For, notwithstanding the horror of the fact, the guilt of his conscience, his sudden surprizing, the terror which should have been struck in him, by coming into the presence of so grave a council, and the restless and confused questions, that every man, all that day, did vex him with; yet was his countenance so far from being dejected, as he often smiled in scornful manner, not only avowing the fact, but repenting only, with the said Scævola, his failing in the execution thereof, whereof, he said, the devil, and not God, was the discoverer; answering quickly to every man's objection, scoffing at any idle questions which were propounded unto him, and jesting with such as he thought had no authority to examine him. All that day could the council get nothing out of him, touching his accomplices, refusing to answer to any such questions, which he thought might discover the plot, and laying all the blame upon himself; whereunto,

he said, he was moved, only for religion and conscience sake, denying the king to be his lawful sovereign, or the Anointed of God, in respect he was an heretick, and giving himself no other name, than John Johnson, servant to Thomas Percy. But, the next morning, being carried to the Tower, he did not there remain above two or three days, being twice or thrice, in that space, re-examined, and the rack only offered and shewed unto him, when the mask of his Roman fortitude did visibly begin to wear and slide off his face; and then did he begin to chuse a part of the truth, and, thereafter, to open the whole matter, as doth appear, by his Depositions immediately following.

*The true Copy of the DEPOSITION of GUIDO FAWKES, taken in the Presence of the Counsellors, whose names are underwritten.*

"I confess, that a practice, in general, was first broken unto me, against his majesty, for relief of the Catholick cause, and not invented or propounded by myself. And this was first propounded unto me about Easter last was twelve-month, beyond the seas, in the Low-Countries, of the archduke's obeisance, by Thomas Winter, who came, thereupon, with me into England, and there we imparted our purpose to three other gentlemen more, namely, Robert Catesby, Thomas Percy, and John Wright, who, all five, consulting together, of the means how to execute the same; and taking a vow, among ourselves, for secrecy, Catesby propounded to have it performed by gunpowder, and by making a mine under the upper house of parliament; which place we made choice of, the rather, because, religion have been unjustly suppressed there, it was fittest that justice and punishment should be executed there.—This being resolved amongst us, Thomas Percy hired an house at Westminster for that purpose, near adjoining to the parliament-house, and there we began to make our mine, about the 11th of December, 1604.—The five, that first entered into the work, were Thomas Percy, Robert Catesby, Thomas Winter, John Wright, and myself, and, soon after, we took another unto us, Christopher Wright, having sworn him also, and taken the Sacrament for secrecy.—When we came to the very foundation of the wall of the house, which was about three yards thick, and found it a matter of great difficulty, we took unto us another gentleman, Robert Winter, in like manner, with the Oath and Sacrament as aforesaid.—It was about Christmas, when we brought our mine unto the wall, and, about Candlemas, we had wrought the wall half through: and, whilst they were in working, I stood as sentinel, to descry any man that came near, whereof I gave them warning, and so they ceased, until I gave notice again to proceed.—All we seven lay in the house, and had shot and powder, being resolved to die in that place, before we should yield or be taken.—As they were working upon the wall, they heard a rushing in a cellar, of removing of coals;

whereupon we feared we had been discovered; and they sent me to go to the cellar, who finding that the coals were a selling, and that the cellar was to be let, viewing the commodity thereof for our purpose, Percy went and hired the same for yearly rent.—We had, before this, provided and brought into the house 20 barrels of powder, which we removed into the cellar, and covered the same with billets and faggots, which were provided for that purpose.—About Easter, the parliament being prorogued till October next, we dispersed ourselves, and I retired into the Low-Countries, by advice and direction of the rest; as well to acquaint Owen with the particulars of the plot, as also, lest, by my longer stay, I might have grown suspicious, and so have come in question.—In the mean time, Percy, having the key of the cellar, laid in more powder and wood into it. I returned, about the beginning of September next, and, then, receiving the key again of Percy, we brought in more powder, and billets to cover the same again, and so I went, for a time, into the country, till the 30th of October.—It was further resolved amongst us, that the same day, that this act should have been performed, some other of our confederates should have surprised the person of the lady Elizabeth, the king's eldest daughter, who was kept in Warwickshire, at the lord Harrington's house, and presently have proclaimed her queen, having a project of a proclamation ready for that purpose; wherein we made no mention of altering religion, nor would have avowed the deed to be ours, until we should have had power enough to make our party good, and then we would have avowed both.—Concerning duke Charles, the king's second son, we had sundry consultations, how to seize on his person: but, because we found no means how to compass it, the duke being kept near London, where we had not force enough, we resolved to serve our turn with the lady Elizabeth."

The Names of other principal persons, that were made privy afterwards to this horrible conspiracy.—Everard Digby, knt. Ambrose Rookwood, Francis Tresham, John Grant, Robert Keyes.

Commissioners; Nottingham, Suffolk, Worcester, Devonshire, Northampton, Salisbury, Marre, Dunbarr, Popham.—Edward Coke, W. Waad.

And in regard, that, before this discourse could be ready to go to the press, Thomas Winter, being apprehended, and brought to the Tower, made a Confession, in substance agreeing with this former of Fawkes, only larger in some circumstances: I have thought good to insert the same likewise in this place, for the further clearing of the matter, and greater benefit of the reader.

THOMAS WINTER'S CONFESSION, taken the 23rd of November 1605, in the presence of the Counsellors, whose names are under-written.

"My most honourable lords; Not out of hope

to obtain pardon; for, speaking of my temporal part, I may say, the fault is greater than can be forgiven; nor affecting hereby the title of a good subject; for I must redeem my country from as great a danger, as I have hazarded the bringing of her into, before I can purchase any such opinion; only at your honours command I will briefly set down my own accusation, and how far I have proceeded in this business: which I shall the faithfuller do, since I see such courses are not pleasing to Almighty God, and that all, or the most material parts, have been already confessed.

I remained with my brother in the country from Alihallow's-tide, until the beginning of Lent, in the year of our Lord 1603, the first year of the king's reign; about which time Mr. Catesby sent thither, intreating me to come to London, where he, and other my friends, would be glad to see me. I desired him to excuse me; for I found myself not very well disposed; and, which had happened never to me before, returned the messenger without my company. Shortly I received another letter, in any wise to come. At the second summons, I presently came up, and found him with Mr. John Wright, at Lambeth, where he broke with me, how necessary it was not to forsake our country, for he knew I had then a resolution to go over, but to deliver her from the servitude in which she remained, or at least to assist her with our uttermost endeavours. I answered, that I had often hazarded my life upon far lighter terms, and now would not refuse any good occasion, wherein I might do service to the Catholic cause; but for myself, I knew no mean probable to succeed. He said that he had thought him of a way at one instant to deliver us from all our bonds, and without any foreign help to replant again the Catholic religion; and withal told me in a word, it was to blow up the Parliament-house with gunpowder; for said he, in that place have they done us all the mischief, and perchance God hath designed that place for their punishment. I wondered at the strangeness of the conceit, and told him that true it was, this struck at the root, and would breed a confusion fit to beget new alterations; but if it should not take effect, as most of this nature miscarried, the scandal would be so great which the Catholic religion might hereby sustain, as not only our enemies, but our friends also would with good reason condemn us. He told me, the nature of the disease required so sharp a remedy, and asked me if I would give my consent. I told him Yes, in this or what else soever, if he resolved upon it, I would venture my life. But I proposed many difficulties, as want of an house, and of one to carry the mine, noise in the working, and such like. His answer was, Let us give an attempt, and where it faileth, pass no further. But first, quoth he, because we will leave no peaceable and quiet way untried, you shall go over and inform the Constable of the state of the Catholics here in England, intreating him to solicit his majesty, at his coming thither, that the penal laws may

be recalled, and we admitted into the rank of his other subjects; withal, you may bring over some confident gentleman, such as you shall understand best able for this business, and named unto me Mr. Fawkes. Shortly after, I passed the sea, and found the Constable at Bergen near Dunkirk, where, by help of Mr. Owen, I delivered my message; whose answer was that he had strict command from his master, to do all good offices for the Catholics, and for his own part, he thought himself bound in conscience so to do, and that no good occasion should be omitted, but spoke to him nothing of this matter.

Returning to Dunkirk with Mr. Owen, we had speech, whether he thought the Constable would faithfully help us, or no. He said he believed nothing less, and that they sought only their own ends, holding small account of Catholics. I told him that there were many gentlemen in England, who would not forsake their country, until they had tried the uttermost, and rather venture their lives, than forsake her in this misery. And to add one more to our number, as a fit man both for counsel and execution of whatsoever we should resolve, wished for Mr. Fawkes, whom I had heard good commendations of; he told me the gentleman deserved no less, but was at Brussels, and that, if he came not, as happily he might, before my departure, he would send him shortly after into England. I went soon after to Ostend, where sir William Stanley, as then, was not, but came two days after. I remained with him three or four days, in which time I asked him, if the Catholics in England should do any thing to help themselves, whether he thought the archduke would second them? He answered, No, for all those parts were so desirous of peace with England, as they would endure no speech of other enterprise; neither were it fit, said he, to set any project a-foot, now the peace is upon concluding. I told him there was no such resolution, and so fell to discourse of other matters, until I came to speak of Mr. Fawkes, whose company I wished over into England; I asked of his sufficiency in the wars, and told him we should need such as he, if occasion required; he gave very good commendations of him. And as we were thus discoursing, and ready to depart for Newport, and taking my leave of sir William, Mr. Fawkes came into our company, newly returned, and saluted us. This is the gentleman, said sir William, that you wished for, and so we embraced again. I told him, some good friends of his wished his company in England, and that, if he pleased to come to Dunkirk, we would have further conference, whither I was then going: so taking my leave of them both, I departed. About two days after came Mr. Fawkes to Dunkirk, where I told him that we were upon a resolution to do somewhat in England, if the peace with Spain helped us not, but as yet resolved upon nothing; such or the like talk we passed at Graveling, where I lay for a wind, and when it served came both in one passage to Greenwich, near which place

we took a pair of oars, and so came up to London, and came to Mr. Catesby, whom we found in his lodging; he welcomed us into England, and asked me what news from the Constable. I told him, Good words, but I feared the deeds would not answer. This was the beginning of Easter term; and about the midst of the same term, whether sent for by Mr. Catesby, or upon some business of his own, up came Mr. Thomas Percy. The first word he spoke, after he came into our company, was, Shall we always, gentlemen, talk, and never do any thing? Mr. Catesby took him aside, and had speech about somewhat to be done, so as first we might all take an oath of secrecy, which we resolved within two or three days to do; so as there we met behind St. Clement's, Mr. Catesby, Mr. Percy, Mr. Wright, Mr. Guy Fawkes, and myself; and having upon a Primer given each other the oath of secrecy, in a chamber where no other body was, we went after into the next room and heard mass, and received the blessed sacrament upon the same. Then did Mr. Catesby disclose to Mr. Percy, and I, together with Jack Wright, tell to Mr. Fawkes, the business for which we took this oath, which they both approved. And then was Mr. Percy sent to take the house which Mr. Catesby in my absence had learned did belong to one Ferris, which with some difficulty, in the end, he obtained, and became, as Ferris before was, tenant to Whinniard. Mr. Fawkes underwent the name of Mr. Percy's man, calling himself Johnson, because his face was the most unknown, and received the keys of the house, until we heard the parliament was adjourned to the 7th of February. At which time, we all departed several ways into the country to meet again at the beginning of Michaelmas term. Before this time also, it was thought convenient to have a house that might answer to Mr. Percy's, where we might make provision of powder and wood for the mine, which being there made ready, should in a night be conveyed by boat to the house by the parliament, because we were loth to foil that with often going in and out. There was none that we could devise so fit as Lambeth, where Mr. Catesby often lay; and, to be keeper thereof, by Mr. Catesby's choice, we received into the number Keys, as a trusty honest man; this was about a month before Michaelmas.

Some fortnight after towards the beginning of the term, Mr. Fawkes and I came to Mr. Catesby at Morcrofts, where we agreed that now was time to begin and set things in order for the mine. So as Mr. Fawkes went to London, and the next day sent for me to come over to him; when I came, the cause was, for that the Scottish lords were appointed to sit in conference of the union in Mr. Percy's house. This hindered our beginning until a fortnight before Christmas, by which time both Mr. Percy and Mr. Wright were come to London, and we, against their coming, had provided a good part of the powder; so as we all five entered with tools fit to begin our work, having provided ourselves of baked-meats, the leap to

need sending abroad. We entered late in the night, and we never saw, save only Mr. Percy's man, until Christmas-Eve. In which time we wrought under a little entry to the wall of the parliament-house, and underpropped it, as we went, with wood.

Whilst we were together we began to fashion our business, and discoursed what we should do after this deed was done. The first question was, how we might surprise the next heir; the prince haply would be at the parliament with the king his father, how should we then be able to seize on the duke? This burthen Mr. Percy undertook, that by his acquaintance, he, with another gentleman, would enter the chamber without suspicion, and having some dozen others at several doors to expect his coming, and two or three on horseback at the court-gate to receive him, he would undertake (the blow being given, until which he would attend in the duke's chamber) to carry him safe away; for he supposed most of the court would be absent, and such as were there not suspecting, or unprovided for any such matter. For the lady Elizabeth, it were easy to surprise her in the country, by drawing friends together at an hunting, near the lord Harrington's, and Ashby, Mr. Catesby's house, being not far off, was a fit place for preparation.—The next was for money and horses, which if we could provide in any reasonable measure, having the heir apparent, and the first knowledge by four or five days, was odds sufficient.—Then what lords we should save from the parliament, which was first agreed in general, as many as we could that were catholicks, or so disposed: but after we descended to speak of particulars.—Next, what foreign princes we should acquaint with this before, or join with after. For this point we agreed, that first we could not enjoin princes to that secrecy, nor oblige them by oath, so to be secure of their promise; besides, we knew not whether they will approve the project, or dislike it. And, if they do allow thereof, to prepare before might beget suspicion; and, not to provide until the business were acted, the same letter that carried news of the thing done, might as well intreat their help and furtherance. Spain is too slow in his preparations, to hope any good from in the first extremities, and France too near and too dangerous, who with the shipping of Holland, we feared of all the world, might make away with us.

But while we were in the middle of these discourses, we heard that the parliament should be anew adjourned until after Michaelmas; upon which tidings, we broke off both discourse and working until after Christmas. About Candlemas, we brought over in a boat the powder which we had provided at Lambeth, and laid it in Mr. Percy's house, because we were willing to have all danger in one place.—We wrought also another fortnight in the mine against the stone wall which was very hard to beat through; at which time we called in Kit Wright, and near to Easter, as we wrought the

third time, opportunity was given to hire the cellar in which we resolved to lay the powder and leave the mine.

Now, by reason that the charge of maintaining us all so long together, besides the number of several houses, which, for several uses, had been hired, and buying of powder, &c. had lain heavy on Mr. Catesby alone to support, it was necessary for him to call in some others to ease his charge; and to that end desired leave, that he, with Mr. Percy, and a third, whom they should call, might acquaint whom they thought fit and willing to the business; for many, said he, may be content that I should know, who would not therefore that all the company should be acquainted with their names: to this we all agreed.—After this, master Fawkes laid into the cellar (which he had newly taken) a thousand billets, and five hundred faggots, and with that covered the powder, because we might have the house free, to suffer any one to enter that would. Mr. Catesby wished us to consider, whether it were not now necessary to send Mr. Fawkes over, both to absent himself for a time, as also to acquaint sir William Stanley and Mr. Owen with this matter. We agreed that he should (provided that he gave it them with the same oath that we had taken before) viz. To keep it secret from all the world. The reason, why we desired sir William Stanley should be acquainted herewith, was, to have him with us as soon as he could: and for Mr. Owen, he might hold good correspondency after with foreign princes. So Mr. Fawkes departed about Easter for Flanders, and returned, the latter end of August. He told me, that, when he arrived at Brussels, sir William Stanley was not returned from Spain, so as he uttered the matter only to Owen, who seemed well pleased with the business, but told him, that surely sir William would not be acquainted with any plot, as having business now a foot in the court of England; but he himself would be always ready to tell him, and send him away as soon as it were done.

About this time did Mr. Percy and Mr. Catesby meet at the Bath, where they agreed, that, the company being yet but few, Mr. Catesby should have the others authority to call in whom he thought best; by which authority he called in after sir Everard Digby, though at what time I know not, and last of all master Francis Tresham. The first promised, as I heard Mr. Catesby say, fifteen hundred pounds; the second two thousand pounds; Mr. Percy himself promised all he could get out of the earl of Northumberland's rents, which was about four thousand pounds, and to provide many galloping horses, to the number of ten.—Mean while Mr. Fawkes, and myself alone, bought some new powder, as suspecting the first to be dank, and conveyed it into the cellar, and set it in order, as we resolved it should stand. Then was the parliament a-new prorogued until the fifth of November, so as we all went down until some ten days before,

when Mr. Catesby came up with Mr. Fawkes to an house by Enfield-Chace, called White-Webbes, whither I came to them, and Mr. Catesby willed me to enquire, whether the young prince came to the parliament. I told him, that I heard that his grace thought not to be there. Then must we have our horses, said Mr. Catesby, beyond the water, and provision of more company to surprise the prince, and leave the duke alone.—Two days after, being Sunday at night, in came one to my chamber, and told me, that a letter had been given to my lord Monteagle, to this effect: that he wished his lordship's absence from the parliament, because a blow would there be given. Which letter he presently carried to my lord of Salisbury.—On the morrow I went to White-Webbes, and told it Mr. Catesby, assuring him withal, that the matter was disclosed; and wishing him in any case to forsake his country. He told me, he would see further as yet, and resolved to send Mr. Fawkes to try the uttermost, protesting, if the part belonged to himself, he would try the same adventure.—On Wednesday master Fawkes went, and returned at night, of which we were very glad.—Thursday I came to London, and Friday master Catesby, master Tresham, and I met at Barnet, where we questioned how this letter should be sent to my lord Monteagle, but could not conceive, for master Tresham forswore it, whom we only suspected.—On Saturday night I met Mr. Tresham again in Lincoln's-Inn walks; wherein he told such speeches, that my lord of Salisbury should use to the king, as I gave it lost the second time, and repeated the same to Mr. Catesby, who hereupon was resolved to be gone, but staid to have master Percy come up, whose consent herein we wanted. On Sunday Mr. Percy, being dealt with to that end, would needs abide the uttermost trial.

The suspicion of all hands put us into such confusion, as master Catesby resolved to go down into the country, the Monday that master Percy went to Sion, and master Percy resolved to follow the same night, or early the next morning. About five of the clock, being Tuesday, came the younger Wright to my chamber, and told me, of a nobleman, called the lord Monteagle, saying, Arise, and come along to Essex house, for I am going to call up my lord of Northumberland; saying withal, the matter is discovered. Go back, master Wright, quoth I, and learn what you can about Essex gate. Shortly he returned, and said, Surely all is lost; for Lepton is got on horseback at Essex door, and, as he parted, he asked, if their lordships would have any more with him; and being answered, No, is rode fast up Fleet-street as he can ride. Go you then, quoth I, to Mr. Percy, for sure it is for him they seek, and bid him be gone, I will stay and see the uttermost. Then I went to the court-gates, and found them straightly guarded, so as no body could enter. From thence I went down towards the parliament-house, and, in

VOL. II.

the middle of King-street, found the guard standing, that would not let me pass. And, as I returned, I heard one say, There is a treason discovered, in which the king and the lords should have been blown up. So then I was fully satisfied that all was known, and went to the stable where my gelding stood, and rode into the country. Mr. Catesby had appointed our meeting at Dunchurch, but I could not overtake them until I came to my brother's, which was Wednesday night. On Thursday we took the armour at my lord Windsor's, and went that night to one Stephen Littleton's house, where the next day, being Friday, as I was early abroad to discover, my man came to me, and said, that an heavy mischance had severed all the company, for that Mr. Catesby, Mr. Rookwood, and Mr. Grant were burnt with gunpowder, upon which sight the rest dispersed. Master Littleton wished me to fly, and so would he. I told him, I would first see the body of my friend, and bury him, whatsoever befel me. When I came, I found Mr. Catesby reasonable well, master Percy, both the Wrights, Mr. Rookwood, and master Grant. I asked them what they resolved to do. They answered, We mean here to die. I said again, I would take such part as they did. About eleven of the clock came the company to beset the house, and, as I walked into the court, I was shot into the shoulder, which lost me the use of my arm; the next shot was the elder Wright struck dead; after him the younger Mr. Wright; and fourthly, Ambrose Rookwood. Then said Mr. Catesby to me, (standing before the door they were to enter) Stand by me, Tom, and we will die together. Sir, quoth I, I have lost the use of my right arm, and I fear that will cause me to be taken. So, as we stood close together, Mr. Catesby, Mr. Percy, and myself, they two were shot, as far as I could guess, with one bullet, and then the company entered upon me, hurt me in the belly with a pike, and gave me other wounds, until one came behind, and caught hold of both my arms. And so I remain, Yours, &c."

Commissioners; Nottingham, Suffolk, Worcester, Devonshire, Northampton, Salisbury, Marr, Dunbar, Popham.—Edw. Coke. W. Waad.

The Names of those that were first in the treason, and laboured in the mine; Robert Catesby, Robert Winter, esqrs. Thomas Percy, Thomas Winter, John Wright, Christopher Wright, Guido Fawkes, gentlemen. And Bates, Catesby's man.

Those that were made acquainted with it, though not personally labouring in the mine, nor in the cellar; Everard Digby, knt. Ambrose Rookwood, Francis Tresham, esqrs. John Graunt, gent. Robert Keyes.

But here let us leave Fawkes in a lodging fit for such a guest, and taking time to advise upon his conscience, and turn ourselves to that part of the history, which concerns the fortune of the rest of their partakers in that abominable treason. The news was no sooner spread

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abroad that morning, which was upon a Tuesday, the fifth of November, and the first day designed for that session of parliament; the news, I say, of this so strange and unlooked-for accident was no sooner divulged, but some of those conspirators, namely, Winter, and the two brothers of Wright's, thought it high time for them to hasten out of the town (for Catesby was gone the night before, and Percy at four of the clock in the morning the same day of the discovery) and all of them held their course, with more haste than good speed, to Warwickshire toward Coventry, where the next day morning, being Wednesday, and about the same hour that Fawkes was taken in Westminster, one Graunt, a gentleman, having associated unto him some others of his opinion, all violent papists, and strong recusants, came to a stable of one Benocke, a rider of great horses, and, having violently broken up the same, carried along with them all the great horses that were therein, to the number of seven or eight, belonging to divers noblemen and gentlemen of that country, who had put them into the rider's hands to be made fit for their service. And so both that company of them which fled out of London, as also Graunt, and his accomplices, met all together at Dunchurch, at sir Everard Digby's lodging, the Tuesday at night, after the discovery of this treacherous attempt; the which Digby had likewise, for his part, appointed a match of hunting, to have been hunted the next day, which was Wednesday, though his mind was, Nimrod-like, upon a far other manner of hunting, more bent upon the blood of reasonable men than brute beasts.

This company, and bellish society, thus convened, finding their purpose discovered, and their treachery prevented, did resolve to run a desperate course; and, since they could not prevail, by so private a blow, to practise, by a public rebellion, either to attain to their intents, or, at least, to save themselves in the throng of others. And, therefore, gathering all the company they could unto them, and pretending the quarrel of religion, having intercepted such provision of armour, horses, and powder, as the time could permit, thought, by running up and down the country, both to augment piece and piece their number (dreaming to themselves, that they had the virtue of a snow-ball, which, being little at the first, and tumbling down from a great hill, groweth to a great quantity, by increasing itself with the snow that it meeteth by the way) and also, that they, beginning first this brave shew, in one part of the country, should, by their sympathy and example, stir up and encourage the rest of their religion, in other parts of England, to rise, as they had done there. But, when they had gathered their force to the greatest, they came not to the number of fourscore; and yet were they troubled, all the hours of the day, to keep and contain their own servants from stealing from them; who, notwithstanding all their care, daily left them, being far inferior to Gideon's host in number,

but far more, in faith or justness of quarrel.— And so, after that this Catholick troop had wandered a while through Warwickshire to Worcestershire, and from thence to the edge and borders of Staffordshire, this gallantly armed band had not the honour, at the last, to be beaten with a king's lieutenant, or extraordinary commissioner, sent down for the purpose, but only by the ordinary sheriff of Worcestershire were they all beaten, killed, taken, and dispersed. Wherein ye have to note this following circumstance so admirable, and so lively displaying the greatness of God's justice, as it could not be concealed, without betraying, in a manner, the glory due to the Almighty for the same.— Although divers of the king's Proclamations were posted down after these traitors with all the speed possible, declaring the odiousness of that bloody attempt, the necessity to have had Percy preserved alive, if it had been possible, and the assembly together of that rightly damned crew, now no more darkened conspirators, but open and avowed rebels; yet the far distance of the way, which was above an hundred miles, together with the extreme deepness thereof, joined also with the shortness of the day, was the cause that the hearty and loving affections of the king's good subjects, in those parts, prevented the speed of his proclamations. For, upon the third day after the flying down of these rebels, which was upon the Friday next after the discovery of their Plot, they were most them all surprized by the sheriff of Worcestershire, at Holbeech, about the noon of the day, and that in manner following:— Graunt, of whom I have made mention before, for taking the great horses, who had not, all the preceding time, stirred from his own house till the next morning, after the attempt should have been put in execution; he then laying his accounts without his host, as the proverb is, that their Plot had, without failing, received the day before their hoped-for success; took, or rather stole, out those horses, as I said before, for enabling him, and so many of that foulest society, that had still remained in the country near about him, to make a sudden surprise upon the king's elder daughter, the lady Elizabeth, having her residence near by that place, whom they thought to have used for the colour of their treacherous design, his majesty, her father, her mother, and male children being all destroyed above, and to this purpose, also, had that Nimrod, Digby, provided his hunting-match against that same time, that, numbers of people being flocked together, upon the pretence thereof, they might the easier have brought to pass the sudden surprise of her person.

Now the violent taking away of those horses, long before day, did seem to be so great a riot, in the eyes of the common people, that knew of no greater mystery: And the bold attempting thereof did ingender such a suspicion of some following rebellion in the hearts of the wiser sort, as both great and small began to stir and arm themselves, upon this unlooked-for accident. But, before twelve or sixteen hours

past, Catesby, Percy, the Winters, Wrights, Rookwood, and the rest, bringing then the assurance, that their main Plot was failed and bewrayed, whereupon they had built the golden mountain of their glorious hopes: They then took their last desperate resolution, to flock together in a troop, and wander, as they did, for the reasons aforesaid. But as, upon the one part, the zealous duty to their God, and their sovereign, was so deeply imprinted in the hearts of all the meanest and poorest sort of the people, although then knowing of no further mystery, than such publick misbehaviours, as their own eyes taught them, as, notwithstanding of their fair shews and pretences of their Catholick cause, no creature, man or woman, through all the country, would, once, so much as give them, willingly, a cup of drink, or any sort of comfort or support, but, with execrations, detested them: so on the other part, the sheriffs of the shires, through which they wandered, conveying their people with all speed possible, hunted as hotly after them, as the evilness of the way, and the unprovidedness of their people, upon that sudden, could permit them. And so at last, after sir Richard Verney, sheriff of Warwickshire, had carefully and straightly been in chace of them to the confines of his county, part of the meaner sort being also apprehended by him; sir Richard Walsh, sheriff of Worcestershire, did likewise dutifully and hotly pursue them through his shire: And, having gotten sure trial of their taking harbour at the house above-named, he did send trumpeters and messengers to them, commanding them, in the king's name, to render unto him, his majesty's minister; and knowing no more, at that time, of their guilt, than was publicly visible, did promise, upon their dutiful and obedient rendering unto him, to intercede, at the king's hands, for the sparing of their lives; who received only, from them, this scornful answer, they being better witnesses to themselves of their inward evil consciences, 'That he had need of better assistance, than of those few numbers that were with him before he could be able to command or controul them.' But here fell the wonderous work of God's justice, that, while this message passed between the sheriff and them, the sheriff's and his people's hearts being justly kindled and augmented by their arrogant answer; and so, they preparing themselves to give a furious assault, and the other party making themselves ready, within the house, to perform their promise by a defence as resolute; it pleased God, that, in the mending of the fire, in their chamber, one small spark should fly out, and light among less than two pound-weight of powder, which was drying a little from the chimney; which, being thereby blown up, so inaimed the faces of some of the principal rebels, and the hands and sides of others of them, blowing up with it also a great bag full of powder, which, notwithstanding, never took fire, as they were not only disabled and discouraged hereby, from any further resistance, in respect Catesby\* himself,

Rookwood, Grant, and divers others of greatest account among them, were, thereby, made unable for defence, but, also, wonderfully struck with amazement in their guilty consciences, calling to memory, how God had justly punished them with that same instrument, which they should have used for the effectuating of so great a sin, according to the old Latin saying, 'In quo peccetumus, in eodem plectimur;' as they presently, (see the wonderful power of God's justice upon guilty consciences,) did all fall down upon their knees, praying God to pardon them for their bloody enterprise; and, thereafter, giving over any further debate, opened the gate, suffered the sheriff's people to rush in furiously among them, and desperately sought their own present destruction: The three specials of them joining backs together, Catesby, Percy, and Winter, whereof two, with one shot, Catesby and Percy, were slain, and the third, Winter, taken and saved alive.

And thus these resolute and high aspiring Catholicks, who dreamed of no less than the destruction of kings and kingdoms, and promised to themselves no lower estate, than the government of great and ancient monarchies, were miserably defeated, and quite overthrown in an instant, falling in the pit which they had prepared for others; and so fulfilling that sentence, which his majesty did, in a manner, prophesy of them, in his oration to the parliament; some presently slain, others deadly wounded, stripped of their clothes, left lying miserably naked, and so dying, rather of cold, than of the danger of their wounds; and the rest, that either were whole, or but lightly hurt, taken and led prisoners by the sheriff, the ordinary minister of justice, to the Jail, the ordinary place, even of the basest malefactors, where they remained till their sending up to London, being met with a huge confluence of people of all sorts, desirous to see them, as the rarest sort of monsters: fools to laugh at them, women and children to wonder, all the common people to gaze, the wiser sort to satisfy their curiosity, in seeing the outward cases of so unheard of a villainy; and, generally, all sorts of people, to satiate and fill their eyes with the sight of them, whom, in their hearts, they so far admired and detested; serving so for a fearful and publick spectacle of God's fierce wrath and just indignation.

What, hereafter, will be done with them, is to be left to the justice of his majesty and the state; which, as no good subject needs to doubt, will be performed in its own due time, by a public and exemplary punishment; so have we, all that are faithful and humble subjects, great cause to pray earnestly to the Almighty, that it will please him, who hath the hearts of

\* Catesby, who was the first inventor of this treason in general, and of the manner of working the same by powder, in special, himself now first maimed with the blowing up of powder, and, next, he and Percy both killed with one shot proceeding from powder.

all princes in his hands, to put in his majesty's heart, to make such a conclusion of this tragedy to the traitors, but tragi-comedy to the king, and all his true subjects, as, thereby, the glory of God, and his true religion, may be advanced; the future security of the king, and his estate, procured and provided for; all hollow and dishonest hearts discovered and prevented; and this horrible attempt, lacking due epithets, to be so justly avenged; that whereas they thought, by one Catholick indeed, and universal blow, to accomplish the wish of that Roman tyrant, who wished all the bodies, in Rome, to have but one neck, and so, by the violent force of powder, to break up, as with a petard, our triple-locked peaceful gates of Janus, which, God be thanked, they could not compass by any other means; they may justly be so recompensed, for their truly viperous intended parricide, as the shame and infamy that, otherwise, would light upon this whole nation, for having unfortunately hatched such cockatrice-eggs, may be repaired, by the execution of famous and honourable justice upon the offenders, and so the kingdom purged of them may, hereafter, perpetually flourish in peace and prosperity, by the happy conjunction of the hearts of all honest and true subjects, with their just and religious sovereign.

And thus, whereas they thought to have effaced our memories, the memory of them shall remain, but to their perpetual infamy; and we, as I said in the beginning, shall, with all thankfulness, eternally preserve the memory of so great a benefit. To which let every good subject say Amen.

There is in the 3rd Volume of the Harleian Miscellany, p. 116, a History of the Gunpowder Treason, compiled from various authors, but the compiler seems to have made no use of King James's Work. In the same volume, p. 127, is an Account of the Arraignment and Execution of Digby, the two Winters, Grant, Rockwood, Keyes, Bates, and Johnson alias Fawkes. It was published at the time, but is very indistinct and insulting, and no part of it, except perhaps the following, is at all worth insertion here:

"Now, after their Condemnation and Judgment, being sent back to the Tower, there they remained till the Thursday following; upon sledges and hurdles they were drawn into St. Paul's church-yard, four of them, viz. Everard Digby, the elder Winter, Grant, and Bates, of whom I forgot to speak, having no great matter to speak of, but only that, being a villain, and hoping for advancement by the same, he had the reward of a traitor.

Now these four being drawn to the scaffold, made on purpose for their execution: first went up Digby, a man of a goodly personage, and a manly aspect, yet might a wary eye, in the change of his countenance, behold an inward fear of death, for his colour grew pale and his eye heavy; notwithstanding that he in-

forced himself to speak, as stoutly as he could, his speech was not long, and to little good purpose, only, that his belied conscience, being, but indeed, a blinded conceit, had led him into this offence, which, in respect of his religion, alias, indeed idolatry, he held no offence, but, in respect of the law, he held an offence, for which, he asked forgiveness of God, of the king, and the whole kingdom; and so, with vain and superstitious crossing of himself, betook him to his Latin prayers, mumbling to himself, refusing to have any prayers of any, but of the Romish Catholics; went up the ladder, and with the help of the hangman, made an end of his wicked days in this world.

After him went Winter up to the scaffold, where he used few words to any effect, without asking mercy of either God, or the king, for his offence; went up the ladder, and, making a few prayers to himself, staid not long for his execution.

After him went Grant, who abominably blinded with his horrible idolatry, though he confessed his offence to be heinous, yet would fain have excused it by his conscience for religion; a bloody religion, to make so bloody a conscience; but better that his blood, and all such as he was, should be shed by the justice of law, than the blood of many thousands to have been shed by his villainy, without law or justice; but to the purpose, having used a few idle words to ill effect, he was, as his fellows before him, led the way to the halter; and so, after his crossing of himself, to the last part of his tragedy.

Last of them came Bates, who seemed sorry for his offence, and asked forgiveness of God, and the king, and of the whole kingdom; prayed to God for the preservation of them all, and as he said, only for his love to his master, drawn to forget his duty to God, his king and country, and therefore was now drawn from the Tower to St. Paul's church-yard, and there hanged and quartered for his treachery. Thus ended that day's business.

The next day, being Friday, were drawn from the Tower to the Old Palace in Westminster, over-against the Parliament-house, Thomas Winter the younger brother, Rockwood, Keyes, and Fawkes the minor, justly called, 'the Devil of the Vault;' for had he not been a devil incarnate, he had never conceived so villainous a thought, nor been employed in so damnable an action.

The same day, being Friday, were drawn from the Tower, to the Old Palace in Westminster, Thomas Winter, Rockwood, Keyes, and Fawkes, where Winter, first being brought to the scaffold, made little speech, but seeming, after a sort, as it were, sorry for his offence, and yet crossing himself, as though those were words to put by the devil's stoccadoe, having already made a wound in his soul, of which he had not yet a full feeling, protesting to die a true Catholick, as he said; with a very pale and dead colour, went up the ladder, and, after a swing or two with a halter, to the quartering-

block was drawn, and there quickly dispatched.

Next him came Rockwood, who made a speech of some longer time, confessing his offence to God, in seeking to shed blood, and asking therefore mercy of his Divine majesty; his offence to the king, of whose majesty he likewise humbly asked forgiveness, his offence to the whole state, of whom in general he asked forgiveness; beseeching God to bless the king, the queen, and all his royal progeny, and that they might long live to reign in peace and happiness over this kingdom. But last of all, to mar all the pottage with one filthy weed, to mar this good prayer with an ill conclusion, he prayed God to make the king a catholic, otherwise a papist, which God for his mercy ever forbid; and so, beseeching the king to be good to his wife and children, protesting to die in his idolatry, a Romish Catholic, he went up the ladder, and, hanging till he was almost dead, was drawn to the block, where he gave his last gasp.

After him came Keyes, who like a desperate villain, using little speech, with small or no shew of repentance, went stoutly up the ladder; where, not staying the hangman's turn, he turned himself off with such a leap, that with the swing he brake the halter, but, after his fall, was quickly drawn to the block, and there was quickly divided into four parts.

Last of all came the great devil of all, Fawkes, alias Johnson, who should have put fire to the powder. His body being weak with torture and sickness, he was scarce able to go up the ladder, but yet with much ado, by the help of the hangman, went high enough to break his neck with the fall: who made no long speech, but, after a sort, seeming to be sorry for his offence, asked a kind of forgiveness of the king and the state for his bloody intent; and, with his crosses and his idle ceremonies, made his end upon the gallows and the block, to the great joy of the beholders, that the land was ended of so wicked a villainy."

81. The Trial of HENRY GARNET, Superior of the Jesuits in England, at the Guildhall of London, for a High Treason, being a Conspirator in the Gunpowder Plot: 4 JAC. I. 28th of March, A. D. 1606.

THE Commissioners present were, sir Leonard Holyday, Lord Mayor; the earls of Nottingham, Suffolk, Worcester, Northampton, and Salisbury; L. C. Justice of England, sir John Popham; the L. C. Baron of the Exchequer; sir Christopher Yelverton, kt. one of his majesty's Justices of the King's-Bench.

The substance and effect of the Indictment of Henry Garnet, superior of the Jesuits in England, appeareth before in the Relation of the former Arraignment, and therefore unnecessary to be repeated again; [3 Co. Inst. 27.] which Indictment was summarily and effectually repeated by sir John Croke kt. his majesty's Serjeant at law, in this manner:

*Sir John Croke.* This person and prisoner here at the bar, this place, and this present occasion and action, do prove that true, which the Author of all Truth hath told us; That 'nihil est occultum, quod non manifestabitur; et nihil est secretum, quod non revelabitur et in palam veniet.' There is nothing hid that shall not be made manifest, there is nothing secret that shall not be revealed and come in publick. And that God by whom kings do reign, 'Consilium pravorum dissipat,' doth scatter and bring to nought the counsel of the wicked.—That he spake with fear and trembling, and with horror and amazedness, against that rotten root of that hideous and hateful tree of treason, and of that detestable and unheard of wickedness, he did crave pardon for it; affirming that no flesh could mention it without astonishment.—He shewed that Henry Garnet, of the profession of the Jesuits, other-

wise Wally, otherwise Darcy, otherwise Roberts, otherwise Farmer, otherwise Philips, (for by all those names he called himself) stood indicted of the most barbarous and damnable treasons, the like whereof was never heard of: That he was a man 'multorum nominum,' but not 'boni nominis;' of many names, as appeared by the indictment, but of no good name; adorned by God and nature, with many gifts and graces, if the grace of God had been joined with them: but that wanting, 'quanto ornatior' in other gifts 'tanto nequior'.—That this Garnet (his majesty summoning his parliament to be holden at Westminster the 19th of March, in the first year of his reign, and by divers prorogations continuing it till the third of October last) together with Catesby lately slain in open rebellion, and with Oswald Tesmond a Jesuit, otherwise Oswald Greenwell, as a false traitor against the most mighty and most renowned king our sovereign lord king James; the 9th of June last, traitorously did conspire and compass: To depose the king, and to deprive him of his Government: To destroy and kill the king, and the noble prince Henry his eldest son: such a king, and such a prince, such a son of such a father, whose virtues are rather with amazed silence to be wondered at, than able by any speech to be expressed: To stir sedition and slaughter throughout the kingdom: To subvert the true religion of God, and whole government of the kingdom: To overthrow the whole state of the commonwealth.—The manner how to perform these horrible Treasons, the Serjeant said 'Horreo dicere,' his lips did

tremble to speak it, but his heart praised God for his mighty deliverance. The practice so inhuman, so barbarous, so damnable, so detestable, as the like was never read nor heard of, or ever entered into the heart of the most wicked man to imagine. And here he said, he could not but mention that religious observation so religiously observed by his religious majesty, wishing it were engraven in letters of gold, in the hearts of all his people; the more hellish the imagination, the more divine the preservation.—This Garnet, together with Catesby and Tesmond, had speech and conference together of these Treasons, and concluded most traitorously and devilishly: That Catesby, Winter, Pawkes, with many other traitors lately arraigned of high-treason, would blow up with gunpowder in the parliament-house, the king, the prince, the lords spiritual and temporal, the judges of the realm, the knights, citizens and burgesses, and many other subjects and servants of the king assembled in parliament, at one blow, traitorously and devilishly to destroy them all and piecemeal to tear them in asunder, without respect of majesty, dignity, and degree, age or place.—And for that purpose, a great quantity of gunpowder was traitorously and secretly placed and hid by these Conspirators under the Parliament-House.

This being the Substance and the Effect of the Indictment, Garnet did plead Not Guilty to it; and a very discreet and substantial Jury, with allowance of challenges unto the prisoner, were sworn at the bar for the trial of him\*.

To whom the Serjeant shewed that they should have Evidences to prove him Guilty, that should be 'luci clariores,' that every man might read them running. They should have 'testimonia rerum,' and 'loquentia signa,' Witnesses and Testimonies of the things themselves. 'Reum confitentem,' or rather 'reos confitentes, accusantes invicem.' That every one may say unto him, 'serva nequam,' thou wicked subject, thou wicked servant, 'ex ore tuo te 'judico', of thine own mouth I judge thee, of thine own mouth I condemn thee. And this shall be made so manifest by him that best can do it, as shall stop the mouth of all contradiction.

*Attorney General.* (Sir Ed. Coke.) Your lordships may perceive by the parts of the Indictment which have been succinctly opened, that this is but a latter act of that heavy and woful tragedy, which is commonly called the Powder-Treason; wherein some have already played their parts, and according to their demerits suffered condign punishment and pains of death. We are now to proceed against this prisoner for the same treason; in which respect the necessary repetition of some things before spoken, shall at the least seem tolerable: for that 'Nunquam nimis dicitur, quod nunquam satis dicitur;' It is never said too often, that can never be said enough. Nay, it may be thought justifiable

to repeat in this case; for that in respect of the confluence and access of people at the former arraignment, many could not hear at that time: and yet, because I fear it would be tedious for the most of all my lords commissioners, and of this honourable and great assembly, were present at the arraignment, and for that I am now to deal with a man of another quality, I will only touch, and that very little, of the former discourse or evidence; and that little also shall be mingled with such new matter, as shall be worth the hearing, as being indeed of weight and moment: and all this with very great brevity.

But before I further proceed to the opening of this so great a cause, I hold it fit and necessary to give satisfaction to two divers and adverse sorts of men, who, according to the divers affections of their hearts, have divined and conjectured diversly of the cause of the procrastination and delay of proceeding, especially against this person: the matter wherewith he stands charged being so transcendent and exorbitant as it is. The first sort of these, out of their hearty love and loyalty to their natural liege lord and king, and to their dear country and this state, have feared the issue of this delay, lest that others might be animated by such protraction of judgment, to perpetrate the like: for they say, and it is most true, 'Quia non profertur cito contra malos sententia, absque timore ullo filii hominum perpetrant mala;' Because speedy justice is not executed against wicked men, the people without all fear commit wickedness. And pity it were that these good men should not be satisfy'd. The other sort are of those, who in respect no greater expedition hath been used against this prisoner at the bar, fall to excusing of him, as gathering these presumptions and conjectures: first, that if he, or any of the Jesuits, had indeed been justly to be touched with this most damnable and damned treason, surely they should have been brought forth and try'd before this time. Secondly, That there was a bill exhibited in parliament concerning this treason, and this traitor, but that it was deferred and proceeded not, for want of just and sufficient proofs. Nay, Thirdly, There was a particular apology spread abroad for this man, and another general for all Jesuits and priests, together with this imputation, That king-killing and queen-killing was not indeed a doctrine of theirs, but only a fiction and policy of our state, thereby to make the popish religion to be despised and in disgrace.

Now for these men, pity it were that the eye of their understanding should not be enlightened and cleared, that so being by demonstrative and luculent proofs convinced, they may be to their prince and country truly converted. First therefore concerning the delay, (though it be true, 'Quod flagellat in corde, qui laudatur in ore') yet must I remember the great pains of my lords the commissioners of his majesty's privy council in this cause: for Garnet being first examined upon the 13th of the last

\* See 3 Co. Inst. 27.

month, hath sithence been again examined and interrogated above twenty several times, which lasted to the 26th of March, within two days of this arraignment. Touching the bill in parliament, it was indeed exhibited before Garnet, was apprehended; but his majesty's gracious pleasure was, that albeit this treason be without all precedent and example, yet they should quietly and equally be indicted, arraigned, publickly heard, and proceeded withal in a moderate, ordinary, and just course of law. Concerning their apologies, and the fictions of state (as they term them), answer shall be made, by God's grace, in the proper place, when I come to lay open the plots and practices of the Jesuits, to the satisfaction of all this honourable and great assembly. But first I have an humble petition to present to your lordships, and the rest of this grave auditory for myself, in respect that I am necessarily to name great princes, yet with protestation and caution, that no blot is intended to be laid upon any of them. I know there is 'Lex in sermone tenenda,' A law and rule to be observed in speaking, especially in this kind; and that kings and great princes and the mighty men of this earth are to be reverently and respectfully dealt withal: and therefore I humbly recommend unto you these considerations, concerning this point of mentioning foreign states. 1st, That the kingdoms were at those times in open enmity and hostility, and that might be honourable at one time which was not so at another; so that hostile actions were then justifiable and honourable, as being in times of hostility and war. 2dly, In these things it is not the king's attorney that speaks, but Garnet the Jesuit: as also that it proceedeth from an inevitable necessity; for that the examinations as well of this, as of the rest of the traitors, cannot otherwise be opened and urged against them: so is the mention of great men, by the impudency of these wicked traitors, woven into their confessions, as they cannot be severed.—And with this comfort I conclude the Preface, That I hope in God this day's work, in the judgment of so many as shall be attentive and well disposed, shall tend to the glory of Almighty God, the honour of our religion, the safety of his most excellent majesty and his royal issue, and the security of the whole commonwealth.

For Memory and method, all that I shall speak may be contracted to two general heads. 1. I will consider the Offences, together with certain circumstances, precedent before the Offence, concurrent with the Offence, subsequent after the Offence. 2. I will lay down some Observations concerning the same.—For the proper name of this Offence, because I must speak of several Treasons for distinction and separation of this from the other, I will name it the Jesuits Treason, as belonging to them both 'ex congruo et condigno;' they were the proprietaries, plotters and procurers of it: and in such crimes 'plus peccat autor, quam actor;' 'the author, or procurer, offendeth

more than the actor or executer:' as may appear by God's own Judgment given against the first sin in Paradise, where the serpent had three punishments inflicted upon him, as the original plotter; the woman two, being as the mediate procurer; and Adam but one, as the party seduced.—Circumstances precedent and subsequent so termed here, are indeed in their proper natures all High-Treasons; but yet in respect of the magnitude, nay monstrosity of this treason, may comparatively, without any discountenance to them in this case, be used as circumstances. And because I am to deal with the superior of the Jesuits, I will only touch such treasons, as have been plotted and wrought by the Jesuits, of whom this man was superior; and those treasons also sithence this Garnet his coming into England; whereof he may truly say, 'Et quorum pars magna fui.'

The coming of this Garnet into England (which very act was a treason) was about 20 years past, viz. in July 1586, in the 28th year of the reign of the late queen, of famous and blessed memory: whereas the year before, namely the 27th year of Elizabeth, there was a statute made, whereby it was treason, for any, who was made a Romish Priest by any authority from the See of Rome, sithence the first year of her reign, to come into her dominions: which statute the Romanists calumniate as a bloody, cruel, unjust and a new upstart law, and abuse that place of our Saviour, 'O Jerusalem, Jerusalem, thou that killest the Prophets, and stonest them that are sent unto thee, &c.' Mat. xxiii. 37. to that purpose: but indeed it is both mild, merciful and just, and grounded upon the antient fundamental laws of England. For (as hath already in the former Arraignments been touched) before the bull of Impius Pius Quintus, in the 11th year of the queen, wherein her majesty was excommunicated and deposed, and all they accused who should yield any obedience unto her, &c. there were no recusants in England, all came to church (howsoever popishly inclined, or persuaded in most points) to the same divine service we now use; but thereupon presently they refused to assemble in our churches, or join with us in publick service, not for conscience of any thing there done, against which they might justly except out of the Word of God, but because the pope had excommunicated and deposed her majesty, and cursed those who should obey her: and so upon this Bull ensued open rebellion in the north, and many garboils. But see the event: now most miserable, in respect of this Bull, was the state of Romish recusants; for either they must be hanged for treason, in resisting their lawful sovereign, or cursed for yielding due obedience unto her majesty. And therefore of this pope it was said by some of his own favourites, that he was 'Homo pius et doctus, sed nimis credulus;' a holy and a learned man, but over credulous; for that he was informed and believed that the strength of the Catholics in England was such, as was able to have resisted the queen. But when the Bull

was found to take such an effect, then was there a dispensation given, both by Pius Quintus himself, and Gregory the 13th, That all Catholicks here might shew their outward obedience to the queen, 'ad redimendam vexationem, et ad ostendendam externam obedientiam;' but with these Cautions and Limitations: 1. 'Rebus sic stantibus,' Things so standing as they did. 2. Donec publica bullæ 'executio fieri posset;' that is to say, They might grow into strength, until they were able to give the queen a mate, that the publick execution of the said Bull might take place. And all this was confessed by Garnet under his own hand, and now again openly confessed at the bar.

In the 20th year of queen Elizabeth, came *Campion*\* the Jesuit and many others of his profession with him, purposely to make a Party in England for the Catholick cause, to the end that the Bull of Pius Quintus might be put in execution. And though all this while recusancy, being grounded upon such a disloyal cause, were a very dangerous and disloyal thing; yet was there no law made in that behalf until the 23rd year of her majesty's reign; and that also imposing only a mulct or penalty upon it, until conformity were offered and shewed. Anno 26 Eliz. came Parry † with a resolution from Cardinal de Como, and others, that it was lawful to kill her majesty, as being excommunicated and deposed. Whereupon her majesty entering into consultation how (together with her safety, and the protection of her subjects) she might avoid the imminent dangers, and yet draw no blood from these Priests and Jesuits, found out this moderate and mild course as the best means, to prohibit their coming at all into her land; there never being any king who would endure, or not execute any such persons, within their dominions, as should deny him to be lawful king, or go about to withdraw his subjects from their allegiance, or incite them to resist or rebel against him. Nay, the bringing in of a Bull by a subject of this realm against another, in the time of Edward 1. was adjudged Treason. But by the way, for that Garnet had exclaimed, saying, Shew us where was your church before Luther, design the place, name the persons, and so forth; it is answered by a comparison of a wedgo of pure gold, which coming into the hands of impostors, is by their sophistications and mixtures, for gain and worldly respects, increased and augmented into a huge body and mass, and retaining still an outward fair shew and tincture of gold. Where is now the pure gold, saith one, shew me the place? I answer, in that mass; but for the extracting thereof, and purifying it from dross, that must be done by the art of the workman, and the trial of the touchstone. So the true religion and service of Almighty God, being for human respects and worldly pomp, mixed and overladen with a number of superstitious ceremonies and

inventions of man; yet ever had God his true church, holding his truth, which hath been the skilful workmen, with the touchstone of the Word of God, refined and separate from the dross of man's inventions.

But to proceed: in the 28th year of queen Elizabeth, being the year 1586, in June, came Garnet into England, breaking through the wall of treason; being in truth, *totus compositus ex proditione*: and this was at that time when the great Armada of Spain, which the pope blessed, and christened by the name of 'The Invincible Navy,' was by the instigation of the high-priest of Rome, preparing and collecting together of many parcels, out of divers parts where they could be bought, or hired, or borrowed; and therefore may be called a compounded navy, having in it 158 great ships. The purveyors and fore-runners of this navy and invasion, were the Jesuits; and Garnet among them being a traitor, even in his very entrance and footing in the land. But the queen with her own ships, and her own subjects, did beat this Armada, God himself (whose cause indeed it was) fighting for us against them, by fire, and seas, and winds, and rocks and tempests, scattering all and destroying most of them: for 'offenso creatore, offensa ditur omnis creatura,' The Creator being offended, every creature is readily armed to revenge his quarrel: In which respect he is called the Lord of Hosts. So that of 158 scarce 40 of their ships returned to the bar of their own haven; and as it is reported, most of them also perished: inasmuch, that in this respect, we may say of queen Elizabeth, as the poet writeth of the Christian emperor:

'O nimum dilecta Deo, cui militat æther,  
'Et conjurati veniunt ad classica venti.'

Observe here, that about the time of this invasion, there being in Spain met in consultation about that business, the Cardinal of Austria, the duke of Medina, count Fuente two Irish bishops, with sundry military men and amongst other Winstlade, an Englishman the Irish bishops perceiving that they expected a party of Catholicks in England, resolved that true it was, that it was not possible to do any good here in England, unless there were a party of Catholicks made before-hand. But such said they, was the policy of England, as this could never be effected: for if any suspicion of fear arose, the Catholicks should quickly be either shut up, or quite cut off. Oh, saith an old soldier there present, 'Hoc facit pro nobis That makes for us; for by that means the souls shall go to heaven for their religion, the bodies to the earth for their treasons, and their lands and goods to us as conquerors: this was indeed that they principally aimed at.—Note here, that since the Jesuits set foot in this land, there never passed four years without a most pestilent and pernicious treason tending to the subversion of the whole state.

After that hostile Invasion in 88, the Jesuit fell again to secret and treasonable practices for in the year 92, came Patrick Cullen, who

\* See vol. 1. p. 1019. † Ibid. 1095.

was incited by sir William Stanley, Hugh Owen, Jaques Fraunces, and Holt the Jesuit, and resolved by the said Holt to kill the queen; to which purpose he received absolution, and then the sacrament, at the hands of the said Jesuit, together with this ghostly counsel, that it was both lawful and meritorious to kill her. Nay, said Jaques, that base laundress's son, (who was a continued practiser both with this Cullen and others, to destroy her majesty) the state of England is and will be so settled, that unless mistress Elizabeth be suddenly taken away, all the devils in Hell will not be able to prevail against it, or shake it.

Now Cullen's Treason was accompanied with a Book called 'Philopater,' written for the abetting and warranting of such a devilish act in general, by Cresswell the legier Jesuit in Spain, under the name of Philopater.

Anno 94, came Williams and Yorke to the same end, viz. to kill the queen; being wrought to undertake so vile and detestable a fact by father Holt the Jesuit, and other his complices: and thereupon the said Williams and Yorke in the Jesuits college received the Sacrament together of father Holt, and other Jesuits, to execute the same. And that treason likewise was accompanied with a book written by the legier Jesuit and rector of Rome, Parsons, under the name of Doleman, concerning titles, or rather titles; a leud and a lying book, full of falsehood, forgery, and malediction.

Anno 97, came Squire from Spain, to poison her majesty, incited, directed, and warranted by Walpole a Jesuit, then residing there; at whose hands likewise, after absolution, he received the Sacrament, as well to put the practice in execution, as to keep it secret. All these treasons were freely and voluntarily confessed by the parties themselves under their own hands, and yet remain extant to be seen.

In the year 1601, when practices failed, then was foreign force again attempted; for then, as in the former Arraignment hath been declared, was Thomas Winter employed to the king of Spain, together with Tesmond the Jesuit, by this Garnet, who wrote his letters to Arthur, alias Joseph Creswell, the only man whom I have heard of, to change his Christian name, the legier Jesuit in Spain, for the furtherance of that negotiation; which was, as hath been said, to offer the services of the English Catholics to the king, and to deal further, concerning an invasion, with promise from the Catholics here of forces, both of men and horses, to be in readiness to join with him. This negotiation, by the means of Creswell, to whom Garnet wrote, took such effect, that the two kingdoms standing then in hostility, the proposition of the English Romish Catholics was accepted and entertained; an army to invade, as hath been specified in the former Arraignment, promised, and 100,000 crowns to be distributed amongst Romanists and discontented persons, making of a party in England, and for the furtherance of the said service, granted. In the mean time the king earnestly desired, That if

VOL. II.

the queen of England should happen to die, he might receive present and certain advertisement thereof.—Now this Treason was accompanied with the Pope's own writing: for now doth the holy father cause to be sent hither to Garnet two Briefs or Bulls, one to the clergy, and another to the laity; wherein observe the Title, the Matter, the Time. The Title of the one was, 'Dilectis Filiis, Principibus, et Nobilibus Catholicis Anglicanis, Salutem et Apostolicam Benedictionem:' that is, To our beloved Sons the Nobles and Gentlemen of England, which are Catholics, Greeting and Apostolical Benediction. The Title of the other was, 'Dilectis Filiis, Archipresbytero, et reliquo Clero Anglicano, &c.' To our beloved Sons, the Archpriest, and the rest of the Catholic Clergy. The Matter was, that after the death of her majesty, whether by course of nature, or otherwise, whosoever should lay claim or title to the crown of England, though never so directly and nearly interested therein by descent and blood royal; yet unless he were such an one as would not only tolerate the Catholic (Romish) religion, but by all his best endeavours and force promote it, and according to the ancient custom would, by a solemn and sacred oath religiously promise and undertake to perform the same, they should admit or receive none to be king of England: his words are these, 'Quamcumque propinquitate sanguinis niterentur, nisi ejusmodi essent qui fidem Catholicam non modo tolerarent, sed omni ope ac studio promovrent, et more majorum jurejurando se id præstituros suscipere, &c.'

As for king James (at whom the pope aimed) he hath indeed both *propinquitatem* and *antiquitatem regalis sanguinis*, propinquity and antiquity of blood royal, for his just claim and title to this crown, both before and since the conquest. To insist upon the declaration and deduction of this point, and pass along through the series and course of so many ages and centuries, as it would be over long for this place, so further I might herein seem as it were to gild gold: Only in a word, his majesty is lineally descended from Margaret the saint, daughter of Edward, son of king Edmund, grandchild of great Edgar, the Britain monarch. Which Margaret, sole heir of the English-Saxon king, was married to Malcolm king of Scotland; who by her had issue David the holy their king, from whom that race royal at this day is deduced; and Maud the good, wife of the first and learned Henry king of England, from whom his majesty directly and lineally proceedeth, and of whom a poet of that time wrote:

'Nec decor efficit fragilem, non sceptrum superbam,

'Sola potens humilis, sola pudica decens.'

And lastly, his majesty cometh of Margaret also the eldest daughter of Henry 7. who was descended of that famous union of those two fair roses, the white and the red, York and Lancaster; the effecting of which union cost the effusion of much English blood, over and besides fourscore or thereabouts of the blood royal.

Q



But a more famous union is by the goodness of the Almighty perfected in his majesty's person of divers lions, two famous, ancient and renowned kingdoms, not only without blood, or any opposition, but with such an universal acclamation and applause of all sorts and degrees, as it were with one voice, as never was seen or read of. And therefore most excellent king, for to him I will now speak :

‘Cum triplici fulvum conjunge leone leonem,  
‘Ut varias atavus junxerat ante rosas :  
‘Majus opus varios sine pugna unius leones,  
‘Sanguine quam varias consociasse rosas.’

These four noble and magnanimous lions, so firmly and individually united, are able, without any difficulty or great labour, to subdue and overthrow all the Letters and Bulls, and their calves also, that have been, or can be sent into England.

Now for the time, observe that these Bulls or Briefs came upon the aforesaid negotiation of Thomas Winter into Spain, at what time an army should shortly after have been sent to invade the land : And this was to be put in execution, ‘quandocunque contingeret miseram illam feminam ex hac vita excedere ;’ whensoever it should happen that that miserable woman, for so it pleased the high priest of Rome to call great queen Elizabeth, should depart this life. Was queen Elizabeth miserable ? It is said that ‘Miseria constat ex duobus contrariis, scilicet, copia et inopia ; ex copia tribulationis, et inopia consolationis.’ Was she, I say, miserable, whom Almighty God so often and so miraculously protected, both ‘from the arrow that flieth by day,’ their great Armada, ‘and from the pestilence that walketh in the darkness,’ their secret and treacherous conspiracies ? that did beat her most potent enemies ? that set up a king in his kingdom ? that defended nations, and harboured and protected distressed people ? that protected her subjects in peace and plenty, and had the hearts of the most and the best of her subjects ? that reigned religiously and gloriously, and died Christianly and in peace ? Oh blessed queen, our late dear sovereign, ‘semper honos nomenque tuum laudesque manebunt.’ But queen Elizabeth of famous memory, (for ‘Memoria ejus semper erit in benedictione’) as a bright morning-star, in fulness of time lost her natural light, when the great and glorious sun appeared in our horizon. And now sithence the coming of our great king James, there have not passed, I will not say four, nay not two months, without some treason. First, in March 1603, upon the death of her majesty, and before they had seen his majesty's face, was Christ. Wright employed into Spain, by Garnet, Catesby, and Tresham, to give advertisement of the queen's death, and to continue the former negotiation of Thomas Winter ; and by him also doth this Garnet write to Creswell the Jesuit, in commendation, and for assistance and furtherance of his business. As also on the 22nd of June following, was Guy Fawkes sent out of Flanders, by Baldwin

the Jesuit, by sir William Stanley and Hugh Owen about the same treason ; and by letters from Baldwin directed and commended to Creswell the legier Jesuit in Spain, for the procuring of his dispatch, as in the former arraignment hath been declared.—In the same June doth Garnet the Superior, together with Gerrard and other Jesuits and Jesuited Catholics, labour not only in providing of horses, which by Thomas Winter and Christopher Wright, upon their several negotiations, they, in the names of all the Catholics in England, had promised the king of Spain, to assist and do him service withal, at such time as the said king should send his forces to invade, either at Milford Haven, or in Kent, as hath before been shewed ; but also did, by force of the said two Bulls or Briefs, dissuade the Romish Catholics from yielding their due obedience to his majesty, for that he was not of the Roman religion : contrary to the practice of the true church and churchmen, that undergo wars, ‘ferendo, non feriendo,’ with patience not with strokes ; their weapons being properly ‘orationes et lacrymæ,’ prayers and tears.

On the same June 9, which was in 1603, 1 Jac. brake out likewise the Treason of the Romish priests, Watson and Clarke, as also that other of sir Walter Raleigh and others. But the Jesuits seeing that the peace was now in great forwardness, and having advertisement, also, that the king of Spain did now distaste their propositions, so that there was no further hope left for force ; then fall they again to secret practice. As for the bulls or briefs before mentioned, when Catesby had informed Garnet that king James was proclaimed, and the state settled, they were by Garnet, as himself hath affirmed, burnt. But to proceed :

In March 1603, Garnet and Catesby (a pestilent traitor) confer together, and Catesby in general telleth him (though most falsly), That the king had broken promise with the catholicks, and therefore assuredly there would be stir in England before it were long. In September following, meets Catesby and Thomas Percy : and after an unjust, but a grievous complaint made by Catesby of the king's proceedings, for that contrary to their expectations, his majesty both did hold, and was like continually to run the same course which the queen before had held ; Percy presently breaks forth into this devilish speech, That there was no way but to kill the king, which he the said Percy would undertake to do. But Catesby, as being ‘versuto ingenio et profunda perfidia,’ a cunning, a wily, and a deep traitor, intending to use this so furious and fiery a spirit to a further purpose, doth as it were stroke him for his great forwardness, yet with sage and stayed counsel tells him ; No Tom, thou shalt not adventure thyself to so small purpose : If thou wilt be a traitor, there is a plot to greater advantage, and such a one as can never be discovered, viz. the Powder-treason.

In January, in the 1st year of his majesty, Garnet took out a General Pardon under the Great Seal of England of all treasons (which pardon

his majesty of his grace granted to all men at his first entrance into his kingdom) under the name of Henry Garnet of London, gent. but therein he never used any of his 'alias dictus,' Walley, Farmer, or any other of his feigned names. But Catesby fearing lest any of those whom he had or should take into confederacy, being touched in conscience with the horror of so damnable a fact, might give it over, and endanger the discovery of the plot, seeks to Garnet, (as being the superior of the Jesuits, and therefore of high estimation and authority amongst all those of the Romish religion) to have his judgment and resolution in conscience, concerning the lawfulness of the fact, that thereby he might be able to give satisfaction to any who should in that behalf make doubt or scruple to go forward in that treason. And therefore Catesby coming to Garnet, propounded unto him the case, and asketh, Whether for the good and promotion of the Catholick cause against hereticks, (the necessity of time and occasion so requiring) it be lawful or not amongst many nocents to destroy and take away some innocents also. To this question Garnet advisedly and resolvedly answered, That if the advantage were greater to the Catholic part, by taking away some innocents together with many nocents, then doubtless it should be lawful to kill and destroy them all. And to this purpose he alledged a comparison of a town or city which was possessed by an enemy, if at the time of taking thereof there happen to be some few friends within the place, they must undergo the fortune of the wars in the general and common destruction of the enemy. And this resolution of Garnet, the superior of the Jesuits, was the strongest, and the only bond, whereby Catesby afterwards kept and retained all the traitors in that so abominable and detestable a confederacy; for in March following, Catesby, Thomas Winter, and others, resolve upon the Powder-Plot: and Fawkes as being a man unknown, and withal a desperate person and a soldier, was resolved upon as fit for the executing thereof, to which purpose he was in April following by Thomas Winter sought and fetched out of Flanders into England.

In May, in the 2d year of his majesty, Catesby, Percy, John Wright, Thomas Winter, and Fawkes meet: And having, upon the holy evangelists, taken an oath of secrecy and constancy to this effect:

'You shall swear by the blessed Trinity, and by the sacrament you now purpose to receive, never to disclose directly or indirectly, by word or circumstance, the matter that shall be proposed to you to keep secret, nor desist from the execution thereof, until the rest shall give you leave.'

They all were confessed, had absolution, and received thereupon the sacrament, by the hands of Gerrard the Jesuit then present.

In June following, Catesby and Greenwell the Jesuit confer about the Powder-Treason. And at Midsummer, Catesby having speech with Garnet of the Powder-Treason, they said,

That it was so secret, as that it must prevail before it could be discovered. Then Garnet seemed to desire that the Pope's consent might be obtained: but Catesby answered, That he took that as granted by the pope in the two Bulls or Briefs before; for that, said he, if it were lawful not to receive, or to repel him, as the said Bulls or Briefs did import, then is it lawful also to expel or cast him out.

Upon the 7th of July, 1604, was the parliament prorogued until the 7th of February. And in November following, Thomas Bates, being (as hath been declared more at large in the former arraignment) fetched in by Catesby, his master, to participate in the Powder-Treason, for better assurance of his secrecy, and prosecution thereof, is by Greenwell the Jesuit confessed, encouraged, and told, That being for a good cause, he might and ought, not only conceal it as committed unto him in secret by his master; but further said, That it was no offence at all, but justifiable and good.—About this time was Robert Keyes taken into the confederacy, and by Catesby resolved of the lawfulness thereof from the Jesuits.

On the 11th of December, they entered the mine: and in March following, which was in 1605, was Guy Fawkes sent over to sir William Stanley, with letters from Garnet to Baldwin the legier Jesuit there, to take order, That against the time of the blow, the forces might be brought near to the sea-side, to the end that they might suddenly be transported into England. And there doth Fawkes, by consent of the confederates, give Owen the oath of secrecy and perseverance, and then acquaints him with the whole treason: Who having been a most malicious and inveterate traitor, greatly applauded it, and gave his consent and counsel for the furtherance thereof.

In May 1605, fell out certain broils in Wales by the Romish Catholics; at what time also Rookwood was by Catesby acquainted with the Powder-Treason, and resolved of the lawfulness of the fact by him as from the Jesuits.

Now doth Garnet write to the Pope, That commandment might come from his holiness, or else from Aquaviva the general of the Jesuits, for the staying of all commotions of the Catholics here, in England, intending indeed to set their whole rest of the Catholick Romish cause upon the Powder-Plot, and in the mean time to lull us asleep in security, in respect of their dissembled quietness and conformity; as also lest impediment might be offered to this main plot by reason of any suspicion of the stirring of Papists, or of inquiry after them upon occasion of any petty commotions or broils. But when he further desired, that it might be so enjoined upon censure, that latter request was not granted, lest it might indeed be an impediment to the Powder-Plot.

In June following doth Greenwell the Jesuit consult with Garnet his superior, of the whole course of the Powder-Treason at large; wherein observe the politick and subtle dealing of this Garnet. First, he would not, as he saith,

confer of it with a layman, (other than Catesby whom he so much trusted) why so? Because that might derogate from the reverence of his place, That a Jesuit and a superior of them, should openly join with laymen in cause of so much blood. And therefore, secondly, as he would consult of it with a priest and a Jesuit, one of his own order, and his subject; so for his further security, he would consult thereof with Greenwell the Jesuit, as in a disguised confession. And being informed that the discourse would be too long to repeat kneeling, he answered that he would consult with him of it in confession walking; and so accordingly in an ambulatory confession, he at large discoursed with him of the whole plot of the Powder-Treason; and that a protector, after the blow given, should be chosen out of such of the nobility as should be warned and reserved.

In this month likewise was there a great conference and consultation betwixt Garnet, Catesby, and Francis Tresham, concerning the strength of the Catholicks in England, to the end that Garnet might by letters send direct advertisement thereof to the Pope; for that his holiness would not be brought to shew his inclination concerning any commotion or rising of the Catholick party, until such time as he should be certainly informed that they had sufficient and able force to prevail.

And in August following, Garnet in a conference had about the acquainting of the Pope with the Powder-Treason, named and appointed sir Edmund Baynam for to carry that message to the pope; yet not to him as pope, but to him as a temporal prince: and by him doth Garnet write letters in that behalf; as also for staying of commotions, under pain of censures, well knowing that before his letters could be answered, the house of parliament, according to their designs, should have been blown up, and the whole state overthrown. But this trick he used like a thief, that going to steal and take partridges with a setting-dog, doth rate his dog for questing, or going too near, until he hath laid his net over them, for fear the game should be sprung, and the purpose defeated.

In this month also doth Garnet write to Baldwin the legier Jesuit in the Low-Countries, in the behalf of Catesby, that Owen should move the marquis for a regiment of horses for him the said Catesby; not with any intent, as it was agreed, that Catesby should undertake any such charge, but that under colour of it, horses and other necessaries might be provided without suspicion to furnish the traitors.

In September following doth Parsons the Jesuit write to Garnet to know the particulars of the project in hand, for the journey to St. Winifred's well in this month. It was but a jargon, to have better opportunity, by colour thereof, to confer and retire themselves to those parts.—In October doth Garnet meet the other traitors at Coughton in Warwickshire, which was the place of rendezvous, whither they resorted out of all countries.—Upon the

first of November, Garnet openly prayeth for the good success of the great action, concerning the Catholick cause in the beginning of the parliament: and prayer is more than consent; for 'Nemo orat, sed qui sperat et credit.' He in the prayer used two verses of a hymn, 'Gentem auferite peridam credentium de finibus ut Christo laudes debitas persolvamus alacriter.'

Now was the Letter with the lord Montea-gle, \* whose memory shall be blessed, on the 4th of November; by the providence of the Almighty, not many hours before the Treason should have been executed, was it fully discovered.

On the 5th of November, being the time when the Traitors expected that their devilish practice should have taken effect, they convened at Dunchurch, under colour of a great hunting-match, appointed by sir Everard Digby, as being a man of quality and account thereabout; purposing by this means to furnish themselves with company for their intended insurrection and rebellion: for that men being gathered together, and a tumult suddenly raised, the traitors thought that every or most of them would follow the present fortune, and be easily persuaded to take part with them; and that they might easily surprize the person of the lady Elizabeth, then being in those parts, in the lord Harrington's house.

Upon the 6th of November, early in the morning, Catesby and the said confederates dispatched Tho. Bates with a Letter to Garnet the superior of the Jesuits, who was (as they well knew) then ready at Coulton, near unto them, earnestly entreating his help and assistance for the raising of Wales, and putting so many as he could into open rebellion. At what time Garnet and Greenwell (who then of purpose was there with Garnet) then certainly perceiving that the plot was indeed discovered, and knowing themselves to be the chiefest authors thereof, prophesied the overthrow of the whole order of the Jesuits; saying, that they feared that the discovery and miscarrying of this practise, would utterly undo and overthrow the whole society of the Jesuits. But Greenwell the Jesuit being carried with a more violent and fiery spirit, posteth up and down to incite such as he could to rise up in open rebellion: and meeting in master Abington's house with Hall, another Jesuit, adviseth him the said Hall likewise to lose no time, but forthwith to seek to raise and stir up so many as he could; but Hall seeming to deliberate thereof, whether seeing no end of so rash an attempt, or fearing by that means to be himself apprehended, Tesmond told him that he was a flegmatick fellow: and said, a man may herein see the difference betwixt a flegmatick man (such as he meant Hall was) and a choleric, as he said himself was: and further added, that he was resolved to do his best endeavours for the raising of a rebellion, under this false pretext

\* See p. 197.

and colour, that it was concluded that the throats of all the catholics in England should be cut; so persuading himself to incite them to take arms for to stand upon their guard and defence: and with this devise he posted away into the county of Lancaster. Afterwards Hall the Jesuit, otherwise called Oldcorn, being urged by Humphrey Littleton with the evil success of their intended Treason, that surely God was displeased and offended with such bloody and barbarous courses, instead of an humble acknowledgment of the justice of God, and a sense of the wickedness of the Treason, fell rather Satanically to argue for the justification of the same: and said, Ye must not judge the cause by the event; for the eleven tribes of Israel were by God himself commanded to go and fight against Benjamin, yet were they twice overthrown: so Lewis of France fighting against the Turk, his army was scattered, and himself died of the plague: and lastly, the Christians defending of Rhodes, were by the Turks overcome. And these he applied to the Powder-Treason, and persuaded Littleton not to judge it ungodly or unlawful by the event.

Observe here a double consequent of this Powder-Treason. First, open rebellion, as hath been shewed both immediately before, and more at large in the former arraignment; and since that, blasphemy in Garnet the superior of the Jesuits; for, he having liberty in the Tower to write, and sending a letter (which letter was openly shewed in the court before him) to an acquaintance of his in the Gate-House, there was nothing therein to be seen but ordinary matter, and for certain necessities: but in the margin, which he made very great and spacious, and underneath, where there remained clean paper, he wrote cunningly with the juice of an orange, or of a lemon, to publish his innocency, and concerning his usage; and there denieth those things which before he had freely and voluntarily confessed: and said, that for the Spanish Treason, he was freed by his majesty's pardon; and as for the Powder Treason, he hoped for want of proof against him, to avoid that well enough: but concludeth blasphemously, applying the words which were spoken of our blessed Saviour, to himself in this damnable Treason, and saith, 'Necesse est ut homo moriatur pro populo: 'It is necessary that one man die for the people: which words Caiaphas spake of Christ. Wherein note his prevarication and equivocation; for before the Lords Commissioners he truly and freely confessed his Treasons, being (as himself under his own hand confesseth) overwhelmed 'tanta nube testium;' and yet 'ad faciendum populum,' in his Letters which he wrote abroad, he clearth himself of the Powder-Treason. And thus much concerning the two circumstances subsequent, which were rebellion and blasphemy.

The Circumstances concurring, are concerning the persons both offending and offended. For the principal person offending, here at the bar, he is, as you have heard, a man of many

names, Garnet, Wally, Darcy, Roberts, Farmer, Philips: and surely I have not commonly known and observed a true man, that hath had so many false appellations: he is by country an Englishman, by birth a gentleman, by education a scholar, afterwards a corrector of the common law print, with Mr. Tottle the printer; and now is to be corrected by the law. He hath many gifts and endowments of nature, by art learned, a good linguist, and by profession a Jesuit, and a superior, as indeed he is superior to all his predecessors in devilish Treason; a doctor of Jesuits, that is, a doctor of five DD's, as dissimulation, deposing of princes, disposing of kingdoms, daunting and deterring of subjects, and destruction.

Their dissimulation appeareth out of their doctrine of equivocation: concerning which it was thought fit to touch something of that which was more copiously delivered in the former arraignment, in respect of the presence of Garnet there, who was the superior of the Jesuits in England, concerning the treatise of equivocation seen and allowed by Garnet, and by Blackwell the archpriest; wherein, under the pretext of the lawfulness of a mixt proposition to express one part of a man's mind, and retain another, people are indeed taught not only simple lying, but fearful and damnable blasphemy. And whereas the Jesuits ask, why we convict and condemn them not for heresy; it is for that they will equivocate, and so cannot that way be tried or judged according to their words.

Now for the antiquity of equivocation, it is indeed very old, within little more than three hundred years after Christ; used by Arius the heretick, who having in a general council been condemned, and then by the commandment of Constantine the emperor sent into exile, was by the said emperor, upon instant intercession for him, and promise of his future conformity to the Nicene faith, recalled again: who returning home, and having before craftily set down in writing his heretical belief, and put it into his bosom, when he came into the presence of the emperor, and had the Nicene faith propounded unto him, and was thereupon asked, whether he then did indeed, and so constantly would hold that faith, he (clapping his hand upon his bosom where his paper lay) answered and vowed that he did, and so would constantly profess and hold that faith (laying his hand on his bosom where the paper of his heresy lay) meaning fraudulently (by way of equivocation) that faith of his own, which he had written and carried in his bosom.

For these Jesuits, they indeed make no vow of speaking truth, and yet even this equivocating and lying is a kind of unchastity, against which they vow and promise: For as it hath been said of old, 'Cor linguæ federat natura: sanctio, veluti in quodam certo connubio: ergo cum dissonent cor et loquutio, sermo concipitur in adulterio.' That is, The law and sanction of nature, hath, as it were, married the heart and tongue, by joining and knitt-

ing of them together in a certain kind of marriage; and therefore when there is discord between them two, the speech that proceeds from them, is said to be conceived in adultery, and he that breeds such bastard-children offends against chastity.

But note the heavy and woeful fruit of this doctrine of equivocation: Francis Tresham being near his natural death in the Tower, had of charity his wife permitted, for his comfort, to come unto him: Who understanding that her husband had before directly and truly accused Garnet of the Spanish treason, lest belike her husband should depart this life with a conscience that he had revealed any thing concerning the superior of the Jesuits, a very little before he died, drew him to this; that his own hand being so feeble as that he could not write himself, yet he caused his servant then attending on him, to write that which he did dictate, and therein protested upon his salvation, That he had not seen the said Garnet of 16 years before, and thereupon prayed that his former confession to the contrary might in no wise take place; and that this paper of his retractation which he had weakly and dyingly subscribed, might, after his death, be delivered to the earl of Salisbury: Whereas master Garnet himself hath clearly confessed the Spanish treason, and now acknowledged the same at the bar; and he and Mrs. Fawkes, and others, directly confess and say, That Garnet and Tresham had, within two years space, been very often together, and also many times before: But, 'qualis vita, finis ita.' And Garnet himself, being at the bar afterwards urged to say what he thought of such the departure of Francis Tresham out of this life, answered only this; I think he meant to equivocate.

Thus were they stained with their own works, and went a whoring with their own inventions, as it is in the psalm. So that this is indeed 'Gens perfida,' according to the hymn, A perfidious people; and therefore, 'Jurat? crede minus, non jurat? credere noli. Jurat, non jurat hostis, ab hoste cave.'

For their doctrine of deposing of princes, Simeon and Philopater are plain, as hath in the former arraignment been more amply declared, and was now again at large to Garnet's face repeated: If a prince be an heretick, then is he excommunicated, cursed, and deposed; his children deprived of all their right of succession, himself not to be restored to his temporal estate upon repentance. And by an heretick, they profess, that he is intended and meant, namely, whosoever doth not hold the religion of the church of Rome. Nay, there is an easier and more expedite way than all these to fetch off the crown from off the head of any king christened whatsoever; which is this, That 'Princeps indulgendo hereticis, amittit regnum;' If any prince shall but tolerate or favour hereticks, he loseth his kingdom. Nay, whereas Garnet, in defence of this usurped power of the high-priest of Rome, alledged, 'Nos sanctorum, &c. out of the decretals; in

the very next title before that, there is another decree that passeth all we have recited; wherein it is shewed, that Zachary the pope deposed Childerick of France, for nothing else there specified, 'sed quia inutilis,' but only for that he was reputed unprofitable to govern.

Now as concerning their daunting and deterring of subjects, which is a part of the Jesuits profession; it were good that they would know and remember, how that the most noble and famous kings of England never were afraid of pope's bulls, no not in the very midnight of popery, as Edward the Confessor, Henry 1, Edward 1, Richard 2, Henry 4, Henry 5, &c. And in the time of Henry 7, and in all their times, the pope's legate never passed Calais, but staid there, and came not to England, until he had taken a solemn oath to do nothing to the detriment of the crown or state.

For the Persons offended, they were these: 1. The King, of whom I have spoken often, but never enough: A king of high and most noble ancient descent, as hath been briefly declared; and in himself full of all imperial virtues, religion, justice, clemency, learning, wisdom, memory, affability, and the rest. 2. The Queen; and she, in respect of her happy fruitfulness, is a great blessing; insomuch that of her, in that respect, may be said, she is 'Ortu magna, viro major, sed maxima prole;' great in birth, greater in her marriage, but to all posterity greatest, in the blessed fruit of her womb, as having brought forth the greatest prince that ever England had. 3. The noble Prince, of whom we may say, with the poet, 'Quæ te tam læta tulere secula? Qui tanti talem genuere parentes?' Never prince, true heir-apparent to the imperial crown, had such a father, nor ever king had such a son. 4. Then the whole royal issue, the council, the nobility, the clergy, nay our religion itself, and especially this city of London, that is famous for her riches, more famous for her people, having above 500,000 souls within her and her liberties, most famous for her fidelity, and more than most famous of all the cities in the world for her true religion and service of God: Hold up thy head, noble city, and advance thyself, for that never was thy brow blotted with the least taint or touch, or suspicion of disloyalty: Thou mayest truly say with the prophet David, 'I will take no wicked thing in hand, I hate the sin of unfaithfulness, there shall no such cleave unto me.' Therefore for thy fidelity thou art honoured with the title of 'The King's Chamber,' as an inward place of his greatest safety: And for thy comfort and joy this day, hath Britain's great king honoured thee with the proceeding upon this great and honourable commission: after the heavy and doleful rumours this other day, when it was certainly known that king James was in safety, well did the fidelity of this city appear, (whereof I was an eye-witness) 'Una voce conclamaverunt omnes, salva Loadinum, salva patria, salva religio, Jacobus rex noster salvus;' 'Our city, our country, our religion is safe, for our king James is in safety.'

The Observations are many, and only in a word to be touched : 1. That in the Spanish treason before-mentioned, and this Powder-treason, there was the same Order, Cause and End. The Order was, first, to deal by secret practice and treason, and then by force and invasion. The Cause which they pretend, was the Romish Catholick Religion. The End was the final destruction of the royal succession, yea, even 'occidere regnum,' to overthrow and dissolve the whole kingdom. 2. Note, that even the enemy hath acknowledged, that our state is so settled and established, as neither strength nor stratagem can prevail, unless there be a party made in England. 3. We shall never have Bull more to come from Rome to England, because they shall never have a party strong enough to encounter with so many lions. 4. All their canons, decrees, and new-found doctrines tend to one of these two ends ; either worldly pride, or wicked policy ; for the amplitude and enlargement of the pope's authority, and for the safety of the jesuits, priests, &c. 5. Observe that Baynam, a layman, and one of the damned crew, and so naming himself, was sent to inform the pope as a temporal prince. 6. I conceive their fall to be near at hand, both by divinity and by philosophy. For the first, there are now in England about 400 priests : so many were there in Israel in the days of Ahab ; 'Who,' saith God, 'shall go and deceive Ahab, that he may fall?' A lying spirit in the mouths of his 400 prophets undertook and effected it ; their fall was near, when once a lying spirit had possessed the priests, according to the vision of Micheas, as it now hath possessed the Jesuits : 3dly, the imitation of good for the most part comes short of the pattern ; but the imitation of evil ever exceeds the example. Now no imitation can exceed this fact, and therefore their time is at an end. 7. Many condemn it now, that would have commended it, if it had taken effect ; for this, say they, is 'E numero eorum quae non laudantur nisi peracta.' 8. They and their adherents spread abroad false rumours ; as that the king should have broken promise with them concerning toleration : which mixture of God's service, rather than he would suffer, he would lose children, crown, life, and all. Nay, they may see there is no such hope left, for that his majesty bringeth up his royal issue in the true religion and service of the Almighty.

Lastly ; Observe the wonderful Providence of God in the admirable Discovery of this Superior Jesuit to be party to this Treason ; and that in two respects : 1. In respect of the means of secrecy, used by him in conference only with Catesby of the laity. 2. They had a strong and a deep oath given them both for secrecy and perseverance. 3. They hereupon received the holy Sacrament. 4. They were allowed and taught by the Jesuits, to equivocate upon oath, salvation or otherwise : and how then should it be discovered ? 5. Their secret intelligence was such, as that it was impossible by the wit of man to be found out. And therefore,

2. The second thing is, How this Treason being long sithence plotted, the Providence of God did continually from time to time divert and put off the executing thereof, by unexpected putting off the times of assembly in parliament. For the parliament began the 19th of March, in the first year of his majesty's reign, and continued till the 7th of July following, before which time the conspirators could not be ready : from thence it was prorogued until the 7th of Feb. against which time they could not make the mine ready, in respect that they could not dig there, for that the commissioners of the union sat near the place, and the wall was thick, and therefore they could not be provided before the 7th of Feb. ; and on the 7th of Feb. the parliament was prorogued until the 5th of October. After this, they found another course, and altered the place from the mine to the cellar. O blessed change of so wicked a work ! Oh ! but these fatal engineers are not yet discovered, and yet all things are prepared. Oh prorogue it once more ! And accordingly, God put it into his majesty's heart (having then not the least suspicion of any such matter) to prorogue the parliament ; and further, to open and enlighten his understanding, out of a mystical and dark letter, like an angel of God, to point to the cellar, and command that to be searched ; so that it was discovered thus miraculously, but even a few hours before the design should have been executed.

The Conclusion thereof shall be this ; 'Qui cum Jesu itis, non itis cum Jesuitis.' For, 'They encourage themselves in mischief, and commune among themselves secretly, how they may lay snares, and say, that no man shall see them. But God shall suddenly shoot at them with a swift arrow, that they shall be wounded : insomuch that whoso seeth it shall say, this hath God done ; for they shall perceive that it is his work.'

Then were repeated the proofs for every of the particular accusations aforesaid, by the express and voluntary confessions of Garnet, and of his complices themselves, and of two credible witnesses sworn at the bar, and openly heard *viva voce*, and acknowledged by Garnet himself to be men without exception.

Then Mr. Garnet having licence of the court to answer what he could for himself, spake, and divided all which had been objected, to his remembrance, into four parts, viz. Containing matter of, 1st, Doctrine. 2dly, Recusants. 3dly, Jesuits in general. 4thly, Himself in particular.

1st, In Doctrine, he remembered two points : 1. Concerning Equivocation : whereunto he answered, That their church condemned all lying, but especially if it be in cause of religion and faith, that being the most pernicious lye of all others, and by St. Augustine condemned in the Priscillianists : nay, to lye in any cause is held a sin and evil ; howsoever of eight degrees which St. Augustine maketh, the

lowest indeed is to lye for to procure the good of some, without hurting of any. So then our equivocation is not to maintain lying, but to defend the use of certain propositions: for a man may be asked of one, who hath no authority to interrogate, or examined concerning something which belongeth not to his cognizance who asketh, as what a man thinketh, &c. So then no man may equivocate, when he ought to tell the truth, otherwise he may. And so St. Augustine upon John saith, That Christ denied he knew the day of judgment, viz. with purpose to tell it to his disciples; and so St. Thomas and others who handle this matter, chiefly under the title of Confession.

2. For the second point, which was the power of the pope in deposing of princes, his Answer was threefold. 1. That therein he only propounded and followed the general doctrine of the church. 2. That this doctrine of the power of the pope, was by all other Catholick princes tolerated without grievance. 3. That yet for his own part, he always made a difference in the matter of excommunicating and deposing of princes, betwixt the condition and state of our king and of others, who having sometimes been Catholicks, did or shall afterwards fall back. As for Simanca, and other writers, whatsoever they set down of the deposing of hereticks, it is to be understood of those princes, who, having sometimes professed the faith of the Church of Rome, do afterwards make a defection from the same.

3dly, For Recusants; 1. I desire them not to impute any offence or crime of mine, to the prejudice of the cause of religion. 2. Concerning their not going to church; whereas it was urged by Mr. Attorney, that the ground of their not going to church, was the excommunication and Bull of Pius Quintus; and that now they may go, for that his majesty is not denounced excommunicate: I answer, That it followeth not; for the Arians and Catholicks had the same service in their churches, yet came they not together; and I know divers myself, who, before that Bull, refused to go to church all the time of queen Elizabeth, though perhaps most Catholicks did indeed go to church before. It was about the end of the council of Trent, where this matter was discussed by twelve learned men, and concluded not lawful. And this was occasioned, for that Calvin himself held it not lawful for any Protestant to be present, not only at our mass, wherein perhaps they may say there is idolatry, but not at our even-song, being the same with theirs.

3dly, Concerning the Jesuits, he said, That if any were privy to such horrible treasons, it was impious, especially in men of their profession; but said, that he talked with some of them about it, and that they denied it.

4thly, Touching myself, The Negotiation into Spain was indeed propounded unto me, and I was also acquainted with the negotiation for money, but ever intended it should be bestowed for the relief of poor Catholicks: but

when they were there, they moved for an army; which when they afterwards acquainted me withal, I misliked it, and said, it would be much disliked at Rome: only I must needs confess I did conceal it after the example of Christ, who commands us, when our brother offends, to reprove him, for if he do amend, we have gained him; yet I must needs confess, that the laws made against such concealing, are very good and just, for it is not fit the safety of a prince should depend upon any other man's conscience. So that I am verily persuaded, if they yielded to me, it had been good: but what their intent and meaning was, in desiring an army, I knew not, and I was charged not to meddle therein, nor not with the money which was to be sent for pensions, though it was to maintain the Title of the king.

The Earl of *Salisbury* then demanded, To maintain whose Title?

*Garnet* answered, The Title of the king of Spain.

The earl of *Northampton* asked him, Why he did not oppose himself against it, and forbid it, as he might have done? For 'Qui cum possit non prohibet, jubet.'

Whereupon *Garnet* answered, That he might not do it: and for sending of letters, and commending some persons thereby, he confessed he did it often, as they were commended to him without knowing either their purposes, or some of their persons; for he never knew Mr. Wright, for whom he writ.

The earl of *Salisbury* then replied to *Garnet*, I must now remember you, how little any of your answers can make for your purpose, when you would seek to colour your dealing with Baynam, by professing to write to Rome to procure a countermand of conspiracies; and yet you know, when he took his journey towards Rome, the blow must needs have been passed, before the time he could have arrived to the pope's presence, (such being your zeal and his haste for any such prevention) as it was about the 20th of our October when he passed by Florence towards Rome.

To which *Garnet* made no great answer, but let it pass: and then went on with his Defence of sending Letters in commendation of many of those with which he had been formerly charged, and so confessed that he had written commendation of Fawkes, thinking that he went to serve as a soldier, not knowing then of any other purpose he had in hand. And as for sir Edmund Baynam, what he or Mr. Catesby intended, he knew not in particular; only Mr. Catesby asked him in general, the question of the lawfulness to destroy innocents with no-cents, as had been before objected against him; which at first, I thought, said *Garnet*, had been an idle question, though afterwards I did verily think, he intended something that was not good. Whereupon having shortly after this, received letters from Rome, to prohibit all insurrections intended by Catholicks, which might perturb this state; *Garnet* informed Catesby thereof, and told him, That if he pro-

ceeded against the pope's will, he could not prevail: but Catesby refused and said, he would not take notice of the pope's pleasure by him. Notwithstanding, he shewed to Catesby the general letter which he had received from Rome, but said he would inform the pope, and tell Garnet also in particular, what attempt he had in hand, if he would hear it; which afterwards he offered to do, but Garnet refused to hear him, and at two several times requested him to certify the pope what he intended to do.

And when sir Edmund Baynam (as he pretended) was to go over into Flanders for a soldier, Garnet thought good to send him to the pope's nuncio, and to commend him to other friends of his, that they should send him to inform the pope of the distressed estate of Catholicicks in England: the rather, that the pope having a lay-man there, might be acquainted with all their proceedings; and that Baynam might then learn of the pope, what course he would advise the Catholicicks in England to take for their own good: but wished Baynam in no case to use Garnet's name to the nuncio in that behalf.

Then were the two Witnesses called for; both of them persons of good estimation, that over-heard the interlocution betwixt Garnet and Hall the Jesuit, viz. Mr. Fauset a man learned and a justice of peace, and Mr. Lockerson. But Mr. Fauset being not present, was sent for to appear; and in the mean time Mr. Lockerson, who being deposed before Garnet, delivered upon his oath, that they heard Garnet say to Hall, They will charge me with my Prayer for the good success of the great action, in the beginning of the Parliament, and with the Verses which I added in the end of my Prayer:

- ' Gentem auferte perfidam
- ' Credientium de finibus,
- ' Ut Christo laudes debitas
- ' Persolvamus alacriter.

It is true, indeed, said Garnet, that I prayed for the good success of that great action; but I will tell them, that I meant it in respect of some sharper laws, which I feared they would then make against Catholicicks; and that answer shall serve well enough.

Here Garnet replied, that for the two gentlemen that heard the Interlocution, he would not charge them with perjury, because he knew them to be honest men; yet he thought they did mistake some things, though in the substantial parts, he confessed, he could not deny their relation. And for the main Plot, he confessed, that he was therewithal acquainted by Greenwell particularly; and that Greenwell came perplexed unto him to open something, which Mr. Catesby with divers others intended: to whom he said, He was contented to hear by him what it was, so as he would not be known to Mr. Catesby, or to any other, that he was made privy to it. Whereupon father Greenwell told him the whole Plot, and all the particulars thereof, with which he protested

VOL. II.

that he was very much distempered, and could never sleep quietly afterwards, but sometimes prayed to God, that it should not take effect.

To that the earl of *Salisbury* replied, That he should do well to speak clearly of his devotion in that point; for otherwise he must put him in remembrance, that he had confessed to the lords, that he had offered sacrifice to God for stay of that plot, unless it were for the good of the Catholic cause; and in no other fashion (said his lordship) was this state beholden to you for your masses and oblations. Adding thus much farther, That he wondered why he would not write to his superior Aquaviva, as well of this particular Powder-Trenson, as to procure prohibition for other smaller matters.

Garnet faintly answered, he might not disclose it to any, because it was matter of secret confession, and would endanger the life of divers men.

Whereunto the earl of *Northampton* replied, That that matter of confession, which before he refused to confess, because he would save lives, he confessed it now to endanger his own life; and therefore his former answer was idle and frivolous.

Then Garnet told the lords, That he commanded Greenwell to dissuade Catesby, which he thought he did; and if Catesby had come to him upon Allhallow-day, he thought he could so far have ruled him, as he would have been persuaded to desist.

Then said the earl of *Salisbury*, Why did you refuse to hear Catesby tell you all the particulars, when he would have told you, if you had been desirous to prevent it?

Garnet replied, That after Greenwell had told him what it was which Catesby intended, and that he called to mind what Catesby said to him, at his first breaking with him in general terms, his soul was so troubled with mislike of that particular, as he was loth to hear any more of it.

Well then, said the earl of *Salisbury*, you see his heart: and then turning to the Lords Commissioners, he desired leave of them, that he might use some speech concerning the proceeding of the state in this great cause, from the first beginning until that hour; and so began to this effect: That although the evidence had been so well distributed and opened by Mr. Attorney, as he had never heard such a mass of matter better contracted, nor made more intelligible to the Jury, to whom it was not his part to speak, nor his purpose to meddle with Mr. Garnet in divinity, or in the doctrine of equivocation, in which latter he saw how he had played his master-prize; yet because he had been particularly used in this service with other of the Lords Commissioners, by whom nothing was more desired, next the glory of God, than to demonstrate to the world, with what sincerity and moderation his majesty's justice was carried in all points, he would be bold to say somewhat of the manner of this arraignment, and of the place where it was appointed. For the first, he said, That seeing

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there was nothing to which this state might more attribute the infinite goodness and blessings of God, than to the protection of the true religion, which had groaned so long under the bitter persecutions of men of his profession; he confessed, that he held himself greatly honoured, to be an assistant amongst so many great lords at the seat of justice, where God's cause should receive so much honour, by discrediting the person of Garnet, on whom the common adversary had thought to confer the usurpation of such an eminent jurisdiction: for otherwise, who did not know, that the quality of poor Henry Garnet might have undergone a more ordinary form of trial, and haply in some other place of less note and observation? And so his lordship took an occasion to declare, That the city of London was so dear to the king, and his majesty so desirous to give it all honour and comfort, as when this opportunity was put into his hands, whereby there might be made so visible an anatomy of popish doctrine, from whence these treasons have their source and support, he thought he could not chuse a fitter stage than the city of London, which was not only rightly termed, 'The Chamber of his Empire,' but was by his majesty esteemed as his greatest and safest treasury; who accounteth no riches comparable to his subjects hearts, and acknowledgeth that such a circuit did never contain so many faithful subjects within the walls: a matter well appearing to his own eyes amongst others, upon the decease of the late queen of precious memory, when he attending most of the peers and privy-counsellors of this kingdom, who were accompanied with no small number of noble and faithful gentlemen, had seen them all stayed from entry within the gates of this city, until they had publickly declared with one voice, that they would live and die with the king our sovereign lord. To you, therefore, Mr. Garnet, (said the earl of Salisbury) must I address myself, as the man in whom it appeareth best what horrible treasons have been covered under the mantle of religion, which heretofore had been petty treason for a Protestant to have affirmed. Such hath been the iniquity of false tongues, who have always sought to prove the truth a lyar. Of which impudent calumnies the state is so tender, as you do best know, Mr. Garnet, that since your apprehension, even till this day, you have been as christianly, as courteously, and as carefully used, as ever man could be, of any quality, or any profession: yea, it may truly be said, that you have been as well attended for health or otherwise, as a nurse-child. Is it true or no, said the earl?

It is most true, my lord, said Garnet, I confess it.

Well then, said the earl, if your strange doctrine of Equivocation be observed, and your hardness of heart to deny all things; let it not be forgotten, that this interlocution of yours with Hall, over-heard by others, appears to be *digitus Dei*: for thereby had the lords some light, and proof of matter against you, which

must have been discovered otherwise by violence and coercion, a matter ordinary in other kingdoms, though now forborn here: but it is better as it is, for the honour of the state, for so were your own words, that you thought it best to tell the truth at last, when you saw you were confounded *tanta nubetestium*. In which I protest, that I do confidently assure myself, that you would as easily have confessed yourself to be the author of all the action, as the concealer, but that his majesty and my lords were well contented to draw all from you without racking, or any such bitter torments.

Then speaking to Garnet, he said; I pray you, Mr. Garnet, what encouraged Catesby that he might proceed, but your resolving him in the first proposition? What warranted Fawkes, but Catesby's explication of Garnet's arguments? as appears infallibly by Winter's confession, and by Fawkes, that they knew the point had been resolved to Mr. Catesby, by the best authority.

Then Garnet answered, That Mr. Catesby was to blame to make such application.

To that the Earl replied, That he must needs be bold with him, to drive him from the trust he had, to satisfy the world by his denials, by putting him in mind, how after the interlocution betwixt him and Hall, when he was called before all the lords, and was asked, not what he said, but whether Hall and he had conference together, desiring him not to equivocate; how stiffly he denied it upon his soul, reiterating it with so many detestable execrations, as the earl said, it wounded their hearts to hear him; and yet as soon as Hall had confessed it, he grew ashamed, cried the Lord's mercy, and said, he had offended, if equivocation did not help him.

To this Garnet answered, That when one is asked a question before a magistrate, he was not bound to answer before some witnesses he produced against him, 'Quia nemo tenetur prodere seipsum.' Then Garnet falling into some professions of his well-wishing to his majesty, and being put in mind of the answer he made concerning the excommunication of kings, wherein he referred himself to the canon of 'Nos Sanctorum,' he answered, that his majesty was not yet excommunicated.

Then the earl of Salisbury bade him deal plainly, for now was the time, Whether in case the pope, *per sententiam orthodoxum*, should excommunicate the king's majesty of Great Britain, his subjects were bound to continue their obedience. To this Garnet denied to answer.

From that matter he began to make request, That where he had confessed the receiving of two briefs or bulls from the pope, in the queen's time, by which all Catholicks were forbidden to adhere to any successor that was not obedient to the church of Rome, his majesty would be pleased to make a favourable interpretation, because he had shewed them to very few Catholicks in England, in the queen's time; and when he understood that the pope had changed his mind, then he burnt the bulls.

To that it was said, That belike the pope changed his mind, when the king was so safely possessed of his estate, and Garnet with his complices began to feel their own impiety, and so as Catesby said to Percy, did resolve roundly of that Treason, which would speed all at once.

Then Garnet began to use some Speeches, that he was not consenting to the Powder-Treason. Whereupon the earl of Salisbury said, Mr. Garnet, give me but one argument that you were not consenting to it, that can hold in any indifferent man's ear or sense, besides your bare negative. But Garnet replied not.

Then Mr. Attorney-General spake in answer to Garnet more particularly, to this effect.

1. For Equivocation, it is true indeed, that they do outwardly to the world condemn lying and perjury, because the contrary were too palpable, and would make them odious to all men: But it is open and broad lying and forswearing, not secret and close lying and perjury, or swearing a falsehood, which is most abominable, and without defence or example. And if they allow it not generally in others, yet at least in themselves, their confederates and associates in treasonable practices they will both warrant and defend it, especially when it may serve their turn for such purposes and ends as they look after.

2. Concerning the usurped power of the pope in deposing of princes; neither is it the general doctrine of the church, as he falsely said, neither allowed or tolerated by all princes, who are otherwise of their religion, as may appear out of the French discourse written to the French king against the re-admitting of the Jesuitical faction. And whereas he would pick-a-thanke in seeming to spare and exempt king James our sovereign, it is not possible to avoid their distinction of being excommunicated *de jure* if not *de facto*, howsoever it be true also, that the pope doth *de facto* curse all hereticks. For recusants not going to church, the example of the Catholicks not joining in service and prayer with the Arians, who denied a main article of the Christian creed, doth no ways hold, neither can it agree to us, of whom no such impious blasphemy can be shewed or imagined. That Garnet said, he knew some, who before the bull came, went not to church, it may be true perhaps in some one or two perverted and perverse men like himself; but whereas he produced the council of Trent, as if there the matter had been determined, and thereupon inferreth, that after that all Romish Catholicks refused to meet with us at Church in time of prayer, it is a gross error: for the last session of that council was in the year of our Lord 1563, which was in the fifth year of queen Elizabeth; whereas I shewed, and am able to justify and prove, That their Romish English Catholicks came to our service in our churches until the nineteenth year of her majesty, which was many years after that council was ended.

Concerning Garnet himself; 1st, For that answer of his, That he knew of the Powder-

Treason by confession, it is true which before was spoken, that such acts as this is, *Non laudantur nisi peracta*, are then only commended, when they are performed: but otherwise, first, Greenwell's was no sacramental confession, for that the confitent was not penitent: nay, himself hath clearly delivered under his hand that the Powder-Treason was told him, not as a fault, but by way of consultation and advice. 2dly, It was a future thing to be done, and not already then executed. 3dly, Greenwell told it not of himself; that he should do it, but of Fawkes, Percy, Catesby, Winter, and others; and therefore he ought to have discovered them, for that they were no confitents. 4thly, He might and ought to have discovered the mischief, for preservation of the state, though he had concealed the persons. 5thly, Catesby told it unto him *extra confessionem*, out of confession; saying, they might as well turn him out, as have kept him out. Lastly, By the common law, howsoever it were (it being *crimen lese Majestatis*) he ought to have disclosed it.

Now, for that Garnet denied that he was a principal author and procurer of this Treason, but only that he had received knowledge thereof; the contrary is clear and manifest, both out of his own confessions, by himself acknowledged, and apparently proved, in that he resolved Catesby concerning the lawfulness and merit thereof, and that he prayed for the good success of the Powder-Treason, which is more than either consultation or consent. Besides, he must remember him of the old versicle, 'Qui non prohibet quod prohibere potest consentire videtur.' Garnet might have commanded Greenwell, that told him of the Powder-Treason, to have desisted, but did not: But Greenwell went still on with the Treason, and when it was disclosed, went into the country to move rebellion, which doubtless he would never have done, if Garnet had forbidden him; therefore, he said, he might say with the orator Tully, 'Cui adsunt testimonia rerum, quid opus, est verbis?' Moreover, Mr. Attorney added, how Garnet writ first for Thomas Winter, then for Kit Wright, after that for Guy Fawkes, then for sir Edward Baynam, and afterwards for Catesby, for a regiment of horse; and that Garnet was for the Infanta, and by his briefs intended to keep out the king, except he should tolerate and swear to maintain the Romish religion.

Then Mr. Attorney spake of the Interlocution betwixt Garnet and Hall, and said, That in all their speeches they never named God, nor confessed their innocency: But as soon as they spake together, Hall spake first; and then Garnet said he suspected one, whose name they that were set to overhear them, could not hear, to have disclosed something against them: But it may be otherwise, for he said he was much subject to that frailty of suspicion. He said he received a note from Rookwood, that Greenwell was gone over seas; and another, that Gerrard was gone to father Parsons, and

that mistress Ann was in town, meaning mistress Ann Fawkes, and many other things were by them uttered in that conference.

By this time came in Mr. Forset, who being deposed, affirmed likewise, that their Examination, and the matter therein contained, were true: saying further, that both of them took notes of that which they heard from Garnet and Hall, as near as possibly they could, and set down nothing in their Examinations, but those things, wherein both their notes and perfect memories agreed and assented; and that many things that were very material, and of great moment, were left out of their examinations, because both their notes and memories did not perfectly agree therein.

And now one of the Letters, which were written with sack, was shewed to the court; by which appeared that Hall and Garnet had interlocution together. Mr. Attorney here inferred that the necessary end of justice was *ut panu ad paucos, metus ad omnes perveniat*; and urged the Examination of Garnet, wherein he confessed that when Tesmond alias Greenwell, made relation to him of the great blow by the Powder-Treason, who should have the protection, Greenwell said, the lords that should be left alive should chuse a Protector. And further, Mr. Attorney urged the writing of another letter, written with sack, to Sayer alias Rookwood, a priest in the Gatehouse: But of this point much is formerly mentioned.

Here Mr. Attorney ending, my lord of Northampton spake to the prisoner this Speech following:

*Earl of Northampton.* Though no man alive can be less apt or willing than myself, to add the least grain or scruple of improvement to the weight of any man's calamity, that groans under the heavy burden of a distressed state, *Vel gravatis addere gravamina*, whereof I have as many witnesses as the world hath eyes; yet as the case stands now in this Trial, Mr. Garnet, between my dear sovereign, *ex cuius spiritu*, as one said of Alexander, *nos omnes spiritum ducimus*; and you that were so well content, to let the course of conspiracy run forward to the stopping of this breath before the time, which God by nature doth prescribe, between his honour and your error, his just proceedings and your painted shews, his sincerity and your hypocrisy; I could wish it possible that in any person of some other quality, you might hear the echoes of your unperfect and weak answers, and thereupon judge more indifferently and evenly of the true state of the cause than you have done hitherto; being distracted with fear, or forestalled by prejudice, or, to borrow your own phrase, which is more proper to the point than any I can use, oppressed *tanta nube testium*, with so thick a cloud of witnesses, as concur with one voice, heart, and spirit, for the confusion of your audacity.

I confess that never any man in your state gave less hold or advantage to examiners, than you have done in the whole course of proceed-

ing to us that were in Commission; sometime by forswearing, as upon the Confession of Hall your fellow; sometime by dissembling, as about the places of your rendezvous, which was the Lapwing's Nest; sometime by earnest expostulation; sometime by artificial equivocation; sometime by sophisticating true substances; sometime by adding false qualities; yet *ut suprest*, as may appear, to the defeat of your inventions, and the defence of the king's majesty, *quia magna est veritas, et prevalet*.

Your parts by nature simply considered and in another person, would rather move compassion, than exasperate humanity; for whom would not the ruin of such a person touch, as is in appearance temperate, and in understanding ripe? But our end at this time is the same with Decius in Livy, *ut quem vos obrutum reliquistis ignem*, &c. that we may quench that fire by prevention, which you have only raked up in ashes; *ut novum daret incendium*, that it might cause a new combustion so soon as it might hit upon matter that were fit and suitable. Wherefore I must rather draw your answers to the true touch for discharge of rumors, than *verberare aërem*, beat the air: For the substance of all your evasions and sly shifts, is as the inn-keeper of Chalvus confessed of his dishes to his guests, admiring *tantam ferculorum diversitatem*, that they were only compounded of pork, howsoever your fine cookery may vary them.

The two Bulls that in the late queen's time entered the land (with a purpose by their loud lowing to call all their calves together, for the making of a strong party, at the shutting up of the evening, against your dread sovereign) were grazed in your pastures, Mr. Garnet; or to speak more properly (because they durst neither endure the light, nor admit the air) they were stall-fed at your crib, as yourself confess; and therefore *serve nequam, ex ore tuo te judico*. And what answer make you to this? Marry, that the purpose was imparted to very few; so much the worse: For out of publication grows discovery; and yet experience hath justified, that those very few were the very souls and spirits of that pack of conspirators, and such as for want of patience and temperance to tarry the time, when the game had been brought to bearing, should have played the chiefest parts in the late smoaking tragedy. You say the Bulls were after sacrificed in the fire by yourself: But not before the king's good angel had cut their throats, and the best part of their proof were past, and your hopes dead of that good which in likelihood they should have brought with them. For to what use could these dumb beasts serve, in seeking to prevent that lawful and undoubted right, which heaven had now proclaimed, and earth acknowledged? But let the proof be what it will, I look into the root. I wonder, Mr. Garnet, what apostle warrants you in undertaking wicked Plots, in hope that good may follow; neglecting what all laws, and the laws of Eng-

land above all, what all states and nations conclude of men, that slyly practise and combine for anticipation of the future rights of lawful successors.

In excuse of Letters written with your own hand by Thomas Winter to father Creswell, when he was employed about the procurement of an army to invade with supplies of treasure proportionable for the quicker execution of so desperate an enterprize; you answer, that the persons were commended in your letters, not the plot: *spectatum admissi, risum teneatis, amici*? as though the minister had any other errand or instruction, than the main plot itself: as though you, Mr. Garnet, being then *Magister in Israel* and *Rector Chori*, could or would be ignorant of their prefixed end; as though so grave a person as yourself, were likely to set his hand to blanks like a baby, and to leave the rest to the disposition of a man wholly transported with fiery humours: Or, as though in this very point other men's confessions in particular, besides your own in generality, had not left us marks and traces evident and plain enough to descry doubleness with diversity. You confess privy to a practice, but not for an army; foreknowledge of a course for getting treasure, but with a purpose, as you conceived, to employ it wholly for the relief of catholics. So as the reason of the reservedness of Catesby, Winter, and the rest toward you, must be undoubtedly their suspicion of your over great affection and duty to the queen: For otherwise it is certain they would have trusted you as well with their intention, as with their means; with their hopes, as with their instruments; especially considering how hard it was for them to compass their own vast desires, without help both of your credit, and of your industry.

Wright was in like manner, and with like expedition, commended by you afterward for the quickening of Winter's project, if any life were in it, upon the slacking of the passions of Spain, with the propositions of peace, that no time might be lost, no stone left unremoved that might give a knock to the peace of our policy; your head wrought upon all offers, your head walked in all regions, your spirit steered all attempts and undertakings: and yet if protestations, qualified and protected by equivocations, may carry weight, all this while your mind was, as good pastors ought to be, patient, your thoughts were obedient, and your counsels innocent. But now to search your cunning somewhat nearer to the quick, we must observe, that when your hopes of invasion began to cool by likelihood of peace, your desires of supplies by the cold answers that came from Spain, your expectation of new mischief, to be wrought at home without complots abroad; when malice itself was cast into so desperate a swoon, as neither Rosasolis when Spain relented, nor Iscobah when Tyrone submitted, nor dissension within the kingdom when discontentments ended, could put it by any fresh adventure into life; when you for your own part, Mr. Garnet,

having been once washed and regenerated in the fountain of the king's free pardon, from the leprous spots of former treasons, were determined to begin upon another stock, and return as a dog to the vomit: though washing can avail no man (as the preacher warns) that *iterum tangit mortuum*, toucheth the dead the second or third time after he hath been made clean; for secretly Catesby resorts to you, as Mahomet might to Sergius, for now I speak according to the matter, and not the men, to enquire whether it were lawful, considering the necessity of the time, to undertake an enterprize for the advancement of the Catholic religion, though it were likely that among many that were nocent, some should perish that were innocent. A man that is religious in any kind, or but morally honest in his own kind; would expect that a priest, a Jesuit, (which title doth imply salvation, and not destruction; nay the Superior of English Jesuits) upon this rash demand, should have resorted for a safe resolution to God's own book; where he should have found that God was pleased to withdraw his wrathful hand from Sodom, so as there had been only *decem justi*, ten just men within that town, and for their sakes; that the wise householder in St. Mauhew, marking how hard it would be before the corn was ripe to make separation, gave order to his servants to abstain from plucking up the tares, *ne simul eradicarent triticum*, lest withal they plucked up the wheat by the roots. Ye should have found in the stories of the church, that the godly bishops in the first spring of religion, suspended process against the Priscillian heretics, *ne Catholici cum illis perirent*, lest the Catholics might also perish with them. And the church of Milan taxed Theodosius the emperor, *quod insonites una cum scitibus trucidasset*, that he had proceeded both against the guilty and the guiltless with one stroke, and in one measure of severity. But far beside the warrant either of holy writ, or holy precedents, your answer, Mr. Garnet, was such, as I both abhor to think, and quake to utter; that if any great advantage were to grow to the church this way, they might destroy them all.

*Tantene animis caelestibus ira*? O Mr. Garnet, be not offended though I ask of you, as a worthy emperor did once of a traitor in a case by many degrees inferior to this, *Quid facit in peccatore humano lupi feritas, canis rubies, serpentis venenum*? But that which ought most to torture and afflict the spirit (if you be the child of him whose name and badge you bear) is, that your doctrine was confidently delivered, and so speedily digested, and converted to nutriment from such a mouth as yours, considering that (according to the prophet) knowledge should depend upon the lips of a priest, as Rookwood, Bates, and others, that did shrink at the horror of the project when it was first laid down, received satisfaction upon the very sound of your assent, though masked with the title of a man, as grave and learned as any in the land. And Catesby doubting of the fickleness of men's affections, in cases that concern the soul, used

your admittance as a charm or spell, to keep quick spirits within the circle of combined faith; which otherwise perhaps, when hell brake loose, would have sought liberty. Your charter only (whereupon I beseech you for your own soul's health, to meditate for the time you tarry in this world) for the base whereon some grounded their bad conscience in proceeding with this plot, not only to the destruction of their bodies, but to the peril of their souls, without sound and true repentance, which by the merit of Christ's Passion will serve *in quacunq; hora peccator ingemuerit*. For though Christ were joyful that he had not lost one of those whom his father gave him in charge, and came to save and not to destroy; yet your advice was to destroy them all: such was your burning charity!

Some man surprized with a question upon the sudden, might answer sharply and shrewdly at some time, I confess, without thinking or intending ill: but this man, Mr. Garnet, cannot be you, that have confessed clearly under your own hand, your suspicion and fear of some mischief purposed and intended in their hearts, by this quick question of nocents and innocents: and therefore *quod dubitas ne feceris*. It seems the heart of Catesby was a fertile soil for sprouting of stinking weeds hastily, into which the seed of your securing confidence was cast. For the Powder Plot, which in January was barely *embryo*, became *formatus fetus* in the March next following; it quickened the next December, when the pioneers began to dig in the thick wall: Catesby not long after imparted his conceit secretly to you of the great likelihood he foresaw of a lucky time of birth; and thereupon was Guy Fawkes sent over by your knowledge and encouragement, to deal with sir William Stanley, about the drawing down of forces somewhat nearer to the sea side for speedy transport, which if need were, might carry torches at the solemnity. But what is your answer to this employment of Guy Fawkes? Forsooth, that your purpose was only to commend him as a soldier, but not as a conspirator. O unlucky treason, that comes to be excused by so poor an advocate! when Fawkes himself meant nothing less than to be a soldier, having so strange a part to play soon after in the Powder Train, but used this retreat as a colour to disguise the secret purpose that did only tarry time, and to eschew those watchful eyes, that nearer hand would have observed both his inlets and his outlets in that place more narrowly. The point is clear, the confessions are direct, the purpose is palpable. All the lines of your level are drawn to the center of the Powder-mine. All letters are either drawn or interlined *manu scorpionis*, to use the word of Hierome; and yet under pain of censure we must believe, That all this while you were in charity, because all this while (which it grieves me to remember) you were not afraid to communicate.

But now to weigh your Answers that concern the Powder-Plot itself; which is paramount in respect of the longitude and latitude to all that

have been or ever shall be: yourself cannot deny, Mr. Garnet, that Greenwell's overture, as you say in confession, coming after the notice which you took of Catesby's question about innocents, was but a fruit of your own doctrine, an effect of your own instruction, and a conclusion drawn wholly out of your own propositions and principles. Now when we press to know what reason drew you to the concealment of a project so pernicious both to prince and state, without revealing it either to the king himself, *tanquam precellenti*, to use St. Peter's term, or to his ministers subordinate; you start to the shift of confession for a formal help, which comes too short in respect of Catesby's first discovery, which your own words aver plainly to have wrought with you. I will not argue in this place what course a confessor should take, or how far he ought to strain for the securing of a prince's life, that otherwise is sure to perish by the rage and ignorance invincible of a base villain, (whose life answers not in value the least hair of a prince's head) because time suffers not: but I am sure that for a matter of less weight than this, and a crime of less importance than the life both of prince and state; confession received a deep wound for a long time, more than a thousand years past, in the church of Constantinople. For God forbid that matters of such weight should hang by such feeble threads. But to this excuse of tenderness in the point of confession, I would answer by making a great doubt, Whether this course of conference were a confession or not; for against your bare words, which equivocation supports, I object some likelihood, That since you kneeled sometimes, and sometimes walked up and down; since matter of conspiracy were interlaced with matter of confession, not for ease of conscience as should appear, but for advice in execution; since Greenwell was absolved instantly, which excludes the shift of reference: and Greenwell should be found to lye to the holy Ghost in case this were a true confession: in promising, Mr. Garnet, as you say, to dissuade the project which he prosecuted even to the last point, as is evident, and after the powder camp brake up: I conclude that tho' this discovery were by confession, yet it was no supersedeas to your former knowledge from Catesby your trusty friend; and if it were none, then it can be no protection for faith petrified. What need we seek light through cobweb-lawns, when the drift of your whole device in seeking to conclude from one, what you learned of another, and from all what you affected and abetted in your heart, doth evidently prove your counsels to have been carried along with such a temper of reservedness, as whensoever mischief should be brought to light, the world might rather wonder at your caution, than commend your fidelity.

By shaping such weak Answers to Demonstrations so manifest, you must either work by the ring of Gyges, in making your audacity and presumption invisible, or hold a very weak

conceit of our capacities, in supposing that they can be either dazzled or deluded by such poor sophistry. For though you pretend to have received a deep wound in conscience at the first revealing of the plot, to have lost your sleep with vexation of spirit, to have offered and prayed to God for his preventing grace, to have required Greenwell's help and furtherance in crossing and diverting the design; yet all this while you suffered the project to proceed, you helped and assisted their endeavours that were labourers, you wrote earnest letters both to Baldwin and to Creswell for their furtherance of ordinary means; you gave order for a prayer to be said by Catholics for their prosperous success; you kept measure with the two first dimensions of fryar Bacon's brazen-head; Time is, Time was, till, thanks be to God, the third Time was past: you had ever an ear open to listen for the crack, and were in the same agony for the Powder-Plot, that Charles 5 was for the pope's dress, giving order in all his dominions, that prayers should be made for his release, when in the mean time he kept and held him in his own hand prisoner. The least word of your mouth, or labour of your pen, might have secured both prince and state, while you pretend to have broken both your sleeps and your brains, and that with a greater advantage to the cause which you would advance, than can ever grow by combustion and conspiracy. But your tenderness herein was suitable with another dutiful desire of yours to dissuade Catesby from the plot, at his coming into Warwickshire, who never meant to come thither, but as to the rendezvous, when the parliament had been blown up, and the storm had been blown over. It may be that your mind was perplexed and disquieted upon the meditation of strange events; for so was the mind of Cain, Achitophel, and Judas that betrayed his master; the reason is very pregnant in the word of God itself, *That cum sit timida nequitia dat testimonium condemnationis*, since wickedness is cowardly and timorous, it gives evidence of condemnation against itself; *et semper præsumit seæa perturbata conscientia*: but Satan prevailing his angels execute.

I will now conclude this address to you, Mr. Garnet, by observing some special points how strangely and preposterously the devil in his last Project of Powder hath altered his old properties. For the curse that God laid upon the Serpent after the first transgression, was *ut gradiretur super pectus suum*, to creep upon his breast: but now we find him mounted upon the wings of an esprairie to the highest region of the air, and among the fire-works. The other part of his curse was, that he should eat Pulverem; that is, dust or powder: but now since Sodom was destroyed by sulphur, and the wife of Lot transmuted into salt, the proper materials of that mean by which Satan wrought in this hot fire; it appears that the Serpent from eating powder, which was a plain device, fell, for a worse purpose, to snuff gunpowder. Then the serpent did *insidiari calcaneo*, now *capiti*,

from which the body draweth both sense and influence. Then he began to Eve, with a modest question, *Cur præcepit Deus?* Why hath God commanded? now with a resolution, *præcepit Deus*, God hath commanded. His words in those carried a flourish of great comfort, *Nequaquam moriemini*, but now terror, *Moriemini*: for a great advantage destroy them all. The devil at that time did only nibble about the text of holy writ, *tantum mus ponticus*, as Tertullian terms Marcion: but now he draws the grounds of equivocation concerning princes lives out of the very scripture and by scholastical authority. Satan tempted Christ with a fair offer, *dandi omnia*; of giving all upon the top of the pinnacle: but now he sets upon the great lieutenant of God's authority and dignity, with an *auferam tibi omnia*, both life and crown, *ex penetralibus ubi Christus non est*, as we are taught by his evangelist. The dragon's ambition extended no further than the sweeping away with his tail of the third part of the stars in the firmament: but now the plot of him and his disciples, was to sweep away the sun, the moon and the stars, both out of Star-Chamber and parliament, that no light be given in this kingdom to the best labourers. In the time of Saul, the devil was so modest, as to suspend his illusions and oracles till the visions of the prophets began to cease: but now though we have both Moses and the prophets *et firmiorem sermonem propheticum*, yet he rustles among the robes, *et inaudita fundit oracula*. In the beginning of the Christian church, the very name of Christ was sufficient to make Satan pack, and to quit the possession of tormented men: but he hath learned a more cunning trick of late, under the banner of Christ to fight against the lieutenants of his imperial majesty. In one point I find no change; that is, in labouring and working by all means to draw men from their trust in God's direction, to a tickle kind of confidence in themselves, and their own weak knowledge of good and ill. And as that error was the cause of Adam's exile from Paradise which was *hortus conclusus*; so had such another almost divided us and our heirs both from our lives and estates: *Et penitus toto divisos orbe Britannos*.

I have stood the longer on this point, to let you know how idly, and yet how wilfully you strive both against the providence of God, and the justice of the law, *Quæ tuo te jugulavit gladio*: The more you labour to get out of the wood, having once lost the right way, the further you creep in. For the wisdom of the world is folly before God: and impossible it is, that those counsels or proceedings should either have good proof in this world, or reward in the next, that are embued with blood, and pursued with tyranny. If then there be no other way to heaven than by the destruction of God's anointed and their heirs, I will conclude with you, Mr. Garnet, as Constantius did with Ascepius, *Erigito tibi scalam, et in calum solus ascendito*; Set up a ladder for yourself, and climb up to heaven alone; for loyal minds will

not suit themselves with such bad company. The worst I wish to your person standing now to be convicted at the bar, is remorse and repentance for the safeguard of your soul; and for the rest, *Fiat justitia, currat lex, et vincat veritas.*

Hereunto Garnet said, That he had done more than he could excuse, and he had dealt plainly with them, but he was bound to keep the secrets of Confession, and to disclose nothing that he heard in Sacramental Confession. Whereupon the earl of Nottingham asked him, if one confessed this day to him, that to-morrow morning he meant to kill the king with a dagger, if he must conceal it? Whereunto Garnet answered that he must conceal it. Then the earl of Salisbury desired liberty of him to ask him some questions of the nature of confession. Garnet said, His lordship might, and he would answer him as well as he could. Why then (said he) must there not be confession and contrition before absolution? Yes, said Garnet.—Then he demanded whether Greenwell were absolved by him or no? Garnet said, He was.

The Earl then asked him, What Greenwell had done, to shew that he was sorry for it, and whether did he promise to desist? Garnet answered, that Greenwell said, he would do his best.

To that the Earl replied, that it could not be so; for as soon as Catesby and Percy were in arms, Greenwell came to them from Garnet, and so went from them to Hall, at Mr. Abington's house inviting them most earnestly to come and assist those gentlemen in that action. Hereby, saith he, it appears, that either Greenwell told you out of confession, and then there needs no secrecy; or if it were in confession, he professed no penitency, and therefore you could not absolve him. To which the earl added, That this one circumstance must still be remembered, and cannot be cleared; That when Greenwell told you what Catesby meant in particular, and you then called to mind also what Catesby had spoken to you in the general before, if you had not been so desirous to have the plot take effect, you might have disclosed it out of your general knowledge from Catesby: but when Catesby offered to deliver you the particulars himself, as he had done to Greenwell, you refused to hear him, lest your tongue should have betrayed your heart.

To this Garnet weakly replied, That he did what he could to dissuade it, and went into Warwickshire with a purpose to dissuade Mr. Catesby, when he should have come down. And for Mr. Greenwell's going to father Hall, to persuade him to join, Garnet said he did very ill in so doing.

To that the earl of Salisbury replied, That his first Answer was most absurd, seeing he knew Catesby would not come down till the 6th of November, which was the day after the blow should have been given, and Garnet went in the country ten days before. And for

the second, he said, That he was only glad that the world might now see, that Jesuits were condemned by Jesuits; and treason and traitors laid naked by the traitors themselves: yea, Jesuits by that Jesuit, that governs all Jesuits here, and without whom no Jesuit in England can do any thing.

Garnet (as it should seem) being here mightily touched with remorse of his offence, prayed God and the king, that other Catholics might not fare the worse for his sake.

Then the earl of Salisbury said, Mr. Garnet, is it not a lamentable thing, that if the Pope or Claudius Aquaviva, or yourself, command poor Catholics any thing, that they must obey you, though it be to endanger both body and soul? And if you maintain such doctrine among you, how can the king be safe? Is it not true therefore, the king and the state should look to you, that spend your time thus in his kingdom?

Garnet said very passionately, My lord, I would to God I had never known of the Powder-Treason.

L. C. J. Garnet, you are Superior of the Jesuits; and if you forbid, must not the rest obey? Was not Greenwell with you half an hour at sir Everard Digby's house, when you heard of the discovery of your treason? And did you not there confer and debate the matter together? Did you not send him to Hall, to Mr. Abington's house, to stir him up to go to the rebels, and encourage them? yet you seek to colour all this; but that's but a mere shift in you. And notwithstanding all this, you said, No man living, but one, did know that you were privy to it: then belike some that are dead did know it. Catesby was never from you (as the gentlewoman that kept your house with you confessed) and by many apparent proofs, and evident presumptions, you were in every particular of this action, and directed and commanded the actors: nay, I think verily you were the chief that moved it.

Garnet said, No, my lord, I did not.

Then it was exceedingly well urged by my L. C. Justice, how he writ his letters for Winter, Wright, Fawkes, Baynam, and Catesby, principal actors in this matchless Treason. Besides, his lordship told him of his keeping the two Bulls to prejudice the king, and to do other mischief in the realm; which, when he saw the king peaceably to come in, then being out of hope to do any good, he burnt them.

Here Mr. Attorney caused to be read the Confession of Hall, alias Oldcorne, the Jesuit, under his own hand (which he said was *Omni exceptione major*) against him; wherein he confessed, that Humphry Littleton told him, that Catesby and others were sore hurt with Powder, and said that he was exceeding sorry that things took no better effect; whereat Hall wished him not to be discouraged, nor to measure the cause by the event: For though the eleven tribes of Israel went twice by the special commandment of God against the tribe of Benjamin, yet they both times received the overthrow. So Lewis the French king in his

voyage into the Holy Land against the Infidels, was overthrown, and his whole army discomfited, though his cause were good. And so likewise the Christians, when they defended Rhodes against the Turks, lost the city, and the Turks had the upper-hand. And this he confessed, and applied to the fact of Catesby and others for the Powder-Treason; and said, It would have been commendable when it had been done, though not before.

After this, Mr. Attorney opened, how Francis Tresham, a delinquent Romanist, even in *articulo mortis* (a fearful thing) took it upon his salvation, That he had not seen Garnet in 16 years before, when Garnet himself had confessed he had seen him often within that time; and likewise, that Garnet knew not of the Spanish Invasion, which Garnet himself confessed also, and which two things Tresham himself had formerly confessed to the lords; yet for a Recantation of these two things upon his death-bed, he commanded Vavasor, his man, whom I think (said Mr. Attorney) deeply guilty in this Treason, to write a letter to the earl of Salisbury. And to shew this his desperate Recantation, Mr. Tresham's Letter was offered to be read.

But before the reading thereof, my lord of Salisbury said, because there was matter incident to him, and to that which should be read, he thought fit to say something. To which purpose he said his desire was, truly to lay open what cause there was for any faith to be given to these men's protestations; when they, to colour their own impieties, and to slander the king's justice, would go about to excuse all Jesuits, how foul soever, out of an opinion that it is meritorious so to do, at such time as they had no hope of themselves. Such is it to be doubted, that sir Everard Digby's protestations might be at the bar, who sought to clear all Jesuits of those practices which they themselves have now confessed *ex ore proprio*. That such was also Tresham's labour, who being visited with sickness, and his wife in charity suffered to come to him, this Letter was hatched by them, and signed by himself some few hours before his death, wherein he taketh that upon his salvation, which shall now by Garnet be disproved.

Then the Letter was read, being to this effect: That whereas since the king's time he had had his pardon, and that to satisfy the lords who heretofore examined him, he had accused Garnet; that now, he being weak, desired that his former examinations might be called in, because they were not true; and set down upon his salvation, that he had not seen Garnet in 16 years before.

Then my lord of Salisbury shewed and said, it was a lamentable thing: for within three hours after he had done this, he died: and asked Garnet what interpretation he made of this testamental protestation?

Garnet answered, It may be, my lord, he meant to equivocate. Here was the Examination and Confession of Mrs. Anne Fawkes of-

VOL. II.

ferred to be read, also to confirm Tresham's perjury, who confessed that she had seen Mr. Tresham with Garnet at her house three or four times since the king's coming in, and divers times before, and that he had dined with him; and that Garnet always gave him good counsel, and would say sometimes to him, and others, Good gentlemen, be quiet; for we must obtain that which you desire by prayer. She confessed also, that they were at Erith together the last summer.

After all this, Garnet being demanded if these Examinations were true, he affirmed they were. And then were his own Examinations likewise read to the same effect: wherein he both confessed the seeing of Mr. Tresham, and his sending into Spain about an invasion.

Here my lord of Salisbury concluded, That that which was said of Mr. Tresham, and others, was not done against charity to the dead, but upon inevitable necessity, to avoid all their slanderous reports and practices; for he said that even now there was current throughout the town, a report of a retractation under Btes's hand, of his accusation of Greenwell, which are strange and grievous practices to think upon. But this day shall witness to the world, that all is false, and yourself condemned not by any but yourself, your own confessions and actions. Alas! Mr. Garnet, why should we be troubled all this day with your poor man, were it not to make the cause appear as it deserveth? wherein God send you may be such an example, as you may be the last actor in this kind.

Hereupon my Lord Admiral said to Garnet, that he had done more good this day in that pulpit which he stood in (for it was made like unto a pulpit wherein he stood) than he had done all the days of his life-time in any other pulpit.

Then was another Examination of Mrs. Anne Fawkes read, wherein she confessed that Mr. Garnet and she were not long since with Mr. Tresham, at his house in Northamptonshire, and stayed there.

After this, my lord of Salisbury said; Mr. Garnet, if you have not yet done, I would have you to understand, that the king hath commanded, that whatsoever made for you, or against you, all should be read, and so it is; and we take of you what you will. This gentlewoman that seems to speak for you in her Confessions, I think would sacrifice herself for you to do you good, and you likewise for her: therefore, good Mr. Garnet, whatsoever you have to say, say on in God's name, and you shall be heard.

Then Garnet desired the Jury, that they would allow of, and believe those things he had denied and affirmed; and not to give credit unto those things whereof there was no direct proof against him, nor to condemn him by circumstances or presumptions.

The earl of Salisbury demanded of him, saying, Mr. Garnet, is this all you have to say? if



it be not, take your time, no man shall interrupt you.

To whom Garnet answered, Yea, my lord.

Mr. Attorney humbly desired all the Lords Commissioners, that if he had forgotten to speak of any thing material, that their lordships would be pleased to put him in mind of it; who was assured by my lord of Salisbury, that he had done very well, painfully, and learnedly.—Then Mr. Attorney desired the Jury might go together, who upon his motion going together forth of the court, within less than a quarter of an hour returned, and found Henry Garnet, Guilty.

Whereupon Mr. Serjeant Crooke prayed Judgment.

Then Mr. Waterhouse, the clerk of the crown, demanding what he could say for himself, why Judgment should not be given against him?

Garnet made answer, that he could say nothing, but referred himself to the mercy of the king, and God Almighty.

The following report of the Speech of the Earl of Northampton exceeds the proportion wherein it was first uttered, and is now inserted as it was afterwards amplified and enlarged by the Earl, when he delivered it to the Bookseller:

Earl of Northampton. Though some of Plato's followers, and those not of the meanest rank, have rather apprehended in conceit, than demonstrated by straight lines, that nothing is which hath not been before: if it were possible to take right observations out of true records, and that all counsels and attempts as well as Configurations and Aspects, return as it were 'ex postliminio,' by revolution to the point from whence they first began: yet if my Ephemerides fail me not in setting up the Figure of this late intended Plot, I may confidently pronounce with a grave senator, 'Reperitum esse hodierno die facinus, quod nec poeta fingere, nec histrio sonare, nec mimus imitari poterit.' So desperately malicious, and so unkindly and unseasonably fruitful is our age in producing monsters, when the force and heat of charity decays, and so violent are the damned spirits of Satan's black guard now before the winding up of the last bottom of terrestrial affairs, in spinning finer threads of practice and conspiracy under the mask of piety and zeal, which the Spirit of Truth termeth most significantly, 'Spiritualis nequitia in celestibus.'

Upon this ground I am moved at this instant, Mr. Garnet, to address my discourse to you, not so much in respect of your own person, 'aut quia te nostra sperem prece posse moveri' (though from my heart I pity the shameful shipwreck of your obedience and conscience upon so false a sand) as for their sakes that have not yet learned in our Saviour, that in one element a man cannot 'duobus servire dominis:' and withal in the king our sovereign's behalf, to exact at your hands (that hold the

hearts of many followers by lease for life) a precise account of the lives of all those Cast-away, 'Quos vel apud te perditos invenit vel per te perdidit.' For either you that are an object unto many watching eyes, may be drawn by God's grace working with my charitable wishes, to lament, not the bad success (for so do men that are desperate) but the wicked purpose and intent of this crying sin (which is proper only to the penitent) or be brought so far at the least out of the black deeps of induration, with the mother of Petrus Lombardus, as to be sorry that you cannot be sorry.

The straits of time, the length of the trial, and the weariness of the auditors, may be and are great discouragements to such a Discourse as craves time, and were better not begun at all, than not perfected. But since the Law and Prophets in this case in hand, stand chiefly as the ground-work of deposing kings, and absolving subjects from the right which they owe to their own natural and lawful sovereigns by the laws of God and man, I shall be forced in discharge of my duty at this instant, to borrow so much time of these attentive hearers, as must be payed again forthwith to the service of the state: for otherwise, 'vix mihi,' as the Prophet threatens, 'quia tacui:' and yet we may conclude with another of the same rank, that 'etiamsi ego tacuero, clamabunt lapides.'

But, first, I am to let both you and the whole world know, that you are not called this day to the bar for any matter of your Conscience, as some perhaps may publish out of rancour or perversity of heart, to set a fairer gloss upon the ground of your profession. Since the first time of your coming to the Council-board, you have not been so much as asked any question about the places of your resort, the supporters of your employment, or the means of your maintenance, before the Powder-project, which hath no kind of affinity with religion or caution, but with fury and implacability came to be resolved on by a pack of *Boutefeux*: though you cannot be ignorant what the Parliament hath decreed, and some persons of your Society have suffered in the late Queen's time, for presuming to exercise a kind of jurisdiction within this realm, that neither policy of state can admit, nor allegiance can justify. I will add somewhat more for the greater improvement of the king's mercy, and the more just aggravation of your ingratitude: You are not pressed to any peril of your life, with publishing those Bulls which in the Queen's time neither had (as by Confession appears) nor could have other end than the forestalment of the king's lawful claim, when the fruit shall fall from the wasted tree, and the fainting sun (whose beams about that time begun to wax both dim and waterish) must of necessity set in our hemisphere.

The king's free Pardon (which, as the times stood then, should have called for a 'melius inquirendum,' before it had found passage without obstruction of any doubt) was applied

by you, and other of your ghostly complices, to many festered and filthy ulcers of this kind. By this free Pardon (so far as you have not since relapsed into worse attempts) even yourself, Mr. Garnet, stand at this present, 'rectus in curiâ:' wherein though it become me not to descant about the measures and proportions of my master's infinite grace, yet I may tax you, for the bad requital of so high a benefit, and lament the king's misfortune, that like an eagle was in so great peril of receiving wounds (almost to the death) by the quills of his own clemency. These are not the true grounds, nor proper motives of your standing-forth; but your art in cherishing, your malice in encouraging, your impiety in strengthening a kind of practice, never heard nor thought upon before in any age, against the life of the most gracious and just King that ever reigned on either side of Trent; of a Queen renowned both for her own worth, and for her happy fruit; and of a prince, whom without ostentation I may be bold to call, the sweetest and the fairest blossom that ever budded, either out of the white or the red Rosary. God's law forbids a man that would live long and see cheerful days, to destroy 'matrem cum filiis,' even in those creatures that are not images of the Deity: but you, Mr. Garnet, out of your anointed influence of superabundant grace, endeavoured your best and uttermost to bruise the very nest-egg of this royal and high-flying airey, if it had been possible: peers, bishops, knights, burgesses, judges, serjeants, and all sorts of officers were drawn in by a writ of 'Corpus cum causa' to this 'feu de joy,' that it might blaze more gallantly. It is not the wearing of a crucifix, which you compare to the sign of Tau, that could have secured any of your own affection, if they had been left unwarmed, though it had been hallowed at Rome. No relique (instead of the red List that was a token of protection to Rahab and her family) could have distinguished a Catholick from a Protestant, when Guy Fawkes had the match in his hand. No kind of holy grains could have added the weight of one grain to the reputation of any Romanist, after once the hand of Greenwell had written the sense of the Hebrew word 'Thekell' upon the wall, (that is) 'Appensi in statera, inventi sunt minus habentes,' being weighed in the scales of your schools, should have been found over-light in the balance. Your end, as I imagine, was according to the threats of the Stoicks to purge this world by fire, or in some way with Democritus, to create a new world 'ex atomis:' or because Catesby did set Thomas Percy's offer light, which was 'tollere unum,' your desire was by this one act 'tollere,' not the man but humanity, not 'unum' but unity. The Plot whereof Livy speaks, of dispatching the whole Senate of Rome in an hour; the Device at Carthage, to cut off one whole faction, by one enterprize: the Conspiracy of Brutus and Cassius to kill Cæsar in the senate: the project of destroying

one Conclave, the greatest part of the cardinals: the Sicilian Evensong, and the Parisian Mattins: nay, the wish of Nero, that Rome had but one head, which he might cut off at one blow, came far short to the mischief of this invention, which spared neither age, sex, nor degree. And therefore I confess, if Catesby your disciple were alive, thus far he might vaunt, and without exception, that he had surmounted and transcended Catiline in the sphere of his own treachery. But thus we learn by Tertullian, that 'favos etiam vespæ faciunt,' Wasps as well as bees make combs, though instead of honey, we find gunpowder.

Surely this was not the Fire that appeared unto Moses in the burning Bush: it was not the fire that should purge the Sons of Levi, though your Levites conceived so: it was not that Fire which was cast into the world by Christ, with a purpose that it might burn: It was not that, by which men should be saved that build over weakly upon the true foundation of faith. But it resembles more lively that false fire which began to glimmer, 'Post commotionem, quando in commotione non erat Dominus.' It is like to that strange Fire which Nadab and Abihu would have offered upon God's Altar, with a zeal that was preposterous: it hath the wasting quality of that Wildfire, which issuing 'ex rhamno,' out of the bramble, would have destroyed the stately cedars of Libanus. Nay, to speak properly, or draw nearest to the nature of that quick dispatching fire, which you and your disciples, Mr. Garnet, utterly despairing to draw down from heaven (because you know that such a like demand received a repulse, whilst Christ was conversant on earth, among your betters) sought by a trick to obtain at the hand of Satan (the great master of the Fire-works) and as the Poet writeth, 'Flectere cum nequeas superos Acheronta movebas.' But God wrought so, that by this Fire (since 'per illum fides proborum collucet') the faith of subjects that are dutiful doth shine more brightly, and the State wins honour. Look not now therefore that the Ladies of Israel shall meet you with their timbrels in the honour of this attempt: for all actions are not praise-worthy, which some persons of your profession study to enamel with pretence of godliness. In thinking of Telemachus, we set little by Astynax: easily may affections wander, where the rules of conscience do shift: and we find, that 'umbra' is not ever 'eo major quo serior:' but if bloody passions can thus far prevail 'in arido' what hope is there of better proof 'in viridi,' which in comparison is but 'linum fumigans?' You seek to raise your glory out of your sin, but 'quæ est gratia?' What thank is it to you, according to the demand of an Apostle, if for your evil deserts you suffer stripes? for what the Jews objected to our Saviour (though impudently) we dare speak truly and confidently to all those that were privy to this pack with you, that 'Non de bono opere lapidantur, sed de blasphemia.' Saint Augustine speaketh of some

hot-headed fellows in his time, that notwithstanding their life led in this world, 'more latronum,' yet in their ends affected 'cultum et honorem martyrum:' among whom I shall ever rank (with just cause) these Powder-men. But if as saint Peter saith, 'Bene facientes patienter sustinetis, (which is far from the rage of your hot spirits) 'hæc est apud Deum gratia,' which your projects merit not. These are perhaps the days which Nabal meant, complaining 'hodie increbuisse servos qui fugiunt;' nay, which is worse, 'qui persecuntur Dominos:' and therefore if you will not learn of Balaam, to beware of speaking more than that which God putteth into your mouth; yet howsoever passions may spur you forward, learn of Balaam's Ass to shrink when you find the Angel of God's wrath opposed, lest as Abigail spake religiously and wisely to king David, 'cum mors advenerit,' when Death shall approach, who stands upon the threshold, and begins to knock at the door of your heart, 'sit tibi in singultum,' it cause you to sigh inwardly, not 'quod effuderis, sed quod effundere volueris,' not for having shed, but because you would have shed blood that is most innocent.

How well the Project of supplanting Princes, and subverting States, agrees either with the title of a Jesuit, or the duty of a Priest, who should rather temper passion, than disclaim charity; the Pharisees themselves express in teaching 'non licere,' that it was not lawful for them to kill any man; much less would they, as it is more than probable in the warp of youth, when their hair began to wax as white as snow, have taken eyes into their heads like burning-glasses to give fire to this train: and yet Truth itself hath said (which both sides must believe) that unless our righteousness exceeds theirs, we must not expect to be heirs of eternity. It will be long before some of you can protest with Paul, that you are 'mundi,' clean and pure from all men's blood, or with Gregory to Mauritius the Emperor, that he would never 'miscere se in cujusquam mortem,' or call to mind either the piety of that godly Bishop in a better time, that would not suffer those hands to be imposed on his head by Ordination, that were 'respersæ sanguine,' or the mishap of David that might not rear the Temple, for the staining and einbruing of his hands with blood. Resort to the very text itself, (or if it please you, to your own Canons) to enquire whether Paul's Restraint of intermeddling with secular affairs were enjoyed with a 'non obstante,' so far only as concerned Projects and Plots for Gunpowder. Your safest course, Mr. Garnet, as I suppose, is to stay your judgment with that Staff of old Jacob, whereof mention is made in Genesis, in these break-neck passages, that is, with that advised Sentence which he pronounced against Levi the Father of succeeding Priests, for killing the Sons of Hemor after circumcision, the same being in that case as well a Bond of Promise, as a Seal of Faith; since I do verily believe

that the Protestants accord with the Catholics in more points of Faith and grounds of Doctrine at this day, than those of Sicheim did with Jacob and his family. By resolving this passage into parts, we shall find a great resemblance both in the point of fact, and in the resolution of right with this present case, upon which we have reason to fix both our eyes and observation. For first, Jacob out of conscience and humanity resolves, 'Non ituram animam suam in concilio Levi,' that his soul should never march in the council of Levi, 'Nec in cœtu illorum futuram gloriam,' nor his honour shine in their society: What is the reason? Because in their rage they have slain a man (much less than the destruction of a prince with his posterity and whole estate) 'Et in malitia suffoderunt murum,' and in their malice digged down a wall; which in my opinion either misseth hardly one hair, or very narrowly, your project's invention, in digging at the wall of the parliament. What is Jacob's sentence upon the fact? 'Maledictus illorum furor quia peritax, et indignatio quia dura:' which curse in a more lively manner (if possible it be) than the very fact itself, suits the comparison. For who knoweth not, that when malice taketh hold of humour only, as fire doth of straw, tho' it cause a great blaze at the first kindling, yet it is quickly spent, and only the smoke remains? but when it taketh hold of conscience, as fire doth of steel, 'Quod tardè acquisivit diu retinet,' then such marks are monuments. Touching the title which Jacob bestoweth for their labours, calling them 'Vasa iniquitatis bellantia,' I may protest that both you and Greenwell, and all they that were privy to this accursed Plot, deserve this style upon better ground than Simeon and Levi; by so much as your indignation compared with theirs by due circumstances, was by infinite degrees 'durior,' more hard than theirs. For though the feat (God's name be praised) were not fully wrought, yet you know, Mr. Garnet, who it is that compriseth our consent both within the compass and the censure of a deadly sin, and what father saith that, 'Quod deest operi inest voluntati.' The common law would punish Treason in the very heart, if the eye of inquisition could extend so far; and therefore the providence of God in preventing by his mercy this destruction, is no discharge to your intention in contriving it. By the course and recourse of times and accidents, wise men observe, that very seldom hath any mischievous attempt been undertaken for disturbance of a state, without the counsel and assistance of a priest in the first, in the middle, or last act of the tragedy; and that all along with such a chorus of Confederates to entertain the stage, while the lives and fortunes of great princes being set upon the tenterhooks, have put all in hazard. For while Moses stood in conference with God upon the mount, his brother Aaron impatient, as for the most part churchmen are in their desires, of pauses or delays, fell instantly to mould and worship the

golden calf, to their commander's vexation and God's dishonour. Abiathar was condemned for plotting with the Shunamite, and Joab lieutenant-general against his sovereign. With what distemper and disorder some priests have rock'd the cradle of the churches infancy in raising heresies, the seeds of factions, only to that end, no man can be ignorant; that hath run over the churches histories.

Odo, bishop of Bayonne, was imprisoned by his brother the first William, as a stirrer of Sedition, and after conspired with Robert earl of Mortaigne, to depose his son, against whom also Geoffrey, bishop of Constance, fortified in actual rebellion the castle of Bristol. The captivity of the lion-hearted Richard, champion of the holy wars, was by the practice of Savaricus, bishop of Bath. Gervas the great preacher enter'd with Lewis the French king's son, purposing to root out the race of our kings, and to plant himself and his progeny. Of the rebellious army that usurped against Henry 3, the title of 'Exercitum Dei' (alho' by the pope's legate, 'reputati sunt filii Belial) 'Clerici fuere erant,' saith the monk of Chester. For conspiracy against the first Edward was the archbishop of Canterbury exiled the kingdom. And before that Isabel, the wife of the second, durst undertake the plot of deposing her husband by a damnable device, for the raising of her son, she sent in a pack of preachers, poisoned with prejudice against the present state, to prepare the people's minds by false suggestions, to the change which was intended to follow. And Adam de Orleton, bishop of Hereford, that was the first deviser, continued the chiefest feeder of that dissension between the husband and the wife, taking occasion in a sermon preached at Oxford, in the presence of the queen, and all the rebels, upon that text of the Scripture, 'Caput meum doleo,' to express by depravation of his lawful sovereign, how many mischiefs grew to the commonwealth by a corrupted head that governed them. For aiding the enemies of Edward 3 was the bishop of Hereford arraigned. And the chaplain of Wat Tyler, that advised his chieftain, as you Mr. Garnet did your followers, to destroy all the clergy and nobility, was Ball a mass-priest. With Gloucester's duke against his sovereign Richard, was Oswald, bishop of Gallaway, the chief comploter. Priests and Friars they were that suborned a false Richard against the fourth Henry, whereof eight being Minors, were hang'd at Tyburn: And Maudelen himself, that took upon him the habit and person of the king, was a priest also, to keep them company. Scroope, the archbishop of York, for plotting a conspiracy with the earl of Northumberland against the same king, lost his head for his labour. Beverly, an anointed priest, not to be behind some other of his fellows in these seditious attempts, conspired against the fifth Henry, with the lord Cobham, sir John Oldcastle.

I have seen the copy of a learned and wise Letter, written by bishop Chicheley, a prelate

of your own, chancellor to that king, gravely advising him to beware of admitting a legate resident in the realm, in respect of the sharp effects by stirs that have been raised in former times by persons of that habit; pointing as it were to Henry Beauford, who afterwards was both author and actor of more mischief than almost could be expected or feared.

They were priests and friars that in the first of Edward 4, conspired with Jasper, earl of Penbroke, and were afterward attainted and executed by act of parliament.

Dr. Shaw was a priest, whom Richard 3 made the trumpet at Paul's Cross of his wrongful claim against the rightful possession of his innocent nephews.

That Impostor that suborned Lambert, to take upon him the person, and usurp the right of the duke of York, against the blessed union of the two Roses, was a priest in Ireland. Wherein I note, that as a priest would then have forestalled, so now two priests, Greenwell and Garney, would have cut off the union. He was a monk of Henton that inticed the duke of Buckingham by seducing hopes, to the ruin of as great a house as any subject in Europe (bearing not the surname of a king) can demonstrate: whereof both I receive a wound, and all that descend of him.

I speak not of those popes, that exercising more the sword of Paul with passion, than the keys of Peter with instruction, have been kindlers of great broils: nor of the three powerful cardinals, York, Lorraine, and Arras in our age, that during their times were not much answerable for sloth or idleness, whatsoever they are otherwise for time ill employed, being persons of great spirit and too great activity: nor of those churchmen, that by their doctrine in the pulpit, and subscription of hands to traitorous decrees, embased the two daughters of king Henry 8, both before and after the death of king Edward 6, for satisfaction to the pride and ambition of an aspiring humour.

I pass over the brainsick opposition of Knox and Goodman, against the two renowned Marys, both queens of Scotland, regent and inheritrice in our days: nor of the fiery triplicity of Ballard, Clarke, and Watson, of which number, the first practised the slaughter of the queen deceased, the other two of the king our sovereign. I rip not up the complots of Sergius the monk, to bring the Turk into the empire of the east: nor of those false prophets, that established the race of Xerif in Barbary. My only drift and purpose is, to compare former practices with the late attempt, (tho' far exceeding and surmounting all that went before) to make true subjects see for the better trial and examination of spirits, that as well some priests in Christendom, as those Sallii that were chaplains to Mars at Rome in the reign of idolatry, took delight by fits in tossing firebrands from camp to camp, for the inflammation of evil affections and worse practices. But the circle of a crown imperial cannot be soldered, if it once receive the smallest crack.

Sinews that are cut in sunder, can never knit: neither is it possible that there should be 'integralis unitas in solutione continui.' I will therefore conclude this point with the grave and learned judgment of Sozomen, an ancient writer of the Church Primitive, 'Universim accidere in sacerdotum disidiis, ut respublica motibus et turbis agitur:' that it happens generally in the dissensions of priests, that the commonwealth itself is shaken with the convulsions of conspiracy.

It is very probable, Mr. Garnet, that the late queen, in case the thread of her worn life could have been spun further on toward these misty days, (that have somewhat overcast the brightness of your enticing lopes upon the settling of this state in the succession of so rare a king) should have run some strange hazard both of her state and person, among your mines and powder trains (having indeed imbrued her sword in the blood of some choice persons of your society by the warrant of her laws;) since this sweet prince our sovereign, that before his coming always wrote his laws in milk, and ever since hath been very careful not to write in blood, can thus hardly either by his own gracious deserts, or his council's incessant care, be secured from the stumbles. I have not read, neither do I believe, that the murder of any anointed king hath been accounted in any religious or just age, either an act of prowess, or a step to martyrdom. I could not have thought, without this demonstration of proof, that any man had been left in the world, since the death of George Buchanan, to proclaim prizes for the slaughter as well of kings as of tygers. But if it were not impossible (which now I find with grief of heart) for any one spark of loyalty to live in an ocean of immoderate and exorbitant affections; surely I should have expected from you and your friends, Mr. Garnet, effects of better inclinations toward so mild and gracious a prince, as never searcheth ulcers but with a shaking hand, and in searching all, hath a more earnest desire, 'non invenire quod querit, quam invenire quod puniat.' For, to speak truth without flattery, (which I abhor as the canker of all generous and worthy minds) have not both you and yours received and enjoyed many favours from the king, which in all likelihood were not in the last time to be looked for? Would the late queen, think you, have bestowed honour, by laying the sword of knighthood upon the heads of so many Catholics, as the king hath done since his entrance? Would the queen have allowed unto all, or any of the Recusants, that free kind of access both to her person, or to her court, which the king hath done (not only upon just occasions, but for their comfort) and in effect, at their pleasure, without making any separation between those, that before his coming saluted the fair promise of his hopeful day, and others that would have prevented it? Was not the gate of justice opened Trojano Tyrique to Protestants and Catholics alike, with that indifferent and equal regard, that it hath been since to the

shutting up of those mouths that were most mutinous? Was the late queen so confident in the fidelity of any Catholics, as to employ them without distrust to foreign princes in embassy? Would the queen have called the chief Catholics to her council-board, that upon the laying open of their just complaints, they might have redress with favour? Might the recusants of best behaviour and countenance in the late queen's time, live in their own countries, dispose of their estates and tenants, and enjoy their pleasures, without any other muilt, than the former laws had laid on them? Was it free for recusants in those days, that had been cast behind in arrearages (for want of answering their payments in due time to the crown) to compound with a commission directed only to that end, almost for what term and at what rates he might best satisfy? Did the compassion of the late queen extend so far in favour of recusants, as to put them in possession of their whole estates, drawn out of the farmers hands upon due proof made of spoil, without further demand of any other contribution or taxation than the law limited? Was it any part of the late queen's care, to give order for the chastisement of informers and messengers, that preyed upon the prostrate fortunes of recusants with harder measure than the justice of the state warranted? Was it free for subjects of all affections and religions (during the late queen's life) that delighted in the wars, to serve what prince or state it pleased them, without either exception or punishment? Did the late time leave it to the choice of young gentlemen that had licence to travel, during the time of their abode in foreign parts, to frequent what places, courts or companies they would, without yielding an account at their return of their adventuring? Had it been possible to have drawn from the late queen either restitutions or pensions for the maintenance of recusants, in respect of service done to antecessors or aicestors? Was the late queen as cautious and tender in forbearing to take the lives of priests and Jesuits upon the point of *summum jus*, before she were made acquainted by the judges thoroughly with the state of their evidence? Was any magistrate ever called to his answer for proceeding in cold blood against a priest, that for want of means to procure a pardon had been kept in prison since the time of the queen deceased? Was the late queen ever pleased, that in the pardon general at the closing up of the parliament, priests and Jesuits should be comprised in the list, and among others you and Greenwell, that at the first opening of the spring resorted thither with as violent a thirst as ever you did to Jubilee; and yet in recompence thereof since that time, have been well content that the distributor of so great a portion of grace and bounty, should be blown up by your Boute-feux? A man would think in likelihood, that both you, and all they that were encouraged and warranted in this attempt by you, having received at the hands of so gracious a king so many talents in a royal kind of trust, should

rather have studied by your best endeavours to encrease the stock, than to lessen the principal, by burying your talent under ground among the powder works; especially considering that our king is not like the other mentioned in St. Luke, 'homo austerus, qui tollit quod non posuit, et metit quod non seminat.' but rather desirous with Moses to be raised out of the book of life; with Paul to be made Anathema for the common good of those subjects that live under him. Our royal master travels not as the other did, 'in longinquam regionem ut accipiat regnum,' into a foreign region to obtain a kingdom, but brought a kingdom with him out of the next region to ours, that hereafter we may live 'unanimis,' that have been so long severed and divided in fraternity. But such are the qualities of many men, and especially of you and your complices in this complot, that as one saith, 'Non tam agant gratias de tribunatu, quam querunt quod non sunt erecti in consulatum.' But when you, or any man of your affection and humour, shall be able, out of quintessence of wit, or positions of state, or grounds of common sense, to prove, that a prince as opposite to your religion as you are to his, and that vows to set up his whole rest and adventure not only of all his crowns, but of his life and succession, upon those principles of faith (which he hath sucked from his infancy with his nurse's milk) to take a milder course with the Catholics than he hath hitherto done, without offence or scandal to the tender conscience of his own church, which he doth chiefly regard, I will acknowledge that you had more reason to bemoan yourselves (which is the furthest period of a subject's power) than, as your case is now, I can admit, looking into sundry circumstances of peril with a single eye, which is neither dazzled with self-love, nor distracted by slight appearance. For though you may perhaps conceive, that there wanted somewhat to the full measure of your vast desires; yet all men know that you prevailed far above the likelihood of any reasonable hope; which may move you to call to mind with more evenly poised thoughts, that judgment of a wise author, that 'inter voluptates tam numeratur id quod habes, quam id quod speras:' a good rule for a perverse interpreter.

The quicksand upon which you plant the great artillery of your sentences and decrees against the states and persons of all princes that square not with your rules, I take to be that idle impression, rather than true supposition of a certain kind of prerogative, thought to be left by our Saviour to his spouse the church 'in deposito,' for the deposing of princes, upon conviction of contumacy, from their seat of government. For as the great philosophers conclude the whole world to be composed of three certain concurrent principles, that is, matter, form, and privation, holding the last of the three to be rather a principle of transmutation than of establishment: so likewise the schoolmen within these last 600 years, have dragged into the discipline a new kind of privation also beside the matter, which is the flock, and the form which

is the government. And this privation hath undoubtedly metamorphosed as many states and policies as the other hath done shapcs and figures, if either the complaints of majesty, or the smart of patience may be accounted of in our audit. I confess with the woman of Samaria, that this well is not only deep, but that I want the bucket, which from such a well may be fit to draw: for every plummet is not for every sound, nor every line for every level: neither is it possible out of every block to carve Mercury; but yet since it is confessed by Robert Winter, Rookwood, Guy Fawkes, and others, that their error in believing this conclusion upon the warrant of a learned man (which as appeareth now, was yourself) hath been the greatest cause, and the strongest motive of their fatal fault; since in like sort, it agreeth fitly with my desire to reduce as many of those silly erring sheep that followed Absalom, 'sed corde simplice et penitus causam ignorantes,' as I can from your 'acheldama,' or 'eger sanguinis,' (considering how many priests have practised in these late years to sound points of war) it were as meet that somewhat were set down for confutation, as for caution: and therefore I have been the more willing to engage my zeal and duty, though perhaps above the measure of my strength, upon this argument, 'et quantum in me est,' to shake the whole foundation of future conspiracies.

But before that I prepare myself to this encounter, or that I enter into this narrow list, wherein I expect as many adversaries as there be men that have humours, to limit or to conquer kings, I hold myself bound in duty as well as drawn by method, to wipe away that weak excuse which you make of your disloyal heart, in publishing this doctrine of curbing, suspending, or deposing princes of high estate, upon this ground only, that in foreign parts you found it neither severely taxed, nor capitally punished. To let go that maxim which binds all sorts of subjects to frame their actions rather to the law of the country wherein they live, than wherein they wander; and likewise the great improbability of so gross ignorance in yourself, and your friends, as not to take notice of a point of state so deeply riveted in all the courts of justice within the realm; I must tell you further also, that princes fear not those fires which are kindled in foreign states, before that some spark light either upon their neighbours houses, or their own palaces. Idle lookers-on, and frank adventurers have not an equal sense of the danger, which the ships and vessels richly freighted endure at the sea, either by false pirates or foul weather. 'Qui sani sunt,' according to your construction of 'sanitas,' Mr. Garnet, 'nec medicis egent, nec metuunt medicinam.' Their ears are very dull, and unapt to musick, that cannot keep time when fortune plays, and all sorts of instruments are set in one key to make full harmony. So long doth the great brood-hen cluck her chickens, as she takes them to be hers: but if once they fly from the protection

and safe defence of her wings, she leaveth them as a prey to the puttock. I will search no further than our own time for satisfaction in this point, how far princes would be patient in case they were as violently pursued and plied as the king our sovereign hath been; than by observing what kind of obedience hath been performed by some of that rank when they were shot with the same arrow. For many men are very slack in making a hue-and-cry after the thief that stealeth their neighbour's goods, which are very forward to fly with the wings of an eagle, when they find themselves pressed in their own particular. 'Et hic si fuerint sentiant aliter,' and in like cases wise men out of experience resort to like remedies.

But if there be no drugs in your shop to purge that sharp humour, that hath been the cause of so many burning fevers, and distempers in this state, than your diacatholicon, I may tell you plainly, that it strives so much against the stomach of the king, and worketh upon nature with that violence and loathsomeness, as he doth rather chuse to feel the pain, than take the pill, and to endure the worst of the disease, than to make the best use of that remedy. In this case he will trust his own receipts that are made familiar by time and use, leaving other princes to their own free choice, which may make all drugs to taste in their mouths like manna, that is agreeable to their own appetite. Princes cannot be too suspicious when their lives are sought, and subjects cannot be too curious when the state brandles. I remember that when Joshua took notice of a single man that came from Jericho, standing with a sword in his hand ready drawn, he asked instantly, 'Noster es, an adversariorum?' 'Art thou of our side, or of our adversaries?' Directing us that are now in commission, as it were by line and level, in what manner and with what caution we should examine you and Hall, since Greenwell is out of our reach, for you draw not one sword, as the other did, but two at once, that is, both the spiritual and the temporal, against our sovereign, and to enquire withal at what time, and in what place, and upon what advantage you and your suborned confederates intend to wound his royal majesty.

For since we find, that to secure litigious possessions, that lie subject to surprize, it is usual and ordinary, even among persons merely private, so long as they live in fear, to sound the dispositions and affections of their own dependents, followers and tenants, upon suspicion of a false trick: At a dead-lift, it much more behoveth great princes, upon whom whole states and successions depend, to take the surest hold that is possible of their subjects affections and hearts, lest if they should chance, in the day of trial, not to be 'nostri sed adversariorum,' and thereby draw their swords of another side, and deceive the trust that is reposed in their faith, we might with Rachel, 'Plorare filios nostras quia non sunt,' and call for help too late, when destruction were in the door of desolation.

This doctrine, Mr. Garnet, is not drawn out of the fusty vessels, as some call them, nor from the lees of the latter times which you suspect: It carries not the least taste of prejudice or festered suspicion upon particulars. It knew no difference either of name or reputation, between catholick and protestant, when it was first set on broach by those princes, states, and divines, which are accounted catholicks, and some of them canonized for saints in the rubricks of your own register. For proof whereof you shall find a patent in the records of Rich. 2, granted to one Waleton, for the searching of all ships and vessels inward or outward-bound in the port of London, and for the sifting of all persons likewise, 'qui bullas, vel alia papalia instrumenta deferebant.' In the same prince's reign, sir William Brian was sent to the Tower, only for procuring the pope's bull against certain burglars that robbed his own house, 'quamvis abundans cautela non nocet' by the civil law, and the bulls themselves were adjudged prejudicial to the king's prerogative. With these I match Stephanus de Malolacu, sharply fined in the reign of Edward 1, for putting a bull in execution against a certain knight his adversary, without acquainting first the king or the counsellors. Roger Sherbrook was called in question for procuring bulls from Rome, in 'contemptum regis et coronæ exheredandæ periculum,' which was the best construction that was then made of these traverses. Edward 2 sent a commission, as appeareth by records, to enquire of any process or sentence brought over from Rome into this land 'sæ inconsulto,' without his privy. It appeareth again in the time of Edward 3, all the ports were laid for interception of bulls by the king's order. To the archbishop of Ravenna was granted a safe conduct at his coming into England, by the same king, with this proviso, that he should only report 'Sanctas papæ exhortationes,' but neither send out process, nor give sentence, 'in coronæ et regni præjudicium.' It was not lawful in those days to bring in any letters either from the pope, or any foreign prince, without imparting them first to the chancellor, or the warden of the Cinque Portuum, which in time of the best correspondence, as it seems to me, implies weak confidency. Edward 3 gave instructions to certain noblemen that were to treat of a peace with France, in the presence of the pope, to proceed with great caution, that is, not 'tanquam coram iudice, sed coram privata persona,' and not as 'in figura iudicii, sed amicaliter.' When the Scots would have had all differences between both kingdoms referred to the conscience and discretion of the pope, the peers of England utterly refused to give their assent, though the king's own facility should incline so far, because their king, as they vouched, was not to make his answers in matters of that quality before any judge whatsoever, 'vel ecclesiastico vel seculari,' either ecclesiastical or secular. To be short, these sparks of jealousy,

were so far kindled between the Church of Rome and our ancestors in former times, although they were no Lutherans nor Huguenots, (as our countrymen are termed in these days) but Catholics according to the Roman Catechism, that an order was set down by the wisdom of the state, that the pope's collector at his first arrival on our coast, should swear solemnly to be faithful to his crown, to attempt nothing to the king's prejudice, or in disgrace of the laws established; to put none of the pope's orders in execution, to the weakening of the king's prerogative; to deliver no mandates or letters from the pope, before they had been viewed and allowed by the council of the king; to write nothing to the pope from hence, without the king's leave; to deal no further in the business of benefices than the privy-council should allow; nor without the king's privy-seal to depart out of the kingdom.

These points are tender, and such as during peace were never offered by the kings of England to the ministers of any other foreign prince; and yet we read of no such iovectives or decrees against prince and state, in our days are ordinary. Other princes in like manner stood upon their guard, and with like circumspection, as is evident by Philip le Beau the French king; who being advertised of the pope's peremptory proceeding upon the committing of a bishop for evil words against himself, inquired of all his peers both ecclesiastical and temporal at a public convention, how far he might rest assured of their fidelity and loyalty notwithstanding that decree; who answered, 'Unanimi consensu se illius tantummodo esse beneficiarios;' and that what pope or potentate soever durst adventure to put out his horns, or to raise his crest by opposition to his royal prerogative, they would live and die with him.

If princes that were absolutely Catholics, according to the Roman list, that were directed by one canon, tuned by one wrest, obedient to the voice of one high shepherd, and between whom and the pope there was but 'cor unum et anima una,' found so just cause and so great reason (notwithstanding union in points of conscience, and orders of conformity) to be tender and suspicious of their temporal prerogative, and to cast a watchful eye upon the pope's encroaching steps, in quarters that pertained neither to the churchyard, nor the church: how much more jealous ought true subjects and sworn servants in our days to be of that prince's state, who being, as the case standeth now, sustained and fed by another root, directed by the voice of other pastors, and as careful to reform, as his antecessors to conform, while they sailed by another compass, and upon another coast? And whosoever will not be instructed by the records, let him search in the vaults and the powder-trains of the parliament. If in the time of Henry 2. (who, touching point of conscience, was 'obedientissimus ecclesie filius') Vivian, the pope's legate, was precisely sifted and examined by the bishops of Ely and

Winchester, (that were of his own profession, and wore the same badge) by what warrant he durst presume to land without special licence from the king; and therefore give oath 'in verbo veritatis,' to do nothing against the king's authority: how much more watchful and reserved ought this state to be, in admitting Greenwell, Hall, and Garnet with their Bulls or censures, 'in regis et coronæ prejudicium,' without inquisition or search, since their end is not as before, 'implere manum,' to fill the hand, but to replenish the churchyard, and to stir up all conceited or discontented men, to the taking of arms against their lawful and redoubted sovereign king James? And though the pope, shewing himself (in this point) more moderate and discreet than other of his predecessors, hath not as yet cut off the king formally as a withered or unfruitful branch; yet to their precipitate and brainsick giddiness it was thought sufficient, as Guy Fawkes and others did confess, that the pope on Maunday Thursday censures schismatics in general, (though the most judicious among the schoolmen, divines and canonists, of their part, hold directly *ad oppositum*, and dare not warrant any conscience according to the rules of their own discipline) by that censure which we may probably conceive to be more narrative than active, in respect the process follows not. This record concerning Henry 2. draws to my memory a message of the same effect, sent to a Scottish legate by Alexander the king of Scotland after that time: for it is true, that legate proposing to sess every parish at four marks of silver, and every monastery in that kingdom at twenty times so much, for the supply of maintenance to the wars in the Holy Land, was commanded by king Alexander, 'intra regni fines consistere,' to stay upon the border of the realm, 'et per literas mandata exponere,' and by letter to deliver his instructions; for neither Scotland could forbear or spare so great a sum as the legate would exact, neither (albeit the realm could,) yet his meaning was, to send it by so unlucky a messenger as the legate was; complaining that he had been robbed of the money gathered in foreign states before, to the loss both of his own labour, and of the charities of other Catholics. In conclusion, a fair offer was made of men for increase of strength, which was not the legate's aim, but of no treasure to fill coffers, which was the chiefest end; and a thousand marks were sent to the pope as a mere benevolence, which sealed up the drift and purpose of this embassy. This answer was exceedingly commended by the king of England, 'qui idem expertus sapiebat;' who having tasted of the same cup, grew wise, as I find by Hector Boetius, a Roman Catholic. I mean not in this place to insert or add the judgment of a Scottish bishop, that these kind of exactions were tyranny; advising further all that state in a full convention, that the legate might not only be sent away empty-handed, (and with like success to those, which, as the prophet saith, 'Dormierunt somnum suum, et



'nihil invenerunt viri divitiarum in manibus eius') but further, that an act might pass in that assembly, to cut off all such errands by provisional accord, as might 'in futuro' tend to the state's impoverishment: which was universally agreed and determined.

I did very well approve, and was glad to hear the distinction and difference which you made in one part of your speech, between the king our sovereign (that was never swathed in the bands, nor danced in the lap of the Roman Church) and other princes Roman Catholics, that were first incorporated by union, and after cast off for their contumacy: for this is somewhat, though I hold it not to be sufficient. And beside that every grain in measure is well gotten at your hand, that held the balance so unevenly and unsteadily: that passage also of St. Paul, prohibiting the church, or at the least confessing himself prohibited to judge those 'qui foris sunt,' as you repute the king inclined to that side, which your own admission and exposition doth bear. But as it is impossible for any man that is not a perfect Gileadite, without lipping to pronounce Sibboleth, howsoever otherwise they drank water 'curvatis genibus:' so the mischief is, that you flee too suddenly from that foundation which your own hands had fastened; and upon the question asked, what you would think of any sentence privative, proceeding from the pope against our king, in case either this man, or any successor of his should hereafter take any course differing from that moderation which hath been used hitherto, your vocales or vowels were changed into mutes, your demonstrations into doubts, and your eloquence into so deep silence, as the passing-bell might have been tolled for a man so quickly stricken speechless with one demand, to make your last testament, 'Ut unusquisque Theophrasti discipulum te posset agnoscere.'

It now remains, that in discharge of promise, and for satisfaction to curiosity, I make it clear by the fairest evidence, the most pure and uncorrupted witnesses, and with the shortest cut that my compass in so vast an ocean will admit, that none of the patriarchs before the law, none of the priests and prophets under the law, nor Christ or his apostles at the last expiring of the old law, nor any of the godly bishops that governed the church of God for the space of one thousand years in 'auditu novo,' by the new law, did ever exercise, approve, or claim that kind of jurisdiction or any branch of it that is extended to deprivation of right, suspension from rule, or sequestration from royalty. For this I take to be that ball of wildfire, which hath caused so great loss of lives and states by combustion in monarchies.

Before the law, tho' it pleased God upon the breach of his decree to drive Adam out of Paradise, the lively figure of the church, that in 'pœnâ culpæ,' he might work for that, 'sua dore vultus,' which before sprung up naturally, 'beneficio Creatoris,' yet he left him monarch of the universal world; a course far

different from the manner of proceeding among many of those Roman pastors, which claiming the dispensation and distribution of St. Peter's keys, *as Keys*, have only by the strength and virtue of that supposed warrant, sought upon displeasure, and sometimes 'causa inaudita,' not only to expel great princes out of the state of grace, but very often also to strip them out of the robes of majesty.

In the sequestration of ungodly Cain, 'à Dei facie,' from the face or presence of God, (which is in effect the same censure which the church useth at this day, 'tradendo Sathanæ,' because these two lords are in one regiment incompatible) we read not that immediately upon the sentence this grievous sinner was set up for a reproachful mark, whereat either justice might shoot, or error might aim, as the king our sovereign, who hath been roaved and pricked at of late: for so far was the providence of God from arming any creature in this world to the least harm, much less the disinherison of Cain, as for so much as concerned life he set upon him his own mark of sure defence, with a seven-fold curse against that that should rid him out of the way; and beside left him a large scope wherein to walk upon his own ground almost all the world over. To these two I will only add a third, which is Esau the lost child, whom, notwithstanding deprivation of that heavenly blessing, by which all nations should by the merit of the blessed seed, and holy covenant, 'in plenitudine temporis,' prefixed by his providence, be reconciled to himself, yet we find that he was enlarged in his temporal possession, secured in his person, and increased far and near in the wide spread of his posterity. Nay, that which maketh more to the blemish and reproof of our rash empiricks, that can hit upon no other way to cure diseases than by letting blood, I infer, and that upon a sure foundation, that Jacob, Esau's younger brother, but yet by mercy the true and lawful heir to the promise, and the chief commander after Esau's fall, among the Saints of God, did a long time after, not only call him Dominum, his Lord, which the Holy Ghost approveth, by the title which is given by Sarah to her husband, to be a word of power; but falling prostrate in a humble manner at his feet, with words expressing as great love as reverence, did respectfully and truly honour him; for 'nondum venit hora,' nor many thousand years after, wherein persons excommunicated must *ex consequente* be deprived of dominion, rather than left to God's chastisement.

Between the roots of Judah and of Levi, by the law of Moses, the separations and distances are so wide, as neither need to cross another's walk, to intermeddle with another's office, or to eclipse another's dignity. Beside, I observe, that among all the conditions affirmative and negative, positive and privative, religious and politick, that are enjoined by the first institution to kings, this kind of tenure holden of Aaron or his successors *ad placitum* is neither expressed in the grant, embroidered on

the skirt, nor engraven in the seat of his office; unless some will argue that the kings of Judah were as well bound to submit their scepter to the priests direction, as to receive the book of the law at their hands: tho' we find that it was entailed by strong words to the tribe of Judah, without any reservation of superintendency. Beside, the plague which God doth threaten with his own mouth, to send princes in his anger, and hypocrites 'propter peccata populi' for the people's sin, were merely idle, if it were free for us at all times, upon these visitations and sharp corrections, by the pope's help, either to abate our penance, or to end our punishment. It is expressed and improved in the scriptures, as a portion of the divine prerogative to chastise kings; then belike no part of a priest's jurisdiction, that is consigned to another element. 'Per Deam regnant reges,' by God they reign: then not at the pope's pleasure. Of God only they hold their crowns and dignities: then not bound by divine laws to yield up their crowns 'in manus Papales,' in fear of process, as some more fearfully than royally have done in other ages, when the popes summoned them. From his mouth they receive their charge; therefore to him only and no other, they are bound to yield a just account of their stewardship. It is said by holy Job, that God places kings in their thrones 'in perpetuum,' then far from these weak tenures by copy of court-roll, at will, or in courtesie. But suppose they wax violent, and apt to quarrel upon the pride of their own strength, who shall censure them with any prejudice to their estates? not the pastor by commission, but God by prerogative. It is the property of God himself 'Regna transferre et constituere,' if we believe the prophet Daniel; and of no pastor upon earth. And he will take it for as great presumption in any mortal man that carries 'spiritum in naribus,' and is but earth and dust, to call his viceregents to account, as any earthly prince would esteem in any ordinary subject, to oppose or strive against his deputies. God giveth no commandment in his law, for observation whereof we need to ask leave of any deputy subordinate; for then were men more absolute in his election, than God in his ordinance. The reverend regard which Aaron had of Moses in respect of the civil stroke, may tender unto all the sons of Adam (how high or how great soever) that live under kings, a scale whereby to take the true latitude of a pastor's liberty so far as concerns this comparison. For no man shall aver, that God did ever give a state to any prince (so as the same were merely independant upon the challenge of any superior command) but he made him likewise free from check in the scope of his sovereignty. If then the question be put in this sort, as it ought, before it work that effect which you desire, whether the crown of England remain free from dependency upon superior command or not; if Simancha, Navarre, Sylvester, or any of the scholastical divines will either examine our records, or resort to our

parliament, where matters of like quality ought to be argued and decided, (because according to the rules of all divines, religion alters not the forms of civil governments) or search the reports of the pope's own rolls; undoubtedly they would receive the same answer which popes in former times have had, and with the same quick dispatch that our antecessors in this case have thought to be requisite.

By observing with careful heed the respective manner which was used to the kings of Israel and Judah, by the legal priests, upon their transgression in those matters and degrees which are now drawn within the compass of the censures of the church, it will appear that within the five books of Moses, and all the stories of the kings, no one decree, reason, or example can be found to make good the formal process which within some few hundreds of years have been rashly put in practice against kings and emperors, upon supposition of contumacy. For though I grant that many of them did err, and in the same degrees, yet not one flower of their crowns was blasted; no not one hair of their heads ruffled, nor one grain of their royal dignity diminished. I doubt not, but if for many priests that were deposed during the practice of the legal censures by anointed kings, and those of the best kind also, as David, Solomon, Joas, Ezechias, and Josias, there could be drawn but one example of a king deposed by a Levitical anointed priest, all the schools, and pulpits of Italy would ring of it; but it falls out happily 'ut quod præcepto non jubetur, exemplo caret.'

It was hard to pick out any grievous sin against the first table of the law, whereof Saul was not guilty in his declining days: for he despaired of God's protection, he consulted with Satan's instruments, he slew the prophets: and yet it is clear, that 'ex solo indelebili unctionis caractere,' only by the character of regal unction uncancelable, he was so far privileged and secured, as well against lay-practices as Levitical decrees, that David himself entitles him 'Christum Domini,' God's anointed (which may seem strange, even after God had appointed David himself to be anointed in his place.) And the same king and prophet likewise forbears at two sundry times to take those advantages against him upon fit occasion, which the laws of God and man allow against an unlawful usurper to a lawful magistrate, without a 'non obstante' from above to moderate.

But one instance above all closeth up the mouth of contradiction itself, and unlooseth the hardest knot, that the Gordians of our age can devise to tie upon so smooth and plain a thread: for God himself by his own injunction, lays a heavy charge upon his own elect, during the time of their distress, while they sat mourning by the streams of Babylon, and hanged their harps upon the willows, that they should not only 'querere pacem illius civitatis,' seek the peace of that state, which was the seat of

their exile by divine direction; but, which is much more pregnant to this purpose, that they should pray for it, 'Et in pace illius civitatis' 'suam stabilirent pacem,' and in the peace of that state politic, unfold, settle and establish their own peace and tranquillity. So hard it is for the policies or passions of men either to work or to dispense against the directions of God: and so far is the purpose and providence of God, from leaving the reins of order loose in the neck of precipitate audacity.

Now Mr. Garnet, whether your scope and drift hath been to pray for the peace and prosperity of the king's estate, (which of necessity must enjoy the privilege of Babylon, if you will needs account it Babylon) I will not appeal to your own scared conscience, but to that hymn, 'Gentem aulerto perdidam,' foolishly wrested and abused by your wreckful rage.

And touching the second point, whether you have sought to enwrap the peace of your profession in the peace of the state, or not, I will be tried by the Powder-works. But to be short, these reasons and examples drawn out of the law of Moses maketh the matter clear, how far the Levites might undertake to deal in censuring the crimes of kings, their office consisting altogether in humility and piety. For though I grant, that assaults were made in those days; on the persons of some kings, sometimes by express direction from God, which ceaseth in our days, and sometimes by the practice and presumption of traitors, which are no more to be justified, than the robberies that are committed daily at Stangate-hole, or at Shooters-hill: yet for our instruction it ought to suffice, that no such plain songs are set out in the books of divine tablature, and therefore upon false grounds no state ought to suffer, either any kind of new descent to make new division in old integrity, or such a conceited kind of voluntary, as only serveth to please factious humours. Sure I am, that though the rod of Moses were once only turned into a Serpent to give terror, yet the rod of Aaron was preserved ever, not 'in campo Martio,' but 'in testimonii tabernaculo,' sprouting forth green leaves and sweet blossoms.

But now to draw nearer to the life of that discipline, which among Christians ought rightly to be reputed regular, to examine principles, and enter into the school of Christ orderly; we must refresh your memory, Mr. Garnet, in putting you in mind, that our Saviour himself, who ought to be the highest object of your imitation, lived obediently to the laws of the state in which he was born, though perverted by pharisaical constructions and glosses 'in sensum reprobam,' and 'ex diametro,' repugnant to that scope of reformation which he only aimed at, without practising with discontented persons against the Roman tyranny, either to displace the governors, or to change the government. He commanded his disciples to give unto Cæsar what is due to Cæsar, reserving unto God what of right belongs to him. Christ would not take upon him to divide a

temporal inheritance, though pressed earnestly by the party that was in suit: much less is it possible that out of passion he would have disturbed monarchies, or transformed monarchies.

To prove further that his kingdom is not of this world, he reasons *à consequenti*, because his followers did not put themselves in arms in his defence, as otherwise undoubtedly, in case his empire had been squared by the common rules of secular affections and devotions, they would have done; though in our days that argument was easily discharged, and that want powerfully supplied by others of that suit, that account it a breach of the church's liberty to dissolve or forbid garrisons. It is true that change of accidents may breed a change of temper, as well in bodies ecclesiastical as natural; for the church may be at one time more quiet, safe, and prosperous, as we may be better or worse disposed, more hot or cold, more sick or whole at one time than another. But as it were a strange kind of it that could transform a man with Apuleius into an ass; so were it as strange a variation in the compass of the church, to alter patience into power, the spirit into the flesh, and humility into cruelty. For philosophy doth teach, that external accidents change inward qualities: but without an absolute transmutation 'ipsius speciei,' of the very kind itself, they change no substances. Therefore I wonder how Gregory 7th and after him Boniface 8th durst adventure to claim the exercise of two swords, like wary fencers, in one scabbard, out of a text pitifully set upon the rack for the countenance of a two-fold jurisdiction; the pursuit whereof hath and will cost many lives, 'priusquam sententia judicis,' touching that particular, 'in rem judicatam transeat.' Yet I am sure that Christ the law-maker gives them over in the plain field, when they fall to dealing blows, and instead of sounding a point of war, cries out to all his own followers, 'Cur non potius patimini?' Since it is certain that 'in patientia possidentur anime,' souls are possessed in patience: a maxim far more sound and honest, than that other of the school-men, 'precipitantur principes,' by censuring and skirmishing. From the consistory of our Saviour cometh a direct prohibition, that his disciples should not 'dominari sicut reges gentium,' domineer in that fashion or manner that the kings of the Gentiles did: but if those bishops, that derive their painted and pretended right of deposing kings, from the power of Christ, might be justified according to the nature of the plea which they put in, they should 'dominari plusquam regis,' more than kings, both by setting themselves above all kings in their temporal estates, and presuming by censure to deprive them of their dominions; which (setting aside the due homage by such kings as owe suit and service to superiors) none could expect, much less demand of other; nor did ever set their foot so hard in the necks of their peers, as pope Alexander did in the neck of Frederick. For, is it likely, that when Christ not only commanded Peter to put up his sword,

drawn with greater zeal in passion, than judgment upon deliberation, but added also to that charge a commination in generality, that whosoever drew the sword should perish by the sword; his purpose was to bind the hands of his apostles? but yet to leave the passions of those that should succeed them, at full liberty. Christ paid tribute unto Cæsar, as appeareth, as well for Peter as for himself; thereby moulding the measures and proportions of the church's conformity. For strange it were, that 'hæres succedens in defuncti locum,' the heir succeeding in the place of the deceased, should by any law be strengthened and enabled to do more than the testator himself might have done; or the party to whom delegation is transmitted, than the principal that did delegate. One rule can never fail, That 'discipulus' is not 'supra magistrum,' because he can never fail that gave out that rule: and if a man observe it well between the function of Christ which was 'magisterium,' and the scope now shot at, which is 'imperium,' the difference is infinite. Our Saviour acknowledged to Pilate, that the power which he both had and exercised over him, was not terrestrial, nor temporary, but it was from above: to which doctrine nothing can be more repugnant, than the schoolmen's dream, that our princes having at this day the like jurisdiction with piety, to that which Cæsar held with pride, should be subject touching their estates and dignities, to the censure of his disciples, who in person, whilst his conversation was here on earth, renounced that prerogative out of disparity to the scope and end of his office. For as our Saviour doth prove *à minori* in another place, that his disciples ought in reason to wash one another's feet, because he that was their master had vouchsafed out of humility to wash theirs; by the same consequence I prove, that whosoever professeth to be 'imitator Petri,' (as Peter was 'imitator Christi') ought to desist from forcible intrusion upon these undue claims of more than imperial prerogatives, which were neither challenged by any Levitical predecessor, nor possessed by the testator, nor conveyed by the testament. For the grant which was conveyed by God the Father to his Son, 'omnis iudicii,' of universal judgment both in heaven and earth, is absolute; whereas the Charter which the church of Christ receiveth of her spouse, is limited and tied to the validity of the evidence and the strength of witnesses, with the prescription of antiquity. When Christ knew that some would even in passion make him a king perforce, and mangre his affection and resolution, 'fugit in montem solus;' whereas they themselves, as 'Successores Christi, et hæredes apostolorum,' descend from the mount of contemplation into the valleys of secular agitation, to make a party for their advancement 'ad regalia Christi,' made a difference between his disciples, following a master that had not so much as the fox, a hole wherein to put his head, and those that dwell in 'regum domibus;' whereas now

the difference, if there be any, is on the other side. This orderly and modest manner of proceeding, recommended by the Lycurgus of the gospel, which is Christ, was continued by the reverend apostles during their time; and likewise by the godly bishops that succeeded them, for the space of a thousand years: for further than the censure of esteeming those as ethnicks and publicans that wilfully refused to give ear to the doctrine of the church, I find not that the church presumed, the popes challenged, nor princes acknowledged.

St. Peter, from whose prerogative many seek to derive this privilege of deposing kings upon conviction, or rather supposition, as it happened for the most part, of contumacy, commands the faithful to obey even that prince that was a butcher of the flock, and a bloody tyrant in his time (because he was superexcellent) and all magistrates that were subordinate in charges and employments under him. He forbiddeth all good pastors also, which ought to be 'forma gregis,' the pattern of the flock, 'providere coacte,' to provide by compulsion, or 'in cleris dominari,' to domineer among the clergy, tho' that be within the compass of their own square, much less meant he to set them over emperors and kings that are fixed in the highest element; nay, which is more, he denies flatly, if we may give any credit to that author which bears the title of Saint Clement, that any of his successors were ordained by God, to be 'cognitores negotiorum secularium,' examiners or judges of causes that are secular, which is now become the chiefest scope and object of your primacy.

Wherefore if Peter were commanded to put up his sword, when Christ was at his elbow to heal, as he did, the greatest wound that it could make; how much more ought his successors to keep the sword within the scabbard, since it is soberly and orderly put up, and that they may do more hurt in their passion, than they can help by their privilege? St. Paul, his fellow martyr and apostle, would never have subjected 'omnem animam,' every soul, whether they were bishops or monks, regular or secular, as Chrysostom notes, to superior authority, in case he had been privy to an exemption of some souls by express warrant. The quality of evil princes ought not in reason to extenuate the force of the inhibition, tending to the peace and order both of church and state: for then St. Peter would not have commanded servants to be subject to their lords, 'non solum bonis & modestis, sed etiam dyscolis,' not only to those that are good and modest, but also to those that are perverse: 'Non propter metum, sed propter conscientiam,' not for fear but for conscience, saith God's spirit. Neither would St. Jude have censured those malecontents so sharply that do 'spernere potestatem,' 'blasphemare majestatem,' not in respect of their glory, but of their lieutenantancy. This is not the readiest and best resolution, 'manendi in vocatione,' of continuing in our vocation without impatience or strife, to wind our obe-

dience out of that obligation wherein the gospel found us, and God hath elected us. The servants of God had recourse in all times to lawful remedies, upon the offer of unlawful wrongs: and tho' there could not be a worse prince, or rather a more ugly monster upon earth, than he that held the place of Cæsar in the time of Paul; yet 'Paulus appellavit Cæsarem,' and being taken at his word, was sent thither to be tried orderly. It was lawful for the prophet Nathan to reprove David for his sin, tho' he did not pluck him out of his chair of state. Our Saviour describing Herod's quality, in crafty circumvention of God's saints, did properly and aptly term him, 'vulpen,' a fox, tho' he did not undertake to hunt him out of his earth. And tho' to warn, admonish, and assure the Tetrarch, 'non licere,' that it was not lawful for him to keep his brother's wife, were an office fit for a John Baptist, and a worthy pastor of a holy church; yet he neither would nor durst adventure to release his subjects of their faith which they ought him by their homage. Polycarpus the disciple of St. John, as we find him reported by Eusebius, dispensed with no breach of any bond, tho' in cases that intend peril to salvation, as idolatry, and the like. The Christians of the first age were neither Albinians nor Negrians, sayeth Tertullian; that is, stained with no faction either to those aspiring parties, or affections of the time, but devoted the service of the sovereign, 'quomodo licuit & ipsi.s expedierit,' so far as it was lawful for the person, and expedient for the prince himself. How far is that? Even so far as they honour him, 'ut hominem a Deo secundum, & solo Deo minorem,' as the next person to God, and inferior to him alone, without making him, as some did, a competitor with the Omnipotent.

Honest men will start and shrink at those loud alarms, when they read with how great obedience and humility, that blessed father Athanasius, upon whose shoulders our aged mother the church of God leaned, in the time of sharpest persecution, to take her rest, cleared himself of the false suspicions and wrongful aspersions, that were cast on him by device of speaking evil of Constantius the great Arian emperor: his dutiful respect was grounded upon that warning of the Holy Ghost, not to curse the king in the secret of our conscience, nor in the most private and inward corner of our cabinet to wish evil to him. St. Hilary would not so much as moderate or stint himself, but leaves it wholly to the discretion of a wicked emperor, 'quatenus et quomodo eum loqui jubeat,' how and how far he would bid him speak. St. Ambrose acknowledgeth no weapons of defence to be so proper to the priest, as tears and prayers: for I can pray, saith he, I can sigh and weep, but I cannot resist any other way. And therefore St. Jerome to Heliodorus saith, a king ruleth men whether they will or no; a bishop those that are willing. 'Ille terrore subjecit, hic servituti donatur.'

To that question moved by Donatus out of

friction and scorn, 'Quia imperatori cum ecclesia?' What hath the emperor to deal or intermeddle with the church? Optatus a learned father, answers tunably to the note and ditty of Tertullian that is mentioned before, that, since God only is above the sovereign, Donatus in extolling himself above the emperor, as Antichrist out of pride shall above all that is called God, 'jam hominum excessit metas,' hath now transcended the bounds of humanity. The patience and piety of thirty popes laying down their heads upon the block successively, at the first planting of the church, to seal the bond of conscience with the blood of innocency, may teach those that come after, as well to follow their example, as to claim their primacy. For though Liberius, a pastor of that rank, was unjustly banished and exiled from his church; yet he never sought to right himself by the bloody sword, but rather by that golden rule of obedience and patience, which our Saviour left to his disciples 'sub sigillo,' and they to the church in 'deposito.' Simaucha with his fellows may perhaps answer to these passages, that the church was swathed all this while in the bands of weakness, that the sickle carried not at that time an edge sharp enough for those stubborn weeds, and that the faithful had not as yet raised themselves to that height of credit, that might give life to their execution. But if the constancy of obedience had been squared by the liberty of men's election, and this had been the latitude of loyalty in those well disposed times when bishops only sought God's honour, not their own prerogatives: surely the church of Christ had wanted a great part of those martyrs and confessors, which are ranked at this day in the Roman calendar. They that take this scope, may conceive and publish when it pleaseth them, that lay subjects in like manner are no longer bound to obedience and loyalty, than they find themselves over-weak to make powerful opposition to ungodly magistrates; and so confound all laws of justice in the state, and all degrees of subjects that in private are bound to live orderly. Tertullian doth notably convince this paradox, as well of falshood as levity, by making a clear demonstration of the strength and potency of godly christians in his own time, (which was among the first) in case they would have put their forces to the strongest proof, since all public places, as courts, consistories, camps, and forts, were stored and furnished with men of that profession and quality.

The legions that were entertained by faithless princes in pay, and prospered in the greatest actions they undertook, might have purchased a far better fortune at an easier rate, in case they could have satisfied their own consciences, by opposing against order. If the godly christians that lived under Constantius the Arian, would have sought their ease, by stepping over to the service of Constance and Gratian that were religious; they might have caused their own sovereign to shrink at their transport, that before made advantage of their humility. If any man will take upon him

more in these days, saith Chrysostome, than was granted heretofore to subjects that were under infidels, 'Quod majora sibi concredita esse dixerint,' because they say that more is committed unto them; they must be taught, 'non ' nunc honoris sui tempus esse,' that it is not the time and place of their preferment, since they are as pilgrims in this world, but they shall in another shew appear more bright and glorious to all men, 'quando Christus apparuerit, ' et tunc cum Christo comparebunt in gloria,' when Christ appears, and they with him then shall appear in glory. Though St. Gregory confesseth himself to have been so powerful in Italy, that he needed not to have left among the Lombards either duke or count, in case he would have opposed confidently his endeavour against their rage: yet finding Theodolinda the queen to have been seduced slyly by some serpent of that sort from the sincerity of her profession, and dangerously withdrawn from God to Belial, from piety to heresy; took no harder course than by forewarning her with a fatherly affection, and in humble terms to take heed in time, that she tainted not the sweet bread of many moral virtues (worthy to be served in the supper of the Lamb) with the leaven of the falshood and impiety of those misbelieving teachers that abused her credulity.

It had not been hard for Chrysostom, in respect of the tender love which was borne him by his flock, not 'ad aras' only, but 'ultra ' aras,' if his patience had been pliant to their desires, to have wearied that ungodly princess Eudoxia, that would never give him rest nor breath in the crooked ways of her own wickedness. But if the doctrine of some schoolmen in this age be found to differ so much from the former demonstrations of obedience and truth, why should I not complain, 'That ' nunc definit ' esse remedio locus, ubi quæ fuerant olim vitia, ' nunc mores sint?' It is true that long after this, the officers of the French king, Philip the Fair, complained, and upon just cause, 'augenda sacerdotum jura, jura regia minuit,' that the king's rights or liberties were appeared by raising the rights and privileges of the priests. It may be likewise true that is written by a countryman of ours, that Gregory the seventh confessed on his death-bed, (but with what remorse or touch of conscience God knows) 'ex minutione laicorum se sacerdotum promovisse gloriam,' which in divers words is of one effect: but yet all bishops were not of that mind, but keeping fast in memory that observation of the prophet David, That to drink of waters drawn from the springs of Bethel, with peril and hazard of men's lives, was 'san- ' guinem bibere,' to drink blood, were as cautious in quenching sparks of dissension and strife by charity, as others were to kindle them out of ambition and vain-glory. For in cases of this nature, 'Non est opus servientis animæ, sed ' medentis studio,' for charity is patient and courteous, 'Nec inflatur nec est ambitiosa,' Peter hath two keys, one of knowledge, another of power: these are prepared and fitted also

to two locks, that is, induration and ignorance: and hardly shall we find, that without both, and a sure use of both, any strong locks of opposition or obstruction have been opened. Wherefore no man need to doubt, but that among so many godly, grave, and learned bishops, as will ever rank themselves 'tanquam ' in acie ordinata,' to discourage and affright the forlorn hopes of Simancha's school, these positions will sink: and some that have been loth to yield out of humour, yet will be forced to faint out of cowardice.

The godly learned never once vouchsafed to lend their ears to the deceitful tunes of bewitching charms; rather grounding their opinions upon the fourth council of Toledo, by which all sorts of persons are condemned without distinction or exception, 'Qui fidem regibus suis sacramento promissum observare contemnerent,' that contemned or scorned to keep the faith which they promised by oath to their sovereign; taking by this first part, all perfidious traitors in general.

But that which follows, pincheth Navarre and his disciples at the very heart: 'Ut ore ' simularent juramenti professionem, cum mente ' retinerent perfidiam impietatem,' and with their mouth dissembled a profession by oath, when in their minds, or mentally, to use the very word of our school-men at this day, they retained still the wicked purpose of treason. Indeed Pythagoras imprinted nothing in the minds of his scholars more deeply, than that profane verse, 'Jura, perjura, secretum prodere noli.'

The Epicuro on the other side was satisfied 'modo mentem injuratum gereret, etiamsi lingua juraret.' And you, Mr. Garnet, (to make up such a triangle as can never be reduced to a cube, that is, a perfect square) divulge and publish to your auditory (which those blind philosophers durst not profess beyond the compass of their schools) that it is lawful to draw words to the sense of thoughts, to cast a mist of error before an eye of single trust, and to deceive your brother for your own security. I am very sure the learned fathers neither knew the way, nor had the will to escape by such a kind of 'deceptio visus,' as directly tends 'ad destructionem animæ.' For when Athanasius was overtaken by a pursivant, and asked 'Quantum inde abesset Athanasius?' how far Athanasius was from thence? though it stood upon his life in a time, as you make of this, of persecution, and he a person far more choice and dainty for the defence of God's own quarrel, as appeared by his quick and sharp encounters with the professed enemies of truth in that holy Nicene council, than you are in this kingdom for the justification of those bad attempts and impious actions, which you take in hand, yet he answered as freely without fraud as fear, 'non ' longè abesse Athanasium:' which was very true, because he was the man for whom the party sought, and cared little, as appears, how soon they met him. A man of weak conceit may apprehend how far our Saviour himself was

from these chymical constructions and evasions sophistical, by that universal proposition, 'Qui-  
'cunque me negaverit,' whosoever denied him before men, should be denied by him before his Father, &c. For to put out cautious equivocators from all hope of succour in this streight by their distinction of verbal and mental negatives, I urge the precedent warning in that very text before, 'Non timere eos qui occidunt corpus, et animam non possunt occidere;' not to fear those which have power only to kill the body, and not the soul. For if our Saviour had left his disciples such a strength of surety for retreat upon pursuit, as verbal flourishes, whatsoever were conceived or resolved in the mind, he needed not so carefully to arm them with encouragement and hope against assaults of cruelty.

The passages which both you and other of your complices wrest from the mouth of Christ himself for a fair countenance of cozenage in this labyrinth, would rather 'commovere nau-  
'seam quam bilem:' though I must tell you, that singular examples drawn from our Saviour, that was both God and man, and not only knew by his eternal wisdom, but was also by his matchless power to rectify whatsoever seemed to our dull conceits obscure, are neither rules of our encouragement, nor warrants for our imitation. I make no doubt for my part, but these eggs of equivocation and mental reservation, never engendered nor covered by fairer birds in better times, were hatched, as the poets feign of osprays, with a thunder-clap. For among the martyrs and pastors primitive, their praises were resounded with the loudest and sweetest cries, that were most resolute, without evasions or tricks, to lay down a transitory life in a moment, to the purchase of a better in eternity; so far they were from forcing wit, or straining craft to secure cowardice. But to pass over this just motive of digression, I will conclude the chief point, which is the care best men have ever had, to prefer obedience before security, loyalty before life, with a discreet answer of a pope to a king of ours, which may serve you for a better precedent in the course of patience, than that either of Gregory 7, Boniface 8, or Alexander 6, in their practices of extremity, if it so stand with your pleasure. Richard the holy warrior, having committed a Norman bishop prisoner, whom he took in field against him with his coat armour upon his back, received within a while after an urgent request, if not a powerful instance, from the pope, at the earnest desire of other bishops, for the prisoner's enlargement; whom it pleased his fatherhood in the letter, by a word of indulgency, but yet without that ground of equity which moved the apostle, 'obsecrare pro filio suo, quem genuit in vinculis,' to press Philemon for his son Onesimus, whom he begat to Christ and his church in duress, to call his son. The king wittily alluding by his answer to that place in Genesis, where Joseph's parti-coloured and pied coat was offered to the aged father stained and sprinkled with blood, sent not the prisoner who remained fast, but the coat armour, which was

loose, to the pope, inquiring 'à beatissimo Pa-  
'tre' (by this mild question) 'an hæc esset filii  
'sui tunica?' whether this were the coat of his son? The pope surprized with a demonstration, and observing heedfully the marks which could not lye, returned a grave answer to the king, 'Nec hanc esse filii sui tunicam,' That neither this was the attire of his son, nor he purposed so to acknowledge the party that was taken in that coat, and therefore left him wholly to civil justice, and the king's gracious pleasure. For it is true, that ambition, which is most bold upon advantage, is most cowardly upon surprize: and howsoever humours may sometimes urge minds that are not evenly balanced with discretion and conscience, to undertake attempts ever above duty, and oftentimes above their strength; yet second wits observe the slips and errors of the first, and thereupon concluding at more leisure out of judgment, that 'vis expers  
'consilii mole ruit sua,' they begin likewise to fear that vast desires as well as buildings, where foundations are not firm, sink by their own magnitude. It is not possible that humours should be durable, considering that 'materia  
'præma,' the first matter, out of which they spring, like Proteus, is capable of as many shifts and forms as the world hath variations and accidents, wearing and consuming like a garment with incessant use: but the moral virtues which have their root in the Deity itself, and derive their influence from grace, must of necessity be co-eternal with their author, who doth not only plant, but water, and produce out of his own goodness, correspondent fruits that suit their original.

By these demonstrations we learn what laws were current, what bounders kept, and what course and manner of proceeding was observed towards princes by modest bishops, which either lived very near, or imitated those that lived next to the precedents of apostolic humility. Now therefore it shall not be impertinent, the subject moving in due place and with due circumstance, to describe, not by idle imaginations, but by evident impressions, how covertly, and as it were by stealth, incroachments crept upon the carpet, before they durst by any forcible attempt invade the seat of power: 'et cum  
'dormirent homines, venit homo inimicus;' and when men were in sleep, the devil came, 'et  
'superseminavit zizania.' It is confessed indifferently by all persons of all sorts, that are either judicious or sensitive, that those maxims which pierce to the center, and touch the very life of conscience, ought rather to be fixed upon the poles of constancy, than carried upon the wheels of change; and that not Israel alone, but all moral and indifferent affections ought to answer Amen to the curse which God pronounced with his own mouth against all men of whatsoever quality, that dare presume to remove or put aside land-marks, or bounders of jurisdiction, which preserve peace: and yet by tract of time and long experience, we see that 'ab illo motu, trepidationis,' ever since that trepidation or quivering, as it is termed by

astrologers, which prevailed in the minds of fearful princes, under powerful strains, there have been many variations of degrees and distances in the conclusions of church government, especially within these last 600 years; which moves wise men to resort to the judgment of a grave philosopher, discoursing of diversity of times and persons that did sway those times, either by predominance or art, 'quo minus ob ortu aberant,' the less distant they were from the first original, the more perfectly they discerned truth: and of the same mind is Tertulian, 'perfectiora prima,' the nearer the spring head, the purer streams: which is the scope of our industry.

To rip up matters therefore from the very root, without obstruction or passion, we may observe, that so long as the plough of persecution did not only make deep furrows on the backs of godly bishops by torture, (which the prophet by the text in the Psalm, 'Super dorsum meum fabricaverunt peccatores,' seemeth to touch) but by vexation and anguish also in their very souls, which those humble spirits feel that are most sensitive of the least scratch given to loyalty; it rent up by the roots all those weeds of ambition and emulation which in calm seasons are apt to spring out of the rank grounds of original infirmity: for till the blessed reign of Constantine, wherein the rage of persecution began to cease, I find almost universally no other kind of strife among the godly fathers, than whose counsel or endeavour, by a religious and modest kind of emulation, might be of best use to the propagation of the Church's limits, and of God's glory. The Church itself (which is the body mystical of Christ) might by analogy be properly resembled to the stomach of a body natural, which though it receive much, yet makes equal distribution, by dividing and dispersing that which it receives, to the use and sustenance of all the other parts, which would otherwise decay, and by degrees waste and perish.

If all this while a tribune had stood up to complain against the Church of Rome, as Menenius Agrippa did against the senate, comparing it to the belly, which devoured all, and did no good, the poorest and the weakest member would have utterly disclaimed and disavowed the least sense of such a wrong: but if the belly afterwards by caring only how to feed itself, did pine the other parts (as the populars did then suggest) and by transforming the orderly and well compacted body of the state poltick into a monster, by so great disproportion of nourishment, did violate the laws of nature, and dissolve the bonds of union, we must confess, that both Menenius with them, and, if the case be like, all faithful patriots and members among us, have reason to require remedy.

It is certain, that the end of these first bishops was then to feed the flock, not to fill the pail; to spread the faith, not to extend the line; to draw kings to perfection, not to depose them from their states; to settle peace,

not to raise dissension; to prepare the subjects hearts to obedience, not to inflame it with prejudice; to be at peace with all the world, holding peace of conscience to be all in all, so they might gain to Christ, and in no case to shew themselves 'percursores,' or 'violentes,' which the canons of the church, beside the prohibition of Paul himself, will not suffer.

Some of the latter, but best learned, writers, finding by the curious examination of sundry passages, and infinite interpreters, how hard, or rather how impossible it is to prove their title to this high prerogative of deposing kings, by direct evidence out of the word of God, and such witnesses of record as are above exception; resort to prove by charter, grant, and privilege from princes' pieties: as for example, from Constantine the first and best, Phocas the first and worst, Ina king of the West Saxons that was religious, and king John that was impious, as well 'sans foye,' as his title was 'sans terre.' In which crew, some intending serious devotion, others pretending feigned satisfaction to other ends; and all, as the times then taught, that no seeds spring up more speedily than those which are sown 'in area Dominica,' for redemption of souls, left them better earnest of their hopes by gift, than our Saviour did in his testament by legacy. Against the pretended charter or donation, which some of the canonists more zealous than judicious seek to derive from Constantine to Sylvester, though I need say little, because the best grounded judgments and most modest spirits of that sort, have torn away the painted visard from that warped face; yet because in matters of this moment too much cannot be said, I mean, more succinctly than the nature of that subject, being once undertaken, doth permit, to press some short arguments. First, how unlike it is that Sylvester, the next bishop but one to that worthy and renowned rank of martyrs that lost their lives for the profession of Christ, should upon the first pause of respiration to take breath, after so many manful combats against God's enemies, abuse the favour of so gracious a time, by hunting after the vain tenures of principality. The bishops that have kept themselves above water all this while, by the strength and favour of that powerful hand, which supported Peter on the seas when he was at the point to sink, by learning now to swim suddenly with the bladders of the world's ambition, might have cast themselves into greater danger of drowning in the rivers of Damascus, than in the Red-Sea that the saints passed over.

Platina reports out of the pope's own records, that Sylvester refused at the hand of Constantine 'diadema gemmis distinctum,' a crown or diadem set with precious stones, as an ornament not convenient nor agreeable to a pastor in his place. Though godly Nestor calls it only 'signum superbie,' a sign or badge of pride; Sylvester should have been found guilty not of a sign, but of pride itself, and that in the highest kind, by the grand jury of all his predecessors saints in heaven, in case he had



accepted what these men certify to have been offered. Among the fathers and histories of the church (how copious and large soever in expressing the great favours which the spouse of Christ received by the piety and bounty of this emperor in other kinds) appears no scrip of evidence to make good this grant; which were an argument of great ingratitude, if they had either heard of any disposition in the prince to give it, or in the pope to accept it. Neither is it like that so religious a prince would have left that to his son, that he gave to the church, nor from thence his godly successors, as Theodosius, would have detained it. Besides, all writers prove how powerful the lieutenants of the Greekish empire, whom they called Exarchs, were long after the date of this pretence, which could not stand with the strength wherein hereby they strive to plant the papacy. I find by direct acknowledgement, 'venisse proventus, &c.' that revenues came from certain places for the maintainance of the church of St. Paul, erected at the humble suit of Sylvester by Constantine; and from Sardinia, by the report of some, to that church which his holy mother built. Again, that the tributes were conferred on the churches, which some cities payed into the exchequer in former times: and these I take to be the shadows and colours of this idle dream. For of the charter itself, which exceedeth ten times in value all that is recorded touching churches in particular, and in respect of a greater eminency and prerogative, should have carried a far greater reputation, and made a fairer shew, there is not so much as a mark whereby they may take their aim that are most ambitious. How little credit, strength or honour any church can gain by deriving charters from Phocas, a lascivious faithless tyrant, wickedly enbrued with the slaughter of Mauritius his master, wife, and heirs, and usurping that estate unjustly, by the countenance whereof he was bold to give more than either of right he ought or could, I leave to their opinions that love to measure claims and titles rather by the line of equity, than by the last of ambition. But yet to make more of a tyrant by vouchsafing a short answer to his shadow, than in conscience is requisite; I first infer that such charters granted chiefly upon ground of cunning, and with a purpose to maintain the plot by party, which was undertaken and begun by fraud, might either have been afterward revoked by himself, or annulled and repealed by his successors: and further say, by judgment of the best civilians, that no prince's act is warrantable, without the publick assent, according to that maxim, 'Quod omnes tangit, ab omnibus approbari debet,' that tendeth to the state's prejudice.

Last of all, I prove that our country in particular could take no copper by this transposition; admitting it to have been sound and absolute, because we were excluded from the care, protection and providence of the Roman empire, very near two hundred years before that Phocas with his bloody hand began to steer

that monarchy. For after that, Flavius, lieutenant for the Roman emperor in the parts of France, did only send instructions and orders to the wasted Britons how to range their battles, and dispose their fights, with a careful, and yet a final answer, not to look for any more supplies or aids for that estate, which then fell into faction, and was no longer able to support itself; the Britons holding themselves abandoned, (in which case all laws free them both of duty, and dependency) after many bloody battles under their own kings against the Scots and Picts, fell into the Saxons hands, who like a Pharaoh that never knew Joseph or his father's house, erected a brave monarchy, tho' sometimes quartered and divided into many parts among themselves, and maintained it in absolute authority, without acknowledgment of any foreign or superior command, till by a second or third relapse, it became a prey to the Norman conquest. Wherefore Phocas having neither possession nor right in this state (left by negligence, or abandoned by necessity so many years before,) could convey no more to the church, than he either had, or ought to have, which was 'accidens sine subjecto, individuum vagum,' and a 'nihil indeclinabile.' The contribution of Peter-pence to Rome by Ina, being called in the Saxon histories the king's Almeson, in the laws of Canutus, 'Larga Regis benignitas,' and in that abstract which is left of the Confessor's and Conqueror's decrees, 'Regis eleemosyna,' proceeded, as the words import, not of duty but of charity; and in respect of any temporal prerogative, which is the key of these aspiring claims, doth rather prove the pope then sitting to have been king Ina's headsmen, than king Ina then reigning, to have been the pope's homager.

I could alledge also an allowance of a special mansion for English pilgrims that were drawn to Rome about affairs, bearing that title to this day, in respect of the great piety and bounty of the Saxon kings; which falling within the compass of that natural contract 'Do ut des,' copiously handled by the civil laws, and compared with the contribution, may rather prove an exchange than an imposition.

To the colour of king John's donation, who was as likely to have parted with his soul as with his crown, and upon the same conditions, if necessity had pressed him; I could give satisfaction by that sound note of a monk of Saint Albans, according tunably with that former concerning Phocas out of the civil laws, that, 'Regis non est dare regnum, quod est republica, sine assensu Baronum qui tenentur regnum defendere:' and therefore he cannot give away the ports and cities, which are branches and members of the main. But I will take it up a straighter link, and avow by Matthew Paris, that so far was the parliament, which he termeth 'Regni universitatem,' from assenting 'detestanda obligationi' to this detestable and hateful band, as it is fitly called by the monk of Westminster, that the metropolitane himself, 'pro universitate contradixit,' contradicted and

withstood it in the behalf of the whole parliament.

The judgment of Philip the French king upon the publication of this charter is much commended by a writer of that age, for the defence of this Paradox, which he thought would prove 'perniciosum regibus et regnis exemplum,' a dangerous example, and fearful precedent both to kings and kingdoms. He would have men resort to Peter's successors about matters that concern the soul, and not 'de regnis, guerris, vel militia,' which do not belong to him. Last of all, the saying which was luckily inserted in this charter or donation, namely, 'Salvis nobis et herædibus nostris justitiis, libertatibus et regalibus nostris,' makes it absolutely void and of no effect: the main prerogative being safely preserved, by God's providence, which the king would otherwise have let slip, by a circumvented and over-awed facility. It is reported by the monk of Westminster, a witness, according to the state of those times, of best regard, that the pope residing and abiding at Lyons, this detestable grant was burnt. The author of Eulogium addeth further, that it was released 'cum omni fidelitate et homagio,' by the pope's direction to the English parliament. And sir Thomas More, that lost his life in defence of the pope's primacy, deserves best of any to be credited in my conceit, avowing first a weakness in the king seeking to subject his crown to superior commands; and next, in the grant a nullity. Besides, not only sir Thomas More affirms, that the pope's imposition, with the king's concession, was never paid; but it is further fortified by addition out of the roll of parliament, in the fiftieth year of Edward 3rd, that when the king was threatened with a citation from Rome for detaining dues upon this grant, with large arrearage, the whole body spiritual and temporal of the kingdom there assembled, after grave deliberation and long advisement, 'resisterent et contradicerent, avec toute leur puissance;' and upon these grounds, that the charter was against the king's oath at his coronation, and without the voice of his parliament.

Since therefore Phocas, Ina, John, nor Constantine, add any further weight to the pretence of a deposing interest, than was in charge before; discretion and observation will judge whether the state of the Roman bishops were not had in greater reverence while they sought to win by piety, than to strain in passion, to bow than to break, and to temper than to exasperate. Religion and humility then were the corner-stones of that stately front which the world so much at the first admired in the church of Rome, tho' afterward by the change of bishops in that see, and of humours in those bishops, so great alteration was found, as Minerva coming afterward to Athens, could hardly take notice of her own ship, nor Constantine at Rome of his own nurse: nor, as St. Hierome notes of painted women, that cast up their eyes to heaven, if we consider how many false colours have been set upon the pillars of

church government, hardly Christ of his own creature in the time of pope Alexander the 6th, if he had been put in mind to call on him. In the beginning it agreed with Daniel's image in the head of gold for godly government, in the breast of silver for unspotted conscience, and in the legs of brass for incessant industry. But afterward in succeeding ages, the heads of many popes grew humourous, their breasts avaricious, and their legs idle.

That holy Nicene Council, whereof I never speak without reverence and due regard, in that great division which was made of the patriarchal jurisdictions according to the state of the church in those days, for establishment of discipline and preservation of unity, speaks not one word of any temporal command, much less of any right in suspending or deposing kings, or absolving subjects from their oaths of obedience and loyalty, to be left in the nature of an Hierome to the Roman bishops by primitive acknowledgment. But as Sallust, very gravely and like a faithful patriot, complains touching the state politick of Rome in his own time, that 'postquam divitiæ honori esse cœpere et eas gloria, imperium, potentia sequerentur;' Faction and pride began to creep up to the seats of senators, and the publick justice of the state to shake: So likewise in the church we find, that upon like corruption like disorders grew, and many weaknesses began daily more and more to disclose themselves in those bright sun-shine days which the saints enjoyed by the bounty of a better prince, as cockle starts up when corn grows ripe, which before was either shadowed with discouragement, or suppressed by discipline. I speak not this, because some such kinds of heats and quick distempers have not sometimes happened, and may not by occasions fall out again between God's own elect, as Peter and Paul, Paul and Barnabas, and the godly bishops in this very council, which I press, tho' with that measure which becomes the ministers of God and his apostles successors, because it pleaseth him sometimes out of our error to raise his own honour, and to make virtue perfect and compleat by infirmity: but to make it plain, that plenty is the daughter of prosperity, ambition of plenty, and corruption of ambition. For after that bishops were admitted to appeal from civil courts by the emperor himself, and their sentences by imperial authority were made equal to his own; they began to raise their crest, and within a while, as it is testified by one of the most antient approved writers of the church, 'Episcopatus Romanus non aliter quam Alexandrinus quasi extra sacerdotii lines egressus, ad secularem principatum jam antè delapsus est.' The see of Rome, in the same manner as that of Alexandria, as it were exceeding the limits and bounds of priesthood, had slid into secular principality; tho' the bishops of neither of those sees, as we may assure ourselves, were ignorant of Paul's prohibition to all degrees of pastors, that they should not intermeddle with secular affairs; so far as concerns an over-dropping of the regal plants,

because a bishop should no more live out of the element of the church, nor a monk out of a desert, than a fish out of water. For Christ fled into the mountains when the people would have made him king: and bishops ought with Joseph rather to leave their cloaks behind them, than to consent to the charms and vain enticements of the world, which like the wanton wife of Potiphar stretcheth forth her arms, and, with the Syrenes, straineth her voice to draw them within the compass of temptation, and then taketh hold to drown them in sensuality.

Now, whereas it is said by Socrates, 'Jam ante delapsus est,' that the see of Rome did slip before that time, whereof he speaks, into secular principality, I am induced by the report of Ammianus Marcellinus, a grave writer, though no christian, to take my level somewhat higher for the finding of my mark: for he living in that time about the court, and observing as it were from the main top of the temporal estate, what course was kept among all sorts and qualities of persons in divers elements, makes mention of a bloody slaughter in a church of Rome, where the christians were wont to meet for the celebration of their mysteries, about the violent competition and contention between Damasus and Ursicinus for the papacy; and taketh notice of 137 carcasses drawn out of that church where they met about election: and further writeth, that Vivianus, then lieutenant to the emperor, was glad to make retreat into the suburbs, till the rage were tempered, or the strife ended. After this, as a man partial to neither part, and therefore in all likelihood the more indifferent and just in deeming rightly of the true state of the cause, he gathers the chiefest motive of contention and emulation about the means of compassing this height, to proceed from the great ease, wealth, and honour, that prevailed and were surely settled and established in that dignity. His reasons are, for that 'Matronarum oblationibus ditabantur,' they were enriched with the offerings of matrons or great ladies: they rode in coaches publicly: they were choicely suited in their apparel; their diet dainty, and sometimes above the rate and use of princes in the times of their banqueting. That Damasus a competitor was one of these, Ammianus doth not affirm; much less do I believe, finding with what respect and reverence St. Hierom that had been himself a priest of Rome doth speak of him: yet the manner of his climbing and aspiring to the seat was scandalous, not only unto such as were religiously devout, but even to Ammianus Marcellinus that was but morally precise: as doth appear by that grave judgment which he gives of the blessed state, which as he thinks the bishops of Rome might enjoy, in case they lived in that sober manner, with that bare diet, mean apparel, and humble looks cast to the ground, which other bishops in the country did, neither tasting nor esteeming those choice pleasures and delights which the delicacy and great abundance of that place afforded them.

This passion of a writer whom we account prophane, in respect he was unregenerate to Christ, nor nursed by the breast of his spouse the church, puts me in mind of a zealous passion in Hector Boetius, a great Roman Catholic, upon this very subject in the Scottish history, 'Hujusmodi antistites quàm sunt illorum dissimiles quia diversa ingrediuntur via cum locum illorum occupent, &c.' He wonders at the difference between those bishops, and others at this day, which succeeding in their places, take another course: they glistered not in gold, they were not resiant in princes courts, they were not attended by guards, nor skilful in the art of dissembling, more gainful by many degrees than that of poetry, which the universities use to crown with laurel. This moved Boniface, I mean the martyr, not the challenger, to prefer the devotion of the golden bishops, that in the church's poverty administered with greater fervency in wooden chalices, before the vanity of many blockish bishops that in a richer state with more solemnity and less zeal, administer in chalices of gold; because, as Hierom notes, external riches add not to the worth of him, 'qui corpus Domini in canistro vimineo, sanguinem in vitro portat;' that carries the body of our Lord in a wicker basket, and his blood in a glass. I would not be conceived by this speech, to favour their ridiculous conceits, that labour to draw the substance or the value of those vessels in which sacraments are administrated, to the first simplicity: for, the reason of David's judging it indecent for him to lodge in 'domo cedrina cum arca Dei' 'esset sub pellitis,' draws me to a greater estimation of vessels appertaining to so high a mystery. For sure I am, that the value of the content, doth infinitely surmount the content; and 'in adiaphoris,' that is, things indifferent, we are left to the rule of decency.

My only purpose is but to observe and tax the declination of piety, together almost at one instant with multiplication of metals and minerals, the labour which is made for charges and employments for commodity alone without conscience; and to limit those excessive grants 'in manu viva,' which our antecessors did 'in manu mortua,' and the ranging of internal piety to external pomp, though of both it were better, that we wanted means that are superfluous, than the moderation that is necessary. For Chrysostom notes two great absurdities in cranning churches till satiety constrain them to regeorge; the one, that laymen are deprived of occasion to shew charity; the other, that the pastors themselves often neglect their duties, to become collectors. This is no ground for gleaming from the church, which at this day doth rather need 'largitore hilari, quàm interpretate maledico:' but to prove that arguments against excess and height, are the surest tenures, and the strongest pillars of stability: for 'in se magna ruunt, summisque negatima est stare diu.' In defence of Ammianus Marcellinus from exception either of partiality or ignorance in that which he speaketh of the

matrons, I vouch a manifest decree set forth, not by the leeches and blood-suckers of the Church, but by Valentinian and Gratian, religious and worthy princes, against any gain to be made by the priests of the church by ladies offerings; and this decree was published by Damasus himself, according to direction of state: which proves that Ammianus in the judgment which he gave touching the motives of dissention, and opposition, spake not idly.

To make the case more plain, whosoever raiseth any further doubt, may learn of St. Hierom, that some such excess (or at least oversight) was censured about that time: where he seems not to be so much grieved and perplexed with the publishing of such a law lighting upon just desert, as with the motive of that law, which was greediness. Therefore our English bishops in the time of Edward 3, assented (though unwillingly) to the limiting of church revenues, when the state's necessity put in a caveat. And the pope himself pretended neither quarrel nor unkindness to St. Lewis of France, for inhibiting the grant of any more lands or revenues, than had been converted in former times to churches without his privy.

The ground of this respective caution and moderation, I take to be derived from the course which Moses held, being a person as well publicly wise, as spiritually devout, in commanding all the peoples offerings of benevolence and piety to cease, after he had drawn in that proportion which was sufficient for the furniture of the tabernacle, where God was to be served and honoured. For the least excess in things (which with moderation are laudable) doth easily degenerate into vice, and all turns to humour that transcends the due proportion of nourishment. We may soon be taught in Genesis, that they which could be satisfied with no moderate degrees of altitude, in seeking to build castles in the air, before their spires and battlements might touch the clouds, were confounded in their own idleness.

You have heard how the churches of Rome and Alexandria were engulfed in the depths of secular principality to the wound of monarchy, although 'spiritualis potestas non ideo præsidet, ut terrenæ in suo jure prejudicium faciat,' saith a learned schoolman. But how hardly in the mean time the civil state did brook these slips, let us learn (if we deal indifferently) of Orestes, who was then lieutenant for the emperor, and complaineth bitterly of some bishops, 'Quod per eos non nihil de auctoritate eorum detractum esset, qui ad magistratus gerendos designati essent,' that they drew much from the authority of those persons which were appointed to bear office. This gallant gentleman began very early to discover (and by the break of day) by what degrees the mystery of ambition began to mine into the strength of monarchy: he feared (and not without great likelihood) lest princes seeking to resume their rights, might in time be dealt withal, as the badger was by the hedgehog: for being wounded with the prickles of

his offensive guest, whom at the first he welcomed and entertained in his cabin as an inward friend, he mannerly desired him to depart in kindness as he came, but yet could receive no other satisfaction to his just expostulation, than, That he for his own part found himself to be very well at ease, and they that were not, had reason to seek out another seat that might like them better. He foresaw by this forerunning light, That misletoe and ivy sucking by their strait embraces, the very sap that only giveth vegetation from the roots of the oak and hawthorn, must bloom and flourish of necessity, when the trees should wither.

I know that civil jurisdiction in that good measure which is compatible with a pastor's charge, is so far from that inconvenience of hindering the growth of piety, as some conceive, as it rather ripens the fruits which in a further distance from the sun, are either nipped by the frost, or blasted by some bitter wind: so according to that of Nahum, 'Residuum locustæ brucus devoret.' I tax those only that presume by forged evidence to contend and strive with mighty princes for their seats, or attempt to set them besides their thrones, which the blessed Virgin makes a portion of God's own prerogative. Otherwise I say with Paul of all the faithful, 'Si in illis modus judicabitur, indigni sunt qui de minimis judicent?' If the world shall be judged by them, are they unworthy to decide matters of least account? And again, 'Si Angelos judicent, quanto magis secularia?' and therefore Epiphanius the bishop of Cyprus is highly commended in the stories of the church, for the discreet temper and decent order he held in managing affairs both ecclesiastical and temporal. The council of Carthage understood very perfectly the way to moderate between both extremes, and in fanning away the smoke of pride, to preserve the gloss of unsoiled modesty. But the patriarch of Constantinople finding by careful observation of times and accidents, what strange effects the church of Rome had wrought in raising patriarchal jurisdiction as high as the jealousy of government and incompatibility of imperial prerogative would endure, adventured upon the wings of pride, to mount so far above the pitch of his other partners, as if St. Gregory himself had not abated this presumption, more by the strength of arguments than the edge of power, it is not unlike but he would have made himself in the end by faction of adherents 'similem altissimo.'

Thus easy it is for many grains of sand by Neptune's blessing to make a shelf; for many Peter-pence by Ina's bounty to make a bank; and by gathering a great heap of sticks together by Minerva's providence, to make a nest high and wide enough for long winged hawks to breed in the proportion of their own earnestly affected, and long laboured sublimity. Such were the drifts and devices for the space of many years of certain Roman bishops, often straining, but never reaching to their end, which was, to make a rise so high, as might carry them

over the heads of emperors, till more than 300 years after the succession of Constantine and his successors into the east; their lieutenants wanting now that Gorgon's head of universal regiment and united strength, whereof they had disposed formerly; till that unlucky division of one eagle's neck into two, which made the fairest bird a monster, as according to that one noted maxim of our Saviour, 'Omne regnum in se divisum desolabitur,' gave way, though much against their wills, to that improvement of the jurisdiction of Peter's keys, which hath not since that time been less feared, than at the first it was favoured. The first motive of the translating of the western empire into the east, as Socrates reports, was chiefly to this end, 'ut vulnera quae erant à tyrannis inflictæ, illis jam sublatis tollerentur,' for the cure of those wounds which were given by tyrants, now that they were rid out of the way. Men liked of this, and commended the discourse that urged it, till experience, together with their own disasters, made them find, that, of both extremes, it is better to admit an outward distemper, than an inward combustion. The ebb hath not been greater by the waning of the empire, than the flood hath been 'ex consequente' by the waxing of the church; which finding that the beams are brightest, and her glory greatest while the sun is under our horizon, from whence she borrows and derives her light, hath sought ever since with her best diligence to quit herself to those rays imperial which by vicinity may weaken, or by conjunction may darken her. It is true that Constantine upon the change did at the first exempt bishops only, but not priests, from convention in civil courts; the first step to that greatness, which was 'in objecto,' to the papacy. Gratian in the year 380, and Honorius in the year 406, confirmed it, Theodosius and Valentinian were pleased for increase of favour, that priests also in lieu of civil judges, might take their trial before bishops, if the parties interested in the cause could be satisfied. Justinian more reservedly than his antecessors, expounds the meaning of the grant of matters only appertaining to the church, not otherwise, and for his labour receiveth a wipe at the hands of Bellarmine. Heraclius exempteth bishops and priests absolutely from all courts, excepting only that of delegates from the emperor. But Guicciardine, no Lutheran or Zuinglian, as many term persons of a diverse judgment in our days, but a Roman Catholic; no German or Helvetian, but an Italian; no simplest, but a man as deeply learned, as discreetly judicious, observeth, That though some dark cloud had overcast a portion of the beams imperial in the highest sphere, yet till this time of the translation of the seat to Constantinople, and a good space after, many tokens both of humble reverence, and respective regard to the civil state, were evident. For the popes without admittance either of the emperors themselves, or of their lieutenants called Exarchs, ascend not to the throne. The popes in all their grants and public dispatches, set down the date by these

words, 'regnante domino nostro,' such or such an emperor. Though by variation of times, which breeds a change in all bodies, states or governments beneath the moon, this good manner began to be first abated, and in time determined. After this unlucky separation of the Greek head from the Latin body, first, it fell into a kind of giddiness; after, into imbecility, the cause of dangerous convulsions in those estates; and like top branches that are not duly fed and nourished with the lively sap of their own native root, they fell afterward to warp and wither both in beauty and glory. The princes grew daily more and more into contempt, either out of want of desire, or ability, or both, to defend 'caput imperii' from incursions of infidels, oppressions of usurpers, and attempts of conspirators. Then fell the grands of Italy to renounce all duty, contributions, or reliefs to the far distant parallel; from which as from a gulf they found no relax. They drew back obedience from lieutenant-governors, who gasping, almost at the very last point, for breath, could light upon no true cordial to comfort them; posts could not ply so fast between Rome and Constantinople, as occasion of state did urge; and beside, which is the most desperate effect of a declining fortune, messengers were employed oftentimes with intercession, but returned ever without remedy; disputations were lame, expectations idle, affections mutinous. And though I find by the best writers, that during this time of staggering, so long as any spark of hope could live, either of secure defence, or timely and sufficient supplies, the bishops endeavoured their best to preserve the life of loyalty in the breast of fear; yet at the last the civil state declining, the church fainting, and all hope languishing, when both peers and bishops wasted like images of wax 'à petit feu,' felt the fury as well of the domestical as the foreign sword, and waxed weary of the fruitless comforts that were sent out of the east; they resolved jointly to call in their next neighbours the French for protection, who were able to defend them with a stronger arm, a quicker dispatch, and a better purse, than this sunk estate surrounded with an ocean of incurable extremities. That there wanted in the pope both then and ever since, affection, invention, or expedition, to raise Rome once again, though in another element, 'ex Albæ ruinis,' to draw their generation of greatness out of the corruption of power, and to make their best advantage of their errors that were wont to give them a commanding check, they may believe that find no grounds of judgment, of experience and truth to conceive otherwise. For being put into possession, by this long desired and lately planted emperor, of a satisfaction, both for profit and for power, proportionable to the pains which they had taken, 'Cum sudore vultus et tremore cordis,' about the new establishment, they found other means to multiply their strength and credit every day, by taking sure hold of opportunity, which being lost with idleness, re-

turns no more to expectation. They began then to establish their estates in that height of security, from the frowns of predominant commands, which many of their predecessors had eagerly apprehended, 'Tanquam spado mulierem amplexans, et suspirans,' as the prophet speaks significantly in another point, but yet failed of the final scope and reward of their industry.

The strongest adamant that drew reverence and love to the church of Rome, in the first spring of religion, was the constancy of so many godly bishops, as with the streams of their blood watered the plants of their profession, desiring rather to die with honour, than to deny with infamy. Besides, it is certain, that during the short time of their sitting in that seat, their chiefest end was to bind subjects to superiors with so great obedience, and superiors to subjects with so great conscience, as those men were esteemed both most godly and most happy, that were either inspired with their pity, or grounded upon their principles. St. Peter's galley might very well hold on a constant and happy course for a-while after the main stroke of oars did cease, that was set out at the first with the force and industry of so many worthy mariners, as made for no other port than heaven: which observation cannot be thought strange, by men that understand how hard, or almost impossible it is for one prince that is humorous, succeeding many that were godly and judicious, to work upon the sudden any dangerous effect, by countermotion or opposition to the spheres of the former government.

For to the raising of this height upon the foundation of religion and integrity, some brought stone, some timber, some lime, some sand, and some gave their own labour and direction gratis; every one affording supplies and helps according to the measure of their strength, or the proportion of his ability. But after that the bishops began to find the strength of their own estates by removes of emperors, and that instead of little ease, they got elbow-room; it was a means to make them stretch their arms, and extend their forces into elements, which like 'terra incognita,' were before unknown to them.

Some of the most artificially and refinedly ambitious, finding by the Itoman histories, as it is probable, that Cæsar was never absolute in power, 'Priusquam potestatem pontificiam cum Cæsarea potentia conjunxisset,' hold it as sound a course for them, seeking the like in another climate, 'Cæsaream cum pontificia conjungere': making no doubt but as 'in abstracto' they had been regarded with reverence; so 'in concreto' they might be feared with observation. The necessity which enforced all Italians after the departure of Charlemaigne, to rely upon the pope's aid for common defence: the bond of conscience, which moved the greater part of the world in those days to resort to Rome, either for satisfaction to souls, or for preservation of unity: the con-

fidence of emperors and kings in compromising causes of unkindness or dissensions to such a bishop, as professing like a father equal affection and tenderness, was not suspected of halting on either side: the strife and emulation of mighty potentates to assure themselves of the love and friendship of that party, whom the greater number regarded as a judge, and few or none for many years suspected as an opposite: the fear and peril into which some emperors were drawn of hazarding their own fortunes, by disputing his prerogative: the contribution of, all states, qualities and degrees of Christians, according to the custom and manner of those times, to the maintenance of St. Peter's successor: the secret interest which the pope had in many kingdoms, by the merit of his predecessors, that did first send learned pastors and doctors to preach unto them redemption by Christ crucified: the exercise of St. Peter's keys, by binding and loosing sins in a kind of excellency, and supereminency above other bishops in all parts of Christendom: the conceit which was holden of a bishop's conscience, whom the canons will not suffer to be 'Solicitus de iis quæ sunt mundi,' in comparison of any secular authority, whose only object is the seal of longitude and latitude: the danger of offending one, whom the greatest part endeavoured with studious affections to please: the subtle union of St. Peter's keys with St. Paul's sword, to this end, that while the one did open locks, the others, like that of Nehemias, might cut off impediments: the great revenue and demain, which was annexed to St. Peter's chair, first by the charter of Charlemaigne, and then by the great countess Maude's legacy: the pope's art in contriving the manner of the choice of emperors by the co-esters of Germany, rather than by occasion of making their returns to Rome, their teeth might be set on edge with a fresh appetite, to taste of the forbidden fruit which grows 'in horti medio,' and thereby compassing the tree of the knowledge of good and evil, covered with the leaves of limitation for so many years, to make their estates once again absolute: the pope's caution in reserving to himself as it were 'in deposito,' a special interest, only for pretence, of crowning and confirming emperors at Rome, even after they had been elected and crowned in Germany, though when they sought it, they seldom compassed it: the pope's eye to the retaining of those rights and royalties in the princes electors hands, which were mortgaged by precedent emperors, lest the bruised feathers of the eagle, impeded once with these hard quills, might again be able to carry her up to the spire of the capitol: the long lasting, and strongly working faction in Italy of the Guelphes and Gibellines, imperial and pontifical: the fast league between the pope and the French kings, ever labouring to maintain the strength of the holy arms, against all violent and sturdy storms, as a plant of his own policy: the rule which hath been ever providently observed and kept by the popes, in eschewing

quarrel or contention with any powerful prince in Europe, before he make himself sure of a party opposite in the same degree, and likely so far as the wit or aim of any mortal creature is able to extend to make the match too hard for him: the sure hold which the pope hath of the hearts and services of all the clergies, in as many kingdoms as are Romanly catholique, by exercising the interest either of investing or confirming metropolitans, that have the highest charge in the church, and draw the consciences and devotions of lay souls after them, by direct dependency: the pope's custom of sorting cardinals and officers for the church out of such powerful and worthy families, as may make both them and all their allies and friends to be in their devotion and gratitude more fast to them: the reservation of certain cases, wherein the pope only will give himself commission of oyer and terminer, thereby pressing the greatest bell-weather of the flock, without an express relaxation, 'ab ipso ore apostolico,' to appear personally: the device of sending princes to the Holy-Land, so soon as ever they began either to pick quarrels with the church of Rome, or might be made by their absence of better use to it: the local interdictions of priests by warrant from the pope, to celebrate for the satisfaction of souls, which, so far as I have read, was first set on broach among our English bishops by Alexander the third, about the year 1170, but not very luckily to those that by observing them with a stricter kind of obedience and awe, than the laws of the realm would admit, were in great peril of their own possessions, with loss of liberties.

Last of all, the garrisons and forts which have been erected and maintained in defence of St. Peter's patrimony, were high steps to carry and convey the pope to that height of crushing princes in their own element, which many quarrel, some tolerate; but in very truth, if the case once come to be their own, none favour. So long, saith a grave and learned writer, and a Roman Catholick, as the popes attended those charges only that concerned the soul, their chiefest care, desire, and study was to be protected under the wings of the secular estate: but the state of the emperors declining faster than they rose, the popes began to neglect both their arms and amity; then fell they to defend by writing and discourse, that it belonged rather to the church to give laws to the empire, than to receive from the emperor; pressing forward still without looking back, for fear, perhaps of being transformed with the wife of Lot, 'in statuam salis,' and abhorring nothing more than the very sound of a remitter to the creeping state of their first simplicity, the wrested censures of the church, either to the passions of humour, or proportion of state: they studied more industriously the ways of making wars and heaping treasure, than of steering Peter's ship, or instructing souls; they sought more slyly than sincerely to make their consistory strong by the support of tyrants and usurpers, which having cast off Cæsar's yoke

with contempt of disarmed ostentation, found no means so proper as the countenance of the church of Rome, for their establishment both in dignity of security. For proof whereof, I wish it may be tried by inquisition, whether Robert Guiscard having filched Puglia from the sacred empire, that is a fair feather from a feeble bird, sought not after that to hold it of the pope in fee; and whether Roger king of Sicily in the year 1130, possessed not himself of that kingdom by such a trick of legerdemain, (for all was fish that came to Peter's net about that time) and many his successors in that corruption both of conscience and conversation, became now rather 'Piscatores imperiorum quam hominum;' tho' the ceasure of St. Paul extended only 'ad interitum carnis,' but not 'peritatis vel diadematis.'

After this some of them mounted to that point of challenge, as they were not ashamed to take upon them the prerogative of deposing emperors. For Boniface the 8th after he had presented himself, as the German catholiques report, to the eye of the world in his habit merely secular, that is with a crown on his head, a sword girt by his side, and with profession that he was as well a Cæsar as a pope, at the next leap gave a greater strain, claiming precedence of Philip the French king, 'Tam in spiritualibus quam in temporalibus,' tho' some of the most learned among the schoolmen oppose absolutely to this paradox: and might as fitly wonder at this armed pope, as the prior of Duresme did of his earled bishop, 'O quam manifeste jam exorbitat noster Episcopus transformatus a vestigiis sancti Cuthberti!' Urban withdrew not only the persons, but *bona* the goods of the clergy from the trials of civil courts. In case of treason the popes would oftentimes have exempted bishops from the bar, tho' princes absolute would never yield to this demand as a right by acknowledgment: howsoever at the pope's request some of them have been pleased to remit wrongs out of indulgency. Let Platina give evidence concerning strange devises vented, and plots undertaken, to bring all the princes of the world to hold their crowns 'ad placitum,' and in effect at the will of Peter's successor: Some being called in question for personal transgressions, some for idle words, some for taking part with princes whom popes hated, some for refusing to participate in actions which the pope favoured; some that the pope might prefer his own friends to their seats, some for standing stilly against humours out of suspicion, some to make the pope himself more strong, some to make his enemies more weak. And sure I am by confession of those that in religion were ever consonant to the Roman canons, that after once the rule of Gregory was riveted into the conscience of Christians, which in those days were more fearful to offend, that studious to learn, 'Sententiam judicis quamvis injustam timendam esse,' that the sentence of a judge is to be feared, tho' unjust: howsoever all the laws of Europe in this case by the grounds of nature grant ap-

peals, what quarrel soever it pleased the pope out of displeasure, just or unjust, to pretend, himself being ever, for the most part, both judge and party, that must be satisfied to the full, though it cost an emperor his crown.

And because 'Homo spiritualis judicatur à nemine,' some of the canonists proceeded so far in flattery after these encouragements, as to exempt the pope's censure from examination, though they carry with them heaps of souls to hell: which though the wiser and the better sort reject, as a doctrine fitter for the school of Mahomet than a scholar of the church; yet it will be ever reckoned and reputed probably as well 'error prædicationis,' as 'conversationis,' so long as it shall pass the print without reproof; and to use the phrase of St. Hierom upon like occasions, 'priusquam Asterisco juguletur.' Emmanuel the Greek emperor craving earnestly of Alexander 3rd that both empires of the East and West might be reunited for a greater strength and a more assured support against the enemies of the faith, his answer was, 'Se nolle id unire quod majores sui de industria disjunctissent;' that he would not unite that which his predecessors had of set purpose severed; though in very truth it may be proved a worse part in those that laid their heads, and set their hands together, being as they were, but men 'ad illud separandum quod Deus conjunxit,' to make a separation in that which God had conjoined and fastened. Though Alexander the pope had modestly forbore to answer the request of Emmanuel in so plain language as might move the world to say to him as the maid did to St. Peter, in the palace of the high-priest, 'Verè tu ex illis, nam et loquela tua te manifestum facit:' yet by the course which this pope's predecessors took in planting 'Sedem Imperii,' the seat of the empire, rather among the Germans, where by larger distance he might less offend, than 'in Romana Metropoli,' than in Rome itself, where he might eclipse the glory of the pope, we might easily have apprehended both what was the object, and where would be the end of that policy. Hereunto I add an indenture made by another of that rank, with Cha. duke of Anjou before his establishment in the kingdom of Sicily, that neither he during his own time, nor any of his heirs and successors after him, should accept of any offer which the German princes might be drawn to make to him of the empire; much less that he or they should hunt after it: his fear was, after an experiment, by the long bustling between the pope and Frederick, who was by right both emperor and king of Sicily, that the vicinity and neighbourhood of so great a state as that kingdom to Rome, in case it fell into the hand of an evil neighbour, with the least colour or advantage of a title, might stir up easily in the disposition of a prince that were courageous, an earnest desire of a discontinued estate: because howsoever questions be overruled among private persons upon the ground of prescription in point of law, yet where the sword must flourish for the master's prize, 'Præ-

VOL. II.

'scriptio nulla, quantumvis diuturni temporis, occurrit Cæsari.' I need not at this present to name that provident and discreet cardinal, who in one of the late conclaves, put in a timely caution to the rest of his fellows at the choice of a pope, to beware of too servile a regard of the partialities and passions of potent princes, that 'sede vacante' recommended their chiefest favourites to St. Peter's chair, to no other end than that they might again, by quintessence of craft, reduce the modern majesty of the church of Rome to that bare 'jus patronatus,' wherein it stood during the reigns of domineering emperors; and while they were able to free themselves of that servile yoke, which by the loss of many lives, by the waste of great treasure, and the highest improvement of their predecessors art, that set their own lives light in respect of the churches liberty, was cast off. These are the steps by which, so far as I can gather, either by observing the current of time, the reports of histories, or the deep impressions of experience, the popes have ascended sometime warily sometime confidently, but almost ever, after the translation of the empire into the east, powerfully to this height of prerogative, which have made them sufficiently strong, as it is said of David in the Scripture, 'Cum leonibus tanquam cum agnis ludere,' and to tread upon the asp and the basilisk. What Soto, Sylvester, Simancha, Navarre, or Bellarmine, either think or publish in their chymical distinctions of 'directè' and 'indirectè,' 'propriè' and 'impropriè,' 'simpliciter' and 'secundùm quid,' 'absolutè' and 'tantummodo in ordine ad spiritualia,' it much matters not; because in this point they do merely transgress 'mandata Dei propter traditionem suam,' leaping like sheep that are frightened with their own shadow, over hedges one in the neck of another, without forethinking of the ditch on the other side, vouching no one title rightly to this purpose out of the word of God, regarding nothing that is ancient, nor adding any reason of importance that is new; filling the schools with clamours, the church with errors, and all Christian estates with tragedies. Yet in disproof of their distinctions, which are only circles and sharp angles of scholastical conceits; beside the grounds of sober judgment formerly set down, I will produce a learned jury of those bishops whom these school-men repute firmly and completely catholic, whom they emblason by descent of pedigree the only true and lawful heirs of Christ, and whom their reverence as his apostles successors, that did absolutely refuse in the most servile times to subscribe the pope's private and peremptory censures against their own sovereigns. They did observe their oaths of loyalty out of the bond of conscience, without regard of canonical absolution; and never shrunk upon threats or terrors that thundered at Rome, from the positive laws and duties of their own countries. They were not ignorant that the high-priest in the law was 'circundatus infirmitate,' and bound by the law to offer sacrifice as well for his own private sins as for

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the sins of the multitude. They had read that St. Peter the first founder of the church of Rome was called Sathan, for giving counsel that was not sound to our Saviour, after the bestowing of those titles of prerogative which many urge. They find him pinched not behind his back, but reproved to his face by St. Paul, for that he did not hold a strait course for the propagation of the faith. They learned of an apostle, so far only to follow others, as they were found to follow Christ. They heard that many popes had revoked their first censures upon better information: that Alexander 3 gave free liberty to the archbishop of Ravenna of abstinence from satisfaction to his own directions, so as withal he gave the reason which moved him to abstain; and that Adrian himself enforced not of sentence 'manente dubio,' so long as the point was in question, or traversed. They were greatly moved with the precedents of those religious and faithful auditors at Thessalonica, that examined the passages of holy writ alledged by St. Paul, for the better trial of the doctrine 'an ita se habent,' whether they were vouched in a right and proper sense or no. Last of all, because they found the privilege of not erring in the pope to be limited by the school-men themselves to matter of faith, not of policy, and to be rather cathedral than personal; it was a course familiar and usual among many grave bishops of that age, to examine papal censures as well by the standard of God's word, as by the weights of the consistory; and so far only to give way to insurgent jurisdiction, as it might not at the issue of their lives unhappily fall out to them 'in singulum cordis,' that they had run counter. If they have either cause or colour to challenge any one or more of this jury that is impanelled, 'ex hominibus legalibus,' for trial of this point in question, as prejudicial either to the cause, or to the church, I will undertake to set him 'rectum' upright, 'in ipsa curia Romana,' by the warrant of their own records, though that be greater pain than I need against any of the school-men, that mould daily new distinctions out of the quiddessence of their own conceited and self-pleasing wits, without the right stamp of antiquity.

I have touched by discourse precedent, how far Philip the French king, surnamed for his personage, Le Beau, was secured by the whole clergy of his realm, so far as concerned the bond of their allegiance and loyalty, 'non obstantè' the rash proceedings and peremptory censures of pope Boniface. To this I add the answer which was made by Hincmar, archbishop of Rheims, to pope Adrian, forbidding him under pain of censure to yield either reverence or service to the king, as to his lawful sovereign, that persons of all qualities, as well ecclesiastical as secular within the realm of France, assembled upon the publication of the pope's censure, had set down this conclusion with a kind of astonishment, 'nunquam ulli prædecessorum suorum,' that no such injunction was ever sent to any of their predecessors before that time. A strong evidence in my conceit, as well of novelty as of injury.

By another grave report touching the kingdom of Sicily, I find in an epistle of the archbishop's of Panormum, how strange the bishops of that state held an oath of obedience to the see of Rome, tendered by the pope's nuncio to one of them at the receiving of the pall, and with this strong exception, 'Non inveniri de hujusmodi juramento statuta in conciliis,' that in the councils no canon could be found, whereby to press the taking of such an oath by an archbishop. Yet can I not deny, that Sicily did more depend upon the directions of the pope, by the condition of some former contract between that kingdom and the church of Rome, than many other provinces.

When Gregory 4 had a purpose in his head peremptorily to proceed against Lewis le Debonaire, the French bishops in flat terms answered, 'Se nolle,' &c. that they would not submit their judgments to that offer; but the ground thereof being both weak and unjust, he should well know, that 'Si excommunicatus veniret excommunicatus discederet.' If he came with a purpose to excommunicate, he should depart excommunicated. Add unto this out of a French record, an instance of one John Tanquerell, condemned by the divines of Paris, for labouring to defend that the pope in some cases might depose the king. So strange was the doctrine of deposing princes, and transposing crowns, esteemed ever in those very times which are thought to carry the strongest tincture of affection, which many call servitude. But if heresy and infidelity were the proper causes, as they are made the ordinary motives of these brave attempting and undertaking censures against crowned potentates, there might be some better colour of excuse, though no better ground of justification, because neither we have any such custom, nor the church of God: but we know that prerogative is the Magna Charta which they study that pursue this point; and let the prince, against whom the pope intends or pretends a quarrel, be as Catholic in all points of profession as the pope himself, yet he cannot save his stake in seeking to save his soul; for the challenge being once on foot, until the supposition be acknowledged, the censure qualified, or the pope satisfied, there shall be no other ground nor object of the process than heresy. This moved many bishops, notwithstanding their obedience to the high-priest, yet to examine the condition, and whether the direction were 'ab initio secundum legem Dei,' as Moses limited. The best learned among the school-men make not obedience either an abstract in the clouds, or an 'individuum vagum,' or, as some do the prerogative of princes, a 'nemo scit,' but they conceive it as a duty ranged by prescription 'ad leges Evangelicas.'

Upon this ground of reason, equity and conscience, Gerbartus archbishop of Rheims was drawn to an absolute renunciation of any grant that can be made to any mortal man in particular, of so large capacity, 'ut quicquid libet liceat;' lest that person being forestalled, cor-

rupted, or seduced by fear, gain, or ignorance, might put all courses out of frame: with this further advice, that in limitation of power, the holy gospels, the prophets and apostles, and the canons of the church indited by God's spirit, and observed in all ages by those pastors whom the Holy Ghost appointed to direct and govern the Church of God, might be 'Lex communis Ecclesie Catholicæ.' This rule gives a round supersedeas to Mr. Garnet, and his schoolmasters: and further we find Ino, the learned bishop of Chartres, so far a friend (how hardly soever the French king dealt with him in respect of his absence from that convention, wherein the pope's proceedings against the king were sharply censured by all the states) as to deny the subjection or subordination of a king to any superior in his temporal estate. And though the king should refuse out of contumacy to give ear to the counsel of the godly bishops, (which was the case as he conceived at that time, being infinitely addicted to the pope) 'Divino tamen judicio relinquent dum esse,' yet he must be left only to the divine chastisement. And as Bracton saith, 'Sufficit ei ad pœnam quod Deum expectat ultorem.' How confidently and how often the synods, parliaments, and schools of France have run upon the pikes of papal censures, in defence of the king's estate paramounte, sometime by their decrees provincial, sometime by their sanctions pragmatial, and sometime by prohibitions, which cut the sinews of all superlative commands with so sharp an edge, as after that they were never able either to march or move, I need not amplify, but only point with my finger to the coronation of the king now regnant at his first entrance, by bishops, Roman Catholicks, (without either awe of superior, or fear of censure, or conceit of irregularity) while he stood within the danger of the curse; and conclude this point with one example very pregnant, as I imagine, of St. Lewis, inserted by the pope himself into the list of holy confessors and saints in the Roman Calendar, notwithstanding his severe decree, that no kind of levies or taxations should be made in France by the pope's instruments, without the knowledge of his privy-council or himself; nor then also, but in cases of evident necessity.

But now lest Mr. Garnet or his accomplices should except against the state of France, as over-tickle in the seat of satisfaction, when the scope of the church is gain; though we must add some greater weight of credit to these courses, in respect the bishops were both orthodoxal and canonical that assented to their publication with the other peers: I will prove further, that in tenderness of care to preserve the prerogative of monarchy within the bounds and limits of itself, the kings of England have neither been inferior, nor least sensitive. May it therefore please Mr. Garnet, and so many other of that suit as hold the subject bound to follow whatsoever is decreed at Rome upon supposition of heresy, or suggested shews of infidelity against their sovereign, to take notice

of the titles, names, and judgments of these persons which I shall present to their consideration; not from the presbyteries, which may distaste their relish, but out of the list of English authors, limned among Catholicks with golden characters.

I will begin with the first of our kings 'post conquestum,' and proceed to others as they fall into the circle of exception in their courses, and proceeding orderly. 'Quid papæ cum imperii vel regni libertate?' What hath the pope to do with the liberty of an empire or kingdom (saith William the conqueror) to whom it rather belongeth to take care of souls, and of the church's security? Afterwards, in that quick contention that fell out between William 2, and Anselme the archbishop about the pope, (though I will never avow this king to have been an holy confessor, nor all his expostulations to have been regular demands) yet they must give me leave to note with what affection and resolution, notwithstanding the pope's intercoming to make himself a party in the quarrel, the bishops did adhere to their own sovereign. 'Notum habeat sanctitas vestra,' your 'holiness,' saith Henry 1, 'must understand, that by God's help the dignities and liberties of this kingdom shall receive no wipe of abatement during my reign: for though I had an humour of embasing myself so much, as to shrink upon so sure a ground; 'tamen optimates mei, in d totius Angliæ populi id nullo modo paterentur;' yet my peers, nay, all the commons of my realm would never suffer it.' And after this, the bishop of Exeter sent to Rome, received a very gracious and mild answer of the pope, touching the kingdom's liberties. Henry 2 would admit no legate from thence, nor repair of any of his subjects to that see, before they gave security, 'quod malum suum vel regno suo non quærerent.'

The Suffragan of Canterbury in very modest and humble manner advised Thomas, his archbishop, rather to appease the king's wrath by a submissive letter, which had ever been the course of proceedings among the pastors primitive, than by heaping coals to inflame his passions in so violent and desperate a kind, as might perhaps cause a revolt from the Roman hierarchy.

Nubrigensis, another countryman of ours, compareth the archbishop's opposition at that time to the king, to St. Peter's zeal, in the question between him and St. Paul. For though no man denies, saith he, that the archbishop in this particular was 'zelo fervidus;' yet 'an plene et secundum justitiam, Deus novit,' whether sufficiently, and according to the right, God knoweth; since it is written in the Proverbs, that 'prudens in tempore tacebit, quia tempus malum;' a wise man will hold his peace in time, because the time is evil, as he thought that to be. The speech is modest, and yet declareth, that even in those times men that were void of passion, though of one and the same profession, coming to scan the point of conscience, judged indifferently, without

either smart to the subject, or wrong to the sovereign: which makes me the more to praise the wisdom of that canon of the church, which (with great reason) dissuades over-rough searching of sores deeply festered, or over-quickly proceeding in a time when censures are set light; for experience hath taught that this were but to cast pearls before swine, and to give that which is 'sanctum canibus.'

The whole reign of king John, being in effect nothing but a tragedy acted in the eye, and to the scorn of England over all the world, between the pope and him, our bishops skirmishing sometimes (out of conscience) on the king's side against the pope in this fraction of the politick estate, and sometimes (out of faction) on the pope's side against the king; yet the greatest part of them at Windsor, as one of our authors writes, 'Non obstante sententiâ quâ rex erat innodatus,' did communicate and religiously receive with him.

Henry 3, suspecting some hard measure (as it seems upon the smart and horror of examples past) expected a formal oath of his bishops that repaired to the council of Lions before their setting forth, that they should assent to nothing there debated, or to be decreed to his or his crown's prejudice. At the same council the king complained (not by the virtue of his letters, but by the voice of his bishops) of a wrongful claim pretended by the pope of an imposition, under the mask and colour of episcopal assent; which in the behalf of all the rest, was roundly contradicted by the metropolitan. Upon notice taken of this complaint, the pope alluding to the spleen of Frederick the emperor against his predecessor, said that the king of England began to Frederize: but it skills not much, said he; for, 'habet rex Angliæ suum consilium, et ego meum;' as he might very well, and yet be no gainer.

Edward 1, sent sir John Lexington to all the bishops as they were assembled in the house of convocation, with an express Caveat, that they should in no ways yield to the pope's earnest instance for satisfaction in a demand: to which prohibition, as my author writes, 'et ipsi paruerunt,' they obeyed accordingly.

Edward 2, stood resolutely upon the maintenance of his gift of the treasurership of York against the pope's Breves, striving forcibly by the colour of a former grant, to prefer a nephew of his own; and upon what ground? Because (saith the king) the peers of this kingdom are bound by their oath of homage, to maintain the rights and liberties of the state, whereof collation of dignities hath ever been reputed a special branch, and therefore cannot 'salva conscientia,' admit or indure the least blemish of an invested honour. For if it were not lawful for the bishops of those ages, as appeareth by record, 'Feodum Laicum Romanæ Ecclesiæ obligare,' to tie a lay-tee upon the Church of Rome; how much less is it reasonable, lawful or convenient at this day, to engage either the prince's right, or the subjects loyalty?

To these I add a very earnest letter written to the pope by the same prince, in such a style, and with ink tempered with so sharp ingredients, as 'ex unguibus leonem:' for he doth there protest, and that with some fervency, 'se jus regni sui contra papam et omnes detensurum:' that he would defend the right and title of his crown against all persons whatsoever, without distinction or diversity. I note by this occasion the temperance of the pope at that time, who neither replies with passion, nor thunders in heat. For though it be true that England by position and site hath a great advantage of many other states and kingdoms of Europe, that are neither so well fenced, nor so compleatly compassed by sea, proposing to stand resolutely in defence of itself, though the cause were good, and the prince martial; yet it appeareth, that the pope for his part also was more patient than some of his successors (impeached by more difficulties and stronger impediments) have been since that time; or else considering the claim which he pretended to collations and investitures in many other estates, where he found princes more afraid, he might at the least have made an offer (though to small effect) of his virulent exceptions, which being used without discretion, are indeed but the vessels of an indiscreet pastor, to take the words of Zachary.

Neither law nor nature do allow to any agent, 'potestatem operandi,' for the maintenance of itself, 'sine preparatione mediorum,' without the preparation of means proportionable to that faculty which it affords: and therefore in this case we must infer, that either the pope wanted passion or power, or instruments to further his ends (according to the scope of his desire) powerfully. The abbot of Tavestock was fined at five hundred marks, for receiving a bull from Rome, wherein there were but 'aliqua verba regi, et coronæ suæ præjudicialia.' The whole court of parliament, wherein the party of the bishops and abbots among the lay-peers, for the number was not weak, gave their promise to king Richard 2, with protestation to defend his regal rights and immunities against all opposition, though it were made by the pope himself. And herewithal I note the reason in the record, suitable to the resolution (which was spoken of before) lest the crown of England, which had been ever free from the restraint of any superior command, might on a sudden slip unawares into the snare of servitude; and therefore the main article in parliament enforced for the deprivation of Richard 2, was, That he had by admitting bulls from Rome, enthralled the crown of England, which was free from the pope and all other foreign power.

The pope's ignorance in the state of English affairs, was the motive by which the wisdom of the state was drawn during the reign of the same prince and all that succeeded, to condemn, disable, and reject all bulls or breves of direction from Rome, that stood upon no warrant of certificate from some bishop in the

land to guide his aim; and those bishops (as we find by the reports of history and record) were ever the worse esteemed, and the less regarded by their own prince and country, that posted over to seek foreign aid, when they might have found greater ease, by resorting to their home bred oracles, and 'non ad transmarina judicia;' which they ought to do by the council of Carthage.

They that desire to be more particularly informed of the prosperous success of some bishops, that were forward in execution of the pope's orders without licence from the king, may find a seizure made upon all the temporalities of those bishops of Ely and Norwich, for the publication of a bull against Hugh earl of Chester: and further observe also, that the bishop of Ely was condemned of felony by a jury at the King's bench, notwithstanding his bold challenge to be 'unctus Domini et frater papæ,' the pope's brother; but a younger it seems, by bearing his dignity with so great a difference. The bishop of Carlisle in like manner notwithstanding the privilege of unctio) was condemned of High-Treason at the bar, (though not in the pope's cause) in the time of Henry 4th, and that worthily. For though Solomon spared the life of Abiathar out of a special favour, and a kind of reverence to religion, 'Quia portavit arcam Domini,' because he had once carried the ark of God; yet by that he calls him 'virum mortis,' I may lawfully conclude, what in justice he might have done concerning life: but of his deprivation the text itself gives clear evidence.

I add to this example the learned judgment of Baptista Baiardus, a profound civilian, that a bishop offending in case of Treason, cannot be exempted by his function from trial before a judge merely secular: and for proof hereof no man can witness better than Philip de Comines, what slight answer was given by the French king his master, to the pope's incessant suit by the Nuncio, for the release of a cardinal whose place and dignity was more eminent.

In Spain itself, which seems in this age to be most precise and tender of that point which is termed the church's liberty, (though neither circumscribed within any certain limits of admittance, nor defined till this day by any doctor of either law) their own writers avow, that the bishop of Coimbra was constrained by the state to recall a sentence against the king, which the pope himself hath both encouraged and justified. Don Pedro king of Arragon, in scorn of the pope's charge, under pain of censure not to take upon him any longer the title of that crown; which, out of his own particular affection he had settled before upon another prince's head, intitled himself 'imperatorem maris, et regnorum dominum;' meaning rather to advance than dismiss his style by the pope's ladder.

Many of their kings, as I could express at better leisure, have withstood peremptory censures of the Church of Rome, almost 'ad deliquium animæ:' sometime upon supposition

of incontinency; sometime upon the stay of the main stroke of that oar in their estate; sometime about collations, transpositions, investitures, without any inward gall or vexation of conscience, for exasperating a pope's humour in defence of their own prerogative. Let the walls and battlements of the castle Saint Angelo in Rome, bear record of the piety, patience and humility of Charles the fifth, grandfather to the king of Spain now regnant, when the pope in passion overstrained both the duty of a child, and the patience of so great a potentate. I think Mr. Garnet will admit, that these thousand years there was not a more obedient daughter to the church of Rome than queen Mary, that could never rest in quiet, till she had reduced the straying sheep of her dominions, as she conceived, to Saint Peter's fold: and yet without regard or awe of the pope's sharp censures against the king her husband, she never gave over aiding him with money, and assisting him with force, till he was perfectly reconciled to the church, and the strife determined. For as by the law of God she found herself precisely bound in cleaving to her husband, with whom by union she became 'una caro,' to forsake all the world; so in the same law she finds in-point of fact no straiter bond, nor stronger warrant of obedience to the sentence of the priest, than she observes the priest to ground himself upon the law of God; that is, 'quem ipse secundum legem docuerit;' which rest is indeed that 'lapis Lydius' to which we ought all to resort for the trial of all coins that are current among Christians, whose image or stamp soever they seem to bear, in case we find them oftentimes embased by an allay, and apt to mine into the foundation of equity and piety. For till I see it clear either by doctrine or experience, that God created all men Stoicks, or rather as void of sense as stocks, and instituted popes not only 'dispensatores mysteriorum,' distributors of his mysteries, but 'tanquam angelos lucis,' as angels of light, or more than angels of light, because in those, as Job records, 'invenit provitatem:' I must borrow leave in discerning matters of this quality, to make use of the little reason, and the great respect I have: leaving those that are of another mind, to borrow such discretion by observation, which in this world all persons at all times neither ever had, nor can ever have.

By these precedents and many more, which time serves not to dilate or to enlarge, I hold it very clear, that both princes and their bishops have obeyed these papal censures in matters touching their prerogative and state, neither longer nor oftener than debility or necessity enforced them to abate their sails, in a storm of distress: Though decrees privative have been often squared by laws positive; and that albeit many kings have made a shew to be mild spectators of their neighbours harms, yet if the case came once to touch either their own affection or their right, they were content to read without the ordinary consonants of the

Roman alphabet. If then the weapons with which our antecessors fought against ambition and wrong, have been eaten into by the cankers of superstitious fears, or overawed by wretched sloth; let us scour them with the powder of experience, since these hot alarms begin to sound, before we be surprized in over-great security; and by resorting often to the rule of God's direction, which is 'verus Judex et sui et obliqui,' we shall the better understand, according to the quality of superior commands, either to lay down our lives, or submit our conformity. It was in my conceit a pain well taken of late years to reduce the feast of our Saviour's nativity as near to the right term or period, as art and industry could devise, by taking up the loose minutes which by tract of time and multiplication of degrees had drawn out a wider distance by certain days, than was consonant to the first calendar: and therefore the like labour in another kind might worthily reduce the challenge which popes have pretended in some cases above kings, to the same proportion which it held under Gregory the first, Leo, and all other bishops of that see before that date, by cutting off encroachments, which by fractions of time have brought the church into scandal, and the greatest part of princes into jealousy: For all this while boldness undertakes, wit contrives, assistance furthers, conscience prepares, scrupulosity consents, strength prevails, and majesty suffers.

Now must I begin either by Mr. Garnet's leave or against his leave, to rip up the false stitches of the canon, 'Nos sanctorum predecessorum,' confidently vouched at his first approach to the council-board, after justified before the lords in commission, and at this instant stood upon, as our own ears can witness, in defence of that supposed interest of deposing or dispatching lawful kings, which is the binding knot of the late Gordian conspiracy. For though wise men that either follow learned conscience, or any certainty of direction or rule, will tax Mr. Garnet's haste in presupposing censures, which the pope did never yet pronounce, in dealing worse with his own sovereign, than any other prince in his condition, running without an errand, and rebelling without a colour; yet I will take this canon for the time 'de bene esse' as it lies, 'ut concusso fundamento arx ipsa concidat.' This only principle, if I err not, hath more afflicted, discredited, and disabled the pope's means and instruments, in working his own ends, than all the batteries that have been bent against the Vatican for the space of 500 years. For what prince under heaven can repute his state secure, so long as every small distaste to the pope's desire may ground a challenge, the challenge may procure a citation, the citation may produce a sentence, the sentence either neglected or not satisfied, infers contumacy, and contumacy deprives the supposed delinquent of that honour which nature gives, conscience avows, and consent fortifies? so as in this case either Gregory the seventh in respect

of his ill hap, or no other person upon earth, hath reason to acknowledge that rule of the Holy Ghost, that 'in quo peccamus, in eodem plectimur.' The words of the canon strongly bent against the crown imperial of Henry 4, are not many, but yet heavy, and in English thus: "We observing the statutes of our holy predecessors, do absolve those that are bound by fidelity and oath to persons excommunicated, from their oaths, and do forbid them to observe or keep their fealty toward them, 'quousque ipsi ad satisfactionem veniant,' till they come to yield satisfaction."

Thus far the text of the canon 'expressis verbis:' but since this is that 'pillula aurea,' or rather 'deaurata,' that pill not of gold but guilt, which is preserved in the cabinet of the church of Rome to purge princes of their choler 'in morbis acutis,' in hot fevers; that is, whensoever they begin to square with the pope about any point of ecclesiastical prerogative: and since Mr. Garnet for his own part likes the composition so well, as that he shrinks not in defence thereof to hazard the life and state of his matchless sovereign, and his royal issue, supposing them to be more sick, God be thanked, than they find themselves; it beboveth me out of affection and duty to my dear sovereign, though otherwise unworthy so much as to gather 'herbas agrestes' with that child of the prophet, 'in die critico,' upon this day critical, to examine the first 'recipe' as I find it formally subscribed by the pope's own hand, that by more heedful looking into the quality of particular ingredients, I may the better understand, by understanding judge, and out of judgment resolve, how well it agrees with the precepts 'melioris ævi,' both in proportion and property.

The first ingredient, of observing statutes, I confess to be of great effect in working the cure of any grievance to the church or commonwealth: but yet I find it not of use among the canonists, that exempt the pope from the regular observation of any law or statute, that out of his own election he likes not to follow. But to the matter, I would learn whose statutes they are, or by whom enacted, or in what parliament, that Gregory 7, intending to depose an emperor, established by the providence of God, and taking God's own office into his hand, by making himself in this point 'similem Altissimo,' will observe thus tenderly. Surely the prophet David was never in the number of those predecessors that promulged any such decree, condemning persons with all kinds of presumption or discontent, that shall induce a subject to lift up his hand 'contra unctum Domini.' Our Saviour was none of them, commanding his disciples to give unto Cæsar what is Cæsar's, and rather to endure, than offer violence to any man, much less to magistrates. St. Peter, that ought to be the first in respect of the descent which the popes derive, gave never any voice to any such decree: for he enjoins obedience even to tyrants, whose authority was absolute. Saint Paul was none:

for he commandeth prayers to be made by the faithful, 'pro regibus, et omnibus qui in sublimitate constituti sunt,' for kings, and all those that are placed in sublimity, as at that instant Nero the tyrant was; and to what end? that under them the Christians might peaceably live.

Out of the rank of these predecessors, he must exclude Pope Xistus, who touching the rule of conscience, resolved rather to obey God than man: but touching the point of obedience, made no kind of resistance nor opposition to tyranny. And Origen's opinion was, That 'omnia crimina quæ vindicari vult Deus, non per Antistites, et Principes Ecclesiarum, sed per mundi Judices voluit vindicari.' He must exclude Marcellinus, that offended no magistrate any further, than to make the church of God know that Cæsar's decrees were no lawful warrants, as some taught, for idolatry. He must exclude Cornelius, who being charged with a course of entertaining intelligence by letter with St. Cyprian the bishop of Carthage (at that time) protested at his death, that the contents of those letters had no other end or drift, than preservation of souls. So far were they from derogation of obedience to authority, as St. Gregory had never read this statute; for unless they will avow that 'servus' may be 'supra Dominum,' which Christ denies, they must confess that Gregory acknowledging himself a servant to Mauritius, he could neither overtop him, nor reign over him.

Neither is it probable that Pope Anastasius to an emperor of that name would have written, That the breast of his clemency was the shrine of public happiness, and that his height carried the place of that lieutenant, which God commanded to rule and govern upon earth, if he had held him a tenant of his crown to the see Apostolick: and therefore with our venerable countryman I must conclude, that the master-rule of our life, is 'Ecclesiæ primitivæ actus imitari,' to imitate the examples of the church primitive.

But if, notwithstanding this obedience, they will enforce a man to reign who with his own mouth doth profess the contrary, which is to serve; let them call to mind that observation of the wisest king that ever was, That one of the chief instruments, 'Per quæ movetur terra,' by which the earth is shaken, is 'Servus cum regnaverit.' I know not what pope can pretend a better title to the prerogative of making laws and statutes, than all or some of these which had their course, and held that chair; and yet we find not that all this while the case was put (much less ruled) by such laws or statutes, as might either countenance the pope's challenge, or excuse his intrusion. But why should we thus puzzle or afflict our spirits in turning over both the Testaments, in ransacking the volumes of the Councils, or in sounding the judgment of the learned Fathers about the names of those holy predecessors which are only recorded in their library? In singling some of the principals from the body of the herd, and hearing them express their own conceits

in their own words, it may perhaps be found that their reputations in this point have been further charged, than they can be blemished: bare words are not to be recorded without demonstrations of right, or impressions of acknowledgement. But in the course of my own reading, which were sufficient to find out a black swan if any were, though not so well able to resolve a doubt as many are, I may protest that I could never light upon a precedent of any pope before Gregory 7th that took notice of any statute, much more enacted or approved any for the maintenance of this deposing challenge; although in case there had been such, I would hardly have preferred the practice of any sinner that may swerve, before the precepts of a Saviour that derives doctrine from Deity.

The civil laws decree, That 'Si princeps causam inter partes audierit et sententiam dixerit, est lex in omnibus similibus.' If a prince have heard a cause among the parties and pronounced sentence, in all like cases it shall stand for law; much more in cases of obedience and sufferance, which 'Rex Regum,' the King of all Kings hath both heard and determined. For if the schoolmen have resolved truly and advisedly, that the pope cannot remit sins without sacramental ministrations, nor alter forms essential, nor 'ad placitum' release vows; because this absolute prerogative only appertains to the key of him which opens and no man shuts; much less can any pope out of the strength of passion, though warped and involved within many folds of fair appearances, deprive magistrates.

Whether the chair of Gregory 7th brake or not, as one writer notes, at the pronouncing of the sentence, because the pope or the sentence, or both pope and sentence, were too heavy for a chair that had not been so far pressed or surcharged for the space of a thousand years, it is not my purpose at this present to dispute: but I am very sure, that the policy, the discipline, and order of the church received a great crack, when the force of the spirit was perverted and abused to the satisfaction of inordinate desires, which mortification should rather suppress, than ambition execute. For St. Bernard writeth with great judgment to pope Eugenius, that 'Episcopi et ministri Ecclesiæ cum tractant politica,' when bishops and pastors of the church intermeddle with civil policy, I mean so far as may put princes to their plunge, they invade the limits, they disturb the functions, and thrust their sickle into the harvest of other men. If none of the predecessors of Gregory 7th, in which many were religious, regarding more internal piety, than external pomp, were privy to the reason or promulgation of such a law, but Gregory himself first undertook the exercise 'duorum gladium,' of two swords upon a weak text in St. Luke, (which is not taken in that sense by any of those fathers whom Thomas Aquinas voucheth 'in catena aurea.')

Is it not then more than probable, that this law was both enacted and proclaimed

in one day, without any former precedent or record, either 'in albo Prætorum,' or 'in rubrica Martyrum?'

Trithemius, a grave and learned writer, living in the year 1005, who was about the time wherein the pope was put into this heat, affirms, That this question was then argued, but not determined: and where? not 'inter Episcopos,' but 'inter Scholasticos,' among the schoolmen, Whether it belonged to the spiritual jurisdiction of the pope, to depose an emperor from sovereign dignity.

The church of Liege in like manner in the same quarrel, and soon after the same time, avow by letter to pope Pascal, that none of those holy predecessors of which Gregory 7 speaks, ever drew the sword against any emperor, before himself, commanding that great lady the countess Maud, that in her life depended wholly upon his direction, and on her death-bed left a rich legacy to the church, and that 'in remissionem peccatorum,' to persecute this prince: whereas Christ himself, whom Gregory should imitate upon the same condition 'peccatorum remissionis,' that is, as we forgive the trespasses, enjoineth his disciples to forgive their enemies, and that not seven times only, which agrees well with the number of 'septimus Gregorius,' but seventy times seven, using the number of finite for infinite, which agrees better with the duty of 'Gregorius Episcopus.'

Otho Frisingensis, another author of those times, concurring formally with the two precedent witnesses, affirms, that 'legendo et relegendo,' in reading and reading over again the lives and actions of emperors, he could not hit upon any one in that rank, that before Henry 4th was expelled or deposed by the papacy. Wherefore the proof standing very clear and pregnant, as I take it on this side, as well 'Quia probatur manifestum,' as 'Quia non probatur contrarium;' that this act of Gregory found no right antecedent whereupon to ground a reasonable consequent; I would gladly learn for my own instruction of any writer modern or ancient, whether it were a just part in a judge to condemn an emperor, 'causa inaudita,' or a wise part in an emperor, to put his crown 'in manus Papalis,' into the pope's hands without surer hold; or a religious part in a pope, to vouch such records as are not any where set down, if they be not in tables of ice, 'Idque flantibus auris,' the winds blowing southerly. But it may be I have mistaken by error, or overshot with haste, or omitted by prejudice some such predecessor to Gregory, as was author of some such act, without any kind of exception made in the behalf of the prince, either of invalidity of the sentence, or of peril in the precedent. For this pope voucheth Zachary a predecessor of his own, that deposed Childerick the king of France; though, as Galasius reports to Anastasius, this heavy sentence fell not on him, so much for any crime committed by himself, as because he was reputed 'inutilis,' unprofitable, or of no use to so great a monarchy.

I would be loth that any man should hold me so presumptuous or undiscree, as to carry over a question of this importance with a peremptory strain, as if no author had reported this suppression of Childerick to have been in deed the powerful act and execution of Zachary. For I acknowledge that some such there are (though earnestly transported with a desire to raise and improve the reputation of Rome, by an effect of so forcible authority.) My desire is therefore only to be heard in a word or two, and so far to be credited, as the weight of reasons may demonstrate, that only the peers of France deprived Childerick by uniform consent, howsoever they were providently careful afterward, that their proceeding upon tickle terms, might pass more currently the voice and censure of the world, by approbation of so grave an oracle. But herein first I note, that Gregory gives evidence with his own mouth in 'causa propria,' in a cause that concerns himself, which Isaiah did not, appealing 'ad legem et testimonium;' nor our Saviour excluding any man's report, 'Qui de seipso perhibet testimonium;' nor St. Peter upon advantage 'Sermonis prophetici.' The Civilians allow not this prerogative to Casar, nor the bishops of Africa to Zozimus, nor Johannes de Parisiis to any pope, 'nisi scripturæ fulciatur auctoritate,' unless he be supported by the warrant of holy writ; nor the canons themselves to any mortal man that may be subject to afflictions. But I will let this advantage pass, though it may seem strange, that whereas the figure of St. Peter's person was sufficient whilst he conversed upon earth, to cure private men of their infirmities, it happens after his translation into the mount, that the shadow of his function should prevail so far as to the suppression of monarchies.

First therefore, in disproof of absolution from oath, and deprivation of regal jurisdiction ascribed to this pope, I take hold of the gloss itself expounding this word 'deposuit,' for 'deponentibus consentit:' for hereby it appears that this honest man being far from their ambition and presumption, that hold it a great honour for a pope to depose a king, sought carefully and modestly to acquit that chair of an imputed crime, (or error at the least) applying the text of his own record to the testimony of the best histories. For in a story found in the library of the Abbey of Fulda among the Germans it is plain, and by the report of a French writer very ancient, that king Pepin of France was surrogated into the place of Childerick by the whole nation of the Franks, 'relatione tantummodo missa ad sedem apostolicam,' report being only made to the see Apostolick.

It is likewise evident by the same author, that before any ambassador was sent to Rome from France, this silly cypher of a king, 'non re sed nomine tantummodo regnabat,' was a king in title, not in truth, and did only fill the place of royalty upon the stage of scorn: and therefore when the reals were all converted into nominals,

let no man wonder at the voice of ratification, but rather note the reproof of imbecility. The whole sway and stroke of affairs in the state rested at that time in the hand of one person only, that was Maire du Palais, his sole act was authentical, his word was law: to him they resorted for resolution; to him they gave thanks for satisfaction: and therefore if it be true that '*privatio præsупponit habitum*,' it must likewise be true that Childerick could not be deprived of a state whercof he was not possessed at that instant, without new grounds of philosophy. Another author writes '*missis baronibus ad Zacharian papam*,' that the barons of France sent to pope Zachary as it were to consult, whether '*ignavum pécus*' a drone that devours, or a bee that labours, were more sufficient to command so great a state; and that Zachary, not unlike in this to Alexander the Great, bestowed his voice of approbation on him that should be reputed '*dignissimus*.' Gagwin makes a question to be moved to pope Zachary from the whole estate of France, by this kind of comparison, Whether of these two persons, '*datâ electione*,' free choice being given, were more capable of government, he that spends his time at home '*nilil agens*' idly, or he that bending his whole endeavours to affairs '*industria virtuteque publica negotia moderaretur*.' But the pope's answer being, by the report of this author, as was testified before, '*hoc adducti responso proceres sibi regem delegerunt*,' the peers induced by the same, chose Pepin king. But as we know, that a question in point of fact submits no claim of right, so the pope's answer out of discretion, implies no bond or obligation of necessity. With this opinion concurs another writer of that state, proving by an express deduction of the whole cause, that the choice of Pepin proceeded originally from the free consent of the French peers; though for prevention of all doubts and scruples, lest malecontents might ascribe the process rather to respective factions than to single faith, there was great use of the pope's authority '*disponentis*' '*in dubio procerum*,' resolving the doubt which caused the peers to stagger. This would have been the end, whatsoever clouds were cast, or the pope had said: but '*abundans cautela non nocet*,' and the persons that either are not at all, or very little interested by their own particular in the point in question, are presumed by the law to regard the matters with eyes of greatest equity. This manner of proceeding is not strange; for Joab fearing at the height of his fortune the shot of envy, pressed David with a powerful argument, to come in person, and receive the honour of giving up of the fort of Rabbath, that by his industry was brought to the last pinch, lest his own glory in the world might swell too much by the fortunate addition of so prosperous an accident. We count that doctor happy, that resorts to the sick patient '*in declinatione morbi*,' and it hath ever been accounted an effect of skill, to wind in the conscience of an upright judge for the countenance of a cause humorously undertaken by the first

VOL. II.

author, that works under the reputation of unsuspected truth. Wherefore though this '*major du palais*,' or superintendant general over all the French affairs, held in his best course to mask religion with the veil of holiness; though Zachary were not unwilling in the end to take hold of this offer for the grounding of a precedent of challenge, and advantage in like causes at another time; though the peers were willing to leave '*Speciem*' to Zachary, reserving '*Vim*' the strength and execution only to themselves, let this be neither rule nor instrument of curbing princes of better understanding, or emboldening popes of stronger minds. For as well might the poor fly sitting on the cart wheel while it was in moving, wonder at the great cloud of dust which she raised in the beaten way, as Gregory or Zachary draw counsel to power, or make that act their own, which was hummered in the forge of ambition, countenanced with a colour of necessity, and executed by a minister, that being weary of subordination, resolved by this trick, when the means were fitted and prepared to the plot, to make himself absolute. The case of kings were pitiful, if '*ex factis singularibus*,' out of special facts and practices, as the chapter of Liege writeth gravely to pope Paschal, it were lawful to draw leaden rules in their disgrace. For some men undertake too much out of presumption; some yield too much out of cowardice; the greater part strain farther than they ought of right; and those weak rules lighting by mishap into the hand of power, not tempered with conscience, are sometime forced by affection, sometime bent with corruption, and for the greatest part applied with subtily. It seemeth not, by the report of Paulus Æmilius, that this manner of proceeding against princes by the chief pastors of the church, though without passion, and at the request of public states, was usual or ordinary in those days; much less humorous, violent, or voluntary decrees. For Zachary himself was at the first so moderate and mannerly, '*ut non auderet tam magni momenti cogitationem suscipere*,' so much as apprehend a conceit or thought of so great a business. And therefore though we should dispense with Gregory 7, in vouching this predecessor in point, yet the predecessor himself by daintiness, doth in a sort disclaim the charter which he should pretend, without either enforcing or urging, in so plain a sphere, any external traverse of obliquity.

By this author it is manifest, with what tenderness, advice, and caution the pope opened a vein that is apt to bleed above the measure which the doctor's art prescribes: for finding by equity, that Childerick was the last branch, though sear and withered, of Clouis the first Christian prince among the French, that he was '*sine liberis, sine ingenio*,' without either issue or discretion, the strongest sinews both of succession and government, that he was so benumbed with sloth and sensuality, that he could not feel the taking off his crown from his head, that his suppression was not only sought by

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France, but applauded by the world: the pope proceeded, having perhaps in his eye the bond whereby he might engage the kindness of king Pepin to the church of Rome, against the Greekish emperors, transported with jealousy. This makes Kransius in his history of Saxe to wonder at the fastness between the French kings and the popes, like hands that wash and help one another by mutual support, in attaining those high objects which both aimed at. Antoninus joins with others in expressing the demand comparative between a prince of judgment, and a 'fact-beant,' an image, and a man; between a king indeed, and one 'qui solo nomine regio regitur,' that was only masked with the name and title of a king; adding, that the states assembled upon the first return of the pope's answer, suppressed Childerick, and raised his competitor. Zachary was so far from levelling at the person or the crown of Childerick 'in hypothesis,' if we give credit to our own countryman Polychronicon, as he only meant 'in this' to set down his judgment of the difference which a wise state ought to make between two princes qualified, not only in a kind of disproportion, but of a direct opposition of gifts and properties. Gotefridus Viterbiensis, striking rather at the root, than at the branches of this enterprize, affirms not 'Francos Zacharia: paruisse decreto, sed acquievisse consilio:' though the difference be as great as between an absolute injunction and a politic advice. Sabellicus, without so much as dreaming of a donative, avows a counsel by these words, 'con- sulto prius pontifice.' Naucleus yet more roundly if it be possible, that after the peers had first elected, the pope ratified: and with him agrees Blondus in one tune, without either rest of violence, or inducement of affection.

Out of Aventine I draw two reasons of conclusion against the jurisdiction of pope Zachary. The first, That being moved by the French peers as before, he takes his ground of answer from the revolt of the ten tribes, (though as aptly as a man might avow the rising of Jack Cade against his anointed sovereign.) For, the sins of that ungodly race, the curses that were pronounced against the rebels themselves, and the censures of God's prophets, evidently prove, that the fact was exorbitant. The same reason may be drawn from Zachary's own paradox at the same return, defending, that since princes hold their crowns and governments of the people's choice, in whom it resteth absolutely 'constituere et destituere,' to constitute and desert; though the doctrine be as dangerous as it is damnable, yet hereby it is evident (for me) that the right of deposition (being, as the pope himself avows, invested in the people) was not in himself, and by consequent, that he was a counsellor, but no commander; an assistant, not a judge; and that he did only approve by admittance, not enjoin by prerogative.

I know that Mr. Garnet and the rest will as unwillingly admit the judgment of the centuries in this circumstance concerning Childerick,

(as other would barons of another side) further than the warrant of their proof makes way; which moves me with a better will to let them pass, and leave the judgment of this point upon the credit of such authors as had no reason to speak more than truth for advantages of either part, because in those days not the manner, but the matter; not the circumstance, but the substance; not 'quo jure,' but 'ad quem finem,' came to be decided between the pope and the parliament.

But touching the pope's process against Henry, the chapter of the church of Liege doth unfeignedly protest, that in their exact perusal of both Testaments, they could find no precedent 'hujusmodi precepti apostolici,' of any such injunction or writ apostolick. A good caution to make us tender in misdeeming of their reports and testimonies, which (living in the time of this distemper void of passion, and qualified with modesty, being learned both in the scriptures and civil laws, and regarding more the peace and quiet of the church, than the partialities or honours of either side): firm soundly out of knowledge, and confidently upon their credit, that this Gregory 7, was the first pope that deposed any prince by the warrant of St. Peter's Keys; or, to use their own phrase, that ever lifted up the priestly lance against Caesar's sword, not dreaming of any formal process sent out by pope Zachary against king Childerick.

The very circle of a crown imperial (so far as any state or fortune beneath the moon can reach) implies a perpetuity of motion: for according to that principle of the mathematicks, as it begins from all parts alike, so 'in seipso desinat,' and ends absolutely in itself, without any other point or scope objectual to move unto. That the pope hath sometimes set the crown imperial upon Caesar's head, since the crowning of king Pepin, (whom I take to be the first) ought to be no reason of his tossing crowns from head to head like tennis-balls; for this were the way by signs to destroy substances, and to oppose formality to necessity, and occasion to institution. The metropolitan of every kingdom, may do as much in form, 'Non conferendo jus, sed implendo justitiam,' not conferring right, but doing what is just and right, as it is aptly said by one of their own partners. For though the pope reserve unto himself this final interest of crowning an elected emperor at Rome, and some flatterers would derive a kind of necessity for consummation and establishment from thence; yet many emperors of an elder date, and Charles 5, in our time, have been ready with their swords in their hands to prove (notwithstanding filial regard and reverence to the mother-church) that the stroke of power is absolute without relative formality. I conclude this question concerning Childerick, with an argument inevitably either by invention or sophistry, not disabling the witnesses. For Soto, both a friar and a learned schoolman, holds, that 'extra causas fidei ipsi pontifices nunquam ausi sunt reges deponere:' the

popes themselves durst never depose any king without the compass of such matters as concern faith. But Childerick was deposed not for any point of faith, but as pope Gelasius writes to Anastasius, because he was of no use to the commonwealth; therefore it is not possible that Childerick should be deposed by pope Zachary. What hue-and-cry hath been made in former times against uncivil claims, varnished with religious pretences, nothing proves more plainly than the strong opposition which was made at the Holy-Land to Pelagius the pope's legate, for seeking to draw in all parts to the share of the church, at the taking the rich city Damietta, not unlike to the partition which was made by the lion to other beasts that hunted in his company: for it is true that at the first they wondered, and after complained, that the minister of him, whose office was to strengthen by advice, should discourage by too much greediness.

To that example which is given by Gregory 7 of Alexander 1, another supposed predecessor, absolving Christians from oaths, it were idleness to shape any formal answer; since it hath neither likelihood in common sense, nor ground of antiquity: For, in a thousand years after Alexander 1, this kind of releasing oaths was not hatched, much less practised. It is not probable that a discreet pope, void of humours, as in that first spring of piety all were, would have sought to range a faithless prince to formal discipline, since Paul himself refuseth to judge those that were no sheep of the fold, but 'foris,' that is without. And as unprobable it is, that when the bishops of Rome intended most the winning of souls by obedience, that should give so great cause of distaste to those princes, that by the strength of their own laws were most absolute in authority. It may be that Alexander 1 might comfort and secure the conscience of some Christians that were over-scrupulous and precise in observing wicked and unlawful oaths, which are 'ipso jure nulla,' though the pope should not dispense, and therefore broken with a better conscience towards God, than kept. But how proves that the breach of lawful oaths to princes that are rightly seated in their state, though perhaps not ever good, which the church condemns, and no law justifies? I hold it most absurd, that the church of Rome for greatness, or the church universal for instruction, would not have kept record of such a fact, if any such had been: But it is not hard to prove 'quidlibet ex quolibet,' where men may devise to join their own positions, without care either to answer for presumption, or to account for ignorance, and then to grace them with protestations of piety.

The caution which St. Peter is said to give at the ordination of St. Clement, that no man should be favoured or kindly entertained by the true professors of religion, against whom his successors should conceive offence, may be admitted without prejudice to this point; if we speak of such just offences as God's law pu-

nisheth. There are cases wherein a man, that doth but in a word salute and give a God-speed to a grievous sinner, is said 'Communicare operibus ipsius malignis.' But this is not ever; when St. Clement's successors censure more out of passion, than out of reason. Christian princes were not so much as thought upon when this course was set, and therefore far out of pope Alexander's aim, that is, made to wound a king standing so far off, with a headless arrow. Reason satisfies thus far, that the pastors of the church, excluding us out of the fold, can bereave us only of those things which they give us at our coming in, that is, the kingdom of heaven, more in value than ten millions of worlds, but no kingdom upon earth; co-inheritance with saints, not with sinners; eternal blessings, not temporal benefits. It appears the wardrobe is very beggarly, as one of Mr. Garnet's fellows wrote over in such another case, that affords nothing but rags instead of robes; and the stock goes low, that would pay counters for Portagues.

These are all the predecessors which Gregory 7 presents as it were in a nummery, to cast dice for a prince's crown, as the soldiers did for the seamless coat of Christ: For they come, and go out again, without either speaking any word, or giving other notice, than by signs, which is nothing in effect: Their end should rather give evidence, than make appearance, dispute, than dally. It is hard that the pope should flourish in this shameless manner, about the heads of anointed majesty with a rusty sword, which since the time that St. Peter was commanded to put it into the scabbard, was never drawn, nor by the rule of Christ ought to be.

King Edgar in an excellent oration, persuading the Saxon bishops that had the sword of Peter, to join hands with him that had the sword of Constantine for the cleansing of the church, meant nothing less, than that it could be in a bishop's power against himself, to make use of the material sword, which was assigned to his custody. He tells Dunstane in the same speech afterward, that it was he that committed this trust to the bishop's care, that should chastise offenders indeed: But how? 'Episcopuli censura, et autoritate regia,' by the episcopal censure, and the king's authority. Gregory 7 was not yet awake, who putting two swords into one sheath, intends nothing more, than to drive princes out of the field with their own weapons.

But howsoever some weak sovereigns, that received their authority from God for term of life, have notwithstanding been content to hold it of the pope at will, this bars not others of a quicker spirit, to examine evidence concerning the point of right, before they suffer themselves to be concluded in the court of equity. Subjects that are dutiful, and not apt to be transported from their faith with every blast of ambitious spleen, cleave fast to the foundation which is the band of obedience, not voidable by strong intruders, nor partial interpreters. I

confess, that a godly pastor ought chiefly to provide, that Christ's humble sheep should be folded in due season, and safely guarded from the persecution of wolves: but the sheep, for their part also, ought to be as cautious, that a wolf be not the bell-weather; which hath happened as often in many churches, as the bishops out of their afflictions and wreakful passions have been authors of a far greater effusion of blood, than hereticks or infidels out of their malignity. Further, if we may give credit to that strange vision which Sozomen in his history reports, there arose a question not only among doctors upon earth, but even among saints in heaven, what course was best to be taken with Julian the renegade, notwithstanding his apostacy, in respect of place: And yet of both, I presume, that Mr. Garnet held him a man of worse condition and affection towards God and godly men, than Henry 4, whom without the least gall of conscience, or supposition of doubt, the pope deprived thus unworthily.

Touching the quality of this afflicted and tormented emperor, and the true state of his cause, which was the ground and motive of the pope's sharp choler, I need not at this time say much, when much cannot be said for want of time; but will leave him with his opposite to their final trial by grand jury at the dreadful bar, where the books of all accounts and evidences shall be laid open, and sentence shall be rather grounded upon just desert, than partial desire: And where no man shall be either charged out of the envy of Crassus, or defended by the eloquence of Anthony. I am not ignorant of that which writes on both sides, imperial and pontifical, Guelphes and Gibelines, have set down touching pope and emperor, according to that humour which infection and distraction of parts envenomed their pens. I know that a man may err easily, bending too much out of partiality or prejudice to the bias of either side: And I want that just measure of discretion and distinction which should level grounds, that are made unequal and uneven by distempered conceits. But whether the pope were vexed and disquieted with Henry's challenge of investiture of bishops 'per baculum et anulum,' and collation of church-preferments, as some think, though many kings, and ours especially, have had, and ever challenged the like prerogative in their own estates, or with the instigation of Sigisfred the archbishop of Mentz, to withdraw subjects over-hastily from their ordinary resort to Rome, as others write, though this hath been the case of some other princes in like sort that escaped thunder-claps, or whether Henry's mean account of the pope's admonitions, or his preparation to withstand force with force, put the pope into choler, as other emperors have done often times, both before and since, with more easy penance for supposed pertinacy: Whether all these or any one of these occasions gave fire to the train, though I presume not to resolve, yet I may be bold to conceive in my

own opinion, that the medicine was over-sharp and violent for the malady. True it is, that the grudge of Gregory to this emperor began first to fester in his heart a good space before, in respect of the countenance and aid which Henry gave to Gilbert, bishop of Parma, chosen pope by the cardinals on that side of the Alps, with opposition unto Alexander, whom Gregory, that was then but an arch-deacon, highly favoured.

But supposing all were true that either colourably or justly hath been given out in this cause for truth, I desire to learn of some grave doctor whether these poor motives were proportionable to the pope's glowing indignation, which shutting his gate against the emperor, (I will not say uncivilly, but uncharitably, that came barefoot in a bitter frost to witness true contrition of heart, for satisfaction to wrath) set up a competitor against him in Germany, while he was labouring by this painful pilgrimage to Rome, to work a perfect reconciliation with the pope; and to write to the party opposite, lest they might shrink upon those shews of friendship, likely to ensue between the emperor and him, that he would send him back, as he would use the matter, 'culpabiliorem' more culpable, and by consequence more subject to their violent advantages.

Nay, which is worst of all, after peace and friendship, and absolute forgiveness of offences sworn, and the sacrament received by the emperor, (for the better assurance of the league intended at the pope's own hand) to arm his son against him in the field, under the pretence and mask of zeal, 'ut nomen Augusti ab hæresi vindicaret,' that he might redeem the title of Augustus from the blot of heresy: for to this center all the lines of the pope's disguised exceptions may be drawn, and in this gulf they vanish: as if no man could embrace a sound belief, unless he had a servile heart: as if all that oppose against intruders were hereticks; as if it were not lawful for the emperor to set up a traverse in the church, so long as he resolved to exclude the pope from competition to the chair of state: or as if the supposition of heresy at large without conviction of any point heretical, against the canons of the church by proof, were a common jail, wherein the pope's custom is to lodge all christian princes, that by contradiction to partial demands upon just grounds are condemned as his cast-aways.

Last of all I would know where the pope learned to forgive 'culpam,' but not 'pœnam,' to a prince, that in the end was more willing to solicit union, than to rankle hate; or where he learned to distinguish between restitution to grace and majesty, by suspending that part of his favour that might put him into possession of his own lawful interest. I find by Sigibert the abbot of Gemelack, that in his time it was holden 'hæresis nondum in mundum emersa,' that the chaplains of that powerful God, that oftentimes makes hypocrites to reign 'propter peccata populi,' should cast the rod into the fire, before that faults were chastised according to

deserts; or by their absolute commands, displace those instruments, that, as powerful executioners of heavenly judgment, are to discharge the duty which is laid upon them.

But howsoever Gregory might in those dog days scorch an emperor by the combustion of beams that 'ex diametro' were opposite by the strength of a party raised by advantage of the time; yet by succeeding tokens I observe, that God was just, though popes were humorous. For one of those arch-traitors whom the pope erected out of passion, and supported out of pride, was slain afterward at the winning of a town; another in the field, though (as one writes) not impenitent for his treachery. The pope himself, worn as it seems with vexation and strife, lived not many years; and having left his point in this prince, was never able to any great purpose to sting afterwards. The mitinous and rebellious bishops, that had oppressed and resisted by the pope's direction, never held up their heads after the fatal blow which they received at the synods of Mentz and Wormes, but were either slain by their own sheep, or perished in the mountains by a most hard destiny.

Walram bishop of Megburge writing to a German count, gives a very just cause of this concurrence in malignity of sharp accidents; For since by resisting power (saith the bishop) they resisted God, it was not possible for the success to be better. Platina reports, that in the very interim, while the pope was as yet advising and consulting about the best course to be taken with this discontented prince, some wiser than the rest were of the mind, 'Regem non ita cito anathematizandum,' that a prince was not to be accursed in such post-haste. But oppositions were idle, the pope's heart being wholly set upon revenge, and supporting this whole process with the commission which Christ gave to St. Peter to feed his sheep, that is, to teach and instruct the flock: for I make as great difference between instruction and destruction, as between feeding and strangling, though by the very form of the sentence, (as it is set down against this emperor) it be manifest that Gregory commandeth St. Peter and St. Paul, as if they were his bailiffs-errant, to execute the writs of his pontifical and private authority.

Touching the charge of absolving subjects from their oaths, which is the chiefest instrument by which the canon, 'Nos Sanctorum' works in seeking to subvert the seats of kings, upon such grounds of quarrel and exceptions as may be made, I will chiefly note, That Gregory doth in this case assume more to his dignity by deputation, than God himself doth to his deity by prerogative. For admitting oaths to be lawful, voluntary and without derogation from right, (as those are which we make to princes as becomes) he concludes all their ministers, that dare presume to violate faith engaged upon those due respects, within the compass of perjury. The promise which God makes to man in swearing by himself, he will not, though it

tend to the quicker and the juster punishment of sin, release unto himself: and yet shall we think that the promise which was made by a sinner to him, can be released without him? 'Frater non redimet, redimet homo? non dabit Deo placationem suam et pretium redemptionis animæ suæ,' as we may conclude in this case with the prophet. Though God were so justly moved with displeasure against man, as he seemed to repent his own free-grace in planting an ingrateful stock in a barren soil: 'et præcavens in futurum, et tactus dolore cordis intrinsecus' which inward wound might very far provoke the wrath of God against his creature; yet in respect of his word engaged, from the beginning of the world, That the blessed seed of a woman, whom all generations call blessed, should bruise the serpent's head; which mystery was to be wrought with effect 'plenitudine temporis;' he would not dispense with his own promise, but suffered the purpose of free-grace to be carried upon the wheels of eternal providence, to the prefixed period of his own benignity. The grievous sins of the prophet David and of his offspring, provoked God's wrath justly to wipe both the blossoms and the root, out of all grace and mercy; and yet in respect of an oath taken long before, that an heir of his line should never want, to keep his throne, it pleased him for the making good of his own promise, to remit his displeasures.

The greatest hope of encouragement that God's people could draw from the prophet Samuel, when they implored his assistance in distress, was this, That God having by a solemn oath selected and in a sort impropriated that nation as a choice people to himself, would neither exclude them out of protection, nor leave them to fury.

The rule of God's own direction is very strict, that if any man hath made a vow to God, 'et se juramento constrinxerit,' and bound himself by oath to keep the same, it shall no longer be in his own election to make it void, but he shall perform precisely what was deliberately promised. It is not known to any man of understanding, what the law sets down concerning the redemption of vows upon just cause in the presence of the priest, and at such a rate as the votary, according to the measure and proportion of his means, is able (without undoing) to afford. Again, all men understand that unlawful vows and oaths (as that of Jephtha, Herod, and many other rash protesters of like sort) force not the point of conscience in the least degree: but when we take an oath advisedly and freely, according to the measures and conditions limited and expressed in the law of God, that is, according to judgment, righteousness, and truth; yea, though it be by duty to a wicked prince, Ezekiel will teach us by the warrant of the Holy spirit, that God himself will nail upon the head of the perjurer, the oath which he hath set light, and the covenant which he hath perfidiously broken.

By the reason which pope Gregory makes

his warrant of releasing the subjects oaths to Henry the 4th, the prophet Hananias one of the high priests for the time, might as well have dispensed with the oaths of God's people to Nebuchodonosor an infidel, and an idolater. But God himself condemneth all priests and prophets that by false hopes went about to ease the people's burden before the time prefixed for their penance by his imposition: and the days of Hananias the false prophet were cut off for his flattery. Wherefore as the boldness and presumption is very great in any mortal man to dive so deeply into the secret mysteries of Providence, as to judge at what time, in what person, upon what condition, or by what warrant one sinner may release another of his oath: so likewise the charter which the school-men in the pope's behalf pretend upon this claim, must undoubtedly be very weak, whensoever they shall undertake without assurance of God's certainly revealed will, to discharge the conscience of man engaged by election, and obliged with solemnity. The school-men shall never be able to make clear proof by any ground out of either testament, by any canon of the councils primitive, nor any of the fathers living in a purer air than ours, (howsoever they devise distinction upon distinction, rather to entangle than to settle faith) that this doctrine of accusing princes upon light occasions, of releasing oaths, of deposing magistrates, is consonant to those principles of obedience and patience which our Saviour left to his apostles, and they like heirlooms to their successors. If it be clear by St. Matthew, that our peace shall return unto ourselves, when they to whom we wish the peace, declare themselves unworthy of our wish; undoubtedly as true it is, that our curses shall recoil upon our own heads, (and that worthily) when they that are within the bosom of the church, (which is the house of God) declare themselves unworthy of the curses which without desert we cast upon them. For as it is a question well moved in this case of Balaam, 'quomodo maledicat ei, cui non maledixit Dominus?' So it is as discreetly noted by St. Gregory, that 'ligandi et solvendi potestate se privat, qui eam injuste exercet:' he deprives himself of the power of binding and loosing sins, that seeks to practise without grounds that may be justified. Origen writes excellently, that where the motives of sharp sentences are unjust, and not able to endure the touch of due regard, he that is cast out, goes not, 'sed qui munit entus, excluditur.'

It was not in the power of the priest by the law of Moses, to make him a leper that was clean, but to judge (by search) whether he were clean or not: and therefore St. Augustine may more confidently deliver his own conclusion, That rash judgment hurts not the person 'de qua temere judicatur, sed ei qui temere judicat.' The reason may be drawn out of another of the same suit, 'quia dum volumus per iram aliena coercere, graviora committimus:' in seeking to correct the faults of

other men in passion, ourselves commit faults that are greater, for want of charity.

Therefore I conclude, and that 'magistrat' liter,' as the school-men speak, out of the very canons themselves, 'manere Letri privilegii, ubicunque fertur ex ipsius a quietate judicium;' that Peter's privilege doth continue so long as the sentence is pronounced out of Peter's equity and not otherwise. To that caution put in by St. Gregory out of scrupulosity of conscience, 'Vel inquam judicis sententiam timendam,' that the sentence of a lawful judge ought to be feared, (yea, though it be unjust) we may give a reasonable answer, by restraining that fear to such a kind of modesty and tenderness as being ever apt to suspect frailty in itself, shall offend less by searching sin with too deep, than too short an instrument; and by supposing out of the sense of an humble spirit, that all men are more apt to flatter themselves in the ways of their own errors, than a learned, discreet and religious judge to censure without a just occasion.

A wise man that desires to preserve his health, receiving pills from the hand of his physician, who understandeth the state of his body out of knowledge and experience, much better than himself, presumeth at the first impression, that some humour may offend either in quantity or quality which serveth correction, though he know it not: but after calling to mind upon advised observation, that his appetite is ordinary, his temper perfect, his digestion strong, and all those other circumstances, which the learned in that faculty regard, suitable to a perfect constitution and state of health, he begins to apprehend (by opposing the sense of his own parts to his doctor's aim) that men, though grave and learned otherwise, may err either by mistaking principles, or giving too light ear to false informations, which are rightly termed the spectacles of error. For God doth only search the hearts and reins, and therefore only knows truly with what ignorance or skill the plaister is applied to the part either festered indeed, or for want of a sound judgment (in those that take upon them as his vicegerents to discern) so deemed of. God hath pronounced in his word, that 'spiritus hominis tantummodo,' the spirit of man only knows those things which are in man, and the spirit of God alone those things which belong to God: and therefore 'de occultis vel de male intellectis,' that spirit which only breathes in the nostrils of mortal men, can neither discern nor judge infallibly. But if any man object, that popes proceeding against princes, arm themselves with sufficiency of proof, before they come to resolve to the defendant's prejudice: I answer, that presumptions too far carried in the scope of passion, have caused many popes to err against emperors in the act of process. And lest we stray too far in seeking an example, even this Gregory 7, condemned Henry, 'Causa inaudita,' before the cause was heard, as some writers of that age testify. That rule of equity which warrants

orderly appeals from judges ill informed, to judges grounding sentence upon proof above exception, in matters of less weight than this, hath been current in all policies and times: for 'Lex iusto non est posita.' And howsoever for the maintainance of order, outward forms are to be kept with moderation and reverence, yet to the soul of man, the conscience standeth for a thousand witnesses, and is in very deed the truest touch. And therefore for my own part I shall never tax that patient, that privily, and without disgrace to the doctor, throws the pills out of the window which are sent, if from certain and undoubted knowledge of his own inward state, he be sure, that for the reparation of health, or for the cure of a supposed sickness, his body hath no need of them.

I stand the longer upon satisfaction to this place of Gregory, because it is opposed in defence of all erring judges, to the snaring (or at the least to the frightening) of those souls that are oftentimes most timorous, because they are most innocent. But in the mean time, note that this godly father released no subject of his oath in point of duty; he accused no prince in the chair of royalty; he confounded no state by extent of primacy; but knew very well how easily a judge may err by strong imagination, with Gad in the book of Judges, mistaking 'capita hominum pro umbris montium,' the heads of men for the shadows of hills; 'et hoc errore decipi,' and by this error be deluded and dazzled.

The chapter of Liege utterly rejecting this release of oaths and fealty, might be moved with many grounds. First, because the breach of a lawful oath (as hath been justified before) falls into the compass of a mortal sin. Again, because many of their predecessors were departed to God in peace of conscience, that till the last point of life observed their oath; whose example they had small reason to under-value. Furthermore, they alledged, and not without just cause, that supposing this emperor as impious as the sentence did import, yet it became them no more than Zedekiah (till the fire of correction had eaten out the rust of sin) to withdraw their necks presumptuously from the yoke of Nebuchadnezzar. I conclude this point with a fit example of the wisdom of our kings in former times, drawn out of the cabinet of most ancient records: for nothing could give them satisfaction touching the loyalty and fidelity of their own prelates, till they had inserted into the oath of homage these words, 'In verbo veritatis,' (Which binds conscience) in place of former words of an elder date, 'Salvo ordine,' which left church-men in effect to their own liberty. For it is free, saith an old Roman Catholic, Johannes de Parisiis, for any lawful prince to repel the violence of the spiritual sword by the best means he can, finding that it tendeth to the disturbance of the civil state, 'cujus cura incumbit regi,' the care whereof belongeth to the king: or else he should bear the sword idly.

But now to make the best use that the fitness of this occasion offers upon the worst motive that ever was heard of among men before this accident; and to make all men see that have either eyes of understanding in their heads, or the fear of God's judgments in their hearts, how rashly our late undertakers, who steer Peter's ship in our narrow seas, Mr. Garnet being one of the chief pilots, have run her upon the rock of rebellion, neither looking to the card of conscience, nor regarding the compass of faith: I desire that certain observations may be kept in memory, as certain monuments of God's powerful works were in Israel, 'tanquam signa prædicantia;' that is, forewarning signs and cautions for abstinence to giddy malcontents in future times; which otherwise, upon the motives of like mischief, may be metamorphosed into figures of like inhumanity; for an angel said to Tobit, That to publish and reveal the works of God, is laudable.

I know that strange things happen oftentimes by accident, so far as the weakness of our sense is able to apprehend, though truth assures us, that without the providence of God no sparrow lights upon the ground: and Pericles justly maketh fortune to be nothing else but 'vera causa ignoracionem,' our ignorance of the proper and true causes of all things. But yet where a wild boar by rooting in the ground doth not accidentally express one A, but adds to that so many letters in due course as presents this whole word Agamemnon to the reader's eye; where a man doth not cast three quarters upon three dice, but 3,000 quarters upon 3,000; and where order, which proceeds from reason and election, is kept in coherent forms, chance hath no stroke of predominance by the right grounds of philosophy. Wherefore no man can tell whether some of those confederates alive, because I dare not say that there are none, looking back as it were from the shore upon the rocks and quicksands which they escaped in this storm, (calling to account the had success, not of one or two, but of all their many counsels, labours and events in this luckless action, keeping in mind that observation among the Galenists, that where all simples work against their kind or property, the cure is desperate) finding our Jerusalem to be bait as a city, 'cujus participatio in idipsum;' marking that our gracious, our just, and best deserving king (supported by God's angels, which are 'Spiritus administratorii in ministerium missi propter eos qui capiunt hereditatem salutis') doth dwell 'in adjutorio altissimi;' and that it is in vain to work upon a monarchy, 'cujus cor est unum et anima una,' whose heart and soul in the point of obedience is one and the same; will return to the resolution wherein they stand engaged by the laws of God, and of their own native soil; give ear to the voice of their own shepherd, and acknowledge humbly with Jacob, that 'Dominus erat in loco isto, et ipsi nesciebant;' God with the mighty protection of his powerful hand was in the place, although they knew it not.

First therefore I observe, that when you, master Garnet, and your practising disciples, laid a pack together for a project of invasion against the late queen, and in her later days, with hope to put out a flush of princes with a prime of jacks, which will never stand in this state, I trust, with our right game of 'primus ero.' God took away this lady in her ripe and mellow years, when her head was white with the blossoms of the almond tree, as he did Josias, 'Ne videret mala quæ eventura erant,' lest she should see the mischief which was likely to ensue, and had followed undoubtedly, as men were restrained from the certain knowledge of the only rightful successor, if the 'bonus genius' of our dear sovereign had not, through the preparation of ordinary means and instruments, by supernal grace established this state in the full fruition of their long lasting security.

The bulls which by the practice of you and your Catiline, the lively image of your heart, should, by loud lowing, have called all his calves together with a preparation to band against our sovereign, at the first break of day, and to have cropped those sweet olive-buds that environ the regal seat, did more good than hurt, as it happened, by calling in a third bull, which was Bull the hangman, to make a speedy riddance and dispatch of this forloru fellowship.

In the time of Henry 6, Humphry duke of Gloucester, finding certain bulls that came from Rome to be very prejudicial to the king's estate, without asking leave of any man, cast them roundly into a bonfire. The late queen of happy memory entertaining the bull which Felton set upon the bishop of London's gate, with the same or greater distaste, because the dritt to be embase her title, and transport her crown, gave it as quick dispatch by like destiny: and master Garnet thought his bulls as worthy to be sacrificed in a quick fire as any of the rest, for their idleness and weakness in effecting what was wished, and expected by the friends that invited them. These bulls master Garnet were 'Cornupetae'; you were warned by the state to shut them up, in respect of the mischief that they meant; you regarded not the prohibitions of law, but gave them scope of grazing in certain grounds, where the marks of their impressions are visible. If this be denied, Catesby your apt scholar and choice friend shall charge your conscience, who drew from the direction of these bulls that shrewd argument, That if it were lawful to keep a right heir from his kingdom, in respect of conscience, before establishment, it was as lawful to remove him after he were established. The wisdom of the Holy Ghost ordaineth, That 'Bos lapidibus obruetur si occidetur dominus:' though we leave all to the law's ordinance, and his majesty's good pleasure. But whatsoever happeneth in the process, I must confess that bulls have little reason to require a mittimus into these parts, since neither their access is acceptable, nor their success fortunate. The point whereat I wonder most, in revolving these strange events, is That the bulls which were consumed into ashes at

White Welbs, should be brought forth this day to be baited at the Guildhall.

At the king's first entrance into this happy state, with as great security and ease, as if he had removed after an ordinary fashion from London to Greenwich, and from Greenwich to Hampton-Court, the most expedient device for the disturbance of the general applause, which entertained 'nostrum Solomonem pacificum' with a kind of joy and cheerfulness unspeakable, as was conceived by the brotherhood, was to awake the purpose of invasion, that slept in foreign parts, by a set messenger employed. But though Verus had commended this Petition by letter of request to Mars, it would not have been heard, God having then prepared and disposed the minds of princes on both sides to such a peace, as could admit neither secret operation, nor open execution of hypocrisy. This was not by the method of Divine process, 'eligere infirma ut confundat fortia:' but this was rather by the spirit of Achitophel's suggestion, 'abuti fortibus ut confunderuntur omnia.' But thanks be to God, the lion is alive, out of whose mouth you must have drawn your dropping honey-comb, before your riddle could have had either the grace or the success which you desire among our conspiring Philistines: so that we only find your fixed trust in tumult and vexation, as the prophet speaketh, instead of that hope and silence which should have been your sheet-anchor.

Your end was by possessing princes with the motives of your malice to stir compassion; because it happeneth often that exhalations drawn up to the highest region by the beams of the sun, are there inflamed and sent back again with a fiery effect: but 'multi committunt eadem diverso crimina fato.' A great philosopher observeth to the same effect, that 'Prosperum scelus virtus vocatur.' And notably to this consort another, that though the fact and intent were one in both, yet 'Ille crucem sceleris pretium tulit, hic diadema.' But in this case by the goodness of God it fell out quite contrary; for the princes being as weary of war, as you were of peace, desiring as much to spare blood, as you to let it out; and regarding more the grounds of their own discretion than the storms of your passion, sent away your second Mercury with a flea in his ear, and instead of procuring treasure and supplies, were content to learn, by the scope of this employment, that some professors of the Catholick religion had other views wherein to exercise their inventions and meditations beside the repetition of the Rosary, which without so manifest a proof, perhaps they would either not at all, or not so easily have credited.

The conspirators could not devise a more likely motive of attraction whereby to draw malecontents and beautefeux into the mischief which their malice did intend, than by whispering into the ears of ignorant and ill-advised Catholicks, that his majesty had violated a former promise made to some of them before,

of toleration in point of conscience: for ears that itch after light reports, and minds that interpret common fears in that sense which tends to their private harm and prejudice, converting for the most part to rank poison whatsoever is prepared by the best affections to kindle nutriment, take hold of the first overture. But for prevention of this peril, God so wrought, by disposing times and accidents to best effects, as before the poison could pierce to the secret of men's thoughts, Watson the priest had confessed to myself, sent from his majesty to the jail at Winchester, for the finding out of the first author of this lewd report, not past one day or two before his death, at which time no man is presumed by the civil laws to lye, that he never could receive any spark of comfort touching ease of conscience to Catholicks from his majesty, how unjustly soever the world had made him author of that scandal; though withal he added how unwilling he had been to utter the king's answer to the Catholicks at his return in his own words, and with those incurable obstructions, which appeared by the manner, for fear lest over-great discouragement might make them desperate, and drive them to seek other helps, as some did, which this action makes evident.

Besides, there are in England some Recusants at this day, that for a need both could and would avow the like report of Percy after his returns out of Scotland, both before and after the queen's death; advising no man to depend upon the least conceit or apprehension of hope from thence, but make the best shift they could devise for themselves; for in the point of conscience he found the king's intent and final purpose to be peremptory. By this plain dealing many were deprived of their best advantage of improving this shroud circumstance, both as a colour of exception and a mask of conspiracy.

The practice was begun with auricular confession, as the safest lock to which men durst adventure to commit a secret of this weight; for, who could hope to draw that from a confident or a confessor in respect of safety, besides censures of the Church, the peril reaching and extending to the loss of life? But by the streams of Jordan running backwards to the drowning of the worst disposed part, it came to pass that by the words which passed between Greenwell and Bates (Catesby's servant) in confession upon the horror of his conscience against so foul a fact, those circumstances happily fell out, which being brought to light, made a fair introduction into that full discovery which the lords laboured. It may be thought that God himself abhorring the falsehood of a priest, that under the colour of the keys, abusing both his person and his power, is not ashamed to contrive conspiracies so much more perilous and pestilent, as they are countenanced with a more holy shew, hath set a mark of his own wrath both upon the matter and the minister. For the patients are oftentimes beguiled in judging by taste the quality

of the simples, and ingredients which they receive, 'decepto sensu cum judicio,' the judgment of the senses being first deceived, 'et corruptis organis.'

It is clear, that for the secreting and concealing of this purpose, till by progression it might be ripened for the desired end, the seal of the Sacrament of union was set to this contract of blood; as if God would be put in trust with the keeping of these prophane bands and obligations of conscience, against the rule and canon of his own written law, 'que versatur tantummodo in bonæ fidei judiciis.' But we that know what desperate effects unworthy eating of the Sacrament, and the presumption of bearing the standard of our Saviour in open field against himself, have wrought in minds polluted with impressions of sins, that are voluntary and premeditate, will not greatly wonder at the bad success of this conjunction, calling to mind that the first work of Judas after the receiving of the sop, was to betray his master, and the next to hang himself; and in such a manner, 'ut creparet medias et effunderentur ejus viscera,' that he brake in the middle, and his entrails came out of him.

The purpose of these gallants in binding faith and promise one to another by solemn oath, though 'Demens est qui fidem præstat errori,' stood upon the distrust that one reposed in another's love and moveless constancy holding themselves as sure after such seal of the contract, as Seleucus did himself in the speculation of a city to be built in the air above the reach of the capacity or wit of man; but yet experience reveals, that the hands of Madian have fought against themselves, the voices of Babel have confounded their own plots, and these forlorn hopes like the knights of Cadmus, as appeareth by the scope of their own confessions, 'mutuis conciderunt vulneribus,' have been wounded to death one by another.

The course of mining into the strong wall of the parliament, was in very deed more laborious and slow, but yet more sure and secret than the latter by the vault, in case the pioneers had proceeded resolutely according to the plot of the first device: For prevention of which almost inevitable stroke, the cellar was set open even in the very heat of their endeavour, as it were by the handy-work of God himself; and not only set open, but almost miraculously put into their hands by a faithful servant of the king's, whose ordinary caution could not possibly have been so far over-shot, without an inward working and contriving favour from above, which took hold of the feet of sinners in that very snare that they had prepared and set for those that were most innocent. They flattered their own conceits so idly, but yet so far with the facility of working upon this unexpected overture, as if it had been the will of God, that to them, as to Jacob hunting for his prey, 'occurreret quod volebant.' But on the other side we may observe with joy and comfort, That though they watched eagerly with Esau for those days of mourn-



ing, wherein the death of Isaac might prepare a way for their most bloody and most violent revenge, like rats between the hanging and the wall 'suo perierunt iudicio,' they were first betrayed, and afterwards perished by their own discovery.

Their spleen was even 'sævire in saxa,' bent against the walls and house of parliament, as an instrumental cause for producing many sharp laws, for the space of more than forty years, against the religion, which their own disguised affections did eagerly embrace, with a purpose to convert Hierusalem 'in acervum lapidum,' into a heap of stones. Thus Polymnestor stricken blind, out of rage against Hecuba, sought to murder all the women he could meet. Thus Fulvia by thrusting needles into the tongue of Cicero, after he was dead, sought revenge of his sharp invectives against Anthony: And thus Anthony himself warred against the walls of the senate-house at Rome after Cæsar's death; but yet the place is as it was, the benches stand as they did, and they that set on them have the same affections which before they had; enforced perhaps by this late more than Neronian attempt of endangering both their souls and bodies at one blast, for want of time to call for grace, to strike a deeper wound than any of their ancestors had done before into the cause which the scope and drift of these undertakers pretended by their inventions to rectify. The Roman soothsayers had reason to divine, that when bulls, bandogs and asses, which are beasts created for obedience and use, grew mad upon a sudden, and without a certain cause, 'Bellum servile imminabat;' and of this composition was the late pack of rebels, that with the same barbarous inhumanity, which was well observed at the ruin of Saguntum, 'nihil reliquæ fecerunt ut non ipsis elementis fieret injuria;' left nothing undone for their parts to wrong the very elements. I grant that they might learn their art of building muddy walls of the swallow, which are but summer-birds; and their skill in weaving cobwebs of the spinners, whom Minerva hated; chiefly, because their works were more laborious than durable; and most commonly swept away before they came to finishing. But this trick of subverting and demolishing, they could not learn better than of the Montanists, 'Qui non laborabant,' as Tertullian reports, 'ut ædificarent sua, quam ut destruerent aliena,' to build their own as to destroy other men's; 'Heu genus invisum superis!

The train of powder was laid only for true men by wicked traitors; to this end chiefly, that after innocency had endured, malice might insult, that 'cùm scelera prosunt, peccat qui rectè facit;' and conclude with the rankest atheists of our time, a prejudice of God's anger against faithful subjects, out of the barbarous effects of their own villainy: For this argument is used in defence of the slaughter of the last French king. But as we find just cause to rejoice thus far with Shadrach, Meshach and

Abednego, 'Nihil potestatis in nostra corpora habuisse ignem?' That the rage of the fire had no force or strength against our bodies, God's angels coming down of purpose both to disperse the flame, and to infuse in lieu thereof 'ventum roris flantem,' a cool wind of mild air breathing, to slack wasting heat, 'Ut neque eos contristaret ignis, nec quicquam molestie inferret;' as it could neither make them sad, nor offend them any way: So on the other side, God wrought so powerfully in this particular, to give a taste and a feeling to some of the chief traitors of those endless flames, that in another world shall never ease, without contrition and confession in this, as in the chiefest puzzle and perplexity of their ill-thriving practices, they were blasted by the rage of their own gunpowder.

Thus Alexander 6 and his darling Borgin, the only monster of that age, were poisoned by error of the cupboard-keeper, out of the bottles that were kept in store, and by Cæsar's own appointment, against supper, for the destruction of certain cardinals. And thus it happens many times, God's justice far surmounting man's capacity, that those instruments which we select for execution of malice, serve for the protection of innocents, 'Et sæpe fugiêdo mala, in majora incurrimus.'

These Catalinians in the raging distemper of their passion, which meeteth their own wants 'et commoda aliena pari dolore,' were so desirous to draw blood even 'ad animæ deliquum,' of the noblest, the truest and best subjects of the state in all degrees, that had not one drop of attainted or infected blood in any vein; and to make sure work, that there might be spare of none, like the Roman triumvir, they held it safest to let out their own, without distinction of kinsmen, allies, or friends; leaving no one man of mark out of the list, which was agreed upon by the conspirators. But mark the proof; For, as Leo writt to Mauritiuſ, 'in victoria veritatis, sola veritatis inimici perierunt,' none but the enemies of truth did perish in truth's victory. For whosoever loves to dive into the waters of contradiction, whose property is, as a learned father notes, rather 'vorare' than 'portare,' may be sure to expect in vain, that the hand of Christ which assisted Peter in his faith, should support them in their fraud: For between truth and falsehood, as well the differences as the degrees are infinite.

It was holden a safe course and of great use for advancement of this bloody project, that a faculty might be granted to some persons, which in that rank were reputed choice for their excess in cruelty, and barbarous inhumanity above all the rest, for the calling in of such other assistants and confederates, as 'Non propter eximias virtutes,' but such as 'pares negotiis erant nec supererant,' and that when the stock grew poor, might be best able to defray expences, to ease burthens, and advance desires. But it fell not out that any good grew to the cause by any person let in at this loop,

howsoever their affections were bent: For Francis Tresham the last above, intended much, but effected little by relief; only this I note, that by his passions and words in his first answer at the council-board before the lords, he left so deep impressions both of his fore-foot, and his hinder-feet, as though we could not evidently descry the hare, yet we easily discerned what course she took, and thereupon the better with a full cry upon so hot a scent pursued the game that hasted to get over.

No man can deny but it was in Robin Catesby the trick of a crafty pate, enrouding violently the ruin of our sovereign, and his royal progeny, to engage the fortunes of his dear friends, Rookwood, Grant, &c. to his hungry creditors, in deep bonds, before he would impart to them the secret of his Plot, supposing certainly, that in respect of their own danger by his fall, they would be more apt to undergo the hazard of all events, and rather chuse to die with him, (though the worst should chance) than to beg after him; having in the mean time in their eye so bright an object of enticing hopes, That 'summa scelera incipiuntur cum periculo, peraguntur cum premio.' But as the greatness and inwardness between wicked men (according to the grounds of moral wisdom) is accounted rather conspiracy than amity, (having but 'metum et noxam conscientie pro fœdere;' so likewise in this case, the success was suitable, for one led another by the links of combination to the reward of cozenage. Trust was the trap, false hopes the baits; and all the fruit they could expect by tricks, was of the same quality with the grapes and pomegranates that grew in Sodom, after the ruin of the town, as we read in Origen, (that is) smelling of sulphur, though delightful to the eye. And even as those upon the first touch were apt to dissolve into powder, so were these upon proof to run into Gunpowder.

The scope of some chief actor in this tragedy, more sensitive in that point of compassion, as it seems, than the rest, was to advise a noble gentleman, whom in respect of his approved love and loyalty to the king his sovereign; he durst not trust, by an obscure letter, more resembling the riddle of an Oedipus than the counsel of a friend, that he should abstain from the place prefixed at the time determined. The dark figure of the writing, the strange manner of delivering, the small likelihood of any cloud at that time gathering, might have moved many men rather to have neglected, than apprehended so blind a figure of discovery. But this discreet and worthy gentleman, conceiving that men experienced in mysteries of state were better able than himself, both to discern of spirits, and unloose hard knots; imparted this occurrent to certain of the privy council, and they to the king, who by that spirit of true divination, which is infused into the lips of the king by God, (as the proverb says) never gave over mining into the purpose of this admonition, with due regarding circumstances and presumptions, according to the nature of the motion,

till the barrels were brought into light, and order was taken to drive the devils out of their den, the materials out of their opportunities, and the pioneers from all possibility of effecting the powder-works.

The purpose of these gallants 'qui pascuntur scelere,' was to feast their eyes with the sight of our dead carcasses; for since there were no doves, but ravens, the less wonder that they did 'sequi cadavera.' But now by God's providence it comes to pass, that their limbs feed the fowls of the air; unless, the curse of God, the putrefaction of sin, and horror of the fact, move all the creatures of God to loath and abhor to look upon them.

The same sly serpent that seduced Eve, by the deceitful bait of understanding good and evil, to transgress, induced some of these, I doubt not, to undertake more gallantly, upon hope to be reputed holy angels in this life, in case their enterprise succeeded happily, or martyrs in the next; if it fell out otherwise. But by evident confession it appears, that the very night wherein the powder should have wrought the desperate effect, either the light of reason, the horror of vexation, or the powder of revelation, presented to Robert Winter in a dream, the faces of his chief friends, and the highest traitors that should have acted execution upon the bloody stage, in such a ghastly and ugly figure, more like to that 'malus genius' which appeared unto Brutus the night before his death, or the face of Hector that appeared unto Andromache, or the countenance which they themselves held afterward upon the pinnacles of the parliament, than to that figure of beatitude, by which their own fantastical conceits and alluding apprehensions were too much flattered. For it is not only true that God, as Job says, 'terret per somnia,' affrights by dreams, 'et per visiones horrorem concutit,' and by visions shakes the mind with horror: But beside, this ground out of the book of Wisdom can never fail, as I said before, that 'cum timida sit nequitia, dat testimonium condemnationis.' Wickedness gives evidence of condemnation, because it is timorous, 'Et semper præsumit sæva perturbata conscientia.'

While the wisest in this wicked pack, upon the discovery made by that worthy lord of whom I spake before, began to lay their heads together, and in a staggering with great uncertainty what course to take, stood with the king of Babylon, as the poet says 'in bivio querentes divinationem;' some doubting, some securing, some hoping, some despairing, and all setting the cause in such a course, as in case Percy their explorer, that was let out like a raven, and sent as a spy to descry by the best inducements he could find, whether the state took hold of their discoveries or not, brought back ill news, a ship might be prepared on the sudden for the transport of this his pack, God dazzled their eyes with so dark a mist of error and perplexity as they could not find the right way to get out of the wood; and their prophet Percy by securing doubts at his return inspired new

life into dead hopes, that the project for speedy rigging of a ship was carelessly cast off, and error left to make full satisfaction by suffering. For God, that caused the first vessel to be built by Noah for the saving of those eight faithful, pure and selected souls, that should with time renew the world which sin had drowned in the depths of despair, would not permit that any other of that mould or fabrick, should preserve these eight unfaithful, unpure and detested souls, whose end was to destroy this *perdition* of our English orb, which hath been so strongly, so often, and so powerfully protected under the wings of his tenderness.

As Joah kissed Abner when he gave him the stab, Jezebel proclaimed a fast when she cut Naboth's throat, and Judas kissed our Saviour when his end was only to betray him to the Pharisees: So Percy, the right limb of Lucifer, pretended with a colour of devotion to kiss the image of the blessed Virgin, after he had plighted faith and promise to his complices, by blowing up the body of the state, to destroy the king, who is indeed the sacred image of the eternal Son. But God, whose holy purpose was to publish to the world how far his blessed mother is from countenancing and protecting traitors, that by opposing to his deputy revolt from him, branded this act of hypocrisy with so palpable a mark for an admonition everlasting to well-meaning souls, that are oftentimes surprized in their weakness, by false seeming shews of piety, when the practices are foul, as on that very feast of the blessed Virgin, (whose picture Percy did so embrace) which shall set forth to the world's end the memory of Christ's incarnation, whom the traitors would have wounded through the side of his lieutenant in the seat of majesty, an act did pass in parliament for the blowing up of these monsters and their hopes that by an act which never had the voice of any member of the parliament, would have blown up both houses.

To your own drift and purpose, master Garnet, in recommending that ancient hymn, used on the day of All Saints,

*Gentem auferre perfidam  
Credentium de finibus;*

for a speedy dispatch of many innocents, that God, which converts both the labours and the prayers of the wicked into sin, and reflecteth execrations of infidelity upon the heads of those that execrate and curse without just ground, gave satisfaction, though in a contrary element; purging the present state of Catesby, Percy, and their complices, which may truly be reckoned, and reputed above all men that ever were, *Gens perfidissima*, transcending all proportions either of precedent or future inhumanity. As for your fervency in swearing and forswearing manifest untruths, and such as you were forced afterwards to confess with a blushing countenance, it proceeded as I think from a reverent regard to shadow great faults, which breaking out of Chaos into light, might cast scandal as you thought upon your whole society. And this I gather evidently, as well out of your own

speeches, as out of your request; that the censure of your weakness might determine personally, within the compass of your fault. But we receive a further benefit thereby in distinguishing between the protestations of plain dealers, and of those that are taught to equivocate; to mark those that pronounce verbally, when they renounce mentally, and those that in point of fact are not ranged unto the rules of faith; and the civil laws have resolved, both justly and judiciously, that construction ought ever to be made against the party that comes masked to the bar, and speaks ambiguously upon advantage, when he should speak plainly for satisfaction.

I dare undertake, it was certainly conceived by you Mr. Garnet, and by Mr. Hall your fellow-prisoner both in profession and bands, that if by any accident you might confer but half an hour after you had passed the file of their examinations, that had both you and your cause in hand, the lips of scandal would have been sealed and shut up so close, as nothing might evaporate to embicmish oaths, since the lords of the commission forbearing torture, dealt so tenderly; and thereupon you found a second vent of whispering between two doors, but with no better proof by this adventure than by the rest. For your former reservedness, being now encouraged and urged by the spur of opportunity, became so confident in running beyond itself through the chief points whereof the state was most eager and desirous to take certain notice at that time, as they that could not reap might glean, and many shifts and subtil traverses were over-wrought by this occasion, which could not be extracted out of your breast either by intreaty or industry.

By writing to the pope in a christian and humble manner for the tempering and cooling of hot humours of some giddy-headed catholicks by his apostolick authority, lest they might cause distemper in the state, carried in appearance a great likelihood of that obedience and patience which the word of God enjoins, and was accordingly divulged both by you Mr. Garnet, and many others of your suit, for the satisfaction of their conceits that were suspicious of your plain faith: But many grew to fear by the forewarnings which Watson left before his death, that this was but a vizard of invention to dazzle trust: And most grew suspicious of a mischief imminent, though they knew not what it was: The world heard rumours of a feat to be wrought for the Catholicks in parliament, though they could not understand the mean, and experience hath taught the ground of this submissive letter to the pope, after the bestowing of all the barrels among the piles of wood, to have only proceeded out of fear, that such another hot alarm as arose in Wales about the giddy mutinies of some light Catholicks might awake those eyes of Argus that were brought into so sweet a slumber by the pipe of Mercury, and put all vices and devices, out of frame, that were to work with leisure, silence, and repose in the great hellish enterprise.

Thus God intended mercifully the prosperous and happy defeat of Achitophel's device, was content that the first contrivers should put it to the highest proof, that upon discovery the practice might be more clear, the state more secure, and the fault more inexcusable. For 'homo inimicus' the envious man sows his tares so slyly and secretly at the first, as the eye of observation cannot reach to the depth of fraud; but like bastard-slips, the higher they grow, the more evidently they discover the true parent's impiety.

Greenwell desiring more the good success of this invention, than the planting of the Roman faith, enjoined Bates in the secret of confession to reveal the purpose to no priest; so jealous and suspicious he was (in respect of the main) both of weakness and error in his own consort: and you Mr. Garnet, no less provident in those things which concerned your own safety or reputation, or as it is said by one spiteful unlike with you,

'Subsedit dubius totam dum colligit iram;' forbade Greenwell to give the least inking to Catesby of your privy to the proceeding, though you were made acquainted with the matter in generality. And more, when you were assured of a likelihood of good success by Catesby's own encouragement, (so much wiser are the children of this world, that do rather 'sapere quæ sunt carnis,' than 'sentire quæ sunt spiritus,' as Paul forewarns, than the children of light, but this is only in their own generation) you were so careful out of fear to be surprized with a lye, (as the wicked judges were by Daniel upon the question 'sub qua arbore,' under what tree) and that your confessions might be consonant, that the quintessence of wit sublimed to the highest point, could not work more precisely and more punctually for prevention of discovery by orderly digestion of all occasions or directions, than you did by this preparative. But against the stroke of Providence all counter-practices are vain: for 'dies diei eructat verbum, et nox nocti indicat scientiam,' as may appear by that 'nubes testium,' that cloud of witnesses, which turning to a Scottish mist, hath not only wet both yourself and your fellows to the skin, but beside, made all their shameful parts so manifest, (even to vulgar eyes, that were to act upon the bloody stage) as the priests themselves appeaching one another, and falling out to be 'suorum fugitorum proditores,' were as much deceived in the theorick of trust, as the lay disciples were in the practick of conspiracy. For it is no less strange than true, that the powerful God (which by his word assureth us that the birds of heaven shall bring those projects and inventions to light, that are contrived in the secret thought, or privy cabinet of any wicked and false-hearted subject against the king) hath so fitted and prepared instruments of overtures, as the mysteries which passed in confession between the priests themselves (revealed by themselves) come this day and in this renowned place to be scanned and censured.

I will now shut up this audit of demonstrations which we descry (God's anger working almost miraculously in the transmutation of substances and change of properties for accomplishment of his own just ends) with the highest object of your wicked aim, which was the destruction of the most just, learned, bountiful, temperate, and tender-hearted king, (I may speak it on my conscience without base flattery) that ever was ranked either in the English or the Scottish register: his right, his heart, his tongue, hath wished happiness, and brought security to this state; which if you and your confederates disdain or wilfully reject, his own good wishes shall return to himself, and the dust of those harmless feet, that never were 'veloces ad effundendum sanguinem,' swift or hasty to shed blood, shall raise a cloud between you and that Eternal Judge in the dreadful day, to plague your ingratitude. For what is the fault (in the name of God) that can offend the most precise and captious conceits (excepting conscience, for which he must neither account to Bruno or Iguatius, but to God alone) wherein the king may be said to have cast dust in their eyes, that were most violent and diligent in preparing fuel, and making fire, for the sacrificing of a lamb, whose innocent blood, like that of Abel, would have cried for vengeance in the ear of God, against the cursed crew of all the conspirators, if their success had been fortunate?

By the way, I cannot cease to wonder at the providence and piety of this thrice happy king, this 'pacator orbis,' (the real attribute of Constantine) who seeketh to establish the throne of his dominion and power, neither with the three feet of Apollo's stool at Delphos, which his own interpreters have understood of nimbleness, observation and subtilty; nor only with the lions and lions whelps, that garnished the six steps ascending to the chair of Solomon, to stir up magnanimity, both in young and old, but according to the rules and ancient precepts of our English government, with the three piles of conscience, honour and the people's love; and that so steadfastly, as the sons of Belial have neither hope nor possibility of compassing their own desires, without cutting off these three, that is bishops, peers and commons at one blow, 'ut cespes unus et regem nostrum, et rempub. tegetet.' Therefore hold not the peril strange wherein you stand at this present, of another kind of triplicity specified by Solomon, for proportionable punishment of your barbarous affection in working (by the quintessence of inhumanity) the ruin both of prince and state, for 'Funiculus triplex non facile rumpitur.' For to men of uncertain wits and aims, it happens often in experience, that by the least swerving either of the eye of judgment, or of the hand of use, instead of the white of ambition, they hit point-blank the mark of execution: therefore no man shall be able to avow either in the present or the future time, that they which sit as judges in this case of execrable treason, wash their hands with

Pilate in hypocrisy, when you and your confederates that stand forth to be tried, cannot wash your own hands with the prophet David, 'innocentes,' among those that are innocent.

Princes use not to taste offers without assays: we cannot admit your obstinacy in refusing to pledge the health of this whole estate; and no man knows better (Mr. Garnet) than yourself, by what writ true men are warranted 'in poculo' 'quod nobis miscuistis, miscere vobis duplum,' to give you double measure of the draught which you had prepared for the state's destruction; when your purpose was (if courses had suited to your wish) that it should begin from them. By this it appears, that 'virtutis' 'cursus' (if that were in you which the world did imagine) was 'celerior quàm statis,' that your life had over-run your loyalty.

It is hard for a man so many ways engaged to a prince, and for so many favours as myself, to cut evenly between affection and truth, or to provide so tenderly by preoccupation, as no spider may suck poison out of a rose: but 'juncta' 'est alea,' and therefore since it is neither my delight to sow soft pillows under princes elbows, nor the king's desire that his trusty servants and true counsellors should with the glosing prophets in the days of Mical utter 'placencia potius quam solida,' I would only crave that liberty which is afforded in case of private persons to affections that are most indifferent, which is to present his picture to the eye of observation in true colours and proportions, without swerving too far on either hand, because he must ever be 'iniquus dignitatis iudex, qui' 'aut invidet aut nimium favet,' and to wipe away the wrong which hath been done to him, and hereafter may by false aspersions, from the pencils of prejudicate conceit, awake my spirits in discharge of duty, beside obligations of grace, to raise my compass thus high at the least, and to lend my strongest arms and best endeavours to the just defence of a most just and worthy king, furiously and unjustly set upon. What spirit moved you and yours, Mr. Garnet, to dissolve the quiet of a state that never conceived you in her womb, with a purpose that, like the brood of vipers, you should make your issue into life by eating out the bowels of the dam that gave you both creation and nourishment? for it could not be, but the commonwealth 'in' 'ipsa vindicta libertatis,' as yours termed it, 'esset peritura,' when Catesby and his desperate rout meant not 'subigere nostram urbem,' as the Athenian orator saith of Philip, 'sed' 'funditus evertere;' well knowing that those that escaped, to be slaves 'neque voluerunt esse,' 'neque potuerunt.' What ailed you to mine into the strongest furt of your dear countrymen, who living by the temper of the king's affections under Libra, that is as much as under the golden line of justice, moderation, and grace, can hardly judge out of their own affection, whether the nights or the days pass over their heads more happily. For neither is it possible at this day for Virgo, that barren sign, to endanger us by orbity or age, nor for Taurus the

bull to gore our sides with anticipation, nor for Scorpio to sting us in the heart, nor for Sagittarius to wound us in the reins, nor Aries the Roman engine to butt with his offensive head at the walls of our high court of parliament: 'ten-' 'pestat abijt, et ecce nova facta sunt omnia.'

At his majesty's first entrance he found us embroiled and greatly weakened by the deeply festered long running ulcer of a lasting war; what was the cure? A beam of wisdom, seasonably derived from the practice and experience of the wisest king that ever was, to conCLUDE a peace 'cum omnibus nationibus in circuitu,' that every faithful subject might enjoy the shade of his own fig tree, and the fruit of his own vine from Dan to Beersheba. I do easily believe, Mr. Garnet, that this course was nothing agreeable to your affections and ends, that sought a greater gain by fishing in streams that were more troubled; and sitting on a bare bough, like the raven when the lion and the leopard came forth to fight, began bravely to sound a point of war, in hope that whether of both those had the worst, one should serve for a prey for him to feed upon. And with the wicked crew in Lucan your prayer was,

'Non pacem petimus, superi, date gentibus' 'iras;'

but were of another mind and hope to make you pine a good while longer at the calms of our repose, before you put us into these distempers, that have made your own best friends, and fairest fortunes absolutely desperate; to whom so far as in modesty you could ask, I may say with Paterculus, 'quod tumultuando adipisci' 'petiistis, quiete obtulisset respublica.' Peace is the mark wherewith the Holy Ghost would have all religious affections to aim: it is the razor that cuts the throat of crying sins; it is the good angel that drives horror out of the conscience of every Christian, when death threatens to arrest; it is the chiefest badge by which our Saviour would have his true disciples known from hypocrites; and it is both the richest and the last jewel which, departing hence to his Father, he left to his spouse the church for a legacy. And therefore our prayer by opposition to your exorcism must be thus,

'Nulla salus bello, pacem te poscimus omnes.'

But how long is it, I pray you, Mr. Garnet, since the heart of every faithful subject in this kingdom was ready to break with a fearful contemplation of those rocks, upon which the vessels of all fortunes both public and particular were likely to have run, at what time soever Deborah was to walk the ways of all flesh, and to be laid up to rest in the grave of her ancestors, for want of a certainly designed successor, upon whom Israel might only fix their eyes, both for satisfaction in conscience, and infallible direction to loyalty? In those days the state was charged by all your pens and pamphlets with an uncivil, or rather an unchristian facility in flattering the present time, with peril to the time to come, in preferring humours personal before real plagues, and in settling the whole weight of this state upon the staff of age, with no less con-

fidence than if it had been a pole of eternity. You could then insinuate for the kindling of undutiful affections at home, how deeply both the queen should be charged in another day for setting the kingdom's rest upon the weak cards of her own particular respects; and others for inclining so much out of awe to the predominance of time; as without the work of God's powerful hand, their fear might have been the cause of the state's overthrow. Nothing was then more rife in the mouths of many Catholics, than the wrong that was done to the true and lawful issue of that worthy queen, who, instead of digging up a turf according to the manner, made her grave an entry in her son's behalf to the title of these crowns; as if she should have said with the conqueror when he took a fall at his first landing, 'Terram capio:' by laying down her life, she took a formal livery and seisin for her son; her life, I say, more precious than either my mind is able to apprehend, or my pen to deliver.

Give me leave therefore to enquire of you in the phrase of Paul, and rather with true zeal than detracting spleen, 'O insensati Galatæ, quis vos suscitavit non obedire veritati?' O ye senseless Galatians, who hath, since that, stirred up your passions against obedience to truth, and moved you in this manner to abhor the most cordial receipts for cure of inveterate infirmities, as if they were compounded of Colocynthis, which in hatred of time past you only sought, as your only restoratives? For though every man that had in his head either half a drachm of discretion, or the least scruple of common sense, knew very well what should become of those which in the day of demonstration durst protest with Sheba the son of Belial by sound of trumpet, 'nullam sibi esse partem in David, neque hæreditatem in filio Jesse;' that since they had neither part in David, nor inheritance in the son of Jesse, it were free to Israel to return to their pavilions; yet I must confess that the wiser sort 'in omnem eventum,' to make the foundation more sure, would have purchased the public satisfaction in this degree at an excessive rate, which was suppressed by the strength of law, and overcast with a cloud of suspicion. We are not ignorant in those days, Mr. Garnet, how many did expect with Esau, 'diem luctus' for opportunity of revenge. We knew both in what manner, and by what means some heavy bodies, and more heavy spirits were in hope to raise themselves like bustards in fallow fields 'vi turbinis,' by the strength of a whirlwind, to that height which ambition, void of due consideration, did foolishly affect.

It is evident that Ishmael would have been Isaac's play-fellow: and every day more arguments were brought to light of a strong desire in many minds, that Eteocles and Polynices might make partition of their inheritance 'acuto ferro,' with a sharp cutting sword: But as Paterculus reports of the security of the Roman Empire, otherwise than was expected, after the death of Augustus, we felt not so much as a quivering of that commonwealth, of whose

ruin we stood in so great fear, 'tanta fuit unius viri majestas, ut nec bonis, neque contra malos opus armis foret:' for so great was the majesty of one man, that not so much as those that were dutiful needed weapons against those that were traitorous; for whatsoever be protected was safe, and whatsoever be rejected did only perish.

And thanks be given to God, we are now so safe and thorowly secured from foreign groans and pining fears by these sweet olive-buds which environed the mercy-seat, as Doleman may indeed *dolere*, that by no kind of instrument he can *dolare*, that is, bore or wimble, into this glorious and graceful stock, wherein he would inoculate the griefs of his stinging grievances.

Again, it cannot be denied, that the state of this strong Island, if it be considered by integrity and union of parts, was in a manner paralytical, so long as Scotland was divided from this realm of England as it were in half, by privation as well of motion, as of sense: and by reason of obstructions in divided heads, that stop the free course and passage of the spirits thro' all and every part and member of the main from preservation of health and strength, it was like to fall by the least distemper symptomatical into a dead apoplexy. It was a work of mercy in our Saviour to cure 'manum aridam,' I mean 'aridam' in respect of the small use to us, tho' active, strong and powerful for itself. It was an act of policy in Cæsar to shut up the back-door that let in the Germans to the disturbance and disquiet of those parts in Gaul. And great wisdom it was once in Severus, to part those from us with a wall of hostility, whom since a more divine hand hath happily fastened to us in eternal fraternity: for the Holy Ghost accounteth it a curse to stand alone, because he cannot be sure of his next neighbour to take him up; the branch bears fruit no longer than it continues in the natural and proper vine, fed with the same sap, strengthened from the same root, cut and pruned by the same vinetor. Thus England and Scotland are the twins of Hypocrites, that must ever laugh, and weep together; they are the Castor and Pollux that must ever rise and set together; they are the two hands of one body natural and politic, that ought both to wash one another's spots, and supply weaknesses: to conclude, they are that 'cor' and 'cerebrum,' that heart and brain, so fastened and knit together in harmony and correspondencies, that without a perfect union of both, it is not possible for the isle of Britain to move with power, to feel with tenderness, or to breathe in security.

Our ancestors desired to have seen this happy day, (I will not say as Abraham desired the days of Christ, lest the comparison might perhaps seem over-bold, but yet as they that live under the pole desire to see the sun which is familiar) as may appear by treaties between princes in the times of some of our wisest kings, as the third and seventh Henries: and again, by the continuance of that earnest instance of the Eighth, for a match between the young queen

Mary and prince Edward his eldest son, upon easy conditions. The lets in former times proceeded in part from the practice of foreign potentates envying the greatness of united crowns; and in part from the flaws of domestic factions within the bodies of both kingdoms, neglecting the benefit of opportunity thus offered upon the light impressions of private fears. God himself bestowed this union between the realms of Israel and Judah (sever'd much after the same measure and proportion that ours have been so long), as the strongest pledge of favour, and the richest blessing of eternal bounty that his loving kindness could confer upon both states, 'ut esset rex unus omnibus imperans, ut non esset ultra dug gentes, nec dividerentur amplius in duo regna: that there might be but one king to reign indifferently over all, that they might no longer be reputed two nations; and with a further condition, that from that time forward, they should be no more divided into two monarchies.

Many motives of encouragement have been propounded, many satisfactions to jealousy have been tendered, many instruments of excellent advantage have been set on work in former times, but to small effect, so long as wisdom rather debated, than right determined; and besides, for that 'nondum tempus a somno surgere:' but our age is that 'plenitudo temporis,' that full period of time wherein so many working causes and inducements draw to one conclusion of equality in happiness in both estates, as unless we will embase what our ancestors with less advantage did improve, disable what they did admire, reject what they did recommend, and in a sort repel the grace of God which knocketh at our door, we must acknowledge, 'Non fecisse Deum taliter omni nationi,' That God hath not dealt thus with every nation. For our 'Rex pacificus,' our 'Delicia Britannæ gentis,' our 'Leo Rubens,' (which according to Merlin's prediction, was to hold in one paw the battlements of new Troy, in another 'Sylvam Caledoniam,' which can level in common sense at no other prince that wielded the scepter of this state before) hath by God's blessed providence as well united the parts of England, Scotland and Ireland, in one body of dominion, as the lines of Edgar, Fergus the conqueror, Mac Morrogh, and Cadwallader in one center of conjunction, and thereby compounded out of many waters, that 'margaritam pretiosam,' for the compassing whereof rather than it should escape our hands, we ought to purchase it at as high a rate, as the wise merchant did that other in St. Luke, 'qui, inventa una pretiosa margarita, abiit, et vendidit omnia quæ habuit, ut emeret eam:' having found one precious pearl among the rest, went and sold all that he possessed in the world beside, to purchase it.

I resemble the rare object of the king our master's aim, (in seeking to unite and knit together all his subjects affections, scopes and endeavours, 'nodo indissolubili,' to this end

chiefly, that it may not rest hereafter in the power of flesh to sever what hath been conjoined by the hand of grace) rather Margaret than to any other jewel of great price, because her name was Margaret, by whom his majesty derives his lineal descent by just title of the Saxon kings. Her name was Margaret, that being eldest daughter to king Henry 7, invested in the blood of our dear sovereign king James, the most absolutely and radically united interest of the two renowned families of York and Lancaster: wherein we are to note *ex abundante*, that at the point prefixed of one hundred years, in which this worthy princess was conveyed, by a lucky match for this renowned island, to her husband James 4, her royal offspring James 6, our matchless sovereign, made his happy entrance into the possession of all these crowns with a cheerful jubilee. I would be glad for my private comfort, and in grateful duty to the gracious bounty of this blessed line, (if it be lawful to intermingle 'corpus opacum' with so many glorious aspects) in a light touch to record and view the revolutions and fortunes of my own family. For as the duke of Norfolk was a forward minister in attending this great princess, by the wise king's direction, to the full accomplishing of the nuptial solemnity; so his heir in the third degree, by misconstruction of humble thoughts, and witty workmanship upon weak suspicion, was drawn into the loss both of life and state, for gazing too much upon the gleams of this rising glory; and our royal sovereign, the true and lawful heir of that peerless Margaret, on whom the service did attend, reserved by destiny to restore the honour of that fading house, which was overcast with a cloud of scorn, and as it were to lay new earth to the root of that sapless tree whose leaves were fallen, and the fairest branches withered. Of myself on whom it hath pleased my most gracious master and dear sovereign to cast more favour than either *sub spe* I could merit, or *in re* I can utter, this only shall be said in acknowledgement of favour and admiration of grace,

'Ultimus hic ego sum qui quam bene, quam male, nolo dicere, qui de me judicet, alter erit.'

The name of the late old countess of Lenox was also Margaret, by whom as daughter to the queen of Scotland, by an earl of Angus in a second match, the younger branch of that princely line was thoroughly incorporate into the person of the king on his father's side, for a stronger union, if it were possible, both of blood and interest, and for a double ornament of his royal progeny. She was no Margaret I confess, but a worthy Mary, that in the last descent covered 'fermentum acceptum,' the leaven which she had received by descent into three kingdoms, as the discreet woman in the gospel did her own into three lumps of dough, till by her blessed issue, founder of our perpetual quiet, they might be all thorowly and completely leavened.

Now to draw to the conclusion, which is the

'knot of these united ends, that is that worthy sovereign, to whom

'De nostris annis sibi Jupiter augeat annos.'

That you and your disciples, Mr. Garnet, in reward of so great merit of this island, were so hasty to blow up by your Powder-Plots into a higher region, than that wherein his throne was by God established, together with those very walls, which, as I find by antient record, were first by the holy confessor St. Edward raised, of whose family his majesty descends, that one king might be buried, and the chief of his race destroyed within the compass of one monument. But howsoever Mr. Garnet was willing to forget that this place was once sanctified for a refuge and retreat to all sorts of persons in distress, by his own canons; yet God that would not destroy Judah for his servant David's sake, his providence in like sort purposing to continue the piety of that blessed king in this fairest branch of his descent; the justice of that divine majesty holding it an act of Atheism to cast 'tot margaritas porcis,' so many pearls to swine, or 'sanctum canibus,' that which is holy to dogs, bounded the malice of these graceless imps within so narrow streights, as it rested not in their power by the murder of our king to stain the Confessor's walls with his own blood, or under the vizard of St. Edward's profession, to extirp the roots of St. Edward's posterity. For in the Proverbs we are certainly assured, that 'domus justorum permanebit,' the house or generation of the just shall continue: but it falls out in a better consequence, That the skull of faithless Percy should stand sentinel where he was once captain pioneer; and Lambeth should now be Catesby's horizon, that was his arsenal; and their giddy pates are left 'tanquam malus navis,' like the mast of a ship, to use the prophet's phrase, to warn passengers by what just disaster these roving pirates came to their unhappy end; especially for seeking the Golden-Fleece, not by Jason's merit, but by Medæa's sorcery.

To conclude: we may learn of the wise man, that there can be neither wisdom, nor counsel, against God. The ribs of a crazed vessel are too weak to bruise the rock which they rush upon. We spur asses to no purpose, when God's Angel is *ad oppositum*. Jacob having shrunk a sinew, halted all the days of his life, after he wrestled so long and to so little purpose with God omnipotent. Men are sure to gain no more than their own smart, that kick against the thorn: in such attempts it is neither in him that wills, nor in him that runs, but in God that shews mercy to those that direct themselves according to discipline: for 'sortes mittuntur in sinum,' the lots are cast into the lap, but it is God that disposeth the lottery. Though your purpose were all one with Ahab and Jezabel, in seeking to cut the throat of Naboth for his ground: though you gave out your hymn before this holy act as they proclaimed a religious fast: though you made yourselves sick, as Ahab did, with anguish and

VOL. II.

vexation, because you could not have your wills; yet since you could neither *occidere* nor *possidere*, your luck was worse than theirs: for by God's powerful and preventing grace, you were thrust as well from all the means and advantages of killing whom you hated, as of possessing what you coveted. It were good therefore that, upon so many plain experiments, you would confess with certain wanderers in the book of Wisdom, 'Lassatos esse vos,' that you are wearied and over-laboured in these crooked ways, and have been ever since you leaped out of *Via regia*, the king's high-way, which neither leads to dishonour, nor ends in misery. Nothing is more proper *matéria*, to matter, than to flow, say the philosophers, 'nisi à for-  
'mā sistitur,' unless it be stayed and fixed by the form; nor any thing more proper to humanity, (according to the rule of truth) than to err, if grace direct it not. Mahomet confesseth in his Alcoran, that the throne of Christ was raised by patience, his by revenge; that by miracle, his by tyranny. The modesty and piety of Christians afflicted for the point of conscience in the time of Terullian, appears by the reason which he gives of their abstinence 'à suffocato et sanguine,' that is, 'ne quo sanguine contaminarentur, vel intra vis-  
'cera sepulto,' that they might admit no pollution by blood, though it were buried within their bowels.

Pardon me, Mr. Garnet, though I doubt whether in the point of conscience, alone, you would voluntarily and resolutely abide the saw of Esay, the bolts of Jeremy, the gibbet of Peter, the sword of James, or the stoning of St. Stephen, much less make a gathering among those of your profession, towards the preparing of an humble sacrifice for the life of Nebuchadnezzar (as you esteem the king), that with the rage of a tiger sought his life, and waxed thus impatient of that soft and easy hand, which it pleased him in his gracious compassion and tenderness, before the late intended tragedy, to hold over you; so that with Seneca you might justly say, 'Nihil felicitati meæ deerat, nisi moderatio ejus.' Those golden comforts of the prophets to contrite offenders, ought at this time to be of greater estimation and value in your thoughts, than all the treasures of the Vatican. You cannot steer the ship of your crazed conscience more safely in this sharp storm, which hath been raised by yourselves, than by the council of Lactantius, which doth warrant, that to minds truly penitent, 'Optimus portus est mutatio consilii,' change of resolution is the best haven and safest harbour. After an humble acknowledgment of a grievous sin 'in fratres vestros,' against your brethren, with the sons of Jacob, and withal, that for this cause chiefly tribulation hath taken hold of your highest top; first, yield unfeigned thanks to Almighty God for preventing this destructive project, that would have cast so great a weight of judgment upon your soul, and for turning your ill purpose to his honour: then thank your merciful and tender-hearted

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king, who seeks not to surprize you suddenly, as Levi did Sichein, 'Quando dolor vulnerum erat gravissimus;' as you would have dealt with him; and to assault you in the greatest horror and the sharpest torture of your crying sin; but by imitation of that eternal object whose person he represents, whose example he regards, agreeably to that record in the book of Wisdom, 'Dat tempus et locum per quæ potestis mutari à malitia,' gives time and place by which you may be changed from your malice: crave pardon of the world, for leaving such a precedent to future times, of a possibility to achieve so desperate an act, which may perchance, according to the dispositions and humours of men diversely affected as well *admonere* as *prohibere*, that is, put the world in mind that such a matter may be, as forbid that it be not.

Remember the difference which Theodoret doth discreetly put, between suffering and the cause of suffering, between torture to force conscience, and legal punishments to chastise faults. To conclude my last caution with your last occasion,

'Discite justitiam, moniti, et non temere Divos.'

Because, 'Hæc vos sapere vel mori jubent;' and withal, as Martial did for Trajan, wish to the best of majesty, to whom you meant the worst of malice,

'Dii tibi dent quicquid, princeps Auguste, mereris.'

'Et rata perpetuo, quæ tribuere, velint.'

THEN the Lord Chief Justice making a pithy preamble of all the apparent Proofs and Presumptions of his guiltiness, gave Judgment, that he should be drawn, hanged and quartered.

And my Lord of Salisbury demanded, if Garnet would say any thing else?

Garnet answered, No, my lord; but I humbly desire your lordships all to commend my life to the king's majesty; saying, That at his pleasure he was ready either to die or live, and do him service.

And so the Court arose.

#### *Garnet's Execution.*

On the 3d of May, Garnet, according to his Judgment, was executed upon a scaffold, set up for that purpose at the West-end of St. Paul's church. At his arise up the scaffold, he stood much amazed, fear and guiltiness appearing in his face. The Deans of Paul's and Winchester being present, very gravely and christianly exhorted him to a true and lively faith to God-ward, a free and plain acknowledgment to the world of his offence; and if any further treason lay in his knowledge, to unburden his conscience, and shew a sorrow and detestation of it: but Garnet, impatient of persuasions, and ill-pleased to be exhorted by them, desired them not to trouble him, he came prepared and was resolved. Then the Recorder of London, who was by his majesty appointed to be there, asked Garnet if he had

any thing to say unto the people before he died: it was no time to dissemble, and now his treasons were too manifest to be dissembled; therefore, if he would, the world should witness what at last he censured of himself, and of his fact; it should be free to him to speak what he listed. But Garnet, unwilling to take the offer, said, His voice was low, his strength gone, the people could not hear him, though he spake to them; but to those about him on the scaffold, he said, The intention was wicked, and the fact would have been cruel, and from his soul he should have abhorred it had it been effected: but he said, He had only a general knowledge of it by Mr. Catesby, which in that he disclosed not, nor used means to prevent it, herein he had offended; what he knew in particulars was in confession, as he said. But the Recorder wished him to be remembered, that the king's majesty had under his hand-writing these four points amongst others: 1. That Greenway told him of this, not as a fault, but as a thing which he had intelligence of, and told it him by way of consultation. 2. That Catesby and Greenway came together to him to be resolved. 3. That Mr. Tesmond and he had conference of the particulars of the Powder Treason in Essex long after. 4. Greenway had asked him who should be the Protector? but Garnet said, That was to be referred till the blow was past. These prove your privity besides Confession, and these are extant under your hand. Garnet answered, Whatsoever was under his hand was true. And for that he disclosed not to his majesty the things he knew, he confessed himself justly condemned; and for this did ask forgiveness of his majesty. Hereupon the Recorder led him to the scaffold to make his Confession publick.

Then Garnet said, 'Good countrymen, I am come hither this blessed day of The Invention of the Holy Cross, to end all my crosses in this life: the cause of my suffering is not unknown to you; I confess I have offended the king, and am sorry for it, so far as I was guilty, which was in concealing it; and for that I ask pardon of his majesty. The Treason intended against the king and state was bloody, myself should have detested it, had it taken effect. And I am heartily sorry that any Catholicks ever had so cruel a design.' Then turning himself from the people to them about him, he made an apology for Mrs. Anne Vaux, saying, 'There is such an honourable gentlewoman who hath been much wronged in report: for it is suspected and said, that I should be married to her, or worse. But I protest the contrary: she is a virtuous gentlewoman, and for me a perfect pure virgin. For the pope's breves, sir Edmund Baynam's going over seas, and the matter of the Powder-Treason, he referred himself to his Arraignment, and his Confessions: for whatsoever is under my hand in any of my Confessions, said he, is true.'

Then addressing himself to execution, he kneeled at the ladder-foot, and asked if he might have time to pray, and how long. It was an-

answered, He should limit himself, none should interrupt him. It appeared he could not constantly or devoutly pray; fear of death, or hope of pardon, even then so distracted him: for oft in those prayers he would break off, turn and look about him, and answered to what he overheard, while he seemed to be praying. When he stood up, the Recorder finding in his behaviour as it were an expectation of a Pardon, wished him not to deceive himself, nor beguile his own soul; he was come to die, and must die; requiring him not to equivocate with his last breath; if he knew any thing that might be danger to the king or state, he should now utter it. Garnet said, It is no time now to equivocate; how it was lawful, and when, he had shewed his mind elsewhere: but, saith he, I do not now equivocate, and more than I have confessed I do not know. At his ascending up the ladder he desired to have warning before he was turned off. But it was told him, he must look for no other turn but death. Being upon the gibbet, he used these words: 'I commend me to all good Catholicks, and I pray God preserve his majesty, the queen, and all their posterity, and my lords of the privy council, to whom I remember my humble duty, and I

am sorry that I did dissemble with them: But I did not think they had such proof against me, till it was shewed me; but when that was proved, I held it more honour for me at that time to confess, than before to have accused. And for my brother Greenway, I would the truth were known; for the false reports that are, make him more faulty than he is. I should not have charged him, but that I thought he had been safe. I pray God the catholicks may not fare the worse for my sake; and I exhort them all to take heed they enter not into any treasons, rebellions, or insurrections against the king.' And with this ended speaking, and fell to praying; and crossing himself, said, 'In nomine Patris et Filii, et Spiritus Sancti;' and prayed, 'Maria mater gratiæ, Maria mater misericordiæ, tu me a malo protege, et horâ mortis suscipe.' Then 'In manus tuas, Domine, commendo spiritum meum:' Then, 'Per crucis hoc signum' (crossing himself) 'fugiat procul omnis malignum. Infige crucem tuam in corde meo, Domine;' Let me always remember the cross: and so he returned again to 'Maria mater gratiæ,' and then was turned off, and hung till he was dead.

82. A true Report of the Arraignment, Tryall, Conviction, and Condemnation, of a Popish Priest, named ROBERT DREWRIE,\* at the Sessions-house in the Old Baylie, on Friday and Wednesday, the 20th and 24th of February; the extraordinary great Grace and Mercie offered him, and his stubborne, traitorous, and wilfull Refusall. Also the Tryall and Death of HUMPHREY LLOYD, for maliciouslie Murdering one of the Guard. And, lastly, the Execution of the said ROBERT DREWRIE, drawn in his Priestly Habit, and as he was a Benedictine Fryer, on Thursday following to Tiborne, where he was hanged and quartered. London; printed for Iefferie Chorlton, and are to be sold at his Shop adioyning to the great North Door of Paules, A. D. MDCVII. [3 Harl. Misc. 36.] 5 Ja. I. 1607.

IN a case deseruing so well to be spoken off, concerning iniury to God's glory, and apparant wrong of our countrey, ouer-run with too many men of such daungerous quality, I

thought it the duty of an honest subiect, to say somewhat, so farre as truth would warrant me, because slaunder and detraction are no meane enemies to such maner of proceedings.

\* This Article, though but unsatisfactory and indistiact, has yet been thought worthy of insertion, because it records a transaction curious in itself, and interesting from its connection with the history of the period during which it occurred. It is proper to mention, that this Drewrie was one of thirteen Priests who a little before the death of queen Elizabeth had signed the following Declaration:

THE SECULAR PRIEST'S LOYAL PROTESTATION.

"WHEREAS it hath pleased our dread soveraign to take notice of the faith and loyalty

of us her natural-born subjects, Secular Priests, and of her princely clemency hath given a sufficient earnest of some merciful favour towards us, being all subject by the laws of the realm to death, by our return into our country after our taking the order of priest-hood, since the first year of her majesty's reign; and only demandeth of us for this intended favour, an assurance of the said fidelity unto her majesty's person, crown, estate and dignity. We whose names are under-written, in most humble-wise prostrate at her majesty's feet, do acknowledge ourselves infinitely bound unto her majesty

Robert Drewrie being apprehended by his maiesties messengers at the White-Fryers, and afterward brought before the right reverend father in God, the lord bishop of London; declared himselfe there, as Garnet, his maister, had done before, 'Multorum nominum,' to be a man of many names, but yet no one of them being good. For, as no lesse than six severall names would serve Garnets turne, so this man had three to shadow him by, viz. Drewrie, Browne, and Hamden, but Drewrie was the last in his owne deliuering, and appearing to be his true name indeede.—His answers were equiuocall and very confused, denying his priesthoode, and seeming so cunning, as if no hold were to be taken of him. But he being better known to the state then himselfe imagin'd, and his many dangerous practises suffici-

therefore; and are most willing to give such assurance and satisfaction in this point as any Catholick priests can give unto their sovereign.

"First, Therefore we acknowledge and confess the queen's majesty to have as full authority, power and sovereignty over us, and over all the subjects of the realm, as any of her highness's predecessors ever had. And farther, we protest that we are most willing and ready to obey her in all cases and respects, as far forth as ever Christian priests within this realm, or in any other Christian country, were bound by the law of God, and Christian religion, to obey their temporal princes.

"Secondly, Whereas for these many years past, divers conspiracies against her majesty's person and estate, and some forcible attempts for invading and conquering her dominions, have been made under we know not what pretences and intendments of restoring Catholick Religion by the sword; (a course most strange in the world, and undertaken peculiarly and solely against her majesty and her kingdoms, among other princes departed from the religion and obedience of the See Apostolick no less than she) by reason of which violent enterprizes her majesty, otherwise of singular clemency towards her subjects, hath been greatly moved to ordain and execute severer laws against Catholicks, which by reason of their communion with the See Apostolick in faith and religion, were easily supposed to favour these conspiracies and invasions, than perhaps had ever been enacted or thought upon, if such hostilities and wars had never been undertaken. We, to assure her majesty of our faithful loyalty also in this particular case, sincerely protest, and by this our publick fact make known to all the Christian world, that in these cases of conspiracies and invasions which hereafter may be made by any foreign prince or potentate for the disturbance and subversion of her majesty's state and dominions, under the aforesaid pretences and intendments; we will according to the rules of Christian religion, defend our prince and country from all these violent assaults and injuries. And moreover, we will not only ourselves resist them, as inconve-

ently discovered and scanned; after such private examinations as were thought convenient, time was appointed for his publique tryall, which followed as hereafter shall be declared.

On Friday, being the 20th day of February, in the forenoone, my lord mayor, maister recorder, and other of his maiesties justices of the peace, sitting at the Sessions-House in the Old-Baily, by vertue of his highnesse commission of Oyer and Terminer, for goale deliuerie, for London, and the county of Middlesex: Robert Drewrie, priest, and a fryer of the Benedictine order, was brought before the bench. His enditement, according to forme of lawe in that case made and provided, was openly read vnto him; whereunto he pleaded, Not Guilty, but, for his tryall, did put himselfe vpon God and his country. Then was a verie sufficient

nient means to introduce Catholick Religion into our country, but also earnestly perswade Lay-Catholicks to do the same.

"Thirdly, If upon any such invasions the pope should excommunicate every one that would not forsake the foresaid defence of her majesty and the realm, and take part with such conspirators and invaders; in this case we do think ourselves and the Lay-Catholicks not bound in conscience to obey this censure, but will defend our prince and country.—And because nothing is more certain than that whilst we endeavour to assure her majesty of our dutiful affection and allegiance by this our Christian and sincere protestation; there will not want those who will condemn and misconstrue our lawful fact: Yea, and by many sinister suggestions and calumnies discredit our doings with the Christian world, but chiefly with the pope's holiness, to the greatest prejudice and harm of our good names and persons that may be, unless we maturely prevent their malice herein. We most humbly beseech her majesty, that in this our recognizing, and yielding Cæsar's due unto her, we may also by her gracious leave be permitted, for avoiding obloquy and calumnies, to make known by like publick act, that by yielding her right unto her, we depart from no bond of that Christian duty which we owe to our supreme spiritual Pastor.—And therefore we acknowledge and confess the bishop of Rome to be the successor of St. Peter in that See; and to have as ample, and no more authority or jurisdiction over us and other Christians, than had that apostle by the gift and commission of Christ our Saviour. And that we will obey him so far forth as we are bound by the laws of God to do, and may stand with performance of our duty to our temporal prince, in such sort as we have before professed: For as we are most ready to spend our blood in defence of her majesty and our country, so will we rather lose our lives than infringe the authority of Christ's Catholick Church." 2 Coll. Eccl. Hist. 664, 3 Harl. Misc. 37.

This paper, says bishop Bancroft under his own hand, was delivered to me by the priests. Ex Biblioth. R. Harley Armig.

Iurie impannelled for him; to whom, in effect, these speeches were deliuered.

Robert Drewrie, the prisoner, standing at the barre, had traytorously, wilfully, and in contempt of the statute made to the contrarie, departed out of this land, wherein he was borne, and at Valedolid in Spayne, where by Parsons means, a seminary for English students was erected, as the like were at Rome and Rhemes, hadde bin made a prieste by the bishop of Leon, by authority deriued from the pope. Sithence which time, he had returned back into this land, to reconcile, seduce, and withdraw his maiesties subiectes from their naturall dutie, loue, and allegiance, to a forraigne seruice and obedience.

Hauiug libertie graunted to speake, and aunswere for himselfe what he could, Robert Drewrie very shallowly sought to insinuate, that, if it were treason in him to be a priest, then it was the like in saint Augustine, saint Bernard, and other reuerend fathers of the church, who received their priesthoode by authority from God; and so did he presume to haue doone the like, for the saluation of his owne soule, and many others beside; which purposely he came hether to do, according to his office and function. His sillie suggestion was presently reprooued, that, notwithstanding the great difference betweene his priesthoode, and that of the fathers before named, yet priesthoode solie was not imputed to him for treason; for that profession, though neither liked, nor allowed by vs, he might vse and exercise in the parts beyond the seas, keeping himselfe there; but not heere within his maiesties kingdome, where, both he, and all other of his ranke, did very well know, and therefore could not plead any ignorance therein, that sundry good and sufficient lawes, heeretofore made, had enacted it to be treason, for any subiect borne to forsake his natue dutie, and, being made priest by authority deriued from the pope, to com home again into this land, and, in meere contempt of the king and his lawes, to reconcile, seduce, and alienate loyall subiects harts from loue, iust regard, and dutie to their soueraigne, and subiecting them in obedience to a forraigne gouernment. Drewrie made aunswere, he could not, neither would he deny, but that he came hether to exercise the office of a priest, according as he had already doone, in winning of soules; but he would not admit, that he had seduced any, or in any sort diswaded them, but only for the good of their soules. Being afterward vrged with his maiesties great mercy, who had, to him and all other of his coate, granted his generall pardon; and why he did not, according to the proclamation, depart the land, when it was so expressly commaunded? He made aunswere, That he wanted means: When it was prooued to him, that not only did the king allow such conuenient transporting, but also enabled them with mony; and therefore his stay could not be otherwise, but meere-ly in traytorous contempt of the kings lawes: Whereto he could make no reply.

Then diuers traitorous and dangerous papers were shewen, which had bin taken in his custody, and whereof he would gladly haue acquitted himselfe, but that they were manifestly prooued to be his. One of them seemed to be Parsons opinion concerning the oath in the late made statute, which he viterly disallowed any catholique to take, appearing to haue vsed the popes censure therein; whereupon the bull, or breese, to that purpose, seemeth to take effect.—The others were also of, a traytorous nature, tending to the abuse and corrupting of poore simple soules, and stealing all duty and allegiance from them. There were likewise two Letters openly read, the one from certaine priestes, prisoners sometimes in the Clinke, to the arch-priest, maister Blackwell, requiring his iudgement in matters, when they laboured and hoped for tolleration in religion: The other was maister Blackwells aunswere therto; both which though he would haue cunningly auoyded, yet it appeared what reckoning he made of them.

When he had answered for himselfe so much as he could, relying still vpon his priesthoode, and vrging that to be the cheifest matter of his offence, though many times the contrary was deliuered to him, the iurie passed vpon him, and founde him Guilty of high-treason, wherevpon he was sent away til the time of iudgement; which because it was not til Wednesday following, it shall not be much differing from our purpose to handle, and say somewhat, in the mean while, concerning the tryall and conuiction of Humphrey Lloyd, indicted there vpon willfull murder, hauiug slaine master Thomas Morris, one of the ordinary yeomen of his maiesties guardé, not long before, in Chauncery-lane.

Upon Sunday in the afternoone, being the 18th of January, the forenamed Humphrey Lloyd and Thomas Morris meeting together in Aldersgate-streete, in the companie of certaine other of their friendes, went into the Halfe Moone tauerne to drink, where they had no such plenty of wine, as to cause distemper, or otherwise, that way, to procure impatience.—But it was deliuered in euidence, that some speeches concerning religion passed betweene them; wherein Morris touched Lloyd to be a dissembler, as neither hot nor cold, but, if any thing at all, it was, indeede, best affected to popery, as afterwarde it plainly appeared. It hapned, that the lie was retorted between them, which vrged Morris to cast a cuppe of wine in Lloyds face, and Lloyd therevpon threwe a rowle of bread at the head of Morris. A further and more dangerous strife had presently ensued, but that honest friendes on both sides, being present, did so discretely deale with them, that they grew friendes againe, drank to one another, and no hart-burning outwardly perceived; till at length, Lloyde renewing remembrance of the former speeches, a more heauier falling out had thereon hapned, but that the friendes, as before, pacified them again; but yet menacing words passed from eyther, Mor-

ris threatening to bee euen with Lloyds bald pate, and Lloyde woulde try acquittance with the others cods-heads; so that they parted with tearmes of enmity.

On the Wednesday next ensuing, Lloyd and a gentleman, in a white coloured cloake, standing talking together at Lincolns Inn Gate, it hapned Morris and a friende of hys with him to passe by; the friende saluted Lloyd, as Lloyd did the like by him; and very soone after, the gentleman in the white cloake, that had stooed talking with Lloyd being sent by him, as it appeared, followed Morris, as Lloyd likewise, and, rounding him in the eare, which the friende then with Morris could not heare, hee perceiued an alteration in the countenance of Morris, and the like in Lloyd, who by this time was come to them; which he being desirous to remooue, as standing an equal friende to them both, desired them, if any thinge were amisse betweene them, to let him persuade a friendly agreement, and not to grow into any vnciuill behauiour in the open street, to the wounding of their credite and reputation, as also, what danger might otherwise ensue, was doubtful to be gathered. Lloyd made answer, that he was good friendes with his cozen Morris, and loued him as deerly as any in England. Whereto Morris instantly replied, Wilt thou neuer leaue thy disembling? Dost thou pretend to loue me so deerly, and hast euen now sent me a challenge by this man? Lloyd immediately returned him this answer: that, if he hadde sent him a challenge, he was come in person to aunswere it, and would performe it there, or any where els. Thus his malicious intent very plainly appeared. What other words passed betweene them, I know not, neither could they bee heard by any standers by; but forthwith they drew out both their weapons, notwithstanding all intreaty to the contrary: and indeede Lloyd did drawe to soone, to expresse his bloody and vnquencheable malice, for he soon gaue to Morris his deaths wound, wherevpon he fell downe presently, not speaking one word.—And, to witnessse the more his cruell and bloodie hatred, he strake twice or thrice at him, when he was downe, cutting him ouer the head, and otherwise wounding him; yet he pleaded, that he did all this but in hys own defence.—All this, which hath bin breiefelie reported, being much more circumstantially deliuered in euidence, and by oath approued to his face, he sought to extenuate his offence by verie shallow speeches, vtterly impertinent, and most against himselfe, in due consideration of his friuolous allegations: for he had bin a man of more dangerous quality, then was conceiued in his present tryall, hauing tasted the kings most gracious mercy, and had bene borne withall beyond his deseruing.—It was also told him, how farre he had waded in Watsons treason, and was also a partaker in the Gunne-powder Plotte, sending shot; and powder also, to them in Wales; in all which the mercie of his maiesty had looked more mildly vpon him, then himselfe coulde

desire, or any way deserue. But the justice of heauen very manifestly appeared, that so false and hollow a hart, sullied with the detested guilt of treason, must now, in a wilful and malicious act of blood and murder, declare itselfe to the whole worlde, and the vpright censure of lawe this way depriue him of lie, that had felte mercie before, in a heauier offence. Here is also to be noted, that, as the quarrel first hapned on talk of the popish religion, so now Lloyd discouers him in his colours. For, though it was told him, that he had very confidently deliuered himselfe to be otherwise, and which himselfe was not able to denye; yet nowe Drewrie the prieste (after his iudgement) passing away by him in the docket, gaue him a publicke noted absolution, with his hand crossing him, and vsing some close speeches; wherevpon, thinking this sufficient to wash off his stayne of murder, he forthwith openly confest, that he is a Catholicke, so he had bin alwayes, and so he woulde die; as if that very name should giue fame to his fool fact, and, where he died a murderer, his owne ydle supposition of Popish absolution should make him nowe to die in the case of a martyr, and for his conscience.

When he was drawne in the carte (with others) toward execution, and all the cartes beeing stayed before St. Sepulchers church, where the most christian and charitable deed of Master Dooue, at euery such time, is worthily performed, to moue prayer and compassion in mens harts, for such so distressed: all the while that the man spake, Lloyd stopte his eares, not willing to heare any thing; but, if any Romaine Catholickes were neere, he desired such to pray for him. And so at Tyborne he did in like manner, calling to Romaine Catholickes to praye with him and for him, but no other prayers would be accept of. But, the lawe hauing censured him, and justice likewise beeing past vpon him, what else remaines to be thought, or said of him, let it be so charitably, as such a case requireth, and as becommeth all honest Christians, euermore remembering, that flesh and blood is subject to frailty, and he, that boasteth most of strength, maye soonest fall and be deceiued: therefore let vs measure other mens infirmities by a considerate care of what our owne maye be, and, committing all to him that is the onely iudge of all, desire his heauenly help and assistance neuer to suffer vs to be led into the like temptations. Let vs nowe remember where we lefte before, and returne to the matter concerning the priest.—In this time of respit since his condemnation, bethinking himselfe, belike, of his present dangerous condition, he solicited sundry great persons by his letters, entreating all possible fauour to bee allowed him. Among the rest, he wrote to sir Henry Mountague, recorder of London, requiring to haue some priuate speech with him. The gentleman, being of a milde and mercifull inclination, willing to do good to any, but much more to one at the point of such perill, vpon Monday morning, sent for

Drewrie downe into the sessions-house garden to him; where vrging to know what fauour he requested, and alleaging the kings great and gracious mercy to any that expressed themselves to be his louing subjects, and would take the oath of duty and obedience to him, Drewrie made voluntary tender of himselfe, that he would take the oath, acknowledging the greatness of his maiesties mercy; and humbly required, that the like grace might bee afforded to his brother, William Dauies, the other priest, that was condemned with him. Maister Recorder conceiued very well of this his submission, and was in his ruinde perswaded, that, if he had put him to the oath presently, without any refusall he would haue taken it. But he, as an vpright iusticer, very wisely considering, that, his fact being openly knowne, and the people acquainted with his dangerous practises, his publike submission, and taking the oath, would the better witness his obedience and submission, and proue much more pleasing then any thing done in priuate, deferred it till the time of more conueniency; so Drewrie departed vpp to his chamber again, being vsed with all kind and gentle respect.

*The extraordinary great Grace and Mercy, offered at the Sessions-house to Robert Drewrie and William Dauies, Priestes, on Wednesday, the 25th of February; and, lastly, the Sentence of Death pronounced against them.*

According to the custome in such cases obserued, the tryall and condemnation of Robert Drewrie passing, as hath beene already declared, on the Fryday before; on Wednesday following, being the five and twentieth day of February, the prisoner was brought to the barre againe; where it being tolde him, that he had been already arraigned vpon high-treason, and had pleaded thereto, Not guilty, but, for his tryall, had put himselfe vpon God and his countrey, the countrey had found and deliuered him vpp guilty; it now remained to hear what he could say for himselfe, why Iudgement of Death should not be pronounced against him.—He replied, as he had done before, that he took himselfe not to be conuicted of treason, but onely for his priest-hood; which if the law made treason, he had nothing to say, but appealed to the kinges grace and mercy.

Heereupon, his voluntarie offer, to take oath on the Monday before, was rehearsed to him. And it was further tolde him, that now it was apparently perceiued, how colorably he cloaked his priuate and pernicious dealing, auswering by equiuocation, and setting downe one thing vnder his owne hand, then afterward speaking dyrectly against the same. For prooffe wherof, his owne letter, written sithence the time of his condemnation, to a person of great honor, was there read; and as much thereof, as concerned the present occasion then in hand, was the more insisted vpon. Wherin (if my memory faile me not) it appeared, that he had bin requyred to set downe his censure and opinion,

according as himselfe did best gather and conceiue thereof, concerning the oath of legalty and allegiance mentioned in the late statute; whereunto (as I remember) his answer was thus: 'I freelye confesse, that (in my opinion) euery honest and good Catholicke may lawfully and safely take it.' Immediately, because he had made such a free confession of the oathes lawfulness, and safety in taking, himselfe was willed to take the oath, which he had thus censured, to let the world perceiue now publicly, whether his hand and hart held true correspondence together, and whether he were so honest and good a Catholicke, as but to expresse the loyalty of a subject, and give Cæsar his due. Now plainly appeared, both what he and such of his profession inwardly are, for he plainly refused to take the oath: hauing the Booke deliuered into his owne hands, and willed to take and alledge what exceptions he colde agaiust any part or partice of the oath, his answers was, that he did but deliuer his opinion of the oath, what any good or honest Catholicke might do, excluding himselfe out of any such titles. 'Neither (quoth he) can it be any waye aduantageable to me, being condemned as I am, and therefore I haue no reason to take it.' But thou, to meet iustly with such cuning dissembling and equiuocating, and to discour such apparant falshood, that no less admired, then most worthy gentleman, sir Henry Mountague, knight, recorder of the cittie of London, as he had many times before, so still he continued, in displaying the subtil slights of so dangerous a person, and what hurt ensued to the state by such as he was. To driue him nowe from these ydle suggestions, and to lay open the kings most royall mercy, though not so much as in truth it deserued, yet sufficiently able to conuince such impudence, he told him, that he was a poore minister of iustice vnder his maiesty, and hadde such true acquaintance with his ever-royall and mercifull inclination, that hartly sorrow, or repentance, in an offender, no sooner colde be discerned, but he was euen as readie to giue pardon and forgiuenes, and rather did superabound in grace, then seeke after blood; and therefore willed him to let all the people there perceiue, whether he would accept of this proffered grace, or no. Nay, more; because euery one was not acquainted with the oath contained in the statute, and (perchance) might conceite otherwise thereof, then in equity it deserued, the clarke was commaunded to read it there publicly, and himselfe to except against it whatsoever he could alledge. The clarke accordingly began, as followeth, reading it distinctly, as it is in the booke.

*The OATH of euery true and honest Subject.*

"I A. B. do truly and sincerely acknowledge, profess, testify, and declare in my conscience, before God and the worlde, that our soueraigne lord king James is lawfull and rightfull king of this realme, and of all other his maiesties dominions and countries: And that the

pope, neither of himselfe, nor by any authority of the church or see of Rome, or by any other meanes, with any other, hath any power or authority to depose the king, or to dispose of any of his maiesties kingdomes or dominions: or to authorize any forraigne prince to inuade, or any him, or his countries; or to discharge any of his subiectes of their allegiance and obedience to his maiesty: or to giue licence, or leaue, to any of them to beare armes, raise tumult, or to offer violence or hurte to his maiesties royall person, state, or government, or to any of his maiesties subiectes within his maiesties dominions.—Also I do sweare from my hart, that, notwithstanding any declaration, or sentence of excommunication, or deprivation, made or graunted, or to be made or graunted, by the pope or his successors, or by any authority deriued, or pretended to bee deriued, from him or his see, againste the said king, his heires or successors; or any absolution of the saide subiectes from their obedience. I will beare faith and true allegiance to his maiestie, his heires, and successors; and him and them will defende, to the vttermost of my power, against al conspiracies and attempts whatsoever, which shal be made against his or their persons, their crown and dignity, by reason or colour of anie such sentence or declaration, or otherwise; and will doe my best endeavour to disclose and make knowne vnto his maiesty, his heires and successors, all treasons and traitorous conspiracies, which I shall know, or hear of, to be against him, or any of them.—And I doe further sweare, that I doe from my hart abhorre, detest, and abiure, as impious and heretical, this damnable doctrine and position, that prince, which be excommunicated or deprived by the pope, may be deposed or murdered by their subiects, or anie other whatsoever.—And I do believe, and in conscience am resoled, that neither the pope, nor any person whatsoever, hath power to absolue me of this oath, or any parte thereof, which I acknowledge by good and faithfull authority to be lawfully ministred to me, and do renounce all pardons and dispensations to the contrary. And al these things I do plainly and sincerely acknowledge and sweare, according to these expresse wordes by me spoken, and according to the plaine and common sence, and understanding to the same wordes, without equivocation, or mental eusion, or secret reseruacion whatsoever. And I do make this recognition and acknowledgment heartily, willingly and truly, vpon the true faith of a Christian. So help me God.”

This Oath, which no good subiect will refuse to take, hauing bene very audibly read, well neare in the perfect hearing of euery one there present, he was required to alleadge or inferre against any part thereof what he colde. But he insisting vainely, as he had done before, that he had but giuen his opinion thereof for others, and refusing vtterly to take it himself, gaue eident and manifest testimony, that such priestes, as himselfe was, were not included in the ranke

of honest or good Catholickes, but apparant traytors to the king and state, in saying one thing, and dooing the contrary; in making an outward shew of duty and obedience under hand-writing, and reseruing a trayterous intention in their close bosome; wherein the grosse deceiuing and abusing of too many ouer-credulous soules, being falsely perswaded of such men, otherwise then they are indeede, is very much to be pitied and lamented: for they do but judge by the exterior habit of smooth sanctitie and holines, and not by the close seducing of them and their soules. Religion is the cloake cast ouer intended treason, and holy protestations hide hollow-harted practises, more deuillish then (in plaine meaning) can easily be doubted, and far more dangerous, then weake capacities are able to discouer, as, very excellently and elegantly, was there plainly approued.

Another allegation also (as impertinent) did Drewrie make, in saying: That a French priest, or Spanish priest, comming into this land to exercise their function at either of their lord ambassadors, or otherwise, they might, in like manner, be tearmed traytors: whereas all the by-standers were euen ready to hisse him, knowing very well, and, as it was with good discretion, answered him, that such priestes neither were or colde be reckoned subiects to this state, nor were they enabled to deal in such dangerous mannet with our people, wanting our language, and credit, in such a case to countenance them, as (by their slye insinuating) they being borne subiects, and credited more than besemed, did too much preuaile by. And as freely might such ambassadours haue men of spiritual office about them, being of their owne countrey, as ours are allowed the like, within their maisters dominions. So that still he wolde haue maintained that priesthoode, and not the treacherous complotting and practises of priestes, in his understanding, was to bee held for treason. The same grace and fauour, which had been before extended to Drewrie, in as ample maisture was offered to Dauies, the other priest, and he was demaunded whether he would take the oath or no. Hee replied, that he was a poor simple ignorant man, and could hardly censure what thereto belonged. For there were many learned priestes, whose iudgements, in this case, he would first know, and then, perhaps, he might be otherwise altered. Wherein appeareth, that one only Romish rule and obseruation is a lesson or direction to them all, and the buls or breues of the pope are more regarded and respected by them, than the natie loyalty and obedience, they owe to their king and countrey. But mercy hath been ouer-mild too long, and won no such grace from, as iustly was expected, but rather hath armed them with more boldnesse and insolence, than either is fit in them to offer, or standes with the wisdom of so great a state to endure: For, ‘*Nunquid colligunt de spinis uvas, aut de tribulis ficus?*’ Doo men gather grapes of thorus, or figs of thistles?

When no further good, either by testimonie of their owne shame, or even father-like and most kinde perswasions, could be wrought vpon either of them: first a most graue, learned, and iudicious admonition was made unto them, containing briefely the many and extraordinarie great graces of the kings maiestie towarde menne of their condition, and howe, after granting them first his free and generall pardon, hee neuer left off, but pursued them still with all fauours that could be deuised, as not desiring the death of any one, but rather to live quietly, like a godly, peacefull, and religious king: not enacting any new or seuerer lawes against such dangerous persons, but ratifying and confirming them that he found at his comming, which queen Elizabeth, of euer happy anemory, compulsiuely was compelled and enforced to make against them. And yet the justice of those lawes, which had been of seauen and twenty years continuance before, his maiestie did forbear to execute; and finding manye, whose liues lay vnder the forfeit of the law, not onely did he remitte them in grace, but likewise gave his free pardon to all; sending so manie as were in durance away at his own cost and charge, and publishing the like offer to all other that wolde except of so kind a benefit: as loath to ineddle with their blood, that were enemies to his life, and desirous to win them by mercy, if they were not too monstrous. Nor hath he sentenced any priest with death since his comming to the crowne, but such as were men of most dangerous qualitie, and had their hands buer deep in most barbarous and inhumaine treasons. But when neither perswasions, sufferances, nor proclamations will serue, to keep such dangerous men out of the land, but euen, in spite of the king and his lawes, they will needs come over, and put in practice their treacherous deuyses: mercy, of necessity, must give way to iustice, and pittie preuaile no longer, when grace is dispised.

The many and excelent parts, contained in Maister Recorders learned and elegant speech, I am not able to set downe, and, therefore, do humbly craue fauour, for but glauncing at these few: which though they come farre short of their iust merite, yet let my good will excuse al imperfections. Being come to the very iumpe of giuing iudgement, Drewrie demanded, if, as yet, he might have fauour to speak, and, most honorably, it was answered that he might, for the king's mercy was neuer too late; therefore he was willed, not to trifle the time in friuolous speeches, but, if he wolde yet take the oath, do it and afterwards speak what further he wolde; which made all the standers by euen confounded with amazement, that grace should be so abundantly offered vnto such froward and wilfull refusers. Drewrie wolde not yeeld to take the oath, whereupon the sentence of death was pronounced against them both. To bee conueyed thence to the place from whence they came,

and there to be laid vpon an hurddle, and so drawne to the place of execution, where they shoulde hang till they were half deade; then, to haue their secrets cut off, and with their in-trailles throwne into the fire before their faces, their heads to be seuered from their bodies, which seuerally should be deuided into four quarters, and afterward disposed at his maiesties pleasure, in mean while, the Lorde to take mercie vpon their soules: and so they were sent backe to prison againe.

*A breefe Report of the Execution of Robert Drewrie, drawne on a hurddle in his Fryer-Benedictine habbet to Tyborne, on Thursday the twenty-fifth of Februarie.*

On the next morning, being Thursday, an hurddle being brought to Newgate, Robert Drewrie, hoping yet for life, and not thinking to die, as by the sequell it plainly appeared, hauing put on, after the maner of the Benedictine Fryers beyond the seas, a newe suit of apparrell, being made of black stufte, new shooes, stockings, and garters, and a black new stufte priests gown, or cassock, being buttoned downe before by loops and buttons; two and two together, to the verye foote, a new cornered cap on his heade, and vnder it a fair wrought night-cap; was, in this manner, drawne along to Tyborne, where being by the executioner prepared for death, he was brought vp into the cart, and vsing such ydle speeches, as he had don often before, that he dyed not for treason, but for his priesthooode, hee was willed to deal more iustly, and not to abuse the world nowe at his death, in vttering that which was a manifest lie and untruth. He made answeere, that, in all his life-tiue, he had not told a lie, and then, after a short pause added, not willingly. There were certain papers shewn at Tyborne, which had bin found about him, of very dangerous and traitorous nature. And amonge them also was his Benedictine faculty vnder seale, expressing what power and authority he had from the pope, to make men, women, and children heere, of his order; what indulgences and pardons he colde graunt them, both in this life, and for multitude of yeares after their death, pre-eruing them both from purgatory, and warranting their entrance, by the popes keyes, into Heauen. He confessed himselfe to be a Romaine Catholick, and a priest, and desired all Romaine Catholickes to praye with him, and for him. And often looking about him, as hopinge there was some mercie for him, for fenre appeared very plainly in him, when he felt the cart go away under him, and his expectation to be deceiued, he caught fast holde with his left hande on the halter about hys head, and very hardly was inforced to let it goe, but held so for a pretty while. If this were not an apparant hope of life, I refer it to better judgements then mine own. He hung till he was quite dead, and afterward's his body was quartered.



## 83. The CASE of IMPOSITIONS, on an Information in the Exchequer by the Attorney-General against Mr. JOHN BATES, Merchant. Michaelmas, 4 JAMES I. A. D. 1606—1610.

[“ This famous Case involved in it a constitutional Question \* of the first magnitude; Mr. Bates, the Defendant, having been prosecuted for refusing to pay a Duty on foreign currants imposed by a mere act of the crown. The attempt to enforce a submission to this duty by legal process, was certainly a principal and early part of that rash and unwarrantable scheme to establish in the crown a right of taxing the subject, which disturbed the reigns of the two first princes of the Stuart line. James the first claimed the right of imposing duties on imported and exported merchandize by prerogative. His son and immediate successor, the unfortunate Charles, not only persisted in the claim, but added to it the equally formidable pretension of ship-money. Realized, these claims, with loans, benevolences, monopolies, and the other subsidiary branches of the same extravagant design, would have comprized nearly a compleat system of extraparlimentary taxation; for imposition at the ports was calculated to serve the purpose externally, ship-money to operate internally. Had they been acquiesced in, parliaments would soon have become unnecessary assemblies; the mildness of a limited monarchy would gradually have degenerated into the harshness of an absolute one; a legal government would have been corrupted into a tyranny. To the great disgrace of the profession of the law, some who in other respects were its brightest ornaments, gave their aid to these attempts against the rights of parliament. We make the acknowledgment with concern; but it is a truth, which neither can nor ought to be concealed. The great luminary of science, lord Bacon, exercised his eloquence to reconcile parliament to impositions by prerogative. Sir John Davis, so justly admired for his writings about Ireland, composed a treatise to prove the right of the crown. Both displayed the greatness of their talents on the occasion, though they managed the argument in different ways; the former speciously professing to claim the prerogative in question from and to limit it by law; the latter boldly adventuring to exalt the same prerogative above law, and describing it to be like another Sampson, too strong to be bound. 2. Bac. 4to ed. 1778. p. 223. Dav. on Imposit. 131. Even the judges deigned to be instruments for subjugating their country to an illegal taxation. Though it was incontrovertible, that, by the fundamental policy of our constitution, the legislature consisted of king, lords, and commons in parliament assem-

bled; though the judges had before them the strong testimony of lord chancellor Fortescue in his famous book ‘*De Laudibus Legum Angliæ*,’ that even in the reigns of Henry the sixth and Edward the fourth the English monarchy stood distinguished as limited from the French monarchy as absolute, notwithstanding their original resemblance to each other; though this noble-minded lord chancellor had instructed the heir apparent to the crown, that one of the most essential differences between the two monarchies arose from the prevalence of the king’s despotism of taxation in France, and from parliament’s having that power in England; though they could not but know, that from the moment the king should succeed in attracting from parliament the commanding power of taxation, parliament must have perished; though the statute-book was full of legislative declarations against taxes without consent in parliament, though not so much as one recognition of the claim could be found in the records of justice, the court of exchequer in Bates’s case unanimously gave judgment for impositions by prerogative on imports and exports; and in Mr. Hampden’s Case, though some very recent admonitions and warnings of duty had intervened, all the judges of Westminster-hall, two only excepted, joined to give the sanction of a judicial opinion to ship-money. Nor were monopolies, loans, and benevolences, wholly uncountenanced by the courts of justice. But, during this crisis, the houses of parliament did not forget their duty. They pursued the several devices for illegal taxation, till all were hunted down, and had yielded to the tide of law and constitution. In 1610, the house of commons, alarmed by the judgment in Bates’s case, formally debated \* the right of the crown to impose on merchandize at the ports; and at length by a petition to the king complained of such impositions as a grievance, which in the subsequent parliaments was followed with frequent remonstrances of the like kind. In 1623, monopolies were curbed and regulated by statute. In 1627, † gifts, loans, and benevolences, were pointedly declared contrary to law by the Petition of Right, with general words to comprehend all sorts of taxes and charges out of parliament. In 1610, ‡ the legislature crushed ship-money almost in its birth,

\* For more learning relative to this question, see the third part of lord Hale’s most elaborate Treatise “concerning the Customs,” in the first vol. of Mr. Hargrave’s Collection of Tracts.

† See 2 Cobb. Parl. Hist. 230, et seq.

‡ See 2 Cobb. Parl. Hist. 672.

\* See 1 Cobb. Parl. Hist. 1139.

by declaring the judgment for it contrary to law and vacating the record. In the same year the final blow was given to taxation by prerogative; an act for tonnage and poundage being passed, with a declaration against the king's claim to impose such duties. Thus the victory over all the several inventions to tax the subject by prerogative became complete; before the civil wars broke out, before the contest with the crown degenerated from resistance of its usurped powers into an invasion of its just claims. Fortunately too, when the country emerged from the anarchy and misery of the scene which followed, the extravagance of joy did not extinguish a due remembrance of the constitution. One of the first acts, after the restoration, was a grant of tonnage and poundage, with words which renewed a part of the former declarations against taxing by prerogative; for it anxiously recited, that 'no rates can be imposed on merchandise imported or exported by subjects or aliens, but by common consent in parliament.' 12 Cha. 2. c. 4. §. 6.—It was once our intention to have traced more fully the history of the long contest about taxes out of parliament, from the accession of the house of Stuart, till it was finally decided against the crown in 1611; our plan being to have minutely and distinctly stated the proceedings on each species of device to elude the constitution, and to have given a general view of the arguments by which each was sustained or repelled. But though we had already made many researches, and collected several materials on the subject, it was found impossible to do justice to it, without more time, than was consistent with present convenience to allow. We therefore reserve the detail of the subject for some future occasion. As to the attempts at extra-parliamentary taxation in the previous period, they are fully investigated in some of the pieces which we now present to the reader.

"So far as respected the general point of taxing by prerogative, it seems to have been the strongest of all cases against the crown. There were such apparent bars to the claim of prerogative in this respect, that it seems surprizing, how lawyers of eminence could submit to the drudgery of being advocates in such a cause. If king James had found himself strong enough by military force to change the form of our government, and to substitute for it a despotic sovereignty in the crown, however monstrous such an abuse of his public trust would have been, its meaning could not have been doubted; for it would have amounted to saying, "I confess the present constitution is otherwise, but I chuse to make a new one; 'sic voleo, sic ju-beo, stet pro ratione voluntas.' However unjustifiable it may be, I will have it so." But whatsoever the inclinations of James the first and his son the unfortunate Charles

might be, either they were not in a condition to risk being thus explicit, or had not the courage to try their force; and this being so, the difficulty of accomplishing their design against the constitution became great indeed; for the great lines of argument both on the principle and fact of the constitution were in the teeth of prerogative taxation; whether the attempt had been made in the large and short way, by at once insisting, that the power was inherent in the crown and exerciseable without the two houses of parliament; or, as the experiment was tried, in the detail, by taking advantages of all the irregular practices of former times, and by straining certain allowed rights and prerogatives into abuse, and so giving to them the colour and pretext of a right of a far higher class. It could not be denied, that the legislative power was by our constitution in the king, lords, and commons. To argue then the next moment, that, notwithstanding this, there was latent in the crown a power of taxing, was an inconsistency in principle; for it was saying in the same breath, that the king was and was not the legislature; taxing the subject being undeniably one of the highest exercises of legislative authority. Nor was the argument on the matter of fact much better for the crown. As far back as the reigns of Edward the first and Edward the third, that is, almost as far back as the records of parliament, those most authentic sources of our constitutional history; can be traced, the king has joined with the two houses of parliament in most explicitly declaring, that to tax in any other manner than in parliament is contrary to the law of the land, and that all other forms of taxation are strains of regal power incapable of being justified. It also happened, that exclusively of such general legislative declarations against taxing out of parliament, there was scarce any particular mode of illegal and irregular taxation, but what at one time or another had been specifically condemned. It was no wonder therefore, that lord Coke, when he framed the Petition of Right in the reign of our first Charles, laid his foundation against the prerogative of taxing, as well as against the other excesses of that ill-advised prince, on the code of our ancient statute law; for it is observable, that, throughout that famous declaratory law, every proposition is derived from that highest of all sources for constitutional knowledge. Here one might easily imagine lord Coke, then nearly of the age of eighty years, to address himself exultingly to the speaker of the commons to this effect. "I propose to the house, not a theory of the best kind of government; not a change of our constitution in the way of improvement: but the solemn declaration of an actual and subsisting constitution; one honorably derived to us from our hardy ancestors, one capable of being proved by testimony from the earliest re-

cords of parliament; one, which has subsisted for centuries, and survived both the calamity of various and long civil wars, and the tyranny of successive ill administrations of our government, even the sanguinary reigns of the two first princes of the Tudor line; nay, one, which even they found it convenient to add new sanctions to, by resorting to its forms to give currency to their despotism and cruelty. Thus strongly fenced with the highest possible testimonies for a mixed and limited monarchy, I wave all inferior proofs. I might perhaps evince from our antient story, that in all periods of time there was a freedom in our constitution; that it was free to our British, to our Danish, to our Saxon, nay to our Norman ancestors; and that it was beyond the power of traditionary fable to name the period, when our monarchs were unshackled by parliaments. I might perhaps trace the antiquity of our present legislative constitution, as composed of king, lords and commons, or at least the substance of it, as far back as the time when the Roman government ceased amongst us. But I will not travel unnecessarily into such remote periods: I will not unnecessarily waste the precious time of this house, or even my own time, in such traditionary and dubious investigations. I will leave all these topicks to the curious antiquarian as his proper employment; or reserve them for the pastime of private curiosity. Confident in the strength of parliamentary records, I will appeal to them only. If they are not decisive in my favour, or as I should rather say in favour of the constitution and against monarchical despotism, I yield the victory to the devotees of the crown: I agree, that the king shall singly exercise that highest power of legislation, the power of taxing: I agree, that from henceforth the king of England shall be a tyrant: and that the reality of parliament shall expire here; as it has expired in almost every other country in Europe. I will not even ask for aid from the testimony of that honest and generous lawyer, that high example of judicial chastity, that undefiled servant of a court royal, the great lord chancellor Fortescue. Even his admired printed book '*De Laudibus Legum Angliæ*,' and the still more valuable remains of him in the manuscript treatise on the difference between absolute and limited monarchy, shall be suppressed. I ask only to put into my scale of a free constitution, and of a limited monarchy, the statute rolls and other records of parliament. Saving these only, I consent to put into the scale of regal prerogative, all the fables of British antiquity, all the traditions of our Gothic ancestors, all the imperfect histories of monkish annalists, all the vague arguments from the vague titles of Saxon and Anglo-Norman laws, all the deceptive verbal criticism from words no longer clearly understood, all the volumes of pre-

cedents of irregular and condemned practices; nay even the vain arguments from the uncertain origin of the representative part of our English parliaments, with the boasted argument from the arbitrary administration of the executive magistrates whilst our throne was filled with the proud Tudor line. Allow to me the benefit of the Magna Charta of our third Henry as confirmed by our first Edward, with the long series of subsequent statutes and parliamentary records; especially the 34th of our first Edward against talliages and aids without consent of parliament, the 25th of Edward the third against forced loans, and the statutes of the last mentioned king with those of the second and third Richards against benevolences and such like charges. Those on the other side shall have the full and sole benefit of all other records and testimonies whatever; with the additional weight of the king and his whole court; without excepting his accomplished but too pliant judges, or those indefatigable hunters of precedents for violations of constitutional government, the great law officers of the crown. Should the ponderous weight of royal charters and parliamentary records fail me against such an aggregate of influences in the opposite scale, I will agree, that the constitution of parliament must perish; and that our kings inust in future be absolute and despotic sovereigns.— Though too my scale, in consequence of the wisdom, integrity, justice, and firmness of this present house of commons, should at present preponderate; yet from the increasing degeneracy of those out of this honourable house, I prophesy, that the high talents with the low ambition of future lawyers will soon again counteract our present solemn proceedings against the excesses of royal prerogative; and that future judges will soon arise to countenance those excesses by new corruptions of judicial authority. But should the conflict be once more revived, I trust, that the freedom of our constitution will again triumph: and should that contest ever again come, and another victory be gained over the pretended prerogatives of the crown, which events from the course of nature can scarce happen in my time, be it recorded in the journals of this parliament, for the instruction of our latest posterity, that such a time, whenever it shall come, will not be the era of a free government newly established in resistance of the abuses of royal power; but will be the era of mere salvation of a frame of government so antient, that authentic memorials are wanting to trace its origin with any thing like accuracy."—In the speech thus imagined for lord Coke, when he presented the Petition of Rights to the house of commons in the year 1627, there is a succession of thoughts, which are the result of all the now editor's study of the antient contests between the crown and the subject, on the claims of pre-

rogative to a right of taxation and other powers of a legislative kind. The same ideas in substance have often occurred to his mind, and he has long wished to disburthen it by an avowal of them; though till the present moment he has not so much as once made the attempt. True it is, that these thoughts are very general, are mere outlines for argument. To try their force, an investigation of innumerable authorities is requisite. But loose and general as the reasoning is, it may perhaps serve as a preliminary memento for those, who are curious and able to pursue the subject in its fullest compass.

“ With respect to the particular claim of a prerogative to tax at the ports, it was more than liable to the general objections of being a prerogative taxation; because there was the addition of peculiar arguments against yielding to such a precedent. It was this very species of regal impositions, which gave occasion to some of the antient statutes declaratory of the illegality of taxing without the consent of parliament; as will appear by reading the incomparable speeches against impositions at the ports, by those profound constitutional lawyers Yelverton and Hakewill. It was also an apparent bar to such a claim, that it had not only been condemned in the reign of the first and third Edwards; but that from the time of the latter king, there had been a continual habit of granting duties of tonnage and poundage at the ports on the commencement of every reign, either for the life of the new monarch, or for a term of years. Nor is it to be forgotten, that prerogative impositions at the ports appear to have been dormant, from the reign of Edward the third, till after the accession of queen Mary, the elder daughter of our eighth Henry. That princess indeed did cause a resurrection of such impositions, after their having been asleep for near three centuries, by ordering some duties on cloth to be levied beyond what was warranted by the parliamentary grant of tonnage and poundage to her. But the then merchants of London were equally awakened by the measure; and they loudly complained, in the first year of Elizabeth, to that great queen, to be relieved on the ground, that such impost by mere power of the crown was illegal. Their opposition is thus stated in lord Dyer's Reports: and it was aided by an argument against prerogative duties at the ports; for Mr. Hakewill tells us, that Mr. Plowden, one of the most consummate lawyers we have had at any time, composed such an argument against the duties thus irregularly imposed by Mary. From the same authority also, and from the account of the case in lord Dyer's Reports, fol. 165, it is clear, that notwithstanding a conference of the judges on the occasion, no sanction, either judicial or extrajudicial, was ever obtained, in the reign of Elizabeth, for this ex-

cess of prerogative; or at least that it was never thought fit to produce any opinion of the judges, or to assert that any such was ever given by them in that reign.

“ Upon this transient view of the attempts to establish a prerogative power of taxation, how can it be wondered at, that the rash attempts of James the first and his son the unfortunate Charles, which latter really was possessed of many pleasing and valuable accomplishments, should terminate in the disgrace of the former, and the personal destruction of the latter? The father had to answer for attempting to systemize prerogative taxation. The son, misled by the father's ill example, and having had instilled into his mind the most extravagant notions of the unbounded extent of regal power, not only adopted his father's illegal plan; but persisted in it, even after giving the royal assent to laws expressly condemning both generally and particularly all taxes of the subject except by act of parliament; and so at length the more deserving son fell himself a victim to the adoption of a system, which the far less deserving father had begun to execute, with no other mischief than one which his mind probably did not sufficiently feel, namely, the disgrace of being odious to and distrusted by his subjects. To the conduct of their predecessor, queen Mary, it was an objection, that she had revived an ill precedent of prerogative taxation after a dormancy of centuries. But on the part of James and Charles, there seems to have been the aggravation of variously extending the bad precedent thus received from Mary; with the still higher aggravation of influencing the judges into a public avowal of judicial opinions, which justified even the principle of taxing without parliament. It may not be useless to add to this long note, that the present editor is in possession of a volume, formerly belonging to sir Christopher Yelverton, father to sir Henry Yelverton; which contains, among other valuable law manuscripts, not only a full report of the arguments of the judges and counsel in the Case of Impositions, but also the copy of a most elaborate argument in that case by lord chief baron Fleming, from original notes written in his book, and in his own hand.\* Decided as the present editor is on this sort of subject, he wishes not to conceal an iota of the learning on the contrary side of the question. So far from it is he, that should the present Collection of Tracts be continued, which however is not very probable, it is his design to publish the very argument thus mentioned. Nor is he afraid to apprise his readers in the mean time, that, notwithstanding its great blemishes, it is so able a performance, as in

\* It is to be regretted that the learned gentleman has not made public the contents of this MS.

many respects to deserve a very serious attention, even from those the most hostile to the unconstitutional system of taxing without a parliamentary grant. Here our readers, who are curious on subjects of the constitution, may consult what he has remarked about benevolences in a note to Mr. Oliver St. John's Case, (A. D. 1615, *infra*).—The editor cannot conclude this note without apprizing his readers, that he is possessed of an imperfect manuscript tract, intitled, "Reflections by the Lord Chief Justice Hale on Mr. Hobbs's Dialogue of the Law:" and that this performance, though an unfinished one, contains both a very pointed refutation and a very severe reprehension of Mr. Hobbs for his arbitrary notions concerning the extent of the kings prerogatives. In general lord Hale is the most dispassionate of all writers upon our law and constitution. But he saw the pernicious tendency of Mr. Hobbs's doctrine in so strong a point of view, that in this instance lord Hale appears to have been scarce able to restrain his indignation. The following extract from the manuscript, being on Taxation, will evince this; and at the same time shew, how pure this exemplary judge's opinions were on that high subject.

It is a thing most certain and unquestionable, by the law of England, no common aid or tax can be imposed upon the subjects, without consent in parliament; and no dispensation or *non obstante* can avail to make it good or effectual; no not for the maintaining of a military force, though in case of necessity. And that man, that will teach, that in all these cases a tacit condition is implied, to let loose laws of this importance, and to subject the estates and properties of the subjects to arbitrary impositions, notwithstanding the solemnest engagements to the contrary.—  
 1. Takes upon him to be wiser than the king himself, who hath not only granted, but judged the contrary.—  
 2. Takes upon him to be wiser than all the estates of the kingdom, as neither just or prudent advisers for the good and safety of the kingdom.—  
 3. Goes about to break down the security of all men's properties and estates.—  
 4. Doth mischievously insinuate jealousies in the minds of men, as if all the laws of the kingdom might be abrogated, when the king pleaseth; and thereby does the king and his government more mischief than he can ever recompence.\*

\* The only state of this important Case, and of the arguments in it, is in Lane's Reports, and in a short note added to Dyer's Reports by the learned editor of the improved edition.\* See Lane's Rep. p. 22. and Dy. ed. 1688, fo. 165-b. in the margin. The report in Lane, being the fullest, shall be laid before the

reader; to which we shall subjoin a Speech made in parliament by lord Bacon in 1610, when the Judgment of the Exchequer in the Case in question was formally discussed by the House of Commons. We shall next add a transcript from an original Manuscript, described by Mr. Carte to be in the handwriting of the famous sir John Davis; being in substance like the latter part of the printed Treatise on Impositions with his name, but differing much in the language, and more likely to be correct. These pieces together comprize the principal Arguments for the prerogative of Impositions claimed by the crown. But, without something more, it would be a very partial view of the subject. In justice, therefore, as well to that excellent constitution, to the injury of which the claim of Impositions by prerogative operated, as to those who so honourably for themselves and so happily for their country resisted the invasion, we shall add two most learned and able Arguments on the opposite side of the question; one delivered by Mr. Hakewill in the same Parliament with lord Bacon's Argument; the other also contemporary, and said to have been composed by sir Henry Yelverton, afterwards the judge of that name. Both of these valuable remnants of the Debates in Parliament on Impositions by the crown are very rare; having been printed separately, and not being to be found in any published collections of the time. What is very remarkable, they are not only unnoticed by Mr. Hume, Mr. Carte, and the authors of the Parliamentary History; but have even escaped the observation of our deservedly celebrated female historian. That the two former writers should not be studious to draw the attention of their readers to two arguments, so fit to counteract the reception of their particular prejudices, is easy to be accounted for; especially in the instance of Mr. Carte, whose bias in favour of the prerogative is more avowed and apparent than Mr. Hume's. But Mrs. Macaulay's silence cannot be explained in the same way; and therefore we attribute it to the accident of her not having met with either of the arguments. Perhaps our observation on Mr. Hume and Mr. Carte may sound as harsh to some persons. But we can assure such, that it is not intended to write disrespectfully of either of those authors. We feel strongly the merit of Mr. Carte, as a most elaborate historian; as one, to whose familiar knowledge and skilful use of records, with the other most authentick materials of the history of his country, all, who follow him in the same line, are infinitely obliged. For strength, clearness, and elegance of stile, for profoundness in remark, for beautiful arrangement and close compression of matter, we consider Mr. Hume's work as a model of historical composition. Such being the characters of these eminent writers, it becomes the more necessary to know, on which side

\* See the observations, on this short note, of Mr. Vaillant in his improved edition of Dyer, 1795.

their prejudices operate. Otherwise the authority of their works might have an improper influence in settling the opinions of their readers on the controverted points of our government and constitution, and so lead to the dissemination of dangerous and pernicious errors. The truth seems to be, that a general History of England, composed with that rigid impartiality so essential to a perfectly just idea of our constitution, is still wanting. Hitherto the best of our writers, who have engaged in that arduous task, have been betrayed into extremes. One is swayed by predilection for the Stuart family; whilst another loses his temper from aversion to them. Some write from favor to absolute monarchy; others are votaries to the passion of republicanism. Too many have been seduced by zeal for a particular party in the state; and so, according to the occasion, have practised the arts of apology, or adopted the severe and vehement language of satire. But the author, who wishes to fix the true point of our antient constitution in the scale of government must banish from his mind all such corruptives of judgment.

“ Besides the arguments by Hakewill and Yelverton, against impositions on merchandize by prerogative, there are some very forcible reasons with the same view by lord Coke in his second Institute, where he comments on the 30th chapter of Magna Charta. See 2 Inst. page 57 to 63. Some observations also occur on the subject in the 12th part of lord Coke's Reports. But, in this latter book, he writes with more favor to the judgment for impositions in Bates's case; for, though he disclaims all idea of the crown's having a right to impose duties at the ports, in form of a tax and for a revenue, yet he contends, that, for the benefit of the subject, and in the way of advancement and regulation of trade, the crown may charge. This distinction seems to be of dangerous tendency, and not quite reconcilable with the same great lawyer's sentiments in his 2d Institute, where he condemns the judgment in Bates's case without any reserve. However it should be considered, that lord Coke's 12th Report contains only his first thoughts, before the question had undergone a parliamentary investigation; and further, that the 12th Report is of small authority, being not merely posthumous, but apparently nothing more than a collection from papers neither digested nor intended for the press by the writer. 12 Co. Rep. 33. Those inclined to pursue the subject still further may consult 4 Inst. 39. the Case of Sheppard against Goswell and others in Vaughan's Rep. 159. the title 'Taxes' in Cotton's Abridgment of Records, the Case of Customs Dav. Rep. 7. Forster's Dig. of Laws relat. to Customs, 15. Gilbert's Treatise on the Exchequer, chap. 15. Maddox's History of the Exchequer, chap. 18.\* and the title 'Prerogative' in the Law Abridgments.† Hargrave.‡]

*Extract from Lane's Reports, page 22.*

AN information was exhibited against Bates, a merchant of the Levant; and it was recited, that the king by his letters patents under the great seal had commanded his treasurer, that he command the customers and receivers, that they should ask and receive of every merchant denizen, who brings within any port within his dominions, any currants, 5s. a hundred for impost, above 2s. 6d., which was the poundage by the statute of every hundred; and it was alledged, that Bates had notice thereof, and that he had brought in currants into the port of London, and refused to pay the said 5s. in contempt of the king. Whereunto Bates came, and said, that he is an English merchant, and adventurer and a denizen, and that he made a voyage to Venice, and there bought currants, and imported them into England; and he recited the statute of the first of king James cap. 33. which grants 2s. 6d. for poundage, and he said, that he had paid that, and therefore he had refused to pay the 5s. because it was imposed unjustly, and unduly against the lawes of the land; whereupon the king's attorney demurred in law.

This matter hath been divers times argued at the bar, and at the bench, by Snig and Savil, barons, and now by Clark and Flemming, chief baron, whose arguments only I heard.

And Clark, who argued first this day, said, That this case being of so great consequence, great respect and consideration is to be had, and it seemeth to me strange, that any subjects would contend with the king, in this high point of prerogative; but such is the king's grace, that he had shewed his intent to be, that this matter shall be disputed and adjudged by us according to the ancient law and custome of the realm; and because that the judgment of this matter cannot be well directed by any learning delivered in our books of law, the best directions herein are precedents of antiquitie, and the course of this court, wherein all actions of this nature are to be judged, and the acts of parliament recited in arguments of this case prove nothing to this purpose. The best case in law is the Case of Mines in Mr. Plowden Com. where this ground is put, that the precedents of every court ought to be a direction to that court, to judge of matters which are aptly determinable therein, as in the Kings Bench for matters of the crown, in the Common Pleas for matters of inheritance and civil contracts, and in the Exchequer for matters of the king's prerogative, his revenue and government. And

\* The case of the king's prerogative in Salt Petre, 4 Jac. 12. Co. Rep. 19, may also be looked into, though not strictly in point.

† This note is not printed as it stood in the last edition of the State Trials; but the additional matter in the learned annotator's preface to his 1st vol. of "A Collection of Tracts, &c." has been here interwoven.

as it is not a kingdome without subjects and government, so he is not a king without revenues, for without them he cannot preserve his dominions in peace, he cannot maintain war, nor reward his servants, according to the state and honour of a king; and the revenue of the crown is the very essential part of the crown, and he who rendeth that from the king pulleth also his crown from his head, for it cannot be separated from the crown. And such great prerogatives of the crown, without which it cannot be, ought not to be disputed; and in these cases of prerogative the judgment shall not be according to the rules of the common law, but according to the precedents of this court, wherein these matters are disputable and determinable. As for example, an action of accompt lies not by the common law against him, who had the land of the accomptant by mean conveyance. But if one be an accomptant to the king, and had land in fee, and alien it unto A. who alien it unto B., B. by reason of this land, shall be charged with this accompt. In 14 E. 3, a coroner was elected by the king's writ as he ought to be, by the countie, and after he was amerced, and because he was not sufficient to ansver the amercement the countie was charged therewith, and that appears of record here. And in 30 E. 3. Rot. 6. as appears also of record, in this court, one William Porter was *magister monetæ*, and had received bullion of divers merchants, and coyned it in the kings mint, and did not restore the coyne to the merchants, but was insufficient, and the king paid the merchants, and inquired of the sureties for the coyne, and it was found that he had none; then it was inquired who recommended him unto the king, and it was found by whom he was recommended; and they, who only recommended him as friends, were charged with the debt. And if one be outlawed in a personal action, and debt is due to him upon a contract, this shall be forfeited to the king, and this is ordinary by the precedents of this court; and yet this seems to be contrary to law, and is against our books. And the king's debtor shall have a *quo minus* against executors upon a simple contract, and therein he cannot release, nor be non-suited. And I put these cases to prove, that the precedents of this court ought to be pursued and observed, although they seem to cross the common law, and the books thereof. A case was here betwixt the king and Jourden. Jourden was receiver, and sold his office to one D. and he not being able to pay Jourden for his office at the day limited, it was agreed, that Jourden should come to the next receipt, and when D. received the king's money, that Jourden should take it for his office, which was done accordingly. After D. was indebted to the king, and this matter appearing as above, &c. Jourden was charged with the money which he had received. And as Stamford in his first cap. of prerogative saith, that the king is the most worthy part of a commonwealth, so is he the preserver, nourisher, and defender of the people; and true it is, that the

weal of the king is the public weal of the people, and he for his pleasure may aforrest the wood of any subject, and he thereby shall be subject to the law of the forrest; and he may take the provision of any man by his purveyor for his own use, but at reasonable prices, and without abuse, the abuse of which officer hath been restrained by divers statutes; and the king may take wines for his provision, and also timber for his ships, castles, or houses in the wood of any man, and this is for public benefit; and the king may allay or inhaunce coyne at his pleasure, for the plentie of the king is the peoples peace. And these imposts are not only for the benefit of the people, and for the king's profit, but are also imposed many times for the increase of merchandise and commerce, as the statute of Aulnageors made in the 2 E. 3. cap. 14. which was made principally to make cloathes more vendible. And so corporations granted by the king with immunities and privileges, and to seclude other subjects from them, are well limited and good: for it is for the increase of the peoples wealth, and thereby the kings revenue is increased. And sometimes there is contained in grants a prohibition to other subjects, that they usurp not upon the priviledges of such corporations upon a pain, as in the custome of forraign bought and forraign sold in London, and York; and divers customes are permitted to such corporations, as in the chamberlain of Londons case, Cook 5. and the breach or violation of these customes is a decay of the corporations, and so an impairing of the revenues of the crown; and therefore the king may make them, and also give them priviledges, and make inhibitions to others, not to usurp upon them. King Edward the third in the sixteenth year of his reign proclaimed, that no man should sell wool-fels, or leather, under such a price, so that these staple commodities might not be debased, and this at no place but at Northampton and Anwick; and this proclamation was the cause, wherefore the merchant in 43 assise 38. was punished for using deceit to abate the prices. And for precedents in this matter of impost, there are many of antiquitie. And first for wines. In 16 E. 1. the custom for a tun of wine was 4s. and in 21 and 24 E. 3 it was increased to ———, and 12, 13, & 14, of H. 8. it was increased to 17s. the tun. And after in the 4th of Mary it was increased to 4 marks; and as it appears by the records of this court, it was answered upon accompt for all this time according to that rate. And it is apparent, that no act of parliament gave this to the king, but that it was imposed by his absolute power; and shall it now be doubted if it be lawful? God defend. Praisage, that the king shall have one hogshhead before the mast, and another hogshhead behinde, is not given to the king by any statute, but was only an impost by the kings power. The impost upon cloathes in 31 E. 1. was two shillings for a scarlet, and 18d. for other cloathes in grain, and after in the 37th year of E. 3. it was raised again, and in the 37 E. 3. an act was made

for the length of cloathes; in the 33 H. 8. it was raised again; and in the time of queen Mary, because that the making of so many cloathes made the impost of wool to be of so small value, therefore the impost of every cloath was raised by her to a noble: and in the first of Eliz. an impost was imposed, for the overlength of cloathes; and it appears in 30 E. 3. that the impost of the cloath was for a stranger 2s. 8d. and for a denizen 1s. and all for cloathes. Another impost was for woolfels, and leather. The 31 E. 1. it was for wool half a mark for a sack, and after that to 10s. and in the time of E. 3. to 20s. and after to 40s. and after to 3l. and so of woolfels and leather; and as the benefit and price of commodities did rise, so was the impost raised, and no act of parliament for the first imposing, and increase thereof. And so much for woolfels and leather. Now for allom. Upon every kintal of allom was imposed 3s. 4d. which was answered upon account; and in the case of Smith, it was not doubted, if it shall be paid, as here it is, but if it were contained in Smiths patent or not. The imposition imposed upon colcs. Now the 1s. increase is paid. The imposition upon tobacco was never doubted to be unjust as this is. And so much for precedents. And now for statutes. The statute of Magna Charta, cap. 30. which was objected, that thereby all merchants may have safe, &c. to buy and sell, without ill tolneys; but there is a saving, viz. by the ancient and old customs. The statute of Articuli super chartas, cap. 2. hath a saving in the end of it, that the king or his council did not intend thereby to increase the antient prices due and accustomed. So are all the other statutes of purveyors. The statute of the 45 E. 3. cap. 4. which hath been so much urged, that no new imposition shall be imposed upon woolfels, wool, or leather, but only the custome and subsidie granted to the king; this extends only to the king himself, and shall not binde his successors; for it is a principal part of the crown of England, which the king cannot diminish. And the same king 24th of his reign granted divers exemptions to certain persons; and because that it was in derogation of his state imperial, he himself recalled and annulled the same. As to that which was objected, that the defendant had paid poundage granted by the statute of the first of the king, that is nothing to this purpose; for that is a subsidie, and not a custome; for when any imposition is granted by parliament, it is only a subsidie, and not a custome, for the nature thereof is changed, and the impost of wine is paid over and above the poundage, and so should it be here. And whereas it was objected, that if it were in the time of war, it is sufferable, but in peace not, this seems no reason; for the king cannot be furnished to make defence in war, if he provide not in peace, and the provision is too late made, when it ought to be used. And as to that which was said, that the subject ought to have recompence, and valuable satisfaction, it seemeth to me that

VOL. II.

he hath; for he hath the kings protection within his ports, and his safe conduct upon the land, and his defence upon the sea. And all the ports of the realm belong to the king, and in this court there is a precedent where one in the time of queen Eliz. claimed to have a port to himself, as his own, and it was adjudged that he could not, for it belonged to the queen, and it could not be severed; and the king only shall have the customes, for landing throughout all the land. And in the 17th of E. 3. there is a notable precedent, where he reciteth all the benefits which the subject had in his forraign traffick, by the kings power and protection, and therefore he imposed a new impost. The writ of *ne exeat regnum* comprehends a prohibition to him to whom it is directed, that he shall not go beyond the seas; and this may be directed at the king's pleasure to any man who is his subject; and so consequently may he prohibite all merchants; and as he may prohibite the persons, so may he the goods of any man, viz. that he shall export or import at his pleasure. And if the king may generally inhibite that such goods shall not be imported, then by the same reason may he prohibite them, upon condition or *sub modo*, viz. that if they import such goods, that then they shall pay, &c. And if the general be lawful, the particular cannot be unjust; and the words in the writ of *ne exeat regnum*, viz. 'et quam plurima nobis, et coronæ nostræ prejudicialia' 'ibidem prosequi intendis' are not traversable by the subject, but he ought dutifully to obey his sovereign. As to that which is said, that this command to the treasurer is not sufficient under the great seal, that is otherwise; for before the statute of R. 2. for matter of customes no command was directed to the treasurer, but always the king signified his pleasure to his customers under his privy seal, and this gave authoritie to them to collect customes, and the same authority is given now to the treasurer, and derived from him to the customers. As to that which is said, that the conclusion is evil, because it is in contempt of the king; without doubt it is a contempt, for the king may inhibit traffic into any part of the world, if he will, or inflict a pain upon any who shall trade into such place inhibited. So may he do upon any commodity, either inhibit it generally, or upon a pain or impost; and if a subject use the trade after such inhibition, or import his wares, and pay not the impost, it is a contempt, and the king shall punish him for it at his pleasure. And as to that which is said, that it is a burthen to the merchant, that is not so; for the burthen layeth it only upon the better part of the subjects; and if it were a burthen, it is no more than they themselves imposed, which was in their hands by commission in the time of queen Eliz. and they have raised the prices to subjects more than the value of the impost; and it is not to be intended, that the king by any impost will prejudice the cause of merchants, for the trade in general is to him more beneficial, than any particular impost. The case of the 11 and 14 H. 4. of Aulnegeor

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is not to be compared to this case; for there the king had made a grant to a subject, and it was also of a thing which was granted before to a maior, and also of a commodity within the land, and not transported. And for the case of Darcy, for the monopoly of cards, it is not like; for that is of a commodity within the land, and betwixt the patentee and the king, and not betwixt the king and the subject. And as to the exception taken to the information, that it is *us lat.* and doth not prescribe, this needeth not; for it is a prerogative wherein lieth no prescription, for every prerogative is as antient as the crown. And as to the conclusion of the information it was objected, that it is not good, for the informer ought to pray the forfeiture; but this belongs to the court to judge of what shall be lost or forfeited, the offence being a contempt, and therefore the conclusion good enough. And so for all these reasons judgement shall be given for the king.

*Fleming*, chief baron. Touching the exceptions to the information, they are of no force. For the first *us lat.* &c. it hath been well said, that the king needs not prescribe in any prerogative, for it is as antient as his crown is, 2 E. 3. and for the conclusion, viz. that he in contempt, &c. that deserves no other answer, but that which hath been given before, for it is enough, without doubt warranted by infinite precedents. But for the bar, it is an increase of the defendant's contempt, and no sufficient matter to answer, an indigested and confused tale, with an improper and disobedient conclusion, and there is in it *multa non multum*; but the conclusion is without precedent, or example, for he saith, that the imposition, which the king had laid, is 'indebitè, injustè, et contra leges Angliæ imposita,' and therefore he refused, &c. In the Case of Smith for Allom, the conclusion was moderate, and besecming a subject, judgement if he shall have impost by his grant; and in the Case of Mines, the defendant, being a great peer of the realm, concluded upon his grant and interest in the soyl, and that he took the metal, as it was lawful for him, and did not confront his sovereign with terms of *injustè indebitè*, and the like. And the king, as it is commonly said in our books, cannot do wrong; and if the king seise my land without cause, I ought to sue to him in humble manner, *humillimè supplicavit*, &c. and not with such terms of opposition in the information; and all his matter had been saved to him then as well as now, or he might have pleaded his matter, and said wherefore he refused, as it was lawful for him. But for the matter, it is of great consequence, and hath two powerful objects, which it principally respecteth. The one is the king, his power, and prerogative, his treasure, and the revenues of his crown; and to impair and derogate from any of these was a part most undutiful in any subject. The other is the trade and traffick of merchantise, transportation in and out of the land of commodities, which further publick benefit ought much to be respected, and nourished as much as may

be. The state of the question is touching a new custom. The impositions or customs are duties or sums of money newly imposed by the king without parliament upon merchandise, for the augmentation of his revenues. All the questions arising in the case are, 'aut de personis, de rebus, vel de actionibus' viz. form and proceeding. The persons are, first the king, his power, and authoritie; secondly, not Butes the defendant, nor the Venetians, but all men who import currants. The imposition is properly upon currants, and for them, and is not upon the defendant, nor his goods, who is a merchant; for upon him no imposition shall be, but by parliament. The things are currants, a forraign commodity, and a victual; the 5s. for impost, which is said to be great. The action formed or process is the command by the great seal, and the words therein are *petere et recipere*, if they be sufficient, and if good without proclamation or other notice, and how notice shall be given, and if it be good without an *ad quod damnum*. And the Case of Mines in Plowden, which is the sole case in the printed books of law, to this purpose, hath inloure reasons of the judgement. First, the excellency of the king, or his person. Secondly, the necessitie of coyn for his state. Thirdly, the utilitie of coyn for commerce. Fourthly, the inconvenience, if the subject should have such royal possessions. And these reasons are not extracted out of the books of law, but are only reasons of policy; for 'rex est legalis et politicus,' and reasons politick are sufficient guides to judges in their arguments, and such cases and precedents are good directions in cases of judgement, for they are demonstrations of the course of antiquitie. Whereupon my judgement shall consist upon reasons politick, and precedents. The case in *Dyer 1. Eliz. fo. 165.* was not like to the case in question, but only a conference; and the case there was for an impost upon cloath, a domestick commodity. In this case, are recited their grievances, but it was paid, and it is denied here; but there was no resolution thereof. At the same time, was the impost of wines increased, and paid, no petition or complaint thereof. And the customs for England's commodities were at the first imposed by the king's will, for no statute giveth them, viz. for wool, woollfels and leather, and it was called the great custom; and that it was paid, it will not be denied; and yet now it is doubted, if the king can impose it upon forraign commodities. The king may restrain the person, as it is in *Fitz. Nat. Br. à fortiori* he may restrain the goods. There was no custom for home commodities, but the great custome aforesaid, which was after increased by parliament, which was called the Petit Custome. It is a great grace in the king to the merchants, that he will command, and permit this matter to be disputed between him and his subject, and the most fit place is in this court, and the best rules herein are the precedents thereof, and politick reasons, which I shall give, and apply them to the particulars

before recited. And first, for the person of the king, 'omnis potestas à Deo, et non est potestas nisi pro bono.' To the king is committed the government of the realm and his people; and Bracton saith, that for his discharge of his office, God had given to him power, the act of government, and the power to govern. The kings power is double, ordinary and absolute, and they have several lawes and ends. That of the ordinary is for the profit of particular subjects, for the execution of civil justice, the determining of *meum*; and this is exercised by equitie and justice in ordinary courts, and by the civillians is nominated *jus privatum* and with us, common law: and these laws cannot be changed, without parliament; and although that their form and course may be changed, and interrupted, yet they can never be changed in substance. The absolute power of the king is not that which is converted or executed to private use, to the benefit of any particular person, but is only that which is applied to the general benefit of the people, and is *salus populi*; as the people is the body, and the king the head; and this power is guided by the rules, which direct only at the common law, and is most properly named Policy and Government; and as the constitution of this body varieth with the time, so varieth this absolute law, according to the wisdom of the king, for the common good; and these being general rules and true as they are, all things done within these rules are lawful. The matter in question is material matter of state, and ought to be ruled by the rules of pollicy; and if it be so, the king hath done well to execute his extraordinary power. All customes, be they old or new, are no other but the effects and issues of trades and commerce with forraign nations; but all commerce and affairs with forrainers, all wars and peace, all acceptance and admitting for current forrain coyn, all parties and treaties whatsoever, are made by the absolute power of the king; and he who hath power of causes, hath power also of effects. No exportation or importation can be, but at the kings ports. They are the gates of the king, and he hath absolute power by them to include or exclude whom he shall please; and ports to merchants are their harbours, and repose; and for their better securitie he is compelled to provide bulwarks, and fortresses, and to maintain, for the collection of his customs and duties, collectors and customers; and for that charge it is reason, that he should have this benefit. He is also to defend the merchants from pirates at sea in their passage. Also, by the power of the king they are to be relieved, if they are oppressed by forraign princes, for they shall have his treaty, and embassage; and if he be not remedied thereby, then *lex talionis* shall be executed, goods for goods, and tax for tax; and if this will not redress the matter, then war is to be attempted for the cause of merchants. In all the kings courts, and of other princes, the judges in them are paid by the king, and maintained by him to do justice to the subjects,

and therefore he hath the profits of the said courts. It is reasonable that the king should have as much power over forrainers and their goods, as over his own subjects; and if the king cannot impose upon forrain commodities a custome, as wel as forrainers may upon their own commodities, and upon the commodities of this land when they come to them, then forrain states shall be enriched, and the king impoverished, and he shall not have equal profit with them; and yet it will not be denied, but his power herein is equal with other states. And so much for the person of Bates the subject. It is said, that an imposition may not be upon a subject without parliament. That the king may impose upon a subject, I omit; for it is not here the question, if the king may impose upon the subject or his goods; but the impost here is not upon a subject, but here it is upon Bates, as upon a merchant, who imports goods within this land, charged before by the king; and at the time when the impost was imposed upon them, they were the goods of the Venetians, and not the goods of a subject, nor within the land, but only upon those which shall be after imported; and so all the arguments, which were made for the subject, fail. And where it is said, that he is a merchant, and that he ought to have the sea open and free for him, and that trades of merchants and merchandise are necessary to export the surplus of our commodities, and then to import other necessaries, and so is favourably to be respected; as to that it is well known, that the end of every private merchant is not the common good, but his particular profit, which is only the means which induceth him to trade and traffick. And the impost to him is nothing, for he rateth his merchandise according to that. The impost is imposed upon currants, and he, who will buy them, shall have them subject to that charge; and it is a great contempt to denie the payment. And so much for the person. I will give a brief answer to all the statutes alledged on the contrary part, with this exposition, that the subjects and merchants are to be freed of Maletolt; and this was toll unjustly exacted by London, Southampton, and other ports within this realm; but they are with this saving, that they pay the duties and customes, due, or which hereafter shall be due to the king; which is a full answer to all the statutes. The commodity of currants is no commodity of this land, but forrain. And whereas it is said, that it is victual and necessary food, it is no more necessary than wine, and impost for that hath been always paid, without contradiction; and without doubt, there are many drinkers of wine, who are also eaters of currants. That which should be said victual for the common-wealth is that, which ariseth from agriculture, and of the earth within this land, and not vice and delicate things imported by merchants, such as these currants are. They are rather delicacy or medicine than a victual; and it is no reason that so many of our good and staple commodi-

ties should be exported to Venice for such a slight delicacy, and that all the impost shall be paid to the Venetians for them, and the king should have none for their comoditie: and although that the price be thereby raised, this hurteth not the merchant, nor no other, but only a small number of delicate persons, and those also who are of most able and best estate, for their pleasure. But when the king is in want, he is to be relieved by a general imposition or subsidie upon all the subjects. The imposition, which is here, is said to be so great and intolerable as an evil precedent; for, if he may do so much, he may do it in *infinitum*, and upon all other merchandise. For the imposition I say, that it is reasonable, for it is no more than foure times so much than was before; and that there hath been as much done in antient time in other imposts, as in that of wooll, which was at first but a noble a sack, and is now at 50s. The impost of wine was in antient time 3s. 4d. a tun, and now is foure marks. The lessening of custome and impost is much to be guided by intelligence from forrain nations; for the usage and behaviour of a forrain prince may impose a necessity of raising custome of these commodities. And so it was in the particular of currants. The duke of Venice imposed upon them a ductet by the hundred, which by the wisdom of the state was foreseen to be a means, that in time will waste and consume the treasure of the land; whereupon the queen writ to the duke, that he would abate his custome, which he refused. Wherefore to prevent, that so great a quantitie of this commoditie should not be imported into the land, the queen granted to the company of merchants of the Levant that none should bring in currants, but by their licence; and those merchants imposed upon them who did import, which were not of their company, if he were denizen 5s. if he were a stranger 10s. And this was paid by the merchants without contradiction. But there was a clause in the patent, that when the duke of Venice abated his impost, that the patent should be void, and after the duke was solicited again, that he would abate the impost, but he refused, and the first commission was recalled, and after a new grant was made, which was executed all the queen's life time, which was as aforesaid. And whereas it is said, that if the king may impose, he may impose any quantitie what he pleases, true it is, that this is to be referred to the wisdom of the king, who guideth all under God by his wisdom, and this is not to be disputed by a subject; and many things are left to his wisdom for the ordering of his power, rather than his power shall be restrained. The king may pardon any felon; but it may be objected, that if he pardon one felon he may pardon all, to the damage of the common-wealth; and yet none will doubt, but that is left in his wisdom. And as the king may grant a protection for one year, so it may be said, that he may grant it for many years, which is a mischief, and so ought to grant none,

which will not be denied but that he may. So it may be said, that the queen may grant a safe conduct to a stranger; for if she may do that, then she may grant to all, which would be burthensome to the inhabitants; and yet it will not be denied but that she may grant to any or all, as in her wisdom shall seem convenient. And the wisdom and providence of the king is not to be disputed by the subject; for by intendment they cannot be severed from his person, and to argue a *posse ad actum* to restrain the king and his power, because that by his power he may do ill, is no argument for a subject. To prove the power of the king by precedents of antiquitie in a case of this nature may easily be done, and if it were lawful in antient times it is lawful now; for the authoritie of the king is not diminished, and the crown hath the same attributes, that then it had. And in antient time such imposts were never denied; and that which is given by parliament is not an impost but a subsidie. In antient time small traffick or intercourse was betwixt the inhabitants of this land and forrain nations, so that the principal custom was of the commodities of this land, which were woollens and leather; and that the custome for wooll, which was a noble for a sack, was an imposition, appears by the statute of the 14th Ed. 3. stat. 1. cap. 21. It is objected, that merchants cannot be restrained, but only persons suspected, as the writ of *ne exeat regnum* is. But as it is said in Dyer before cited, it is without doubt, that the cause is not traversable, and that the king may inhibit any man; for if it be not traversable, it is not material. And the reason, wherefore any man may be restrained, is for the defence of the realm; and it may be done by privie seal, privie signet, great seal, or proclamation; and that appears by the writ of *licencia transportandi* in the register, which containeth licence for one to travel, and limits him to what place he shall go, and when he shall return, and with what goods, so that the king may prohibit body and goods. And when a man is beyond the seas, the king may command him to return; and if he doth not obey such command, he shall forfeit his goods. Now for restraint of commodities many precedents are to prove it. In the time of H. 3. and E. 1. it was forbidden, that the wooll should be transported into Flanders; and in E. 1. a commission was awarded to enquire, who had done against this ordinance, and the goods of one Freeston were seized: and therefore an attachment awarded against the ships of Hull, for transporting contrary to the ordinance. In the 22 E. 1. it was forbidden, that no merchant should trade with France; for trade with forrainers is a forrain thing, which is only referred to the king. In the 17 H. 6. all merchants were forbidden to import wares from Flanders into this land; and the citizens of London complained of certain merchants, which had done contrary to this ordinance to the lords of the privie council, which I have here ready; for the record men-

tions it, and the kings attorney was commanded to exhibit an information against the merchants, which he did: and they pleaded that the proclamation was made here upon Easter eve, and that they were then at Bruges, and upon the Wednesday after Bruges market they bought the wares before notice of the proclamation, and before it were possible that they could have notice of it, and pray judgement, &c. And so much for restraint of the person and goods. By the statute of 31 E. 3. cap. 8. times were appointed in which wools should be transported; and also cap. 9. authoritie was given to the chancellor and treasurer, to defer the passage at their pleasure. But that this was the common law, and that the king by his supream authoritie might do it, it seems to me it is apparent by the statute of the 26 H. 8. cap. 10. which gives power to the king by his letters patents, to limit the time for importing of wines against the statute of 23 H. 8. cap. 7. which was no more but a restoring of his power abridged before; and so was the statute of 31 E. 3. for otherwise the parliament would never have given him authoritie to contradict an act of parliament by his letters patents, or to revive these acts. Impositions are merely a new custome. And so are they stiled in the margin of the roll of the 3 E. 1. in this court, where it is recorded, that the king had assigned merchants to receive (using the same words which are used here) half a mark for every sack of wool, and a mark of every last of leather, and that if the merchant, who is so appointed, transport any after, it shall be forfeited; and out of this record I observe, that three hundred pelts make a sack of wool. From the 21 Ed. 1. unto the 28 E. 1. the customs for wools was 40s. a sack, and in 25 E. 1. the imposition of Maletolt was repealed by act of parliament, which Maletolt was an increase of impost upon staple commodities; and therefore was given to the king a great subsidie with this cause, that it should never be drawn into precedent; which shews, that this Maletolt was rightly imposed, otherwise the parliament would never have given him so great a recompence for the abrogation of it. But after in the 13 of E. 3. because it was a thing of so great consequence to the crown, it was revived and made 40s. for wool, and woofels, and 3l. for leather for denizens, and double for strangers. In the 14 Ed. 3. a petition in parliament to abate it; and for a great subsidie it was released; and in the 18. of Ed. 3. it was again revived, and a new petition was made in parliament, and this petition was continued until the 36 Ed. 3. and then it was abated; and also by the 45 E. 3. it was again abated; so that it seems, that between these times it was revived; but after it did not continue long, for in 48 E. 3. it was again revived, and for wool the impost was 50s. *et sic de singulis*, and in 1 R. 2. after it was answered to the king, as it appears in the accompts here, and in 5 R. 2. it was again suppressed by parliament for a subsidie granted to the king with a saving of antient rights. All these sta-

tutes prove expresly, that the king had power to increase the impost, and that upon commodities of the land, and that he continually used this power notwithstanding all acts of parliament against it. And so much for commodities of this land. But for forrain commodities it appears by no act of parliament, or other precedent, that ever any petition or suit was made to abate the impost of forrain commodities, but of them the impost was paid without denial. As for example, for wines in the 16 E. 1. as appears in this court upon record, it was commanded to the bailiff of Dover to levie and collect of every tun of wine of a stranger 4s. and in the 22 E. 1. 2s. thereof was released, at the suit of the French ambassador. In the 26 of E. 3. the king granted priviledges to merchants strangers; but there was given for it an increase of custome; and this was answered as it appears upon accompt in the times of E. 1. and E. 2. The case of Allom was as it hath been recited by my brother Clark. It is objected, that the merchants ought to have free passage upon the sea; but that doth not conclude the king, but that he shall have his impost if he cometh into his ports, and here the question is for merchandise after that they are brought into the port. But it is said, that they cannot come into the port but by the sea. That is true; but if this reason should hold, then the king could not grant morage, pontage, and the like, because the common channel to them is free, and average is for secuurities as well as ports. Another objection, that the defendand here is not restrained; but that is answered, for if a pain be inflicted upon them who import, this is an inhibition upon a pain to all. Another objection was, that there was no consideration of the imposition; and if it be demanded what differences between the cases, I answer, as much as is between the king and a subject; and it is not reasonable, that the king should express the cause and consideration of his actions, for they are *arcana regis*, and no satisfaction needeth, for if the profits to the merchant faileth he will not trade, and it is for the benefit of every subject, that the kings treasure should be increased. An objection was made against the form of proceeding; because it was by the great seal to the treasurer, and that he by the customers *peteret et reciperet*; and this could not be better, as it was answered before. It was objected that it should be by proclamation; and that needs not, for it toucheth not all the subjects, but only those who are traders in merchandising, and the best and aptest means to give them notice is by the customers, and it is alledged by the information expresly, that he had notice. It was lastly objected, that there ought to be a *quod damnum* in the case before the grant. That is not so; for that shall be only when the king granteth any thing which appertaineth to his prerogative, and not when he maketh charters to his servants to levy his duties due to his crown. Wherefore I think, that the king ought to have judgment: which was after given accordingly.

Argument of Sir FRANCIS BACON, the King's Solicitor, in the Lower House of Parliament, in 1610, for Impositions by the Crown; from volume ii. of the last 4to edition of his Works, p. 223.

AND it please you, Mr. Speaker, this question touching the right of Impositions is very great; extending to the prerogative of the king on the one part, and the liberty of the subject on the other; and that in a point of profit and value, and not of conceit or fancy. And therefore, as weight in all motions increaseth force, so I do not marvel to see men gather the greatest strength of argument they can to make good their opinions. And so you will give me leave likewise, being strong in mine own persuasion, that it is the king's right, to shew my voice as free as my thought. And for my part, I mean to observe the true course to give strength to this cause, which is, by yielding those things which are not tenable, and keeping the question within the true state and compass; which will discharge many popular arguments, and contract the debate into a less room.

Wherefore I do deliver the question, and exclude or set by, as not in question, five things. First, the question is *de portorio*, and not *de tributo*, to use the Roman words for explanation sake; it is not, I say, touching any taxes within the land, but of payments at the ports. Secondly, it is not touching any impost from port to port, but where *claves regni*, the keys of the kingdom, are turned to let in from foreign parts, or to send forth to foreign parts; in a word, matter of commerce and intercourse, not simply of carriage or vecture. Thirdly, the question is, as the distinction was used above in another case, *de vero et falso*, and not *de bono et malo*, of the legal point, and not of the inconvenience, otherwise than as it serves to decide the law. Fourthly, I do set apart three commodities, wools, woolfells, and leather, as being in different case from the rest; because the custom upon them is *antiqua custodia*. Lastly, the question is not, whether in matter of imposing the king may alter the law by his prerogative, but whether the king have not such a prerogative by law.

The state of the question being thus cleared and freed, my proposition is, that the king by the fundamental laws of this kingdom hath a power to impose upon merchandise and commodities both native and foreign. In my proof of this proposition all that I shall say, be it to confirm or confute, I will draw into certain distinct heads or considerations which move me, and may move you.

The first is an universal negative. There appeareth not in any of the king's courts any one record, wherein an imposition laid at the ports hath been overthrown by judgment; nay more, where it hath been questioned by pleading. This plea, '*quod summa predicta minus juxta imposita fuit, et contra leges et consuetudines regni hujus Angliæ, unde idem Bates illam solvere recusavit, prout ei bene*

*licuit,*' is *prima impressionis* Bates was the first man *ab origine mundi*, for any thing that appeareth, that ministered that plea; whereupon I offer this to consideration. The king's acts that grieve the subject are either against law, and so void; or according to strictness of law, and yet grievous. And according to these several natures of grievance, there be several remedies. Be they against law? Overthrow them by judgment. Be they too straight and extreme, though legal? Propound them in parliament. Forasmuch then as impositions at the ports, having been so often laid, were never brought into the king's courts of justice, but still brought to parliament, I may most certainly conclude, that they were conceived not to be against law. And if any man shall think that it was too high a point to question by law before the judges, or that there should want fortitude in them to aid the subject; no, it shall appear from time to time, in cases of equal reach, where the king's acts have been indeed against law, the course of law hath run, and the judges have worthily done their duty.

As in the case of an imposition upon linen cloth for the alnage; overthrown by judgment.

The case of a commission of arrest and committing of subjects upon examination without conviction by jury, disallowed by the judges.

A commission to determine the right of the exigenter's place, *secundum sanam discretionem*, disallowed by the judges.

The case of the monopoly of cards overthrown and condemned by judgment.

I might make mention of the jurisdiction of some courts of discretion, wherein the judges did not decline to give opinion. Therefore, had this been against law, there would not have been *alium silentium* in the king's courts. Of the contrary judgments I will not yet speak; thus much now, that there is no judgment, nor plea against it. Though I said no more, it were enough, in my opinion, to induce you to a *non liquet*, to leave it a doubt.

The second consideration is, the force and continuance of payments made by grants of merchants, both strangers and English, without consent of parliament. Herein I lay this ground, that such grants considered in themselves are void in law: for merchants, either strangers or subjects, they are no body corporate, but singular and dispersed persons; they cannot bind succession, neither can the major part bind the residue: how then should their grants have force? No otherwise but thus; that the king's power of imposing was only the legal virtue and strength of those grants; and that the consent of a merchant is but a concurrence, the king is *principale agens*, and they are but as the patient, and so it becomes a binding act out of the king's power.

Now if any man doubt that such grants of merchants should not be of force, I will alledge but two memorable records, the one for the merchants strangers, the other for the merchants English. That for the strangers is upon the grant of Chart. Mercator. of three pence in value *ultra antiquas custumas*; which grant is in use and practice at this day. For it is well known to the merchants, that that which they call stranger's custom, and erroneously double custom, is but three pence in the pound more than English. Now look into the statutes of subsidy of tonnage and poundage, and you shall find, a few merchandise only excepted, the poundage equal upon alien and subject; so that this difference or excess of three pence hath no other ground than that grant. It falleth to be the same in quantity; there is no statute for it, and therefore it can have no strength but from the merchants grants; and the merchants grants can have no strength but from the king's power to impose.

For the merchants English, take the notable record in 17 E. 3. where the commoner complained of the 40s. upon the sack of wool as a mol-toll set by the assent of the merchants without consent of parliament; nay, they dispute and say it were hard that the merchants consent should be in damage of the commons. What saith the king to them? Doth he grant it or give way to it? No; but replies upon them, and saith, it cannot be rightly construed to be in prejudice of the commons, the rather because provision was made, that the merchants should not work upon them, by colour of that payment to increase their price; in that there was a price certain set upon the wools. And there was an end of that matter: which plainly affirmeth the force of the merchants grants. So then the force of the grants of merchants both English and strangers appeareth; and their grants, being not corporate, are but noun adjectives without the king's power to impose.

The third consideration is of the first and most ancient commencement of customs; wherein I am somewhat to seek; for, as the poet saith, 'ingreditarque solo, et caput inter nubila condit,' the beginning of it is obscure: but I rather conceive that it is by common law, than by grant in parliament. For, first, Mr. Dyer's opinion was, that the ancient custom for exportation was by the common laws; and goeth further, that that ancient custom was the custom upon wools, woolfells, and leather. He was deceived in the particular, and the diligence of your search hath revealed it; for that custom upon these three merchandises grew by grant of parliament 3 E. 1. But the opinion in general was sound; for there was a custom before that: for the records themselves, which speak of that custom, do term it a new custom, 'alentour del novel custome,' as concerning the new custom granted, &c. This is pregnant there was yet a more ancient. So for the strangers, the grant in 31 E. 1. Chart. Mercator.

is, that the 3d. granted by the strangers should be *ultra antiquas custumas*, which hath no affinity with that custom upon the three species, but presupposeth more ancient customs in general. Now if any man think, that those more ancient customs were likewise by act of parliament, it is but a conjecture. It is never recited *ultra antiquas custumas prius concessus*, and acts of parliament were not much stirring before the Great Charter, which was 9 H. 3. And therefore I conceive with Mr. Dyer, that whatsoever was the ancient custom was by the common law. And if by the common law, then what other means can be imagined of the commencement of it but by the king's imposing?

The fourth consideration is of the manner that was held in parliament in the abolishing of impositions laid: wherein I will consider, first, the manner of the petitions exhibited in parliament; and more specially the nature of the king's answers.

For the petitions I note two things; first, that to my remembrance there was never any petition made for the revoking of any imposition upon foreign merchants only. It pleased the Decemviri in 5 E. 2. to deface Chart. Mercator. and so the imposition upon strangers, as against law. But the opinion of these reformers I do not much trust, for they of their gentleness did likewise bring in doubt the demy-mark, which it is manifest was granted by parliament, and pronounced by them the king should have it, *s'il avoit le droit*: but this is declared void by 1 E. 3. which reneweth Chart. Mercator. and void must it needs be, because it was an ordinance by commission only, and that in the time of a weak king, and never either warranted or confirmed by parliament. Secondly, I note that petitions were made promiscuously for taking away impositions set by parliament as well as without parliament; nay, that very tax of the *neufieme*, the ninth sheaf or fleece, which is recited to be against the king's oath and in blemishment of his crown, was an act of parliament, 14 E. 3. So then to infer that impositions were against law, because they are taken away by succeeding parliaments, it is no argument at all; because the impositions set by the parliaments themselves, which no man will say were against law, were nevertheless afterwards pulled down by parliament. But indeed the argument holdeth rather the other way, that because they took not their remedy in the king's courts of justice, but did fly to the parliament, therefore they were thought to stand with law.

Now for the king's answers. If the impositions complained of had been against law, then the king's answer ought to have been simple, *tanquam responsio categorica, non hypothetica*; as, let them be repealed, or, let the law run. But contrariwise, they admit all manner of diversities and qualifications: for, Sometimes the king disputeth the matter and doth nothing; as 17 E. 3. Sometimes the king distinguisheth of reasonable and not reason-

able, as 38 E. 3. Sometimes he abolisheth them in part, and letteth them stand in part, as 11 E. 2. the record of the *mutuum*, and 14 E. 3. the printed statute, whereof I shall speak more anon. Sometimes that no imposition shall be set during the time that the grants made of subsidies by parliament shall continue, as 47 E. 3. Sometimes that they shall cease *ad voluntatem nostram*. And sometimes that they shall hold over their term prefixed or assised.

All which sheweth, that the king did not disclaim them as unlawful, for *actus legitimus non recipit tempus aut conditionem*. If it had been a disaffirmance by law, they must have gone down in *solido*; but now you see they have been tempered and qualified as the king saw convenient.

The fifth consideration is of that which is offered by way of objection; which is, first, that such grants have been usually made by consent of parliament; and secondly, that the statutes of subsidies of tonnage and poundage have been made as a kind of stint and limitation, that the king should hold himself unto the proportion so granted and not imposed further; the rather because it is expressed in some of these statutes of tonnage and poundage, sometimes by way of protestation, and sometimes by way of condition, that they shall not be taken in precedent, or that the king shall not impose any further rates or novelties, as 6 R. 2. 9 R. 2. 15 H. 4. 1 H. 5. which subsidies of tonnage and poundage have such clauses and cautions.

To this objection I give this answer. First, that it is not strange with kings, for their own better strength, and the better contentment of their people, to do those things by parliament, which nevertheless have perfection enough without parliament. We see their own rights to the crown which are inherent; yet they take recognition of them by parliament. And there was a special reason why they should do it in this case; for they had found by experience, that, if they had not consent in parliament to the setting of them up, they could not have avoided suit in parliament for the taking of them down. Besides, there were some things requisite in the manner of the levy for the better strengthening of the same, which perchance could not be done without parliament; as the taking the oath of the party touching the value, the inviting of the discovery of conceal-

ment of custom by giving the money to the informer, and the like.

Now in special for the statutes of subsidies of tonnage and poundage, I note three things. First, that the consideration of the grant is not laid to be for the restraining of imposition, but expressly for the guarding of the sea. Secondly, that it is true, that the ancient form is more peremptory, and the modern more submissive, for in the ancient form sometimes they insert a flat condition that the king shall not further impose; in the latter they humbly pray, that the merchants may be demeaned without oppression, paying those rates. But whether it be supplication, or whether it be condition, it rather implieth the king hath a power; for else both were needless, for '*conditio annectitur ubi libertas præsumitur*,' and the word oppression seemeth to refer to excessive impositions. And thirdly, that the statutes of tonnage and poundage are but *cumulative* and not *privative* of the king's power precedent appeareth notably in the three-pence overplus, which is paid by the merchants strangers, which should be taken away quite, if those statutes were taken to be limitations; for in that, as was touched before the rates are equal in the generality between subjects and strangers; and yet that imposition, notwithstanding any supposed restriction of these acts of subsidies of tonnage and poundage, remaineth at this day.

The sixth consideration is likewise to an objection, which is matter of practice, viz. that from R. 2.'s time to Mary, which is almost 200 years, there was an intermission of impositions, as appeareth both by records and the custom-books.

To which I answer; both that we have in effect an equal number of years to countervail them, namely, 100 years in the time of the three kings Edwards addod to 60 of our last years; and *extrema obruiunt media*; for we have both the reverence of antiquity and the possession of the present times, and they but the middle times. And besides, in all true judgment there is a very great difference between an usage to prove a thing lawful, and a non-usage to prove it unlawful: for the practice plainly implieth consent; but the discontinuance may be, either because it was not needful, though lawful; or because there was found a better means, as I think it was indeed in respect of the double customs by means of the staple at Calais.

Transcript of part of Sir John Davis's Manuscript Argument for Impositions by the Crown, from Carte's History, vol. iv. p. 191.—[From the Title to the printed Treatise by Sir John Davis on the same Subject, it appears to have been written the latter end of the reign of James the First.]

The king is the fountain of all justice, as well commutative as distributive. The first is exercised chiefly in the ordering and government of trade and commerce; wherein he is to do justice, or procure it to be done, not only to his subjects who make contracts-real or per-

sonal within the land, but to his merchants also, who trade with foreign nations, and to strangers who traffick in his dominions. For the administration of commutative justice within the land, the king receives various profits, which grew first by way of imposition; as

finer for original process to recover debts, fines for passing lands from one to another in his courts, and in common recoveries, and the silver *pro licentia concordandi*, the profits of the seals in his courts for all manner of writs, &c. nor is the taking of these and the like duties any breach of Magna Charta; having been imposed by the king long before that charter was made, and taken as a recompence for the charge of the crown in maintaining the courts of justice. There is the same reason for his charge in doing justice, and procuring justice to be done abroad to merchants, whose commerce is for the most part out of the land, being recompenced out of the merchandizes exported and imported, not according to the will of the merchant, or the pleasure of the people, but in proportion to the king's charge, which being best known to himself, it is fit that the recompence should be fixed by himself. All leagues, truces, and treaties of state, with foreign princes, in which the public trade and commerce of merchants is ever included, are made and concluded at his charge; he maintains a court of admiralty for deciding all marine causes, which generally concern merchants; his council of state is applied to, in case of injuries contrary to the sense of treaties; he is at vast expence in keeping resident ambassadors in different courts, chiefly for procuring justice to be done our merchants; and in case of their being wronged and denied justice abroad, the king, by his prerogative, grants them letters of marque or reprisal, to right themselves; and if those injuries are multiplied or continued with an high hand, it is his office directly to denounce and make war on such prince or state, as refuses to do justice to his merchants. So king Charles had lately done against France. It was for this cause, as Appian says, the Romans began the first Punic war; and Cicero (*a*) affirms, that they frequently waged war for the injurious treatment of their merchants. The making of war and peace is an undisputed prerogative of the crown: he maintains a fleet, to protect merchants from spoil and piracy (*b*) (which the Romans thought a just reason for customs) at a charge too great to be defrayed by the poundage laid by Edward 1. at the rate of three-pence, though silver being then at twenty pence an ounce, the grant was intrinsically worth near a shilling, and it being levied at this last rate, in the time of Edward 4. (*c*) was found insufficient for the maintenance of his navy. The flow of money from the East and West Indies vastly enhanced the price of merchandize, and the charges of the crown, as well in all other articles as in that of the royal navy. Hence arose a necessity of new impositions, it not being fit, that the king's charges, in supporting the trade of merchants, should be unlimited and infinite, and the duty on

merchandize be stinted and restrained to such a proportion only as the subject shall be pleased to grant him. Subjects may live as privately as they please; but a king, by reason of the majesty of his estate, cannot well abridge his charge, and would be in a poor situation, if he had no power of himself, without their leave, to improve his revenue.

As he protects the merchants, and gives them convoys at sea, he grants them safe conducts at land (no other being allowed by the law of nations, or acknowledged by Magna Charta) and receives their ships into his harbours. The king is the *custos*, or guardian, of the whole realm, but he is more particularly lord of the ports, not only of the Cinque ports, where he appoints a warden to exercise his jurisdiction, but of all the rest in the kingdom; and our kings have ever enjoyed the prerogative of opening and shutting them at their pleasure. In the reign of Edward 3. great part whereof was spent in war, there are several petitions in the rolls of parliament for opening the sea, when it was shut by his prerogative: yet he never opened it again, without laying an extraordinary imposition upon merchandize. This prerogative was founded on excellent reason; for commerce is not to be held with all persons. Else enemies might discover the secrets of the realm, and corrupt religion or the manners of the people. Nor are all things fit to be exported, particularly such as the kingdom cannot spare, or may be of advantage to the enemy, as corn in a time of dearth, warlike stores in war, &c. Embargos are of the same nature with the stopping of ports, and equally appropriated to the king, being an incident annexed to his prerogative of making war and peace. When war is denounced, all trade is stopped between the nations engaged therein; and if a king can stop it, he must of course have a power to open it, and lay reasonable impositions on merchants for doing so. It is a rule in law, he that may do more may do less; and he, that can forbid people to trade or pass at all, may dispense with the prohibition, and give them leave to traffick under certain conditions. Our kings have forbid (*d*) trade, sometimes generally, sometimes between us and particular nations, sometimes for particular merchandizes only; of all which there are examples enough in our records and histories. All companies of merchants are instituted by the king; and he that gives their privileges may likewise prescribe the terms, on which they are to enjoy them, exclusive of others. The king is lord of the sea about this island, not only as to jurisdiction and protection, but as to property (*e*). Hence all land

(*d*) See Rot. Parl. 2 Ed. 2. m. 18. Rot. Fin. 2 E. 3. m. 17. Claus. 10 Ed. 3. m. 3, d. 17 H. 6. in Scacc.

(*e*) So Baldus affirms, 'De jure gentium, distincta esse dominia in mari, sicut in terra arida—mare attribuitur terræ circumstanti.—Pedagium in mari debet solvi, sicut in terra, si sit impositum per dominium maris;' and

(*a*) Orat. pro lege Manilia.

(*b*) Pliny's N. H. lib. xix. c. 4.

(*c*) Stat. 12 Ed. 4. c. 5.



drained from the sea belongs, by the common law, to the crown (as Stanford (*f*) says) *de jure gentium*; and all seas belong to the next potentate, at least so long as they are formidable, and all navigable rivers, being like arms, of the sea, so far as the tide floweth. Hence, antecedent to any statute, the king (*g*) might restrain all his subjects, of what quality soever, from going beyond-sea, as Edward I. did in the 22d year of his reign; and the like prohibitions were (*h*) made in those of his successors. If he allows merchants to pass to and fro, to come in and out of his streams and ports, he may certainly prescribe the conditions, and what duties they shall pay. Trade was carried on by the English many hundreds of years, before there was such a thing known as an house of commons: it was carried on with so great profit, that our riches served for admittance to other nations, even to the Normans at the time of the conquest: but if our kings had not the same authority as other princes, both in commerce, and in Impositions, it could never have been carried on with advantage. They could not without it have held the balance of trade upright, or have preserved an equality between their own subjects and foreigners. Our neighbours might otherwise drain off all our wealth, and ruin our trade at their pleasure: and their princes, having the sole right to lay impositions, might manage the market so, that their subjects should sell dear, and buy cheap, unless our kings had the same powers to prevent the ill effects of their measures, and the ruin of our commerce. Thus when the state of Venice laid a ducat upon every hundred weight of currants carried out of their dominions by the English merchants, queen Elizabeth, by a speciall patent, in the 12th year of her reign, enabled her merchants trading to the Levant, to levy a noble upon every hundred weight of currants brought into England by any merchant stranger. Thus when the Hanse Towns had got the emperor to banish all English merchants out of Germany, the same queen caused their house called the Steelyard to be seized, forbade them to traffick with any of her subjects, and ordered their merchants to quit England, the same day that the English were to depart out of the empire. Nothing is more evident, than the necessity of our kings having the same power, in impositions as well as commerce, as other princes; they always exercised it well, and there was no danger of their abusing it, whilst the best part of their revenue depended thereon: and whoever will consider, how light, easy, reasonable, and calculated for the benefit of trade, the im-

other learned civilians assert, that the lordship of the sea contains in it, '*Jus navigandi*; *jus piscandi*, et *jus imponendi vectigalia pro utroque.*'

(*f*) Book of Prerogative of the Crown.

(*g*) 22 Assis. p. 93. Dier. 119. a. See Writs.

(*h*) 4 E. 3. 21 E. 3. 16 R. 2. 17 H. 6.

positions of our kings were, must be allowed an uncommon measure of public spirit, if he is very fond of the change into heavier, because they are parliamentary impositions.

These are some of the reasons that may be assigned for the royal prerogative in point of laying impositions, which all monarchs enjoyed by the law of nations, and which the civil law considered as so inherent in the scepter, that it could not be taken away without the destruction of the scepter. In fact, it had been always exercised in this island; the British princes, whose territories were situated on the sea, laid (as Strabo says) heavy duties on the native commodities, which the Gaulic merchants transported hence to their own country; and some pieces of the tribute money paid to Cunobeline, with his image and superscription, are still preserved. The Romans laid the like impositions; the power of laying them was incident to the imperial authority; and when the empire was over-run by the Goths and other northern nations, the princes thereof succeeded to, and exercised the same right, in all the countries which they conquered. The Saxon kings did the same here: and even Magna Charta attests, that there were ancient and right customs paid by merchants, before the making of that charter, and before an house of commons was in being. These customs were indeed but small; such as half a mark on a sack of wool, or 300 woollfells, a mark on a last of leather, those on tin and lead were proportionably easy: and when king John laid 8d. a ton on wine; and Edward I. in his Carta Mercatoria, laid 3d. in the pound upon merchandize imported by strangers, generally called the petit custom, with an increase of all other duties on them: the one was as much a tonnage, and the other a poundage, as if higher rates had been imposed: and the question is only about the king's right in the thing itself, not about the quantum of the imposition. Nor was the difference in point of the rate or quantity any thing considerable, for a poundage of 3d. in those days was more worth to the crown, than that of a shilling now; and the duty of two shillings a tun upon all wine imported by strangers (which Edward I. imposed by the same charter) was, each shilling weighing then as much as three now, double the value of the present tonnage. Those who were for stripping the crown of this branch of its authority, objected to Edward's charter in this point, that it was suspended by his successor's writ (*i*) in the 3d year of his reign, and in the 5th repealed (*k*) by ordinance: but this was done not by the king and parliament, but by certain rebellious barons, who assumed the government of the realm, and called themselves Ordainers. It is well known, how turbulent a reign this was, and how weak a prince sate upon the throne, scarce ever master of himself, and so distressed by this violence of the barons (several

(*i*) Claus. 3. E. 2. m. 23.

(*k*) Rot. Ordinat. 5 E. 2.

of whose ordinances were treasonable) that he was forced to take by large sums of money by way of loan (*l*) from the merchants, which being never repaid, the merchants received thence greater detriment, than they would have done by paying double the poundage imposed by his father. But no sooner did Edward 3rd get possession of the crown, than (*m*) he revived his grandfather's charter, and ordered by his writs, the poundage and other customs therein contained to be levied to his use, notwithstanding the ordinances made, not by the king his father, but *per quosdam magnates*.

Edward 3. was a great prince; and being embarked in expensive wars during the most part of his reign, he put extraordinary duties, sometimes of 4s. sometimes 5s. upon wool, and the like upon other commodities. This gave occasion to several petitions of the commons in parliament, upon which a greater stress hath been laid than they deserve. It doth not appear, that these petitions were of right, but rather of grace and favour; they are far from inferring, either that the people had received wrong, or that the king had no right to lay impositions. It never behoved any prince more, than Edward, to be well with his people, to whom he was obliged to apply every year for the support of his wars; he was infinitely careful in this respect: and his answers to their petitions were generally gracious, but wary and circumspect. On some heads he was silent; on others, his answers were general or doubtful; sometimes he granted them in part, for a certain time, and on condition he received a greater recompence; nor did he ever remit any imposition, without receiving a subsidy of more considerable value. In his 14th year, (*n*) the Commons prayed him not to take above the half mark on a sack of wool, nor more than the old customs on lead, tin, and leather. In his answer, he granted their request, not for tin or lead, but only for wool and leather; yet this grace was not to take place, till after the Whitsontide to come twelvemonth; it was granted but in part, to Englishmen only, not to foreign merchants: and yet though all these new impositions were to continue for above a year, he got a parliamentary grant, not only of 20,000 sacks of wool, but of the 9th lamb, the 9th fleece of wool, and the 9th sheaf of corn, of all persons, both clergy and laity, throughout the kingdom. In his 29th year, (*o*) the commons wanting to get the 40s. duty, laid on a sack of wool, to be taken off, it was agreed in parliament, that the king should have a greater subsidy out of wool and leather for six years, 'so as, during that time, he laid no other imposition or charge upon the commons.' This is evidently a conditional agreement, (*p*) and the

people would scarce have bought it so dear, if the king had not a right to lay them; and if he suspended his power of imposing for six years, it was in consideration of a recompence of greater value. The punishments of lord Latimer, John Pechy, and Richard Lions, in the 50th of this king, when through age and grief at the Black Prince's death, he was become weak, sickly, languid, melancholy, and almost stupid, made as little to the purpose of those who urge them against the royal power in impositions. Pechy had got a patent, that none should sell sweet wines in the city of London, but himself, his deputies, and assignes; and under colour thereof, extorted ten groats for every pipe of sweet wines sold by others within the city; it doth not appear that he had any warrant for it from his patent, and his being punished for abusing it, and doing the things of his own head, is no argument against the king's right of laying the like imposition. Latimer had, of his own authority, laid several impositions on merchandize at Calais, to the great decay of the staple there. He had likewise played the stock-jobber in buying the debentures, tallies, and ticquets, due from the king to his soldiers and pensioners, at a great discount, giving very little to the parties, and yet, in deceit of his majesty, had an entire allowance for them in the Exchequer. He had also defrauded the king of the pay sent to his forces in Bretagne, had sold a large quantity of provisions for his army there, converting the money to his own use; and had delivered up the towns of S. Sauveur in Normandie, and Becherel in Bretagne, to the enemy, not without the suspicion of corruption and treason. He was censured for all these crimes in the gross, so that nothing can be drawn thence against the right of the crown in laying impositions on merchandize; especially since Latimer was charged with laying the impost at Calais, without any warrant, and purely of his own authority. Lions, a farmer of the customs, was accused (*q*) of setting on wool and

Parl. n. 5. 18 E. 3. Rot. Parl. n. 20. 36 E. 3. Rot. Parl. n. 26. In 25 E. 3. Rot. Parl. n. 25, 26, 27; the commons petition against an excessive imposition on woollfells, and desire that only the old custom be paid: the king's answer was, 'Ancient customs ought not to be withdrawn.' In 38 E. 4. (Rot. Parl. n. 26.) they petitioned for the repeal of an imposition of ten groats on every sack of wool at Calais, and of all unreasonable impositions; an answer was given to the last of these points, but none at all to the former. In 6 E. 3. (Rot. Parl. n. 4.) on a petition for the remitting of impositions, the king said, 'He would assess no such talliages for the future, but such as had been in the time of his ancestors, and as it ought to be by reason.' In 13 E. 3. (Rot. Parl. n. 13.) there was a petition against a maletolt of wool: but no answer was given.

(*q*) Rot. Parl. 50 E. 3. n. 17, 18, 19, 20.

(*l*) Rot. Fin. 11 E. 2. m. 12.

(*m*) Rot. Fin. 2 E. 3. m. 30.

(*n*) Rot. Parl. 14 E. 3. c. 21.

(*o*) Rot. Parl. 29 E. 3. n. 11.

(*p*) The like conditional agreements were made in 6 E. 3. Rot. Parl. n. 4. 13 E. 3. Rot.

other merchandize, certain new impositions without assent of parliament, converting them to his own use without controul, the lord treasurer not being acquainted therewith; and of assuming to himself in divers other things, as a king. He pleaded, indeed, that he laid them by the king's command, but he produced no warrant, nor could he have any without the treasurer's knowledge: and he was justly punished by fine, ransom, and imprisonment. The king's right could not be any ways affected by this sentence on a man, who had acted of his own head; especially since his charge was, 'that being but a subject, he had taken upon him, as a king, in divers things, particularly

'in laying impositions;' which intimate sufficiently, that a king might do it, but not a subject. This is still more plain in the bill exhibited by the commons in this parliament, (r) praying, 'that those who should set new impositions by their own authority, accroaching to themselves royal power, might have judgment of life and member;' than which there cannot be desired a plainer acknowledgment, by parliament, that the setting of impositions belonged to the crown, and was a mark of sovereignty and royal power.

(r) Rot. Parl. 50 E. 3. n. 192.

**Mr. HAKEWILL'S Argument\*** in the Lower House of Parliament, in 1610, against Impositions by the Crown.†

Mr. Speaker;

The Question now in Debate amongst us is, Whether his Majesty may, by his Prerogative Royall, without Assent of Parliament, at his own Will and Pleasure, lay a new Charge or Imposition upon Merchandizes, to be brought into, or out of this kingdome of England; and enforce Merchants to pay the same?

I MUST confesse, that when this point was first stirred amongst us, and that wee, not contented to seeke redresse for the excesse of the present Impositions, resolved to proceed far-

\* This argument in MS. is in the library of Lincoln's Inn.

† This argument was printed in 1641, with this title, 'The Libertie of the Subject: against the pretended Power of Impositions. Maintained by an Argument in Parliament an. 7. Jacobi Regis. By William Hakewill, of Lincoln's Inn, esq.'—It was preceded with the following address from Mr. Hakewill to the reader. 'Being very sensible of a great injury lately done mee, by the extreme false printing of a small treatise of my composing, stoln out without my consent, and hearing accidentally that some part of this also had passed the presse, I thought good for the preventing of the like wrong to stay the forwardnesse of the printer until I had reviewed and corrected it by mine owne notes. For my part, I should have been contented altogether to have restrained it, if I might; but now seeing it must abroad, I shall not bee ashamed to let it beare my name, and owne the errors of it my self (those of the presse excepted) though heretofore it had payned so much reputation by some, as it was attributed to a worthier author. Some there are yet surviving that heard this argument about thirty yeeres since in the commons house of parliament; but it hath now extended itself beyond the probable proportion of a speech or argument, by the insertion of many records and acts of parliament more at large, which, at the delivery of it,

ther, by calling his majesty's right of imposing into questions, I was very sorry: for I saw we were then in a faire way to have obtained a very great abatement of the impositions that now are; and besides, we had his majesties promise never to lay any more but in parliament time, by the advice and free consent of his subjects, repaying hither from all parts of the realme. This hope of a present ease, and gracious promise for the time to come, gave me, I confesse, a full satisfaction: especially, seeing I was confidently perswaded, that his majesties right to impose was very cleere and not to be disputed; and that therefore by

were but meerey quoted.—The endeavour of it is to prove, that the just prerogative of our kings never warranted them to raise monies at their pleasure, by laying a charge on merchandize to bee exported or imported, without assent of parliament. But, on the contrary, the settled lawes of the land, the precedents of former ages, the acts of our most necessary and powerfull princes, and indeed every thing requisite to make the truth apparent, doe as it were unanimously consent to discharge us of this unjust and heavy burthen.—And you shall see herein, how the policy of active princes hath by many waies attempted to undermine those fortifications, which the wisdom of our ancestors hath rayzed to maintain themselves from this kinde of assault. You shall see with how great difficulty their prevailing was withstood. And (which is the glory of truth) you shall finde those designes, which were laid to overthrow our right, mainly to make for the evidence and confirmation of it. For, whatever unjust impositions were either exacted by a pretended lawfulness, or set up by a commanding power, were by complaint in parliaments presently following taken down, and remain on record as (witnesses against themselves) unlawfull, and against our libertie.—These reasons and arguments of mine (how meane soever) those times, wherein I urged them, accepted favorably; and since, in their private passage in manuscripts, were

drawing into question the right, wee might give his majesty just occasion to withdraw from us his gracious purpose of the present abatement, as also his promise for the time to come. For, syr, when the case of Bates, who as you know was called into question for refusing to pay the Imposition laid upon currants, was argued in the Exchequer, in which case his majesties right to impose was solemnly disputed, and there resolved for his majesty, I was then present at all the arguments both at the bar and at the bench; and I doe confesse that by the weighty and unanswerable reasons, as I

then conceived them, of those grave and reverend judges, [Fleming, Ch. Bar. Clarke, Savil,] sitting in their seate of justice, I was much perswaded. But by those many records vouched by them, I was altogether overcome, and as it were vanquish't to yeeld to them; for syr, *ratio suadet, autoritas vincit*. But though I were then, and when the question was first moved in this house, very confident, yet as you shall perceive anon, I was not very constant in that opinion; for being, amongst others, employed by this house to make search in the Exchequer for records, which, by the practise of

'entertained in many judicious hands, which  
'made mee somewhat enlarge the conceit that  
'before I had of them. And now seeing necessi-  
'tie enforceth mee to make them more pub-  
'lique, I must adventure them to the censure  
'of these nice times. Beneficiall (happily) they  
'may be to some, prejudiciall I hope to none.  
'In which confidence (having the leave of au-  
'thority) they have likewise my leave to goe  
'abroad.—Vale.—W. H.'

There are also prefixed the following heads of the Argument: '1. That there was ever some custome due to the king by the common law.—2. That it was a sum certaine by the common law.—3. That all the revenues which the common law giveth to the king, out of the interest of the subject, are certaine, or reducible to a certainty by some legall course, and none left to the kings pleasure.—4. The reasons why the law requireth such certainty in those revenues which the king hath out of the interest of the subject.—5. Examples of revenues given by the common law to the king, out of the interest of the subject, and that they are all certaine.—6. Answer to an objection, that the king may lay impositions upon extraordinary occasions.—7. Arguments drawn from the actions of our kings, that they had no power to impose.—8. Arguments drawn from the forbearance of our kings to lay impositions, notwithstanding their urgent occasions.—9. The difference between the presidents urged, of impositions laid by the antient kings, and those which are now laid.—10. A particular answer to the imposition of 3*d*. in the pound laid upon merchant strangers by Charta Mercatoria, 31 Ed. 1.—11. The urgent occasions which Ed. 2. had to lay impositions, and yet how he forbore.—12. The severall policies used by Ed. 3. for the introducing of the power of imposing: 1. Impositions taken by colour of a voluntary grant from merchants: 2. By way of dispensation with penall lawes: 3. By way of ordinance in parliament: 4. By colour of a loane by merchants: 5. By grants of merchants for liberties granted to them: 6. By expresse and direct commandement; with severall answers to all those severall wayes.—13. In what statutes impositions are mentioned after Edw. 3*rd*'s time, untill queen Maries; and upon what occasions, and how to be interpreted.—14. The signification of the words imposition, toll, maletoll, *custuma et consu-*

*tudo magna et parva*.—15. No imposition laid from Ed. 3*rd*'s time till queen Maries.—16. What urgent occasions all the kings from Ed. 3. till queen Maries time, had to lay impositions, and yet did it not. Rich. 2. Hen. 4. Hen. 5. Hen. 6. Edw. 4. Hen. 7. Hen. 8. Edw. 6. with a corollary of all those times and occasions.—17. The impositions laid by queen Mary, and how answered.—18. Admitting the kings had power by the common law to lay impositions, yet how they are barred by statutes.—19. Magna Charta, cap. 30, urged against impositions, and the objection made against it, answered: 1. Objection, That it extendeth onely to merchant strangers: 2. That it was made onely against taxes within the land: 3. That by the exception in the end of the statute, the kings prerogative is saved.—20. The statute *de tallagio non concedendo* urged, with the answers to the objections made thereunto. The exposition of the words tallage, ayde, subsidie.—21. The statute of 25 Ed. 1. cap. 7. urged against impositions, and cleared from objections: 1. That it is against the excess of impositions, and not against the right: 2. That it is onely against impositions on woolls.—22. The statute of 14 Ed. 3. cap. 21. urged against impositions, and cleared from objections. That it extendeth onely to impositions within the land, and not upon merchandizes, answered, with an exposition of the word charge.—23. Answers to the reasons urged in maintenance of impositions: 1. That because it cannot appeare that the ancient customes were set by parliament, therefore they were imposed by the king. The antiquity of parliaments.—24. Answer to the second reason urged for impositions, that the king may totally restraine importation and exportation, and therefore may restraine *sub modo* by laying impositions.—25. Answer to the third reason, that the ports are the kings, and that he may open and shut them on what conditions he pleaseth.—26. Answer to the fourth reason, that the king is bound to protect merchants, and safeguard the seas, and tht therefore he may lay moderate impositions for raising of money to defray his charges.—27. Answer to the fifth objection, that all orreign princes have power to impose; and your king should not have the like, it might be very inconvenient to this state.—28. A ammary conclusion of the whole argument.'

former ages, might guide our judgments in this weighty point, and having diligently collected the arguments made in the Exchequer, and not only so, but compared my owne collections with reports thereof made by divers other of my friends, and finding that some of the records urged in those arguments were untruly vouchèd, and many misaplyed, I then began to stagger in my opinion, and presently fell to examine the weight of the reasons which had been alledged, which in my poore censure, I found not of strength sufficient, without the full concurrence of cleere presidents of former times, to maintaine the judgement given, or my opinion grounded thereupon. And therefore, syr, in love to the truth I did forsake my former opinion as erroneus, and do now embrace the contrary, that is, That his majestie hath no right to impose, and so am now become a convert. Those reasons that moved mee thus to change, and the weakenesse which I discovered in the reasons alledged against the opinion which I now hold, I will, with your patience, open unto you, and will therein follow the commandement of Christ to Peter, being converted, seeke to convert my brethren.

As touching the judgement in the Exchequer standing yet in force, so often cast as a block in our way, though I much reverence the persons of those yet living, and the memory of those that are with God, who gave the judgement: yet seeing, as I hope I shall bee able evidently to prove, the same to bee against the Great Charter of our liberties, I can esteeme no otherwise of it than the statute of 25 Ed. 1. cap. 10. pronounceth of all such judgements; that is, that it is void and to be held for nought. Thus much I thought good to say by way of preamble or introduction to the matter. Now, by your favours, I will enter into the debate of the question; in handling of which I will purposely avoid the repetition of any thing that hath been spokèn by any man that hath argued before, as knowing in what presence I speake. That I may the better convey my selfe through my argument, and be the better conceived of you that are to heare me, I will divide that which I have to say into certain parts, which I will prosecute in order.

First, I hold it necessary to consider, whether Custome were due to the king by the common law.

Secondly, admitting it to bee due by the common law, whether it were a summe certain, not to be increased at the kings pleasure or otherwise.

Thirdly, supposing that by the common law the king might by way of Imposition, have increased his Cutom at his own will, by his absolute power, without assent in parliament, whether or no hee bee not bound to the contrary by acts of parliament. In the handling of which part, I will consider the strength of every act of parliament hitherto vouchèd to this purpose, answering, as I goe, such objections as have ben made against those statutes by such as have maintained that the king is

not bound by them. I will also add a statute or two as yet not remembered by any.

Lastly, I will discover unto you the weakenesse of such reasons as have been made in maintenance of the kings right to impose.

In the prosecuting of which parts I will, as occasion is offered, give some answer to that which hath been last spoken, [by sir Robert Hitchain]; as knowing it to be expected at my hands.

FIRST then to consider, 'WHETHER there were by the Common-Law any Duty belonging to the King upon Merchandize to be carried into or out of the Kingdom, known by the name of Custome?'—Though the maintenance of custome to be due by the common-law be a point of such consequence to them that maintained the kings right to impose, as without the upholding of which, their opinion, as I conceive, is not so much as colourably to be maintained, and that to maintain the same, it be not at all necessary to induce my conclusion; and although to admit it, it may seem perhaps no good policy of argument, but rather a great disadvantage to me to admit that, without which the contrary part cannot uphold their opinion, and which being admitted cannot make any thing for me; yet because we are here not as arguers at the bar, but as judges in a high-court, and that all our ends tend to the discovery of the truth: I will therefore not only admit it, but will maintain it as well as I can.

That Custome is due by the common-law I collect, first by the name thereof, for though at this day it bee (and so hath been for more then 350 yeeres, as I shall have occasion more fully anon to open unto you) called in our law-Latin *Custuma*, yet in ancient time it had no other name here amongst us (for I meane not to wander into forreign-learning) then *consuetudo*, as may appeare by the statute of Magna Charta cap. 30. 'Per rectas et antiquas consuetudines;' for I shall anon directly prove unto you, that *consuetudo* in that place is not to be understood an usage, as hath been said, but in that sense which I take it. The name *consuetudo* in the same sense is also found in many ancient records brought into this house upon the late search. That this name then *consuetudo*, which implies an approved continuance without a known beginning, should by the common law be given to this revenue more then to any other revenue belonging to the king; nay, that this terme, which is the common and general name to all common and approved usages of what nature or kind soever, should be applied to this dutie rather then to any other amongst all the ancient usages and customes which the common-law imbraceth, cannot but denote the great antiquity thereof, and more then so, the allowance and approbation thereof by the common-law; for doubtlesse, if, beside the antiquity of this dutie, the common-law had not also allowed the reasonableness of it, and in a manner the necessity of it, it would never have denoted it unto us by this name of excellency above all other customes which require reason-

ableness as well as antiquity. Therefore doubtlesse, this duty, thus favored, is a childe of the common-law. Nay farther, it is of the very essence of a Custome to have his only beginning by allowance of the common-law; for that, which beginneth by private contract of partie, or by act of parliament, and dependeth not wholly upon the allowance of the common-law, by one of which three waies all things considerable in law have their commencements, cannot bee called or bee a custome, in name or deede. Moreover, considering that this custome is not limited to any one place within the realme, wee shall so little neede to be curious in affirming it to bee due by the common-law, as wee may boldly pronounce it to be part of the common-law itselfe. Thus you see, that the very name *consuetudo* proves Custome to bee a dutie by common-law. To this may bee added, that Magna Charta, cap. 30. which statute was made little more then 150 yeeres after the Conquest, termeth this not only *Consuetudo*, which, as I have said, implies antiquity beyond all remembrance of a beginning, but *antiqua consuetudo*; not onely custome, but old and ancient custome. And in comparison to this old custome due at common-law, the custome upon staple commodities, given or increased by act of parliament 3 E. 1. not printed, was called *Nova Consuetudo*: before the making of which statute of 3 E. 1. you may further see, that custome was due; for an. 52 H. 3. in the statute of the Exchequer, printed, you may read, that the collectors of the Custome of Wools were to yeeld their accompt twice every yeere into the Exchequer. But that, which most of all moveth me to believe that this duty was and is due by the common-law, is this; that in all cases where the common-law putteth the king to sustaine charge for the protection of the subject, it alwayes yeeldeth him out of the thing protected some gaime towards the maintenance of the charge: as, for the protection of Wards, Lunatiques and Ideots, the profits of their lands; for the maintenance of the courts of justice, it giveth him fines for purchase of originall writs, and fines *pro licentia concordandi*, which in supposition of law are no other then fines paid for not proceeding according to the surety by pledges put in upon purchase of the originall, and for troubling without cause the kings justices, who are maintained in their places at the kings charge. There are many the like profits of court, given by the common-law to the king for the maintenance of his charge in the administering of justice.—This observation, which might be further proved by divers other instances in things of other nature, maketh me to think, that because the common-law expecteth that the king should protect merchants in their trades, by maintaining, repairing, and fortifying the havens at home; by clearing the sea of pirates and enemies in their passage: and by maintaining ambassadors abroad to treat with forreigne princes upon all such occasions; that it also giveth him out of merchandizes exported and imported,

some profit for the sustentation of this publique charge. Otherwise were the law very unreasonable and unjust. So as to prove, that by the common-law Custome is due to the king, I shall need to say no more: especially considering it hath not onely been yeelded to, but proved by those, which maintain a contrary conclusion. I will therefore proceed to my SECOND CONSIDERATION ' WHETHER that profit upon Merchandizes, which the Common-law for these respects gave unto the King, were a Duty certaine, not to be increased or inhauced at the Kings Will and Pleasure, without a common Assent in Parliament; or otherwise, whether the Common-law hath left an absolute Power in the King, to demand in this case more or lesse at his owne Pleasure, and to compell his Subjects to pay it?—The resolving of which question will, as I conceive, make an end of this controversie between us; for what are these impositions which wee complaine of other than the enhaucing of the Custome by the king's absolute pleasure?

That this duty given by the common-law, as I have proved, unto the king, was and is a Duty Certain, not to be enhauced by the king at his owne pleasure, without assent in parliament, I hope I shall be able cleerly to prove unto you: in mauteinance of which, I will use some arguments of direct prooffe, and others of great presumption and probability. And first, I lay this as a ground, which will not be denyed me by any man; THAT the common-law of England, as also all other wise lawes in the world, delight in certainty, and abandon uncertainty, as the mother of all debate and confusion, than which nothing is more odious in law:—and therefore the rule is, *quod certum est retinendum est, quod incertum est dimittendum*; nay further, *quod incertum est nihil est*. This is the censure of law upon all the acts of men, which fall under the judgment of the law. If then the law so judge of the acts of men, holding them for nought and voyde, that are uncertaine; how much more then doth the law require certainty in her own acts, which are to binde all men? And if in any of the acts of law certainty be to be specially expected, most of all is it requisite that bounds of limitation and certainty be set between the king and his poor subject, between the mighty and the weak, between the lion and the lamb. And if in any case between the king and his subject more than other this certainty be required, most of all it is requisite in cases where the common law giveth the king a perpetuall profit or revenue to be raised out of the interest and property of his poor subjects estate, either in lands or goods. If in all other things the law, as I have said, and wherein I suppose you have yeelded to me, doe require certainty and limitation, and onely in this case where it is most requisite, it hath omitted and neglected it, we must conclude the law to be most unreasonable, improvident, and contrary to it selfe; which to say, were to conclude it to be no law. Out of these

grounds, I may then in my opinion safely and with some confidence deduce and maintain this position; That the common-law of England giveth to the king, as to the head of the common-wealth, no perpetuall revenue or matter of profit out of the interest or property of the subject, but it either limiteth a certainty therein at the first; or otherwise hath so provided, that if it be uncertaine in it selfe, it is reducible to a certainty onely by a legal course, that is to say, either by parliament, by judges, or jury; and not by the kings own absolute will and pleasure.—Though this position be grounded upon those sure foundations, out of which I have, as you perceive, drawn it, and needs no farther proof; yet because you shall see how plentiful the truth is in reasons to maintain it selfe, I will further open unto you the particular reasons of this position, which are these:

First, the law requireth certainty in matter of profit, between the king and the poor subject; because to make any man judge in his own case, especially the mighty over the weake, and that in a point of profit to him that judgeth, were to leate a way open to oppression and bondage.—Secondly, Because by reducing it to a certainty, the king may know what certainty to expect; that so he may order his charge accordingly.—Thirdly, That the subject may know likewise what he is to pay, that so he may know certainly what shall remaine to him as his own.—Finally, That the king may not depend upon the good will of his subject for his revenue, seeing the law expecteth he should beare the charge, but may know in certainty what to claime as due to him, and may accordingly compell the subject to pay it; and that the subject may not be under the kings absolute power to pay what the king pleaseth, which may perhaps extend to the whole value of the merchandize.

You see in generall, how the law, by requiring certainty in matter of profit between the king and the subject, preventeth many mischiefs, which would fall out if the law were otherwise; and therefore without more saying, I might here conclude, that custome, being due by the common law, was and is a sum certain, not to be increased at the kings pleasure by way of imposition. But because there are many other revenues due to the king by the common law, as well as custome; if they all, or as many as we can call to minde shall fall out to bee, as I have said, summes certaine and not subject to bee increased at the kings will, this will bee a forcible argument, that custome is likewise certain and not to be inhaunced at the kings pleasure; for, this argument drawne *à simili* is of great force, and the most usuall of any other in debate of things doubtfull in law. “*Quæ legibus decisa non sunt, iudex ex his quæ decisa sunt statuet, et de similibus ad similia procedat.*” May it please you to consider in this respect other revenues, which the common-law of this land giveth the king; and according to the rule, to

decide that which is in question, by the same rule and measure, by which other things of the same nature have been decided and ordered. The common-law giveth the king a fine for the purchase of an original writ. Is it certaine? It is, and ever hath been. If the debt or damages demanded amount to above 40*l.* the fine is, and ever hath been, 6*s.* 8*d.* and no more; if to 100*l.* then 10*s.* and no more. May the king increase this fine at his pleasure? There is no man that will say he may. There is a fine due by the common-law, *pro licentia concordandi*. Is it not certainly known, and so hath alwayes been, to be the tenth part of the land comprised in the writ of covenant? And is not also the post-fine thereupon due certainly known to be once and a halfe as much more as the fine *pro licentia concordandi*, or pre-fine; as for example, when the pre-fine is 10*s.* the post-fine to be 15*s.* And can the king demand any more of the subject? So likewise, when, in a writ of right, the demandant, alleading the seisin of his ancestor, will not be compelled to prove the seisin alleaged, is he not to tender the king a somme certain of deny-mark, to have this benefit? Was it ever more or lesse? Or can it now be more, if the king would? There, amongst many others, are duties belonging to the king by the common-law from the subject, for the maintenance of his charge in the administration of justice, which the civilians call *rectoral judicarium*. There are also in divers other cases duties certain, belonging to the king by the common-law: as for example, the relicke for an earldome is certainly knowne to be 100*l.*, for a barony 100 markes, for a knights fee 100*s.*; all which in the statute of Magna Charta, cap. 2. are called old and ancient duties. This is *rectoral patrimonial*; of which sort I could produce many others, all which have like certainty. Nay, there is one duty well known to us all, which the common-law giveth to the king; and is in his nature a custome (our very case) in which the king is bound to a certainty which he cannot exceed; and that is *prisage*, a duty given by the common-law to the king, upon every ship-loading of wine brought into the kingdom by English merchants; and is one tun of wine before the mast, and another behinde. I am unwilling to trouble you with any more particulars of this kinde. But let any man shew me one particular to the contrary, and I will then yeeld, that my position, being false in one, may be in more: but till my position hath been in this point infringed, this general concordance of the law in all these particulars is argument enough for me, without having alleaged other reasons, to conclude, that custome being, as all these are, a revenue due to the king by the common-law, arising out of the property and interest of the subject, is, as all these are, limited and bounded by the common-law to a certainty, which the king hath not power to increase. *Ubi eadem ratio, eadem lex.* It may perhaps be here objected, that the ayd paid to

the king upon the knighting of his eldest sonne, or marriage of his eldest daughter, was by the common-law uncertaine; and that the king did take more or lesse at his pleasure, untill he was bound to the contrary by statute. To this I make divers answers. Though it were indeed a summe uncertaine, yet the common-law did in some sort give it a limitation; for it is by a special name called Reasonable Ayd: so, as if the summe demanded doe exceed reason, it became from a Reasonable Ayd an Unjust Exaction. Beside, this revenue was a thing happening very rarely, and therefore the certainty thereof not so much regarded by the law. And yet it is to be observed, how the frame of this common-wealth could not long indure uncertainty even in this casuall revenue; but it was reduced to a certainty of 20s. upon a knights fee, and 20s. upon every 20l. socageland, by the stat. of West. 1. cap. 35. 3 Ed. 1. If in this casuall revenue they were so carefull to be at a certainty, to avoid unreasonable exactions, as the words of the statute are, how much more carefull would they have been, for the same cause, to have reduced the great and annual revenue of the custome to a certainty, if they had not thought it to have been certaine by the common-law, or limited by statute law before that time made? But, sir, that, which I rely upon for answer to this objection, is this. Reasonable ayd was and is by the common-law due as well to meane lords as to the king; but meane lords were not limited to a certainty, otherwise than in general, that it must be reasonable, as I have said. Therefore to limit the king any further, was no reason: and this answer may be given for all uncertain revenues belonging to the king, the like of which meane lords have of their tenants; for the uncertainty of which there may also be given special reason; because these duties first began by special contract and agreement between the lord and the tenant, and not directly by operation of the common-law, and so were certain and uncertein as they did at first agree. And therefore you may be pleased to remember, how in laying my position I was wary to say, That such revenues, as are due to the king as to the head of the common-wealth, (by which I purposely excluded such revenues as are common to him with other meane lords) are always certaine.

I am now according to promise, and in maintenance of a second part of my Position, to shew you, That where the common-law giveth the king a revenue not certaine at the first, that is alwayes reducible to a certainty by a legal course, as by act of parliament, judges, or jury, and not at the king's pleasure.—Every man, that by his tenure is bound to serve the king in his warres, and faileth, is to pay, according to the quantity of his tenure, a fine by the name of escuage. This cannot be assessed but in parliament. Upon Forfeitures for Treason, or otherwise, to the king, though it be a kinde of a certainty that the law giveth, in giving him all the estate of the party convict,

VOL. II.

both in goods and lands, or in goods onely, as the case is; yet for reducing it to a more expresse certainty, the law requireth, that it be found by office. Wayfe, Stray, Wreck, Treasure-Trove, and such like, are no less certaine; for the king hath the things themselves in kinde. Fines for Misdemeanors are alwayes assessed by the judges. Amercements in all cases are to be assessed by the country, and not be assessed by the king; though the forme of the judgement be, *et sit in misericordia domini regis*, in the king's mercy, *pro contemptu predicti*. Nay, though for punishment of an offence it be by statute-law enacted, that an offender shall make fine and ransom at the kings pleasure, the law even in this case, which is as strong a case as may be, will not leave the assessing of the fine to the kings pleasure, to be by him rated privately in his chamber; but it must be solemnly and legally done in an open court of justice by the judges, who in all other cases are to judge between the king and his people, where the interest or property of the subject, or any charge or burden upon them doth come in question, as may be proved by the booke of 2 R. 3. fo. 11. Inasmuch that I am of opinion, that if a statute were made, that the king might raise the customes at his pleasure, yet might it not be done as now it is, by the kings absolute power, but by some other legall course, of which the common-law doth take notice; as in the case of the fine and ransom. Much lesse then will the common-law permit, that it should depend upon the king's absolute pleasure, there being no such statute in the case.

You have heard out of what grounds I first deduced this my Position, That the law requireth certainty in matter of profit between the king and his people.—You have heard likewise the particular reasons of that Position. You have also heard what prooffe I have made by particular cases of like nature to this in question; and how I have applyed them to the point. And so leaving the judgement of the whole to your wisdomes, who can best discern whether the argument be of weight, I proceed to my Second Reason, which is drawne from the policy and frame of this common-wealth, and the providence of the common-law: the which, as it requires at the subjects hands loyalty and obedience to their soveraigne, so doth it likewise require, at the hands of the soveraigne, protection and defence of the subject against all wrongs and injuries whatsoever, offered either by one subject to another, or by the common enemy to them all, or any of them. This protection, the law considereth, cannot be without a great charge to the king; and because, as Christ saith, "no man goeth to war upon his own charge," the common-law therefore hath not only given the king great prerogatives and favours touching his own patrimony, more (I beleeve) than any other prince in the world hath; but also hath, for the sustentation of his great and necessary expences in the protection of his subjects, given him, out of the interest

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and property of the subject, an ample and very honorable revenue in very many particular cases, some of which I will call to your remembrance.—He receiveth out of the subjects purse for Wardships and the dependances thereupon, as we have of late accounted, about 45,000*l.* by the yeare. This is a revenue which no other king of the world hath: and as it appears by the statute of 14 E. 3. c. 1. 'It ought to be employed in maintenance of the warres.' And so doubtlesse was the first institution of the common-law; for the lord hath the profit of the wards lands to no other end, than to maintain a man in the warre during the infancy of him, who otherwise should serve in person.—He hath likewise all forfeitures upon treason and outlawry, and upon penall lawes, fines and amerciaments, profits of courts, treasure-trove, prisage, butlerage, wreck, and so many more, as the very enumeration of the particulars would take up long time. To what other end hath the common-law thus provided for the maintenance of the kings charge, by all these ways and means of raising profit out of the interest and property of the subjects estate in lands and goods, but onely to this end, that, after these duties paid, the poore subject might hold and enjoy the rest of his estate to his owne use, free and cleare from all other burdens whatsoever? To what end hath the law given a part to the king, and left the rest to the subject, if that which is left be also at the kings will, to make his profit thereof as he pleaseth? To give a small portion to him, that may at his pleasure take more or all, is a vain and an idle act; which shall never be imputed to a wise law. But it may be objected that as the revenues are ordinary, so are they by the law provided onely for the sustenting of the kings ordinary charge; and that if the law have not taken further consideration, and limited some certain course, how upon sudden and extraordinary occasions the kings charge may bee sustained, there is yet no reason shewed to the contrary, why the king may not upon such occasion take some extraordinary course for the raising of money, as by the laying of impositions upon merchandizes, or by a tax within the realme, rather than the common-wealth, for want thereof, should perish or be endangered.

And hereupon by the knight that last spake, (Sir Robert Hincham) it was held, that, Upon occasion of a sudden and unexpected war, the king may not only lay Impositions, but levy a tax within the realme, without Assent of Parliament, which Position in my opinion is very dangerous; for to admit this were by consequence to bring us into bondage. You say, that upon occasion of suddaine warre the king may levy a tax. Who shall be judge between the king and his people of the occasion? Can it be tryed by any legall course in our law? It cannot. If then the king himselfe must be the sole judge in this case, will it not follow, that the king may levie a tax at his owne pleasure, seeing his pleasure cannot be bounded by law? You see into what a mischief the admittance of one

error hath drawne you. But for a full answer to the objection, I say, that the providence of the common-law is such, and so excellent, as that for the defraying of the kings charge upon any occasions of a sudden warre, it hath, over and above all the ordinary revenues which it giveth the king, which in the time of warre cannot indeed but fall short, made an excellent provision; for, sir, the warre must needs be either offensive or defensive. Offensive must either be upon some nation beyond the seas, or against the Scots, or Welsh, or other borderers within the island. If it be an offensive warre upon some nation beyond the seas, it cannot be a sudden accident; for it is the kings own act; and he may, and it is fitting he should take deliberation; and if it be a just and necessary warre, he may crave, and easily obtaine assistance of his subjects, by grant of ayd in parliament. If an offensive warre upon some of his neighbours within the continent of this island, as the Scots, or the Welsh, which also cannot be sudden or unexpected to the king, being his own act; you know, how politikeley the kings of this realme have provided, by reserving tenures, by which many of their subjects are bound to serve them in those warres in person, at their own charge. Only a defensive warre, by invasion of foreign enemies, may be sodaine: in which case the law hath not left the king to warre upon his owne expence, or to rely upon his ordinary revenue, but hath notably provided, that every subject within the land, high and low, whether he hold of the king or not, in case of foreign invasion, may be compelled at his own charge to serve the king in person, as it appears by the opinion of justice Thirning, in 7 H. 4. The reason of which, in my opinion, was to no other end, than that the king might have no pretence whatsoever for the raising of money upon his subjects at his owne pleasure, without their common assent in parliament. I doe then conclude this argument, that seeing the common-law, for maintenance of the kings ordinary charge, hath given him such an ample revenue out of the interest and property of the subject, and provided also for sodaine occasions; in so doing it hath secluded and secured the rest of the subjects estate from the kings power and pleasure; and consequently, that the king hath not power upon any occasion at his pleasure to charge the estate of his subjects by all impositions, tallages, or taxes, for I hold them in one degree, or any other burden whatsoever, without the subjects free and voluntary assent, and that in parliament. If it were otherwise, you see how it were to the utter dissolution and destruction of that politike frame and constitution of this commonwealth, which I have ordered unto you, and of that excellent wise providence of the common-law, for the preserving of property, and the avoydance of oppression.—These two arguments used by me, that of certainty, and this of the provision made by the common-law, are in my poor opinion, arguments of direct proofe, that the king cannot impose.—I will now, according to my division, urge

an Argument or two of inference and presumption; the rather, because arguments of this nature have been much enforced by those, who have maintained the contrary opinion, especially by Mr. Solicitor, (Sir Francis Bacon.) I call them Arguments of Inference; and yet in my opinion, those which I shall urge, are also of good proofe. Such as they are, you shall judge of them. They are drawn, either from the actions or forbearances of the kings of this realme, or from the actions and forbearances of the people.

First, in the actions and forbearances of the kings, I observe, that all the kings of this realm since Hen. 3. have sought and obtained an increase of Custome, more or lesse, by the name of Subsidie, of the gift of their subjects in parliament. Nay, some of them, and those not the weakest in spirit, or power, but the most couragious and potent in that whole ranke, even that mighty and victorious prince, king Ed. 3, being to undertake a just and honourable warre, than which there could not happen a better or juster occasion to have made use of his prerogative of imposing, did neverthelesse at that time stoope so low in this point, that he did, in full assembly of the three states, pray his subjects to grant him a reliefe in this kinde for the maintenance of his warre, and that to endure but for a short time; and further, was well content to suffer his prayer in that behalfe to be entred of record to the memory of all posterity. And the succeeding kings have also suffered the same to be printed, as may appeare by the printed statutes at large, an. 14. Ed. 3. cap. 21. Is it likely, that if any or all these kings had thought they had had in them any lawfull power by just prerogative to have laid impositions at their pleasure, they would not rather have made use of that, than have taken this course by act of parliament, so full of delay, so prejudiciall to their right, so subject to the pleasure of their people, who never undergoe burdens but with murmuring and much unwillingness? Can there be any thing more hatefull to the high spirit of a king, than to subject himselfe to the pleasure of his people, especially for matter of reliefe, and that by way of prayer, having lawfull power in his hands to relieve himselfe without being beholding to them?

If perhaps the kings themselves were ignorant of this great prerogative, which cannot be imagined; had they not alwies about them wise counsellors to assist them, and such as for the procuring of favor to themselves would not have failed to have put them in minde of it? Nay, if they had known any such lawfull prerogative, had they not been bound in conscience, so to have done? What an oversight was it of king Edw. 3, and all his counsell, so much to prejudice his right in so beneficiall a prerogative, as to suffer him upon record, and that in parliament, to pray for that, which he might have taken out of his absolute power? Can there almost be a more direct disclaiming

in the right? To compare great things with lesse, if the lord by matter of record claime any thing of his villaine, it is a disclaimer of the villenage.

The kings of England have other noble and high Prerogatives. I will only name two of them, the making of warre and peace, and the raising and abasing of coyne at their pleasure. Did they ever crave the assent of their subjects in parliament to make a warre? Their advice indeed they have sometimes sought, and their ayd for treasure to maintaine it. The prerogative of raising and abasing the value of money hath been oftentimes put in practice by them, and sometimes strayned to such a height, that the king might well suppose the subjects could not but be much discontent therewith. And yet never any king of this realme did it by assent of parliament, which perhaps some one milde king among so many would have done, and it may be, would also have prayed his subjects to yield thereto, only to avoid the grudging of the people, if the seeking of assent in parliament had not been thought to have been prejudiciall to the absolute power of their successors: and yet, as for some of these kings, it may be supposed, they made little conscience to prejudice a successor in one point, that made no scruple totally to depose a predecessor from his throne, and all his regalities, and to usurp it to themselves.

And so I proceed to my next Argument of Inference drawn from the actions of our kings. Some of the kings of England, as namely Edw. 2, in the yeere of his reigne, and Edw. 3, in the 1st and 24th yeere of his reigne, as may appeare by the records here amongst us, were contented to accept an increase of their Custome "by way of loane" from the merchants, and solemnly binde themselves to repay it againe. Would any wise man in the world, that thought he had but a colour of right, so much prejudice himself, as to borrow that which he might take without leave, and binde himselfe to repay it? If a poore man perhaps through feare might be enforced so tarre to yeeld to a mighty adversary, yet that a powerful man should stoope so low to one much weaker than he; nay, that a king, in a point of such consequence, should so tarre descend from his greatnesse, as to borrow of his poore subject that, which without being beholding to him he might obtain as his right, and binde himselfe to repay it againe: I say, it cannot with any reason be imagined; but withall it must be concluded, that a king, that shall so doe, doth not thinke that he hath so much as colour of right to impose.—I will not much presse or enforce the actions of Edw. 2, who (I confesse) was but a weake prince; but as for his sonne and successor, Edw. 3, there was not, as I have said, a stouter, a wiser, a more noble and couragious prince than he, and none more careful to preserve the rights of his prerogative, as may evidently appeare by all his answers in parliament, on any complaint of the subject. Besides, never had king of this

realme more occasion than he to straine this prerogative of imposing to the utmost. For besides his excessive expence in the warres of France and Ireland, he had also a continual charge of many expensive children. His wife queene Philippa had also for her maintenance a large allowance out of his revenue. But the dowry of queen Isabel his mother, who lived till about the 27th yeere of his reigne, was so great, as it is reported by some writers, that little more than the third part of the certaine revenue of the kingdome was left to him. In-somuch, as through these occasions of extraordinary expence, and the diminution of his revenue, he was driven to such necessity, as his queen in the yeere of his reigne, was enforced to pawne her crowne and jewels to procure money for him, as may appeare by the record of that yeere in the office of the clerke of the pels. Nay, the king himselfe, in these extremities, was oftentimes driven to lay his jewels to pawne for money: and in an. 17, did also pledge his crown for 1000*l.* to certaine merchants of Florence, as by the records of that yeere, in the once of the lord treasurers remembrance in the Exchequer, is manifest. By this you may see, that this powerfull king wanted not urgent and just occasion, if any occasion may be just, to have put in practice his absolute power of imposing; and yet, as you see, it appears of record, that in the midst of his great wants he tooke an increase of custome "by way of loane," and bound himselfe to repay it.

It may be here objected, that he did lay Impositions.—What impositions they were, and how to be compared with the Impositions now in question, I purpose to tell you, when I come to answer objections, which I have referred to the end of my speech. In the meane time I will goe on with my course, and urge one argument more, drawne from the actions of our kings, touching the increase of Custome.

A man would thinke, that the taking of the increase of Custome by all the kings, both one and other, with the assent of their subjects in parliament, and sometimes by way of prayer and intreaty, for a short time; nay, the taking of it by way of loane, and binding themselves to repay it; and that to have been done by the most powerfull kings, in their greatest necessities; were argument enough, that they did not beleere they might justly claime it as their right by their absolute power.—And yet is not this all; for, some of them, by name, Edw. 1, did not onely take it by assent in parliament, or "by way of loane," but (as one that buyes for his money in the market) did give for it a reall and valuable consideration, and that to merchant-strangers, of whom there was more colour to demand it as a duty, than of his naturall subjects. In prooffe of which I produce *Charta Mercatoria*, made anno 31 Edw. 1, whereby it is recited, that, in lieu of certaine liberties and immunities granted by the king to the merchant-strangers, as also for the release of prisage, they granted to the king an increase

of custome. What were all the special liberties that were granted them, I know not, nor whether they continue. But sure I am, that by vertue of that grant they are at this day free of prisage, paying onely 2*s.* upon a tun of wine, by the name of butlerage, which they granted by the same charter; whereas Englishmen pay prisage in specie, viz. one tun before the mast, and one tun behinde.

And it is very worthy the observation, how the same king Edw. 1, in the same yeere of his reign did command his customers throughout England, that, whereas certain English merchants were, as he was informed, of their own accords willing to pay him the like increase of custome which the merchant strangers had granted unto him, so as they might enjoy the like liberties and benefits; nevertheless they should not compell such English merchants, against their wils, to pay it. The words are worth the hearing. *Cum quidam mercatores de regno et potestate nostri, ut ipsi dicitis libertat. (having before recited Charta Mercatoria) uti et gaudere, et de prisas nostris quiesse possint, præstationes et custumas hujusmodi, de bonis et mercandizis suis, nobis dare et solvere velint, ut accepimus; assignavimus vos ad præstationes et custumas illas gratis, his, qui præstationes et custumas illas gratis et absque coercione solvere voluerint, colligendum, et ad opus nostrum recipiendum; ita tamen quod aliquem mercatorem de dicto regno nostro ad hujusmodi præstationes et custumas nobis invite solvendum nullatenus distringatis.*—What stronger inference can there almost possibly be against the kings absolute power of Imposing, than this: that he was contented, and so specified to all his officers of the ports, that if the merchants did of their own accords pay more than their ancient customes, they should have consideration for it; but if they themselves were not willing to pay more, then they should not be compelled thereunto?

One other Observation I draw from the actions of the kings touching the increase of their Custome, which is this, that those kings, which did lay Impositions (which as I will shew you by and by, was very rarely; though it were never but in time of great necessity, and but to endure for a short time; yet they alwayes did it, not with the advice alone of the merchants, as at this day, but the merchants did alwayes solemnly grant an increase of Custome; and the kings were alwayes wary, for the better justification of their actions to the people, in their commissions for colling of custome, to recite not onely the great necessity which moved them to take an increase of custome, but also the Grant of the Merchants, as may appeare by the records, of which we have the copies amongst us. I dare confidently say, there is not above one or two at the most that are otherwise, if the impositions be of that nature, which these are of which we can please; and yet these impositions also, by the Grant of Merchants, though raised upon a necessity

great a necessitie of state, and to indure but for a short time, were always complained of by the commons, when they met in parliament, as may appeare amongst other records, by the parliament roll of 27 Edw. 3, No. 27, where in a petition of the commons, exhibited to the king in parliament, are these words: 'Les Commons monstrent, coment que les marchants ayent grant per eux, sans assent de parliament, un subsidie de xls. de sacc. de layn, outre le droiturel maletout de demy marke; et prion que soit amend a cest parliament; car est encounter reason, que le cominaltie de lour biens soient per marchants charges.' Which I English thus: 'The commons shew, how the merchants have granted by themselves, without assent of parliament, a subsidie of 40s. upon a sack of wooll, over and above the rightful custome of halfe a marke; and pray that it may be redressed at this parliament; for it is against reason that the commonalty should be charged in their goods by merchants.' With this agreeth the printed statute of 36 Edw. 3, cap. 11, in the Statutes at Large, where you shall finde an expresse provision against the raising of Impositions upon Wools, by Grant of Merchants; in which petition I doe observe, that the parliament in those dayes did distinguish, even as we now doe, between Impositions laid by act of parliament, and Impositions laid only by the grant of merchants, acknowledging that Impositions laid by parliament only are lawfull, and condemning all other as unlawfull; for otherwise why should they tearne the demy-marke, which was laid by act of parliament, 3 Edw. 1, (*Droiturel maletout*) a lawfull Imposition, but with relation to the unlawfulness of these Impositions granted by merchants, which they then did complaine of? Besides, I observe that they say, that it is against reason, that merchants should by their grant, without assent in parliament, charge the whole commonalty; by which it plainly appears, that they complained not so much of the excess or greatness of the impositions, as of the unlawfull manner of the raising of it by grant of merchants, without assent in parliament.\*

Hitherto I have, according to my division, drawn arguments from that which our kings have done, and put in practise for the increase of their custome.—I will now make some observations of their forbearance to put this pretended power in practice, considering the severall occasions of the times, which I will prosecute in order.

\* As to Voluntary Subscriptions for Defence of the State, see Lord Hardwicke's speech in passing sentence on Lord Kilmarnock and others. *Lords Journals*, Aug. 1, 1746; *Comm. Journ.* Ap. 2, 1778; *King's Speech and Debates thereon in Parl. History*, Dec. 5, 1782, 3 *Hats. Prec.* 71, 72; See also *H. 13. Car. 2. c. 4. § 5*, and *Rex v. Hendley and others*, 1719.

First therefore in general, I observe, that from the Conquest, until the reign of queen Mary, being no lesse then 480 yeeres space, whatsoever the occasions were, whatsoever the disposition of the kings were, yet in the practise of this pretended prerogative of imposing the kings have been so sparing, as, notwithstanding this curious search that hath been made, wherein I suppose nothing that might make for the clearing of the question hath escaped us, it cannot be found or proved by matter of record, that six impositions, such as we now complaine of, were laid by all those kings, who were in number 22. And those six, if they were so many, though they were unlawfull, yet were they in some sort to be born withall. First, by reason they were very moderate. Secondly, that they were laid in the times of great and apparent necessitie, and that they were to endure but for a yeer or two; for none of them, except onely that upon wine, laid 16 E. 1, lasted longer. They were, I say, notwithstanding their unlawfulness, yet in these other respects so farre to be borne withall, as, if the impositions which are now laid had been so qualified, we should, I suppose, never have complained of them. And yet not one of these few impositions laid in former times, but was complained of, and upon complaint taken away, as may appear by the records here amongst us. How much more reason is there then, that we should expect the like justice now; considering that not one merchandise alone, as then, but very neere all the sorts and severall kindes of merchandises that are, are charged; that not a moderate and easy charge is laid upon them, but such, as though we should confesse his majesties absolute power to lay what he list, yet we had just cause to complain of the excessiveness of the burden? For first, the rates of merchandises, for the subsidies of poundage and tonnage, are extremely rayed, a thing also though lawfull, yet hath been rarely put in practise. Then comes the impost upon the back of that, and is as much as the subsidie it selfe is. In some few merchandises, 'tis true, the impost is perhaps lesse then the subsidie; but 'tis as true, that in divers others the impost is farre more. Besides, these impositions were not laid in the time of warre, but even then when we were at pence with all the world, except perhaps there were some sparks of rebellion in Ireland, then not fully quenched. Lastly, these impositions are not, as those in former times were, limited to endure for a yeere or two, but are to come to his majestie, his heirs and successors for ever, as may appear by his majesties letters patents in print, prefixed before the new book of rates. So as if those few impositions laid in former times had been lawfull, yet can they not by any means be a warrant or president for our present impositions, differing so far from them in all these points of consequence. But if even those few, so qualified as they were, were complained of and taken away, what shall we then say of ours, so farre exceeding

them in all the degrees of irregularitie? Besides, if so few presidents, as five or six in so many yeeres space, and those in times of so great necessitie, without any expresse judgment in law, or good authoritie in approbation of them, but accompanied with as many complaints against them, be argument enough to prove the lawfulness of the act, I dare undertake, that as well taxes within the land, as impositions upon merchandizes, may be proved to be lawfull. But to alledge the acts of kings, in raising a profit to themselves upon their subjects, to prove thereby their right, is of all other arguments, that are, the weakest. And so I leave it, and call to minde, that when I told you, it could not be proved by the records amongst us, that from the Conquest to queen Mariés time, there had been any more than six impositions laid; I did in that number limit my selfe to such impositions as those are which we now complain of; for I must confesse, that in that space, many more impositions were laid, but they were of a farre differing nature from ours; differing, I say, not only in those circumstances by which I did even now compare the impositions of these times to those five or six of former ages, but in very essence and propertie, insonmuch as they may not properly be called impositions. And yet the frequent practise of them hath been objected and relyed upon, as so many presidents, to prove the lawfulness of the impositions now complained of. It behoveth me therefore, that in maintenance of my assertion, that so few impositions have been laid, as I have affirmed, that I open unto you the difference betwene the one and the other, which being done, your selves will easily judge, that the greater part make nothing towards the defence of these present impositions. For these impositions, which now are in question, are no other then an increase of custome at the kings pleasure, and commaunded by him to be taken, the passage being free and open to all men. Those other, which make such a great shew in number, and are produced as so many presidents in maintenance of these, are no other then so many dispensations or licences for money, to passe with merchandizes prohibited by act of parliament to be exported; as will evidently appeare by comparing the times, and examining the statutes. I will therefore in this place, as shortly as I can, runne over those presidents, that have been, or may be alledged by the contrary part, out of those records which are here amongst us, and leave it to your judgement, whether I maintaine my assertion, or be not rather better then my word for the number.

The first Imposition by them alledged, [Flem. Clark, Doderidge] is that of 16 Edw. 1, which, as it appears by the record, was 4 shillings upon a tun of wine. This indeed, for aught I know to the contrary, was a meere imposition, such as are now in question. And yet if I did deny it, and say that it was layd by assent of parliament, I know not how the

contrary could be proved; for though indeed the words of the record are, 'cum rex precepisset, ut de singulis doliis vini caperentur 4 solidi,' it follows not that it was laid therefore only by the kings commandment; for we see that even some acts of parliament, in those auncient times, though they were made by the full assent of all the three estates, yet they have these words in their preambles, *rex precepit, rex vult*. But as for recitalls of acts of parliament by the king, in his commissions, and otherwise, it was in those times usual to say, *cum nuper ordinaverimus*; and therefore notwithstanding the recitall be, *cum nuper rex precepisset*, it is no cleere proof, that therefore it was done onely by the kings commandment. Nevertheless I will, I say, admit this to be a meere imposition, and to be one of the number; and indeed, as this is the first they produce, so is it their best. Only this, amongst all the rest, is not limited to indure for a time certain. But give me leave, I beseech you, to open unto you, with what circumstances this imposition was accompanied, and what followed of it; and then I will leave you to judge, who best are able, how far the present impositions may be justified by this.

The first circumstance to be observed in this Imposition is, that it was laid immediately after the warre against Wales was ended, and at the time, when for the selling of the estate of Gascoigne, the king himself was in person enforced to undertake a voyage thither, as may appeare by our histories of those times, which also may be collected by the very words of the record, which are these, 'cum rex ante ultimum recessum suum ab Anglia precepisset, &c.' That as these times were troublesome, they were also very chargeable to the king, and did put him to try all means for the leyving of money, I shall not need to urge it: it cannot be otherwise.—One other circumstance is this, that this Imposition laid in this time of great necessity was not, as now, upon all merchandizes, nor so much as in generall upon one kind of merchandize, coming from all the parts of the world, but onely upon such wines as were brought hither from two towns in Gascoigne, Bergerac and St. Emilians, as may appear by the records; [16 E. 1. 22 E. 1, in Scaccario.] and it is probable that these towns were then in revolt, and that the sooner to reduce them to obedience, the king laid this burden upon their commodities, thereby to hinder the vent of them.—Another circumstance is this, that though that this imposition were indeed laid without limitation of any time, as touching the continuance thereof, yet within six years following, viz. 5 Dec. a. 22, upon complaint of the merchants the king released two shillings of the foure shillings, as may appear by the records of 22 E. 1, with which the merchants not holding themselves contented, the very same yeare within eight or nine months following, viz. 23 Jun. an. 22, the whole imposition was released, as may appeare by a recitall in the account of our William

Randall, receiver of the impost money, entred an. 26 E. 1. And within three years after the release, viz. an. 25, there followed an act of parliament against all impositions in generall, as when I come to shew you what statutes there are, in the point, I shall I hope cleerly prove unto you. In the meane time I will proceed to examine the rest.

The next precedent urged is an imposition of 40 shillings upon a sack of wooll laid by E. 1. an. 21. For the prooffe of which, a record of the Exchequer of that year hath been vouched. I must confesse I have not seen that record. But by another record of the same court, an. 26 E. 1, it is evident, that the said imposition was not raised by the kings absolute power, but by grant, and that also the same was in the time of warre, and to endure but two or three years, if the warre should so long continue, as will best appear by the words of the record. 'Cum custuma 40s. nobis, in subsidium guerræ nostræ contra regem Franciæ, de quolibet sacco lanæ exeunte regnum nostrum, percipiendum per biennium vel triennium si tantum durasset guerra illa, nuper concess. fuit, &c.'

By this you perceive, by what means, upon what occasion, and with what limitation this Imposition was laid. If you will further know, what followed of it, may it please you to read the printed statute of 21 E. 1, c. 7, where it is said, that the more part of the commonality found themselves sore agreeved therewithall; and by the same statute, not only that imposition of 40 shillings upon a sack of wooll, which was the occasion of the great grief and complaint, was taken away; but upon occasion thereof, there was at the same time provision also made against all other impositions whatsoever, as, I say, I hope I shall anon cleerly prove unto you. Inasmuch as this imposition of 40 shillings upon a sack of wooll ought to be so farre from being urged as a president for the present imposition, and consequently of the grievance of the commonwealth which followes thereupon, as that rather on the contrary part it may be thought to be the happiest accident in the consequence thereof, that ever befell the commonwealth in this kinde. For it was the occasion of the making of the first law that ever was made against impositions, and other charges and burdens of that nature to be imposed by the kings absolute power without assent of parliament.

And so I leave their second precedent, and come to the third, which in time was 31 of the same king E. 1. [Vouched by Fleming, Clark, Dodderidge, Bacon, Attorney Hobart.] It is no other then that increase of Custome, which by the merchant strangers was granted to king Ed. 1. by that charter now familiarly known unto us by the name of Charta Mercatoria, which, by all that have maintained his majesties right to impose, hath been stood upon and urged, as an imposition by the kings absolute power; but more especially by master Solicitor hath been strongly inforced with all the

advantage possible for the maintenance of his opinion. Nevertheless I doubt not but I shall give it a very full answer, such as yet this objection hath not received, though divers, that have spoken before, and some this day, have undertaken to cleere it; wherein I will arrogate nothing to my selfe, but leave it wholly to your censure. It hath been said by master Solicitor, that though this increase of custome may seem to some, to proceed from the grant of merchants, yet that this grant of theirs was to no other purpose, nor had other effect, then only thereby to declare their assent; for that, those which did grant were no corporation or body in the estimation of law, and so could not binde any but themselves alone, and not such as should succeed them; and that it was only the authority of the kings pleasure to accept and take this increase of custome, that gave it life at the first, and strength to continue as an imposition till this very day. For 'even at this day, saith he, the three-pence upon the pound, granted by the said charter, is paid by the merchant strangers, and they likewise enjoy some priviledges granted by the said charter.' And it was further by him observed; that notwithstanding all the statutes that have been urged against impositions, yet this imposition hath continually stood, and hath never been denyed to be paid by any man; and that therefore it is likely that no man till now ever conceived, that these statutes were made against impositions upon merchandizes, but were rather to be understood to extend onely to impositions within the realme.

To this Objection I make this answer, that it is indeed true, that the grant of merchants in this case, cannot binde the whole commonwealth; as I have heretofore proved by the petition exhibited in parliament by the commons 27 Ed. 3. No. 27. and by a statute of 36 Ed. 3. c. 11. And therefore I cannot but confesse, that this increase of custome may very truly be called an imposition; for that indeed it did at first take strength, onely by the kings pleasure to accept it, as hath been said, and not by the grant of the merchants. Admitting it therefore to be a meer imposition; let us consider with what extraordinary circumstances it is accompanied.—First, as you may perceive by the Record itself, and as it hath partly been said already, the king took it not without yeelding recompence for it; for the merchants strangers, by submitting themselves unto this charge, obtained divers liberties and immunities from the king, by the same charter, amongst which freedome from prisage is one which at this day they enjoy, in which respect this imposition is in some sort tollerable, though not at all lawfull.—Another considerable circumstance, and difference from our present Impositions, is this, that it was a composition made by the king with merchant strangers, which, though it be by strictnesse of our common law, not of force to binde in perpetuite; yet how farre by the civil law this doth binde strangers, which are governed by these lawes,

is not so easily decided; and this may be a good colour to uphold it.

These special reasons, though they may well serve the turne, to make an evident difference betwixt this and our present impositions, and so consequently to avoid the conclusion drawn from the president, and may also seem colourable, and particular reasons to uphold the imposition itself; yet is not this that, which I mean to relie upon for answer. For even this imposition, in recompence of which the king parted with so large priviledges and benefits, and which, because it concerned only merchant strangers, did neither in the burden thereof, nor in the president, so directly touch the English; yet in the detestation, as it seems, of all impositions, of what nature or kinde soever, and upon what pretext or colour soever they were grounded, I say, even this imposition also was complained of in parliament within few yeeres following; and upon complaint, taken away, as may appear by the Close Roll of 3 Ed. 2, mem. 23, where you shall finde inrolled a Supersedes, commanding, that the new custome, granted by the merchant strangers, reciting the particulars as they are contained in Charta Mercatoria, shall cease at the king's pleasure; and this is there said to be yeilded to at the request of the commons, which cannot be but in parliament. But because the renewing of it again rested at the kings pleasure, therefore, within two yeeres after, by a publicke ordinance made by the principall prelates, earles, and barons and other great men of the kingdome, authorised by the king's commission, dated the 16th of May, the same third yeere of his reigne, the charter itselfe was declared to be utterly void; for that it was hurtfull to the commowealth, against Magna Charta, and made without assent in parliament. And not only that charter, but all other new customes or impositions whatsoever, imposed since the coronation of Ed. 1. will that time, were also taken away, saving onely the old custome upon wool, woolfels, and leather. And further it was ordained, that if any man should presume to take any more then the auncient custom rightfully due, and should be thereof convict, he should answer to the partie greeved his costs and damages, be imprisoned according to the quantitie of his offence, and be further punished as an offender against Magna Charta, according to the discretion of the justices. Ro. ordinationum 5 Ed. 2. in the Tower.

Though the force and authoritie of this Ordinance may perhaps be doubted and blemished; because it was made by the barons, at the time when they had the better hand of the king, as hath been in part objected? yet you see, that they deliver not their censures, without alledging also their reasons; and this their ordinance is no more in effect, then that which was thought fit by all the commons in the parliament of 5 Ed. 2. before mentioned.

But it hath been yet further said, that notwithstanding this Ordinance, the Imposition doth nevertheless continue in force, and is at

this day paid by the merchant strangers, and that therefore in likelyhood the ordinance prevailed not against it. 'Tis true, that at this day the merchant stranger doth pay three pence more in the pound for subsidie of poundage, then the English doth, and that by vertue of Charta Mercatoria. But let me tell you, that Charta Mercatoria in it selfe had not strength and vertue sufficient to subsist for so long a time. It was, as I have said, suspended by the king himselfe an. 3, condemned by the ordinance of 5 E. 2. and had at this day been of no more force, then it was all the time after 3 Ed. 2. that is, of none at all, had it not been confirmed by act of parliament an. 36 Ed. 3. cap. . This was onely that which protected Charta Mercatoria against all those statutes made against impositions, and that hath kept it in life till this day; and this indeed, I mean an act of parliament, is the only means, that our law acknowledgeth, for the laying or establishing of impositions, and without which they cannot long last.

You have now heard opened three of those six presidents, which are most relied upon for maintenance of these present impositions, which are all that have been urged, or can be found to have been practised from the conquest till the reigne of Ed. 3, during which time there are, as you see, as many publique acts in opposition of them, which are of so much the more force, in that they are the legall regular acts of great counsellis; whereas, on the contrary part, those three impositions were the acts of powerfull kings wills, in the times of extream necessity. As for Ed. 2, his successor, there hath not been one imposition alledged to have been laid by him of one kinde or other. Nay, all the records touching this business found in his time, being onely foure, make directly against them.—The first is anno 3. which was (as you have heard) a release at the kings will, upon complaint of the commons, of the impositions raised by Charta Mercatoria.—The second was the Ordinance made an. 5. declaring Charta Mercatoria and all other impositions to be void, and inflicting punishment upon such as should demand any.—The third was an. 11, which is a supersedeas to discharge certain commodities from yeilding an increase of custome granted by merchants by way of loane, which in great probability the king would never have released, but upon complaint. The rather I think so, because, as the record recites, it was granted in a time of great necessity. The fourth is an. 12, and is much of the same nature, the recitall of which contains some very observable things, which I will open unto you. It shews first in very effectuall words the greatnesse of the kings wants, and the causes thereof. The words are, 'Cum 'pro expeditione guerræ nostræ Scotiæ, et 'aliis arduis necessitatibus nobis multipliciter 'incumbentibus, pro quarum exoneratione 'quasi infinitam pecuniam profundere oportebit, pecunia plurimum indigemus in presenti; ac insuper, pro eo quod exitus regni et

‘*terræ nostræ, simul cum pecunia nobis in subventionem præmissorum tam per clericum quam per communitatem regni nostri concessa ad sumptus predictos cum festinatione, qua expedit, faciend. non sufficiunt.*’ Here was cause, if any cause may possibly be just, for the king presently to put in practise his prerogative of impositions. His expence by reason of a necessary warre in Scotland was so great, as the whole revenue of the kingdom, together with an ayd which had been lately granted him, could not with that expedition that was requisite supply his present want. Doth hee for all this make use of his prerogative of imposing? Or doth hee hastily, for want of advised proceedings, take some other course prejudiciall to his right? No. The record further sayes, that he enquired by all wayes and meanes, how he might most commodiously and fitly levy money for these occasions. After which advised deliberation, the course at last resolved upon was, not by absolute power to lay impositions, which of all other courses, if it had been lawfull, had been the most speedy and beneficiall. but a course more justifiable; which was, that merchants should be called together, and that they should be intreated to lend the king upon every sack of wool 10s. and upon every last of leather 5s. above the ancient custome; and that for their security of true repayment, without fiction or delay, which are the words of the record, whereby it seems that onely a pretence of a loane and repayment had been before that time used to colour impositions, commandment should be given to the customers to certifie into the Exchequer the names of every particular merchant that should so lend unto the king, that they might accordingly receive full satisfaction. And ’tis worth the observing, that this loane was for no longer time, then from April, till October following. Thus much is warranted by the record. So as you see, that in all this time of this king Ed. 3. impositions were not only altogether forborn even in the times of his greatest necessity, but they were also condemned as unjust and utterly unlawfull.

We come now to the reigne of king Ed. 3. in whose time there was no practice or meanes, that by the policy of man could be thought on to bring the people under this yoke of Impositions without assent of parliament, but it was by him attempted: insomuch, as I have in my observation out of the records collected no lesse then five or six severall waies, all of them very colourable, which in his time were put in practice for the raising of impositions; and yet none of them but was resisted by parliament and condemned.—That which was most usuall with him was, that merchants should grant to pay him so much upon every commodity exported or imported by way of increase of Custome. This seems not unreasonable, for that every man might grant of his own what he listed; and this also, to make it more colourable, was never attempted but in the time of warre. And yet, as it hath been partly said already,

VOL. II.

this was always held unlawful, as may appeare by the record of 17 E. 3. [No. 27. Ro. Parl.] where the commons in parliament say, that it is a great mischiefe, and against reason, that they should be enforced to pay the deerer for commodities, by reason of a charge upon merchandizes, by the grant of merchants, the which is a charge to the people, though none to the merchant. Anno 25 Edw. 3. [No. 22, Ro. Parl.] the commons reciting, That Whereas merchants have granted a new increase of Custome to the king, pray, that commissions to collect such new increase of custome by singular grant of merchants be not awarded. Anno 36 Ed. 3. cap. 11. amongst the printed statutes, grants of subsidies upon wools by merchants without assent of parliament are declared to be void, which act was made upon a petition of the commons in anno 36 Ed. 3. [No. 26. Ro. Parl.] desiring a law to be made to the same effect. If impositions raised by the grant of merchants, which I suppose to have been by some publicke and solemn instrument, under the hands and seals of the principall merchants of all the great towne of England, being called together for that purpose, were not of force in this behalf, much lesse was their bare assent without any such solemnity, which also was a course in practise in the days of Ed. 3. and was also used in the laying of these present impositions, which wee now complaine of.

Another meanes of raising Impositions used by Ed. 3. was by way of Dispensation for money with some statute in force, which restrained the passage of merchants. Most of his impositions of one kinde or other, laid after 11 E. 3. were of this nature. For anno 11. cap. 1. amongst the printed statutes, you shall find it enacted, ‘that no man upon paine of death, lesse of lands and goods, should export wools.’ Immediately after the making of this statute, impositions by way of dispensations for money came to be so frequent and burdensome, that the very yeere following the king, being in person to undertake a warre in Scotland, and for the raising of treasure having laid heavy impositions in this kinde, which he perceived to be very burdensome to the people, he wrote to the arch-bishop of Canterbury. His letter is extant upon record, [12 E. 3. No. 22. Ro. Aleman.] to this effect; ‘That where- as the people were much burdened with divers charges, tallages, and impositions, which he could not mention but with much greet, but being enforced by inevitable necessity could not as yet ease the people of them, he required the arch-bishop to exhort the people patiently and humbly to bear the burden for a while, and to excuse him towards the people, hoping he should ere long recompence his said people, and give them comfort in due time.’ His necessities were neverthelesse so great, and this meanes of raising money was so colourable, seeing no man was compelled to pay, that did not himself desire to be dispensed with, for the breach of a penal law, by which his life, goods,

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and lands were forfeited, as he spared not to lay on load in this kinde; insomuch as you shall finde, that in an. 13. [Ed. 3. Orig. de Scac. Ro. 3. & 12.] he took for dispensations to passe onely to Antwerp of Englishmen 40 shillings upon a sack of wool, 40 stillings upon 300 woollfells, and 4*l.* upon a last of leather; of strangers 3*l.* upon a sack of wool, 3*l.* upon 300 woollfells, and 6*l.* for a last of leather; whereas the ancient and due custome was no more then 6*s.* upon a sack of wooll, the like upon 300 woollfells, and 1*s.* 4*d.* upon a last of leather. Immediately hereupon, even this very yeere, was this complained of in parliament, and a petition exhibited by the lords and commons, [No. 5. Ro. Parliam.] that it might be enacted, that this maletolt or imposition, because it was taken without assent of parliament, might be taken away, and that a law might be made, that no such charge might be laid, but by assent of parliament. And they further prayed, that they might have a charter under the great seal, confirmed and enrolled in parliament, to the same effect, which was performed the next parliament, as may appeare by the statutes printed, where, an. 14 Ed. 3. cap. 21. you shall see an act of parliament to this effect, and that a most effectual one. And immediately after, follows the charter to the same effect, of both which I shall have more occasion to speak hereafter. But such were the king's wants, that, even in the mean time between the petition and the making of the act, he could not forbear to raise money by this means; for in an. 14 Ed. 3. [Ro. 3. Orig. de Scac.] the eleventh day of March, in the end of which month the next parliament began, as may appeare by the preamble to the statutes of that parliament, he tooke by way of dispensation 40*s.* upon a sack of wooll, when it should be safely landed at Bruxells, and 40*s.* at the port within England, which was indeed an intolerable charge. But the better to colour it, the king, in his commissions for collection thereof, pretended, that the merchants had been humble suiters to him, that the passage for woolls might be open till Whitsontide following; and that to obtaine the same, they had of their free wills offered to give him the said summes, as may appeare by the recital in the beginning of the said record.

In further prevention of this mischief, in an act of parliament printed, made an. 27 Ed. 3. cap. 2. there was a speciall provision made against all licenses to transport. Nevertheless, as it may be collected by a record of the same yeere, (Orig. de Scac. 27. E. 3. Ro. 7.) the king raised 40*s.* upon a sack of wooll, 40*s.* upon 300 woollfells, and 4*l.* upon a last of leather, by the same means, I meane by way of dispensation. For though indeed it be recited to be granted by merchants, yet was it no otherwise granted by them, then for licenses to transport; for at that time the staple of wooll was in England, as may appeare by the printed statute of 27 Ed. 3. cap. 1 and 2.

And here I thinke it fit to make this Obser-

vation in generall, that, whereas in some other of the records of Ed. 3 there is mention made of Impositions upon Woolls granted by merchants, because the passage of woolls was in those daies so often restrained by statute, as may appeare by very many printed statutes of that time, it is very likely, that these grants of merchants were also for dispensations to transport, as appeares that this of 27 was; (Yet you shall finde an act of parliament for free passage an. 15 Ed. 3.) and it may well be that some of the statutes, being but temporary, were not committed to the presse. This kinde of imposition, by way of dispensation, I finde not to have been at all practised from 27 till 39, where without any colouring of the matter, with pretence of the grant or gut of merchants, or any recital of suite made by merchants to have the passage open, as usually in former times, but plainly and aptly, the king recites, [39 Ed. 3. Ro. 2. Orig. Scac.] 'That Whereas English merchants were by act of parliament restrained to transport woolls, neverthelesse, upon advice with his counsell, he thought fit to give leave that such as would might transport woolls, paying 46 shillings 3 pence upon a sacke, which the king commandeth to be levied.'—This Imposition lasted a very little while; for the next parliament following, the subjects granted to the king a subsidie upon woolls, woollfells, and leather, to endure for a very short time. And yet, as it appears by the words of the record, the king doth thank his people for it, 'with all his heart.' At which time, for the maintenance of his warres in Scotland, he obtaineth the continuance thereof for two yeeres, at the end of which two yeeres he further obtaineth in parliament a continuance of the same from Michaelmas following, for three yeeres, for the supplie of treasure for the warre. [43 Ed. 3. 9 & 10 Ro. Parl.] Two yeeres following, viz. in an. 45, [Num. 42, Rol. Parliam.] the commons doubting, as it seemeth, that the king had secretly concluded to increase, by way of imposition, this subsidie, which was yeilded to in parliament, and granted for three yeeres, made a conditionall petition, that if any imposition be laid upon woolls, wooll-fells, or leather more then the subsidie granted in parliament, that it may be taken away. The king answereth, that if any be laid since the statute, it shall be taken away; and then follows the printed statute, an. 45 Ed. 3. cap. 4. 'That no Impositions be laid upon woolls, wooll-fells, or leather;' which is the first place where I finde Impositions named in our printed books. I finde them first named upon my Latine record, 12 Ed. 3, in the kings letter to the archbishop; and first upon my record in French, not printed, an. 21 Ed. 3. Num. 16. Ro. Parliament.

But to proceed. About a yeere following this parliament of 45; neere which time the subsidie granted an. 43 for three yeeres was expired, there was another subsidie of forty three shillings foure pence upon a sack of wooll, as much upon twelve score wooll-fells,

and five pounds upon a last of leather, above the ancient customes, granted in parliament, [46 Ed. 3. No. 10. Ro. Parl.] for the maintenance of the warre in Guyen, to endure for two yeeres; for which, the king likewise gave thanks.

The next yeere following, [47 Ed. 3. No. 12. Ro. Parl.] the subsidie granted the last parliament, was continued from Michaelmas for a yeere without any condition, and for the next yeere upon condition, amongst other things, that no imposition be laid during the two yeeres, and that the money levied be employed upon the warres. In the next yeere following, [48 E. 3. Ho. 2. Orig. de Scac.] the king took, us by the grant of merchants, upon a sack of wool, of denizens fifty shillings, and of strangers foure marks; upon 210 wooll-fells, of denizens fifty shillings, and of strangers foure marks; and upon every last of leather, of denizens five pounds, and of strangers eight marks. Though this record pretendeth nothing but the grant of merchants, yet it is upon the matter no other than a dispensation for so much money; for, at this time, the passage was not open, other than to Callice, where the staple then was, as may appeare by the two records of 38 Ed. 3. Ro. Parl. et 50 Ed. 3. Num. 24. And yet you may see, how hatefull even these impositions by way of dispensation, which are farre more tollerable then our present impositions, were in those dayes. For within two yeeres following, [50 Ed. 3. Nu. 17, 18, 19, Ro. Parl.] one Richard Lions, farmer of the customs, among other things laid to his charge, was accused in parliament for setting or procuring to be set new impositions, not shewing of what nature, without assent of parliament, and was adjudged to forfeit his goods and lands. [Ro. Parl.] But more particularly the lord Latymer, lord chamberlain of England, was expressly accused, that he combined with Richard Lions and others, who for their own profit had procured and counselled the king to grant many licences for the transporting of great quantities of wool beyond the seas, other then to the staple at Callice, against divers ordinances and commandements to the contrary, and had put upon woolls and wooll-fells new impositions. Here you see, that the device of dispensations for money had the name of an imposition in those dayes, though indeed it be not in its nature a meere imposition, or at least not such a one as those are which we complain of: but such as it was, you see how from time to time it hath beene condemned, and how it is reckoned up amongst the most hainous faults of those two great offenders, who, though perhaps they were condemned also for other offences, yet the laying of these to their charge did shew the great hate generally conceived against impositions of this kinde. I might here further adde in prooffe of the invalidity of these dispensations, that certain merchants, having obtained some of these, and having also the advantage of the king's proclamation to dispense with the statute which restrained their passage, yet they never

thought themselves secure from this punishment of the statute, till they were provided for by act of parliament, as may appeare by a statute printed anno 35 Ed. 3. cap. 21. To alledge therefore any of this kind, thereby to prove the lawfulness of ours, cannot but argue a weak cause.—For first, as I have said, there is farre more reason and colour for these, then for ours; for in this case no man was compelled to pay, that did it not to avoide a greater mischiefe; for by paying the imposition, he was free from a grievous punishment for breach of a penall law which restrained his passage; whereas in our case a charge is laid upon him for exercising his lawful trade, where no statute law or common law is to the contrary, but rather both the one and the other make for him.

But it may bee here objected, that the king may lawfully restraine, the breach of which restraint is a contempt and against law, and that to impose doth imply a restraint upon a penalty. Suppose it were so, yet, if in case where the restraint is not onely by the king, but the whole estate assembled in parliament, for some urgent cause, it be unlawful to give license for money, as you perceive it is, how much more is it so, where the restraint is for no other purpose then to raise an imposition, as in our case? But of this more largely hereafter.

Another device of raising impositions without assent of the commons in parliament, practised by Ed. 3. was by way of Ordinance, which indeed is in the next degree of strength unto a statute. For it is a constitution made by the king himselfe, and all the prelates, earls, and barons, not at the counsell table, or in the kings chamber, but sitting solemnly in parliament, and hath also the like solemnity of inrollement that a statute hath, onely it is enrolled in a roll by itselfe, which hath the name of the roll of the ordinances. But the only essentiall difference between this and an act of parliament is, that this hath not the assent of the commons.

Some Ordinances have had that estimation amongst us, that they have at this day the force of statutes; as the ordinance of Merton, made 20 Hen. 3. which, though it were no other then an ordinance made by the king, the prelates, earls, and barons, without assent of the commons, yet hath it by continuance of time gotten not onely the strength, but the name also of a statute. There be some others of this nature, and we finde it usuall, that the names of statutes and ordinances have been indifferently and confusedly used to expresse the one or the other. So as there was not any other more probable devise or invention to have brought the people under the yoake of imposition, without their own assent, then was this, by the way of ordinance. Nay, to adde yet a further strength to this high authority of an ordinance in parliament, the assent also of merchants was usually joyned therewithall, to make it have the clearer passage with the subject; and further, it was never but in the time of warre.

The first imposition of this kinde by way of ordinance, which I finde amongst the records, was 7 E. 3. amongst the originals of the Exchequer, where it is said by way of recital, that the king considering how merchants, which make great gaue by trading, ought as well as others to assist him with treasure for his warre, especially considering how at their intreaty he had placed the staple in England; therefore at his parliament held at Yorke, by the prelates earls and barons it was ordained, that the merchants should yield unto the king a subsidie upon merchandizes. This subsidie or rather imposition thus solemnly ordained, and in the times of so great necessity, was no sooner established then revoked, as may appear by the words immediately following in the same record, whereupon the merchants of their own accords yielded, and freely gave 10s. upon a sack of wool, as much upon 300 woolfills, and 20s. upon a last of leather, for a short time, by way of dispensation or licence, towards the maintenance of the warre.

The like is found anno 20 E. 3. [Nu. 18. Ro. Parl.] where the commons complaining of an imposition of this kinde, laid by the prelates earls and barons in parliament, and by the agreement also of merchants, it was not denied unto them, but that their suit was just. Onely it was answered them, that as yet it was not convenient to take it away; for that the king had taken up great summes of money of divers merchants, for his present necessity, to be repayed out of the said subsidie, and therefore it could not be as yet discharged without great damage to the king and the merchants. But the most materiall record, against impositions by way of ordinance, is the yeere following, where the king, in excuse of impositions complained of, answereth that they were laid in times of great necessity, 'and by the assent of the prelates, earles, and barons, and other great men, and some of the commons, then present; nevertheless his pleasure is, that such impositions, not duly laid, be not drawn into consequence, but taken away,' 21 E. 3. No. 17.

There are some others of this kinde, but never any that did abide the triall, though they have alwayes been accompanied with all such circumstances, as were most likely to give them passage without controullment; as to be laid in the time of warre, to be limited to a short time, with consent of merchants. If the authoritie of an ordinance in parliament, joyned with the assent of merchants, were in those dayes not of force sufficient to uphold impositions, much lesse will an order of the king and his counsell out of parliament uphold them at this day, especially after so many yeeres discontinuance.

Another invention to raise Impositions, practised by Ed. 3. and in former times, was by way of a pretended or feigned Loane from the merchants, of so much above the old custome upon merchandise exported or imported, which loane was never repaid to the merchant. That this was an old practise, may be collected

by the president, of 12 Ed. 2. already cited, where the king promiseth, that without fiction or delay he would repay them their money; implying thereby, that sometimes fiction had been used: and doubtlesse that loane which was 11 Ed. 2. the very yeere before, was such a fained loane as I speake of; for otherwise, without question, the king would not have released part of it, as may appear by that record that he did. For if the money be, *bona fide*, borrowed, and truly intended to be repaid, then doubtlesse the course is lawfull; if otherwise, I hold this kinde also as unlawfull as any of the rest.

Edward the third did once or twice borrow in this kinde, as may appear by records already cited to another purpose, with which I will not againe trouble you.

There was yet another device for raising of Impositions, begun indeed by Ed. 1. and condemned in the time of Ed. 2. but revived; and much practised by Ed. 3. which was also by way of Grant of merchants, and yet not altogether the same that I first observed to have been so much practised by Ed. 2. but is much more colourable and tollerable. For whereas that was a grant, or rather a meere gift, without any thing granted back againe in lieu thereof; this, I now speake of, is a soleme grant indeed, made by merchants, of an increase of custome, for liberties and freedoms, and other valuable priviledges and exemptions, granted unto them by the king. That former was *dote nihil expectantes*. This is, *dote et dabitur vobis*. And indeed the recompence that the merchants had by this charter granted unto them, made their grant to the king lesse subject to controul, then otherwise without such recompence it would have been. I mean the grant of mercant strangers, so often remembered amongst us by the name of *Charta Mercatoria*, which though it were damned all the time of Ed. 2. from the third yeere of his reign, yet was it revived by E. 3. even that very yeere, when he likewise deposed the king his father, and usurped to himself his crown. For it appears by the records, [1 Ed. 3. Ro. Fin.] that he commanded the same to be levied the very first yeere of his regne. What hath been said against this kind of imposition, I shall not need here againe to repeat, onely let me call to your remembrance, how this charter, as needing a better prop then his owne strength, and validity in law, was in the same kings regne confirmed by parliament, and onely by that strength continueth in force at this day.

You have heard five or sixe severall politike inventions and devices for the easie drawing on and sweetning of this yoke of Impositions, all practised by this prudent and potent king. Ed. 3. whose times were indeed so troublsome, and his charge every way so excessive, as it is no marvell, that he let not any way unatempted to raise money, without the assent of the commons, whom he always found unwillingly and hardly drawne to matters of charge.

One other way of Impositions he used, not

coloured or masked under any such pretence, or politick invention, as you have heard, but plain and direct, only his owne expresse Commandment to his officers, to collect of every merchant so much for such a comoditie, exported or imported, and to answer it into his Exchequer, without any recitall in his commissions, of grant, assent, guilt, loane of merchants, dispensation, or ordinance in parliament, or any other such colourable pretext whatsoever.

These indeed, and only these, are meer Impositions, and may be aptly compared with these of our times. Of this kind, amongst all the records of Edward the 3rd's time, I find only two, which I will truly open unto you. [21 Ed. 3. No. 11. Ro. Par.] The first is in the 21st of his reigne, where it appears, that Lionell, afterwards duke of Clarence, named upon the record Lionell of Antwerp, because I suppose he was there borne, the kings second sonne, being then guardian of England, whilst the king his father was at the siege of Callise, at a counsell by him held the same yeere, which I take to be no other than the privie counsell, assessed without assent of parliament, upon every sack of wooll two shillings, upon every tun of wine two shillings, upon every pound of aver de poys of merchandizes imported sixpence. This Imposition was, I must confesse, for ought I know to the contrary, such as our present Impositions are: I mean, in that it was imposed onely and simply by the kings absolute power, and may in that respect be the fourth, of that number of sixe, which I told you were all that could be found in any degree like to ours, ever to have been practised in this commonwealth, from the conquest till queene Maries time. But though in the authoritie of imposing it be like, yet in circumstances very materiall you shall find an apparent difference between them.

First, this imposition is very moderate in the sum, as you may perceive; for it was but two shillings upon a sack; whereas in 13 Ed. 3. forty shillings upon a sack of wooll was usuall, and sometimes fifty shillings.—Secondly, it was to continue no longer then till Michaelmas following.—Thirdly, it was laid in the time of a most chargable warre, and ordained to be employed for the maintenance of ships of warre at sea, for the safeguard of merchants in their passage, of which it is apparent there was at this instant very great necessitie; for it was, as I have said, imposed then, when king Ed. 3 lay at the siege of Callise.

Besides, such as it was, and so qualified as you perceive, it was neverthelesse complained of in parliament, by a petition from the commons, as may appeare by the records of the same of 21 Edward 3. To which petition or complaint this answer was given, 'that all the said impositions were already taken away, save only the two shillings upon a sack of wooll, which should last no longer than Easter; and seeing the same was ordained for the safeguard of merchants, in which there had been greater sums of money expended by the

'king, than could be collected between that and Michaelmas, therefore to continue the same till Easter; he hoped it would not seeme over-burdensome or grievous unto them.' In the parliament following, viz. anno 22. the commons pray, that writs may bee directed to the customers to forbear at Easter next to take the two shillings upon a sack, according as it was granted at the first parliament, and that it be not any longer continued by the procurement of any merchant. [22 Ed. 3. N. 16. Ro. Par.] The king answereth, 'let it cease at Easter, as it was agreed the last parliament.'

Here you see it was absolutely taken away; and therefore though it had wanted these qualifications and circumstances which I have observed it had, yet, it being a thing so, publickly condemned, it ought to be of little force with you to justifie these present impositions. But that which I observe out of this last record, maketh me rather to incline, that, this imposition was onely by way of dispensation, then that it was an absolute imposition, such as ours are. For to what end, I pray you, should the commons pray that it might not be any longer continued by the procurement of any merchant, except it were likely that merchants for their benefit should pray the longer continuance thereof; and what benefit can any imposition whatsoever bee to a merchant, except it bee by way of dispensation to give him leave to trade, where before such dispensation given he stood altogether restrained? If then it be an imposition by way of dispensation with a penall statute of restraint, then is it no president for our present impositions. But whether or no it be a dispensation or absolute imposition; I leave it to your judgements. You have heard my observation.

And so I come to the next precedent in the times of Ed. 3. produced for maintenance of our impositions, which was in the 24 yeere of his reigne, the record of which [N. 12. Orig. de Scac.] and that which followed thereupon, I will, without any inforcement at all, open unto you, and so leave it to your censures. The king reciting, that whereas the Spanyard and French had joyned in league to make warre against him, and that for the withstanding of his said adversaries, as also for the safeguard of merchants against pirates, he had ordained, that certaine ships should be set forth, and that for maintenance of the said ships there should be paid by merchants two shillings for every sack of wooll, two shillings for three hundred woollfells, foure shillings for a last of leather, a scute of gold, or foure shillings for a tunne of wine, and sixpence of the pound upon all other merchandizes for one yeere following; he commandeth his customers to levy the same accordingly.

The very next yeere and parliament following, the commons exhibite a petition in parliament against impositions and other like charges, without assent of parliament; [25 E. 3. N. 12. Rot. Par.] to which answer is given, 'That it is not the kings intention they should be charged.'

I have now gone through all the materiall

Records here amongst us, of the times of Ed. 3. in which, though his reign were very long, and by reason of his warres, and other excessive charge, more occasion was given him to try the strength of this point of the prerogative, than ever any king before or since; though oftentimes, and by many politicke inventions, as you have heard, he attempted to establish this prerogative, of laying impositions without assent in parliament: yet can there not be produced in all his time, any more then two presidents of impositions like to these of ours: that is, imposed by the kings absolute authority. And yet these two were also, as you perceive, qualified with such circumstances, as, if ours were such, we should have held them tolerable, though perhaps not lawfull. Yet they, such as they were, escaped not without being complained of, and condemned also in parliament, as you have heard.

It may perhaps be, that some one or two of these impositions, which were by assent or grant of merchants in this time of Ed. 3. were in times when the passage was open, and not restrained by act of parliament, and so to be compared to our impositions. But whosoever shall, by looking over the statutes and records with never so much heed, consider the times of opening and shutting of the sea by statutes, shall finde it so intricate, as hee shall be very hardly able directly to say, that, at the time when any of these impositions were granted, the passage was open.

If in my observation I had found any such, I should have admitted it for an absolute imposition, as I have done *Charta Mercatoria*, which was by grant of merchants; for certainly, as I have yielded, the grant of merchants is in this case of no other effect, then the declaration only of their assent; and the imposition resteth meerly upon the king's authority. But I finde none such. If any such could be produced, you have heard, how they have bene from time to time controlled in parliament.

And so I passe from E. 3 to the times following.—From the end of the reign of E. 3 till the reign of queen Mary, who was the 11th prince of this realme after Ed. 3 (as Ed. 3 was the 11th after the conquest) being the space of 170 yeeres or thereabouts, it hath been confessed by all those that have argued in maintenance of his majesties right to impose, that there hath not been found one record that proves any one imposition to have been laid. There are indeed in our printed bookes some three or foure statutes during that time, in which mention is made of impositions; but they are, as I shall prove, impositions of another nature then those are which we claime of; and so make nothing at all to the prooffe of his majesties right: or if they were such as ours are, yet are they nowhere found mentioned but with disgrace, and to the end to be taken away; which may be the reason, that notwithstanding the great use that might have been made of three or foure presidents of impositions in these times, for the patching up of a continuance of the practise, which otherwise by this long discontinuance re-

ceives a great blemish; those which argued for impositions did not take hold of these, but chose rather to confesse, that no impositions at all were laid during all this time, and labored to seek out the reasons of the discontinuance.

I will briefly shew you what Statutes they are, during that time (viz. after the end of Ed. the thirds raigne untill qu. Maries.) which mention impositions. The first is 11 R. 2, cap. 9. No imposition nor charge shall be put upon woolls, leather, or woollfells, other than the custome and subsidie granted to the king this present parliament; and if any be, the same shall be repealed and annulled, as it was another time ordained by statute, saving alway to the king his ancient right. If by this saving the pretended right of imposing should be excepted, as was said in the Exchequer, the saving should then be contrary to the body of the act; and therefore it must needs have some other interpretation, that it may stand with the rest of the act, and not condemn the law-makers of so much want of discretion. Therefore doubtlesse this (saving) is no other then an exception of the ancient rightfull customes, due upon those staple commodities. And for my part I am of opinion, that the statute was made, not so much to take away any imposition laid by this king R. 2, as out of a provident and prudent care in the law-makers, proceeding from the fresh memory of the practise of Ed. 3 in this kinde; for all those that were of this parliament, did live and were at mans age in Ed. 3. time, and could not but well remember the grievousnes of his impositions. Besides, I observe, that they desire, that no imposition be laid by way of addition to the subsidie upon woolls and leather then granted. It was never heard till of late, that an imposition upon any merchandize was charged at the same time with a subsidie; and therefore without question, this was no other then an abundant provision by them, wherein they were no more carefull then any wise man would be in the like case. When they had of their own free wills given the king a liberall gift, they were carefull not to be further charged by him.

The next statute in these times, where impositions are found mentioned, is, 23 H. 6 cap. 18. By which it appears, that English merchants, being restrained from repaying to Gascoigne and Guen, to buy the wines of that country, they were nevertheless suffered to repaire thither paying certaine new impositions, which were demanded of them. Upon complaint hereof, it was enacted, that all English merchants might freely passe into those parts, and buy wines there at their pleasure, without any new imposition or charge to be put upon them; for that such impositions were to the damage of merchants, and to the hinderance of all the kings people: if any were demanded by the kings officers, the officers so demanding them should forfeit 20*l.* besides treble damages, to the party grieved.

That these impositions were by way of dispensation with a statute, which restrained the repaire of English merchants into those parts,

and not by the kings absolute power, thereupon to ground an imposition, is evident by the statutes in print. [27 E. 3. c. G. 38 Ed. 3. c. 10. and 38 Ed. 3. cap. . 42 E. 3. c. 8. 43 E. 3. c. 12.] For from 27 E. 3 till this, 23 H. 6 there are five or six statutes in print to this purpose, some more strict then other, which continued in force till 23 H. 6. The reason of the restraint by Ed. 3, I suppose to have been, because Gascoigne and Guien were then in his possession, and he was desirous his subjects, the merchants of those countries, should have the sole profit of their own comodities; and that they onely should import them into England, and not the merchants of England. Whatsoever the cause of the restraint was, it is very clear the restraint was by statute, and that this imposition raised by way of dispensation was condemned; which neverthelesse, suppose it had not been controled, yet, as I have said oftentimes, it is in nature so farre differing from ours, as the practise thereof will not so much as help to salve this long discontinuance.

The next mention of Impositions is found 1 R. 3 cap. 12. The words are, 'The subjects and cominality of this realme shall not from henceforth be charged by any such charge or imposition called a benevolence, nor by such like charge.' You perceive by the words of the statute, what impositions are intended within that statute.

The next mention of Impositions in these times, I finde to be, 7 H. 7. cap. 7. where a charge of 18s. laid upon a butt of malmesie by parliament, is called an Imposition.

Another mention of Impositions, I finde to be, 12 H. 7. cap. 6. In the preamble of the statute the words are, 'That every person ought to use himselfe to his most advantage, without exaction, fine, imposition or contribution to be had, or taken of him, to, or by any English person or persons.'—Though some, that have argued before me against impositions, have urged this statute, as making against our present impositions, yet for my part, I am not of that opinion, but upon perusing the statute, doe rather thinke, that it extendeth only to impositions laid by the merchants of London, upon the merchants of other cities and townes not incorporate into their companies, as will evidently appeare by the statute: so as notwithstanding this statute, that which I have averred, and hath been yeilded to by the kings counsell, that no imposition was laid from Ed. 3. to queene Maries reigne, is not yet impeached.

There is yet one other statute of later time, in which mention is made of impositions, and that is 14 H. 8. cap. 4. The words are 'Every subject borne in England, and sworne to be subjects of other princes, as long as they shall so abide subjects to the other princes, shall pay such customs, subsidies, tolls, and other impositions, within this realme, as strangers doe.' I hold that this word Impositions, in this place, is used as a generall to all the particulars before mentioned, and no otherwise, and is no more in effect then charges; a thing usuall

in statutes of this nature, to adde generall words for the more securitie, which I collect by the word 'other' going next before it: for to what end should it be said, no 'other' impositions, if those particulars first named, were not contained within that generall word of impositions? This word 'other' is a relative, and must needs be answered with words going before, when there are no other words following. Besides, it is common in the statutes and records of Ed. 3. No imposition upon wools shall be laid, but in parliament; by which it appears, that a charge laid by parliament may be called an imposition; which is very evident by a statute made not above 28 yeeres before this, I meane the statute of 7 H. 7, cap. 7, which I spake of even now, where a charge of 18s. upon a butt of malunsey, laid by that act of parliament, is called an imposition; and as I have shewed you, the word imposition hath been applied to all these severall inventions, used by Ed. 3 for the charging of merchandizes. Nay, the word *maltoll*, which is Englished by Rustall an Evill Toll, as indeed it signifies, and in that respect is of a farre harder sense then the word Imposition, is used indifferently for a Charge set by parliament, or a charge set by the kings absolute power upon merchandizes.

*Inpositio*, derived from the verb *imponere*, is no other then the act of laying on, or imposing; and therefore in my opinion, impositions are more properly by the merchants called *imposts*, which signifieth the things imposed. But I shall not need any further to enforce this, considering it hath so liberally been confessed by the kings counsell, that there is no record or statute from Edw. 3, till queen Maries reigne, that giveth any assurance that Impositions, or so much as any one imposition was laid, during all that space of above 170 yeeres. Only it behoves me for further opening the truth, to testifie, that, being one of those that were by you employed to make search in the ancient custome books of those times remaining in the Exchequer, together with some of the best experienced merchants of this house, some of which had sate at the receipt of custome, wee had many meetings, and spent many whole dayes in turning over the old custome books, and as carefully as we could did survey some books of every age and time; but after all our search ended, could not finde any one imposition from the time of Edw. 3, till queen Maries reigne, to have been received by any customer or collector. And if you please to give me leave to remember to you the passages of those times you cannot but marvell, that none of all those princes should so much as attempt to trie the strength of this so beneficiall a prerogative, so much practised by Edw. 3, and when you have heard their occasions, and compared their other actions with their forbearance in this kinde, you will, I think, conclude, and say in your hearts, that surely none of all those kings had so much as any imagination, that any such prerogative belonged unto them, as to raise money at their pleasure, by

laying a charge upon merchandizes to be exported or imported, without assent in parliament.

Richard the second, being the grand-child and next successor of Edw. 3, in whose times impositions of all sorts did so much rage, had little lesse occasion then his predecessor had. For first, he had little treasure left him, and he was no sooner in his throne, but news was brought that the French had invaded the realme. They had burned Rye and Hastings in Sussex, they had taken and possessed the Ile of Wight, they had besieged Winchelsey. From the northern parts, the Scots had burned Roxborough, and were ready to overrunne all the north parts of England. Being thus beset with warre on all sides, doth his counsell, which in all likelihood had most of them been of counsell to his grandfather, advise him to raise money by impositions, as his grandfather had done (for this course of raising money by way of impositions, was yet fresh in all their memories)? They do not, but he taketh the ordinary course, by calling a parliament, which for maintenance of his charge in the war, the 2nd yeere of his reign, granteth him a 15th. He calleth another parliament, and hath another 15th granted, the 4th yeere of his reign. The warres increasing, his necessities were such, and so conceived by the parliament, as they granted him a most unusuall tax throughout the whole kingdom, upon every ecclesiasticall person, one and other, 6s. 8d. upon every other man or woman within the realm, 4d. which when it came to be levied, caused (though causelesly, because it was legally granted) that notorious rebellion, of which Wat Tyler was the captaine. This tax, as it was levied not without that great rebellion, so questionlesse was it unwillingly yielded to in parliament; and yet because there was no other course thought lawfull for the raising of treasure upon the subjects goods, then by their own assent in parliament, onely that course was thought fit to be practised, which was such as ought to be obeyed.—From the 5th to the 18th yeere of his reign, he obtained every other yeere one aide or other in parliament; sometimes a tax, sometimes a 15th, sometimes a subsidie of tonnage and poundage. In the 18th yeere, he was enforced to go in person into Ireland, to settle the state of that country, then in rebellion. All these troubles he had from abroad, besides those famous rebellions here at home, which afterwards cast him out of his seat; yet did he never for all this attempt to lay impositions, though he wanted not about him to put him in minde of his absolute power. For Edward Strafford, bishop of Exeter, lord chancellor of England, in a sermon made to the parliament held anno 21, as our chronicles report, did publicly maintain that the king was not bound by any law, but was of himself absolute and above law, and that to controule any of his actions was an offence worthy of death; at which parliament all that were present came armed, for fear of

the king; and the parliament house it selfe was beset with 4000 archers by his appointment. I will speak no more of him then this. Though he were a king of a weak spirit, yet did he not spare to practise upon his people the most grievous things that were; insomuch that he so farre discontented them that they deposed him by common consent in parliament, the onely desperate example of that kinde, that our histories doe afford, or I hope ever shall.

His successor Henry the fourth, in respect he held the crown by so weak a title, had cause to give the people all the content he could possible. And yet he was so oppressed with warres on all sides, from France and Scotland, but especially by continuall and dangerous invasions made by the Welsh, as without the aide of his people for the supply of his treasure, it had not been possible for him to have held his crown on his head. And therefore he pressed his people so farre, that in a parliament held the 5th yeere of his reign, they yielded to him so great and so unaccustomed a tax, as that the grantors thereof, as our chroniclers say, tooke speciall order, that no memory thereof should remaine of record onely to avoide the present; and yet the very next yeere following, his wants were againe grown so great, as his subjects, being assembled in parliament to give him further ayde, did resolve, that there was no other way to supply his want, then to take from the clergie their temporall lands and goods, and to give them all to the king; which being understood by the clergie, a resumption of all the gifts of Edw. 3, and Rich. 2, was propounded. At last, after they had sate a whole yeere, they gave him two fiftieths. At this time, most of his counsell and the great officers of the kingdom were spirituall men. Had they not now, if ever, a just occasion given them to have put the king in minde of his prerogative of laying impositions, not onely to the intent to have diverted him from the harkning to that desperate motion, that had been made against them to all their utter undoings; but were they not also bound in duty and conscience, in this time of so great necessitie, seeing the parliament knew not otherwise how to supplie the kings wants, to have advised him to have made use of his lawfull right of imposing; by which means, he might, without troubling the parliament, quickly have raised great summes of money? Certainly it was not, because they were ignorant of any such practise in former times; for none of them that were then of the counsell to Henry the 4th, but they lived in Edw. 3's time; and most of them, doubtlesse, were in Ed. 3's time men of age and discretion. But in all likelihood as they knew that Edw. the 3rd did lay impositions, so likewise they knew, that impositions had been from time to time, in those daies, condemned as unlawfull, and were become hateful to the people; and onely for that reason they did forbear to advise the king to take that course, though the

necessitie were never so great.—Another prerogative, as much concerning the interest of the subject as this of impositions; namely the abusing of coyne, this king made no scruple at all to put in practise, because he held it to be lawfull.

His sonne, and next successor, Hen. 5. who, by his many victories over the French, and his noble disposition and behaviour towards his people, was so farre beloved of them, as never was king of this realme more, though the kingdome were now, by one degree of discent, more firmly settled upon him then it was on his father, who usurped it; though also his expence of treasure, by reason of that great warre in France, were as much, as any king's of England ever were; though he had troubles also from his neighbours the Scots, and within his owne realme by rebellions; and lastly, though he spared not, for supplie of treasure, to suppress above 100 priories of aliens; yet neither out of the strength of his love with the people, nor in his extreame necessity, by reason of these honourable warres in France, for the maintenance of which the people would willingly have undergone any burden which he would have laid upon them, especially after the victory at Agencourt, did he ever so much as attempt the laying of impositions.

His successor Hen. 6. though indeed of a meek spirit, yet he was so followed with troubles within the realme, and from abroad, that he was inforced to crave such an extraordinary aide of his subjects in parliament, as the levying thereof was the cause of that famous rebellion of Jack Cade in his time. Besides, in the 18th yeere of his reigne, for the ease of his charge and supply of his wants, all grants by him made, of any lands, rents, annuities, or fees whatsoever, since the first day of his reigne, were resumed: and this is never yielded to, but in cases of extreame necessity. As for impositions, notwithstanding his great wants, he thought not of them.

Edw. 4. that succeeded him, was no lesse free from troubles; for he was, as you know, driven to forsake his kingdome, and to live for a while like a banished man with the duke of Burgundy. He was also inforced in the 5th yeere of his reigne to make a resumption; and the same yeere to abase his coyne. And Comines observeth of him, that he obtained a subsidie of his subjects in parliament, upon condition that he should himselfe in person undertake the war in France; and that only to get the subsidie, he passed the seas into France, but presently returned without doing any thing. What should such shifts as these have needed, if he might, without being beholding to his subjects, lawfully and without controll have raised treasure by laying of impositions? It is well worth the remembering, that which the same Comines, speaking in commendation of the frame of this commonwealth, saith, 'that this state is happy, in that the people cannot be compelled by the king to sustain any publique charge, except it be by their own consent in parliament.'

VOL. II.

I proceed from Ed. 4. to Hen. 7. omitting Ed. 5. and Ric. 3. because of the shortness of their reignes. Hen. 7. had indeed a more peaceable time than any of his predecessors; and yet he was not altogether free from troubles, both within the realme and from abroad\*. But his naturall inclination was rather to embrace peace. He was so provident and politique in the gathering and storing up of treasure, as never any prince of this realme was therein to be compared to him. He did himselfe take the accounts of his revenues, which I have seen under his own hand. He had for his assistants about him Empson and Dudley, men learned in the lawes, and by all probability very cunning in all the profitable points of the prerogative; men that intended or studied little else than the advancing of their masters profit; men even till this day infamous for their wicked counsell, in perswading that good king to lay such heavy exactions and burdens upon his people as he did. If these men, who in all likelihood should have best knowne the kings right, especially in so high a point of profit, had but had the least notice of so profitable a prerogative as this, would they not have been at strife which of them should first have put the king in minde thereof? Or if they had held it questionable, would they not have put it to some triall? Certainly there can be no cause imagined, that should make them thus to forbear, but either they were utterly ignorant of any such prerogative; or, that knowing such a thing to be claimed by some of the ancient kings, especially by Ed. 3, they knew likewise, that it was in the same times continually complained of in parliament, and always condemned; and that there were acts of parliament directly against it. And this is more probably to be conceived of them, being men of such searching spirits, and so well studied in point of prerogative, then that they were ignorant of the practice of Ed. 3. considering also that they were neerer to those times by 120 yeeres then wee are.

But that which most of all moves me herein is, that there was in H. 7's time such an occasion offered of making use of this prerogative, as there could not possibly happen any other that might better have justified the laying of impositions, which was this. The Venetians, to the intent to drive our merchants from fetching sweet wines at Candy, that they might the better employ their owne ships and merchants, did impose upon every butt of malmesey brought thence by English merchants foure ducats; by which means the English wholly lost that trade, and the Venetians made the whole profit thereof. This mischief was no other way better to be remedied, than by imposing the like, or a greater charge, upon merchants of Candy bringing malmesey into England; that so

\* H. 7. had a subsidy of tunnage and poundage granted to him for his life, as may appear by the Parl. Roll, 1 H. 7, which appears so where in our printed books.



they of Candy not being able to afford them better cheape than the English, the English might still fetch them from Candy, as they had wont to doe. I say, there could not possibly be a more justifiable occasion of laying impositions, than this was. And did this king, so carefull in other things of preserving his prerogative, and most of all in matters that concerned his profit, take hold of this occasion to lay an imposition by his absolute power? Nay rather, though he saw it convenient, and in a manner necessary, yet he conceived it to be unlawfull so to do; and therefore did it not by his absolute power, but by assent of parliament, as may appeare by the statute of 7. Hen. 7. cap. 7. printed; where in the preamble of the act, you shall see the occasion of the making of the act to be as I have opened it unto you: and you may perceive by the body of the act, that for the counterpoysing of the imposition of four ducats laid by the Venetians upon our merchants, there was imposed 18s. for a butt of malnesey, upon their merchants bringing it hither, to last as long as the imposition of foure ducats, which, as appeares by the act, came but to 18s. of our money, should endure. It is not probable, that this king, considering his other actions, would have suffered this to have been done by parliament, if he had thought he might have lawfully done it by his absolute power; and therefore it cannot almost be gaine-said, that in these times this pretended prerogative of laying impositions without assent of parliament was held to be against law.

Hen. 8. his sonne and successor, was so farre from the disposition of his father, in this point of thrift and providence, as there was not in the whole ranke of our kings any one like to him, for excessive prodigality.\* The great riches stored up by his father with so much care, and left unto him, hee so sodainly consumed in triumphs, masks, mummeries, banquets, pompous and braving warres, as was that of Turwin and Turney, and in the satisfying of his lust, as he was out of very necessity enforced to crave most unreasonable aids of his subjects in parliament, such as never before had been granted, which through very dread and feare were yeilded to him. Yet not so satisfied, that no meanes for the raising of money might bee neglected or unattempted, in the 15th yeere of his reigne, by the councill of that proud prelate cardinall Woolsey, he spared not to send out commissions into every shire throughout the whole realme, with privy instructions to the commissioners, how they should with most advantage behave themselves, in perswading the people to contribute to the king the sixth part of their whole estates, to bee paid presently, either in money or plate; whereupon followed extreme cursing, weeping and exclamation against the king and his councill, and

\* Hen. 8. had a subsidie of tunnage and poundage granted to him for his life, the first yeare of his reign, as appeares by the Parl. Roll.

the people were in point to rebell, had not the king stayed the proceedings of the commissioners by his letters. Finding that this way would not serve his turne, hee demanded a benevolence; which not answering his expectation, he did the same yeere raise unto himselfe a great deale of treasure by abasing his gold.

Such things as these, princes never put in practice, but when all other meanes faile them; and yet hee went many degrees beyond this. For, in the 27th yeere of his reigne he suppressed above 370 religious houses, the yearly value of whose revenues I have read to be no lesse than 32,000*l.* per annum in those days; and that of their goods, sold at very low prises, he made above 100,000*l.* in present money. About 4 yeeres after he dissolved all the monasteries, abbeies, priories, nunneries, and all other religious houses of what kinde soever throughout England. By which meanes, and by the sale of their goods, he gathered such a masse of treasure, as it might have been imagined that never any king of this realme should have needed to have sought reliefe at his subjects hands. Yet he himselfe, no longer than within 3 yeeres after following, craved and obtained, as may appeare by the statutes of that time, an excessive great ayde by parliament; and yet the yeere following hee did also abase his coyne more than halfe in halfe, such an abasement as never before or since was heard of, and could not but bee very grievous to the people; but because perhaps they held it lawfull so to doe, they made no publique complaint thereof. And it is worth the observing, that though this prerogative of abasing coyne be a thing which trencheth as deeply into the private interest of the subject as the laying of impositions; for by this meanes a man, that this day is worth in revenues a hundred pounds per ann. shall to-morrow, if the king be so pleased, be worth but fifty or forty, or lesse, in real value; and though also the practise of this prerogative hath not been forborn by any of the kings of this realme, and that some of them have used it very immoderately; yet cannot there be found any one publique complaint, that ever I have met withall, upon record against it, as from time to time there have beene many against impositions; which argues that the subject did make a difference between these two prerogatives; this, of laying impositions; and that, of abasing coyne; thinking the one lawfull and the other not. But to conclude my observations upon the actions of Hen. 8. The next yeere after this unconscionable abasement of his money, he craved a benevolence. The yeere following he tooke the profits of all the chantries, colledges and free chappels, &c. during his life, which ended the next yeere. Can any man imagine, that during this kings reigne it was held lawfull, or any such thing so much as dreamed of, to raise treasure by laying impositions? I will enforce it no farther, but leave it to the judgment of any reasonable man, that shall consider these things which I have remembered, whether or no it bee likely.

Out of the time of his sonne and successor Ed. 6, I can observe little, because of the shortnesse of his reigne. But methinkes, if his governors had imagined that any such prerogative had been due unto him, they should not in honor have forborne the practise thereof for the supplying of the kings great necessities, and instead thereof have craved of the subjects that unaccustomed and unreasonable subsidy, granted an. 2. of a certain sum of money upon every sheep and every cloth within the realme, for 3 yeeres: which afterwards for the unreasonableness thereof was released.

I have now gone through in such sort as you have heard, the times of all the kings from Ed. 3, till Q. Maries reigne; during which time what can there be more imagined, that might possibly have happened to have awakened impositions, if they had not been more than asleepe? Neither the necessity of just and honorable warre, nor the subtilties and curiosity of peace, nor the prodigality of some of these kings for the better satisfying of their pleasures, nor the covetousness of others, nor the softnesse of some of their dispositions, nor the nonage of others apt to be abused by evill counsellors, nor the dreadfull and fearefull awe in which some of them held their subjects, nor the assurance of the peoples extraordinary affection, which might have emboldened some others, nor the evil conscience of usurpers, nor any other motive whatsoever, which happened during this long time, could revive them; untill Q. Mary did at last raise them out of the grave, after they had been so many yeeres dead and rotten.

The first Imposition, that she layd, was that upon cloth, continued till this day, which grew upon a speciall reason; as may appeare by the printed booke of the rates of her customes and subsidies; in the end whereof you shall finde a Declaration expressing the losse sustained by reason of the difference between the customes and subsidies of wool and cloth. By which it appeares, that a sack of wool yeelded in custome six shillings eight-pence, and in subsidie thirty-three shillings four-pence; that the custome upon a short cloth was fourteene-pence, and that a sack of wool did commonly make foure short clothes, the custome of which was foure shillings eight-pence; so that the custome of wool made into cloth was lesse, then the custome and subsidie of so much wool not cloathed, in every sack in short cloathes thirty-five shillings foure-pence; which difference was reduced to an equality by rating upon every short cloth ten shillings. After this declaration made of the difference, and of the rate which reduced both to an equality, follow these words; 'Which difference considered, and the great losse sustained by us in the same, by reason that cloathing is much increased, it is thought convenient by us, with the advice of our councell, towards the reliefe of the losse, for to asseesse, upon the clothes carried out by way of merchandize, some larger rate then heretofore hath been used; and though it were reason to appoint such a rate as might

recompence the full of the losse sustained, yet upon divers considerations, at this time us, and our councell moving, we are pleased only to asseesse upon every short cloth, by the name of custome, six shillings eight-pence, &c.'

I thought good to open this at large unto you, that you might see, upon what speciall reason of equity this imposition was grounded, and how it differeth from ours. And it is worthy the observing, how the queene commundeth this increase of custome to be yielded unto her, not as an imposition, or by the name of impost, but by the name of custome; because it cometh in lieu of the ancient custome upon wool; which is the reason, that at this day it is demanded and paid by that name; whereas no other new raised duty hath that privilege, but they are either called subsidie of tonnage or poundage, if they be raised by act of parliament; or impost, if by the kings absolute power.—The name of Custome was anciently given to none but to wools, woolfells, and leather; and upon this occasion, to cloth also.—This imposition, though grounded upon such equity as you have heard, yet in Dyer, 1 Eliz. fo. 165. a. and b. it was, as appears by my lord Dyer, complayned of by the merchants of London with great exclamation, (which are his words,) and suit to the queen to be unburdened of it, because it was not granted in parliament, but assessed by queen Mary of her absolute power: whereupon there were divers assemblies and conferences of the justices and others, but their resolution is no where to be found, at least, by us. It is very probable, that, if they had given judgment for the queen, it would not have benee kept close.\* But howsoever the profit was too great to be taken from the crowne, and therefore it continues till this day.

Howsoever the reason in equity in the laying this imposition upon cloth may seeme to bee sound unto some men, and so to allow of this imposition as differing from ours, yet for my part I hold it not so, when I consider what course was taken by Ed. 3, upon the same occasion. An. 11. E. 3. cap. 1. and 2, it was enacted, that no wool should be carried out of England, but by the kings licence; and that no man should weare cloth, other than such as should be made in England. This law tooke such effect, as within ten yeeres the greatest part of the wool in England was made into cloth; and it became to be transported in such abundance, by reason that there was no custome at all due upon cloth, and the custome and subsidie upon wools was very high, that in the 21st yeere, the king, finding his custome of wools so much decreased, doth seeke to remedy it, not by imposing a new charge upon cloth by his absolute power, as queen Mary did, but did it by assent of his subjects in full parliament, as I collect partly by my lord Dyer in the place last mentioned, but more fully by a recitall in a record amongst us,

\* Plowden's argument against it, in Mr. Tate's hand.

of 24 E. 3. Ro. 13. Orig. de Scaccar. to this effect: 'That, Whereas the customes and subsidies due and granted upon wools are much decreased, because a great part of the wool of England is made into cloth, for which no custome is due; and whereas in consideration thereof, at our council held the 21st yeere of our reigne, by the common assent of the prelates, earles, and barons, and others, it was ordeined and accorded, that 1*sd*. by denizens, and 20*th*. by strangers, should be paid for every cloth of assize, &c. made of English wool, and transported; upon paine of forfeiture of the clothes.' And so followeth an authority given to collect the same.

The next Imposition laid by queen Mary was forty shillings upon a tun of French wines, imposed in the 5th yeere of her reigne: at which time there was first a proclamation made, that no wines at all should be brought from France, being then in enmity with England, upon paine of forfeiture of the wines; which by the way, is a strange clause in a proclamation. Immediately after this restraint there was an order made by the queen and her privy counsell, that such as would might bring in French wines, notwithstanding the proclamation, paying forty shillings upon every tun by the name of impost, as doth appeare by record in the rolls of Easter terme, 1 Eliz. in the office of the kings remembrancer of the Exchequer, in the Case of one Germane Ciol, against whom an information was exhibited for not paying the said imposition. Whereunto, taking it by way of traverse, that there is any law of the land by which he may be charged with impost, he pleads a licence made unto him, an. 1 and 2 Ph. et Mar. to import a certaine number of tunnes of wine within a certaine time, any restraint then made, or afterwards to be made to the contrary, notwithstanding; provided alwayes, that the custome, subsidie, and other duties due and accustomed to be paid to the king and queen, were duly satisfied: and he shewes, that, for all wines brought in by him during the life of queen Mary, he paid the subsidie of tonnage, viz. three shillings for every tun, which was all that was due and accustomed to be paid. Upon this plea a demurrer was joynd, and judgement given thereupon against the queen. This Judgement hath been enforced in the maintenance of Impositions. Whether or no it make not rather against them, I leave to your censures.

Nere about the same time there were Impositions laid also by queen Mary upon all French commodities whatsoever to be imported, as may appear by the port-bookes of those times in the Exchequer; which impositions were received to the use of queene Eliz. in the beginning of the 1st yeere of her reign. But ere the yeer ended they were all taken away, as may appear by the same port-bookes; which in my opinion is a great argument, that they were not then held lawfull. For princes doe not so easily give over their hold in matters

of profit, if they be any way able to maintain it. What hath hitherto upheld the imposition upon wines, I know not, except it be the great profit that comes by it to the crown, and because there was never any late judgement given directly against impositions.

You have hitherto heard what reason and direct proofs I have used to maintaine, that by the common-law the king cannot at his will increase his custome by way of imposition. You have, secondly, heard what the practise of former ages hath been in this kinde, till this day; from which I have also drawn reasons of inference, that prove the common-law so to be. But now, admitting that by the common-law it had been cleere and without question that the king might at his will have laid impositions, and that also the same could have been cleerly proved by the practise of the ancient kings; yet I affirme, that so stands the law of England at this day, by reason of statutes directly in the point, as the kings power, if ever he had any, to impose, is not onely limited, but utterly taken away; as I hope I shall be able evidently to prove, notwithstanding any objection that hath been made against the interpretation of the statutes to this sense.

The first statute is in Magna Charta, cap. 30. The words are, 'All merchants, if they were not openly prohibited before, shall have their safe and sure conducts, to enter and depart, to goe and tarrie in the realme as well by land as by water, to buy and sell without any evill tolls, by the old and rightfull customes, except in the time of warre. And if they be of the land making warre against us, and be found in our realme at the beginning of the warre, they shall be attached without harme of body, or goods, untill it be knowne to us, or our justices, how our merchants be intreated there in the land making war against us, &c.'

The statute, of which this is a branch, is the most ancient statute-law we have, wonne and sealed with the blood of our alicestors; so revered in former times, that it hath been by parliament provided, [25 E. 1, cap. 1, 2, 3, 4.] that transcripts thereof should be sent to all the cathedrall churches of England, there to remaine; that it should be twice every yeere publikely read before the people; that likewise twice every yeere there should be excommunication solemnly denounced to the breakers thereof; that all statutes and all judgements given against it shall be held as void; that it should be received and allowed as the common-law, by all such as have the administration of justice; and it hath been no lesse than 29 times solemnly confirmed in parliament. I will, therefore, with so much the more care, endeavor to free this law from all the objections, that have been made against it.

The first Objection doth tend to the diminishing of the extent of this statute, as touching the persons whom it may concerne; for it hath been collected out of the latter words of the statute, that it should extend onely to

merchants-aliens, and not to denizens.—First, it is improbable, that the makers of the law should be more carefull to provide for the in-dempnity of merchant-strangers than of English; except perhaps they might imagine, that English merchants were already sufficiently provided for by the common-law. If that were their reason, as there could be no other that I can imagine, it doth as much maintaine my opinion, as if they had been contained within the statute.—Again, the words are generall, ‘all merchants;’ and, ‘qui omnes dixerit, nullos excipit.’

Besides, the statute is a beneficiall law; in which case particular and speciall words doe alwayes admit a generall extent: and therefore, to restraine generall words, as the objectors would, is against all reason, and rule of law. As for the latter words, ‘tis true, they doe indeede extend onely to merchant-strangers; but the sense of the first sentence is perfect without this: and as long as no absurdity nor contradiction doth follow by interpreting the first words to extend to all merchants in generall, and the latter onely to merchant-strangers, the most ample and beneficiall construction is ever the best, as in all other statutes of this nature.

But this Objection is, in my opinion, clearly removed by two statutes made by Ed. 3, in declaration of this very clause. The first is, 2 Ed. 3, c. 8, the words are, ‘All merchants, strangers and privies, may goe and come with their merchandizes into England, after the tenure of the Great Charter.’ I take it, that ‘privies’ in this place, being the very word that is found in the originall, which is in French, ought to be understood ‘denizens;’ for, otherwise I suppose it would have been joynd to the word ‘strangers’ by a conjunction disjunctive, which is usuall where the words are of one sense; and not by a copulative, as here it is. Besides, I take the word ‘privy’ to be derived from the Latin, *privatus*, which signifeth a particular property; as *res privata*, a mans owne private estate; so, *mercatores privati*, our own merchants. That merchant-strangers should be first named, is common in statutes and records.

The next statute explaining this of Magna Charta, is 14 Ed. 3, c. 2. The words are, ‘Whereas it is contained in the Great Charter, that all Merchants shall have safe conduct, &c. We grant that all Merchants, denizens and forreins, may freely passe, &c.’ which I take to be no other than a meere declaration of Magna Charta.

The second Objection made against this branch of Magna Charta, is, that the meaning thereof was to secure the merchants, not from a new increase of custome to be imposed by the king, to be paid at their entrance or going out of the ports, such as our impositions are; but from certaine petty exactions, as tolls and such like, which were then usually demanded of them within the land, by the townes through which they were to passe, and where they sold

their merchandize; for the farther remedy of which there were afterwards divers statutes made, which doe evidently manifest that such was the mischief. And they doe the rather make this collection because of the words, ‘buy and sell without evil tolls;’ for, say they, impositions are not paid upon the buying and selling of merchandize, but when they are to ship or unship. They take hold of the word Toll, which properly is an exaction for passage within the land, or for sale in markets or faires. These objections notwithstanding, I hold it somewhat cleere, that the meaning of this statute was principally to secure merchants touching impositions. My first argument is drawn *ab auctoritate*, from the authority of the wisest and most sage men in greatest places and offices within this kingdom, in the times wherein they lived, and who also could so much the better judge of the true meaning of this statute, in that they lived so neere the time of the making thereof, even in the beginning of the reign of the next king (save one) to him that made this statute. I meane those, who made the ordinance in 5 Ed. 2, heretofore divers times mentioned by me, who, in alledging their reason against Charta Mercatoria, doe amongst other things say, that the same was made against Magna Charta. What was the cause of the griefe conceived against Charta Mercatoria, other than the impositions by colour thereof laid upon forraine commodities? It appears by the ordinance, that was the onely cause. If then Charta Mercatoria were by them adjudged to be against Magna Charta, only because by colour thereof new impositions were raised without assent of parliament, it is evident, that they interpreted the statute of Magna Charta to be made against impositions. If they had thought it to have extended onely to petty tolls and exactions within the land, as is objected, then could it not have extended to Charta Mercatoria. As for the words, ‘buy and sell, without any manner of evil tolls,’ I denie not but the words may perhaps have that sense which hath been collected out of them, viz. that in buying and selling, they should be free also from unjust exactions within the land. But I say further, that these words, ‘without any manner of evil toll, by the old and rightfull customes,’ do extend not onely to the next precedent words, ‘buy and sell,’ but also to the former words, ‘enter and returne,’ and more principally to them then to any other; for to have provided, that they should be free from those petty exactions of tolls in markets, and for passing through cities and townes, and to leave them subject to impositions to be laid on at the kings pleasure, had been but a slender securitie. This exposition of mine is confirmed by a record here amongst us, of 16 Hen. 3, no longer than seven yeeres after the making of this statute; by which it appears, that the king commanded his officers at the ports, ‘to signifie to all merchants, that they might with safetie enter into his kingdom, paying the rightfull and ancient customes,’ ‘Nec timeant sibi

'maletoltis quas faciet rex.' As touching the word Toll, which they say is to be understood of tolls for passages, and for buying and selling in faires and markets, it behoves me to say something of the derivation thereof; the rather, because it is very often used in our ancient statutes and records in the same sense as it is in this place; and by the derivation thereof the naturall and true meaning of the word shall be best understood. I hold it therefore to be derived from the Latine word *Teolonium*, which signifies custome, by cutting off the latter part of the word, and retaining onely the first part *teol*, by contraction *toll*; of which manner of derivation there are infinite examples in our language. The Latine *Teolonium*, as saith Calvin in his *Lexicon Juris Civilis*, is derived from the Greek *Τωα*, which signifies as well *custome* as it doth *finis*. Hence it is, that the customers are called in Latine *Telomarii*.

Thus you see, that the genuine and primitive signification of our word Toll is no other than custome upon merchandizes. From the word Toll, are come those two barbarous Latine words found in our statutes and records; *tollum*, which is the word used in the record of 16 H. 3. but even now vouched by me; and *tolnetum*, the originall word in the statute now in question, which I must confesse is also in our law Latine used by us for Toll in the market and Toll for passage, as may appear by the register and the book of entries. But in this place, *malum tolnetum* properly signifies, not a toll in the common sense, but an unlawfull charge laid by the king upon merchandizes, as an increase of custome, according to the primitive signification; which is evidently proved, in that it is here opposed to old and rightfull customes, 'sive omnibus malis tolnetis per certas et antiquas consuetudines.' Wherefore it ought so to have been translated, for so it signifies, 'without impositions, by the old and rightfull custome.' This exposition and translation is further warranted by the use of the word *maletolt*, so often found in our ancient statutes and records, which without scruple is derived from the Latine, *malum tolnetum*, the very word of our statute. I find it diversely written, *maletout*, *maletolt*, *maletot*, and sometimes *maletent*; but I never find it any where used in any other sense then for an imposition by way of increase of custome upon merchandizes. Sometimes indeed, but that very rarely, it is taken in the best sense, for lawfull and rightfull custome, as the word imposition sometimes is; but then commonly it is accompanied with another word to free it from the worst sense, as *droiturel maletout*, &c. That *malis tolnetis* in this place ought to be translated Impositions, may be farther proved by that which I find in a writer of the French history, one Jean Serres, who saies, that in the time of Philip le Beau, king of France, which was about the time of Ed. 3, king of England, there were rebellions in France because of impositions laid by the king, which in those days they did, saith he, call *ma-*

*louts*, the very word then anciently used in Engl. for impositions, as may plentifully appear by the statutes and records of H. 3, Ed. 1, Ed. 2, & Ed. 3; for the word Imposition was not used in any French record, statute, or other, for ought I have seene, till Ed. 3. I find it once used in Latine, 12 Ed. 3, in the letter which king Edward the third writ to the archbishop, to excuse him to the people for laying impositions; and as all that letter throughout is of an eloquent stile, so as it seemeth he was careful to avoid also that barbarous word, *malum tolnetum*, though common and familiar, and instead thereof to use the pure Latine word *impositio*. Sylvius, writing upon Tullies oration for Marcus Fonteius, where these words are used by Tully, 'imposuit vectigal,' saith, 'Ita usitatum vulgo est ut Vectigalia nova appellent impositiones.' The word *vectigal*, in this place, though in a generall sence it may be applyed to any renew whatsoever, yet, with the civill lawyers, it is by way of excellence commonly used for custome, as may appear by Calvin in his *Lexicon*. 'Vectigal, quod fisco vel reipubl. portorii nomine penditur, id est, pro meritis, quæ invehantur vel evehantur.' Sometimes they use to joyne with it, for a more cleere distinction, the word *portorium*; as a man would say, the revenue of the ports; agreeable with which, upon some records of Henry the third's time, I have found it to be called *aritus portorium*. By this it is evident, that *impositio* in pure Latine, and *imposition* in English, is the same with *maletolt* in French and *malum tolnetum* in our law Latine; and they doe all signifie a new increase of custome, and not any thing else. Wherefore I conclude, that these words, 'sive malis tolnetis,' in our present statute, are naturally and properly to be expounded, and understood of Impositions, and so ought to have been translated, and not as they are. And although the word Imposition itself, as also the word *maletout*, and *malum tolnetum*, may be, as I have confessed, taken as well for a new increase of custome by a lawfull means, viz. by assent in parliament, as for an increase of custome by the kings absolute power, which is unlawfull; yet by the words that immediately follow it is evident, that this statute doth onely intend unlawfull impositions, that is, impositions laid by the kings absolute power, without assent in parliament. Otherwise would they not have been opposed to due and rightfull customes, as by the words of the statute they are.

But because there hath been some exception also taken to the exposition of the word Custome in that sense in which I take it, that is, for Custome upon merchandize, for that the word in the originall is *consuetudo*, which signifies an usage, and not *custuma*, which is the Latine word we now use for Custome upon merchandize; it behoves me therefore to say something touching these words, *consuetudo* and *custuma*, for the clearing of this scruple. This word *consuetudo*, in his first and proper signification, doth, I confesse, signifie

an usage, or practise of a thing time out of minde. But it is evident by the records in the time of H. 3, and Ed. 1, this word in a more speciall manner was applied to all, or most of the duties belonging to the crowne by reason of trade; as 'consuetudo aquæ Thamesis,' 'consuetudo piscis venientis ad vicum pontis London' 'consuetudo quæ vocatur scavegium, consuetudo quæ vocatur gauge.' But yet more specially it was applyed to that dutie, which we, following the same rule, because of the greatnesse of the revenue, doe likewise *per excellentiam* call Custom. This may appeare by the pipe roll of 52 Hen. 3, with this title Consuetudo Mercandizorum, and by divers other records of Hen. 3's times. The rolls and records of the beginning of Ed. 1, doe likewise prove the same very evidently, insomuch that not onely that which in this kinde belongs to the king by the common-law and by ancient prescription, was called *consuetudo*; but in later time, if any increase were of that dutie, though it came not by prescription, but by grant in parliament, or otherwise, yet it still retained the name *consuetudo*, which by continuance of time came to be the proper name to that kinde of dutie howsoever it began. And therefore in 3 Ed. 1. you shall finde, that after the old custome of woolls was increased to a demy-marke by act of parliament, yet the word *consuetudo* was nevertheless still retained, but with an addition; for it was then called *nova consuetudo*. Nay, though the increase were by the kings absolute authoritie, and upon the matter a meere imposition, yet the king in his commission did alwayes call it *consuetudo*; as in 16 Ed. 1. the imposition of foure shillings upon a tun of wine is, in the kings commission to collect it, called *consuetudo*. Nevertheless, I assure myself, the people called it by some worse name, as *maltoft*, or the like.

The severall applications of this word *consuetudo* to all duties whatsoever belonging to the crowne by reason of trade, is the reason, as I conceive, that the word is used in the plurall number in the statute of Magna Charta, 'per antiquas et certas consuetudines;' that so they might bee secure against all unjust exactions upon merchandizes whatsoever. But, as I have said, the principall scope was to provide against impositions; and by reason also that the word *consuetudo* was taken as well for impositions as for rightfull customes, therefore, to make all sure, they insert the words 'antiquas et rectas.' This word *consuetudo* in this sense continued till about the twentieth yeere of Ed. 1. after which time I cannot call to minde that I have seene it upon any record. In stead and place thereof came in the word *custuma*, which I find first in Charta Mercatoria an. 31 Ed. 1. where the increase of custome by the grant of merchant-strangers is called *parva custuma*; and that which before was called *nova consuetudo*, doth now begin to lose that name, and to bee called *magna custuma*; which termes of *magna custuma*, intending thereby that increase made by parliament, anno 3 Ed. 1. upon

the three staple commodities, woolls, woollfells, and leather; and *parva custuma*, intending thereby the increase granted by the merchants-strangers, an. 31 Ed. 1. are the termes used at this day by the customers, and by which they distinguish their entries. This word *custuma*, I finde to have been also promiscuously used by E. 1, E. 2, and E. 3, in their commissions, and applied, as well to increase of custome by way of imposition or by acts of parliament of those times, as to ancient custome upon the staple commodities. But regularly none ought to be called *custuma*, but that which is due upon the staple commodities; and so is it used at this day, except only cloth: for if it bee laid by act of parliament, it is called a Subsidie; if without assent of parliament, Imposit. You see in what sense the words *malum tolmetum* and the word *consuetudo* have been used in former times, and are thereby able to judge how they ought to be understood in this present statute, which, as I have said, ought to have the most benign interpretation that the words may beare.

But it hath beene likewise objected, that in this statute there is a special clause of exception, which leaveth the king at his liberty to lay what impositions he pleaseth, this statute notwithstanding. And that is the words in the beginning of the statute, 'All merchants, if they were not openly prohibited before, shall have their passage, &c.' which implies, say they, that if they be prohibited, which rests wholly in the kings power, then they are not to have benefit of this statute, touching the freedom from impositions; and they say farther, that the very laying of impositions doth imply a restraint *sub modo*. Though I purpose to speake more fully in answer of this objection, when I come to shew you the weakness of the reasons alledged for impositions, yet I cannot forbear in this place to speake a worde or two in answer thereof, having the statute now before us. 'Except they be prohibited, they shall have free passage' (saith the statute) 'without paying evill-toll.' This doth imply, say they, that if they be prohibited, they may be compelled to pay impositions. But that cannot be necessarily concluded. It implies indeed somewhat strongly, that they may bee prohibited. The statute of 1 R. 2. cap. 12. inhibiteth the warden of the Fleece to deliver any prisoner out of execution, unlesse it bee by writ or other commandment of the king. It may be as strongly implied out of this statute, that the king may, by his commandment without writ, deliver a prisoner out of execution: but the contrary hath alwaies been held. [1 & 5 P. & M. fo. 162, b. Dyer.] The same objection is made, and the same answer may be given to another exception in the latter end of this branch, except in the time of war.

I come to the Second Statute against Impositions, which is the statute *de tallagio non concedendo*, touching the time of the making of which there is great variety of opinion; for it is not, for ought I could ever learne, found any

where upon record. Justice Rastall accounts it to have been made 51 of H. 3, and with him agrees an old manuscript which I have seen. It may well bee; for in one of the statutes you shall finde a pardon to Humfrey earle of Boham earle of Hertford and Essex constable of England, and to Roger Bygott earle of Norfolk and Suffolk marshal of England, who both lived in that time. Thomas of Walsingham in his history of England saith it was made in the 25th yeere of Ed. 1. Hee reciteth the statute *de verbo in verbum* as it is in our printed bookes; otherwise I should have thought he had meant another statute against impositions made indeede 25 Ed. 1, and found upon the records of that yeere. In our printed statutes at large, it is placed last of all the statutes of E. 1. Though there be some disagreement about the time of the making of this statute, yet they all agree the occasion to be the laying of a great imposition upon wool. The words of Thomas Walsingham; 'Auxit rex tributum lanæ ad 40s. cum prius ultra dimidiam mercam non daretur. Tota. autem communitas sensit se gravatam de vectigali; lana enim Angliæ fere extendit ad medietatem valoris terræ et vectigal ad quintam partem terræ.' The custome of wools, as you perceive, was in those dayes esteemed to bee the fift part of the value of the whole land. It followeth in him, that upon complaint the subject at last obtained the statute I nowe speake of, the words of which are, 'No tallage or ayde shall bee raysed or set by us or our heires in our realm, without the assent and good will of archbishops, earles, barons, knights, burgesses, and other freemen of the land.' After these generall words, by way of provision against all manner of burthens whatsoever to bee laid in time to come without assent of parliament, followeth in the next branch, save one, especial provision for the taking away of the imposition then in demand upon wools; which latter clause, as it doth cleerely shew the cause of their present griefe to bee the same which our chronicles say it was, so doth it likewise make it evident, what it was which they sought to be secured of for the times to come. Neither are the words themselves so obscure, by reason of the generality of them, but that they also without knowing the occasion of the making of the law doe directly point at impositions; for, though indeede the word Tallage be, as I conceive, to be understood only of charges within the laud, yet the word Ayde extendeth to all charges of what nature soever. Nay, that even impositions themselves have been called Aydes or Subsidies, which is all one, is evident by almost all the records of the Exchequer here amongst us, especially by those of Ed. 3's time; in which, wheresoever you finde any mention made by the king, in his commissions, of an imposition raised by him, hee ever calls it Subsidium or Auxilium. So likewise in the printed statute of 36 Ed. 3. cap. 11, you shall finde, that the imposition by grant of merchants there mentioned is called a Subsidie or Ayde. This exposition of the word ayde, concurring with the occasion

of the making of the statute, doth in my opinion strongly enforce this statute against impositions. And 'tis to bee observed, that in this statute there is no saving or exception of the kings antient right, which, as our chronicles say, was a point principally insisted upon at the making of this law, earnestly pressed by the subject to bee without that clause, and for a long while stood upon by the king, but at last yielded unto in such sort as you have heard.

The next statute (third) against Impositions is 25 E. 1, c. 7. The words are, 'Forasmuch as the more part of the cominality hath found themselves sore agrieved with the maletolt of wools, viz. a toll of 40s. for every sack of wool, and have made petition to bee released of the same, wee at their requests have cleerely released it, and have granted for us and our heires, that wee shall take no such things, without their common assent and good will, saving to us and our heires the custome of wools, skins and leather granted before by the cominality aforesaid.' I might, in enforcing this statute, rely upon a rule of law for the exposition of statutes of this nature, 'Omnis impositio est odiosa, ideo stricta contra impositiones, et large ad favorem gravatorum interpretanda est lex contra impositiones data.' But there shall not need any such favourable construction; for the words are in themselves very cleere. The law consisteth of three parts. The first is the kings grant of a petition made by the commons for the releasing of an imposition of 40s. upon a sack of wool, then in demand. When the present grief was ended, the next care was to prevent the like mischief in all times to come. It therefore followeth, 'And wee have granted for us and our heires, that we shall take no such thing without their common assent,' which is the second part of the law. The saving in the end is the third part.

Against this generall provision two objections have bene made.—First, that the words 'no such things,' are to be understood only of the burthensommesse and excesse of impositions, and not otherwise. 'No such things,' that is, say they, no such grievous impositions as this present imposition is. It had bene a poore security for times to come, to have left it to interpretation, whether or no impositions, which might happen to be laid in after ages, be as grievous as the imposition complained of in this time, by comparing one with the other. 'Tis so uncertain a computation, as no man, when hee thinks thoroughly of it, can imagine, that men, worthy to sit at the making of laws, should suffer such a thing to passe them. Who can certainly say, whether our impositions bee more or lesse grievous then the rate of 40s. upon a sack of wool? Beside, how easily had this lawe bene to have bene eluded by abating only 12*d.* or but 1*d.* in the next imposition? For, if it be but a penny lesse, it is no such imposition, for the burden. Therefore it must needes bee expounded of the quality and very nature of the thing complained of, and not of the quantity. No such thing, that is, no such thing as this is,

that is to say, an imposition. But that, which will cleere this objection, is a proclamation made the very next yeer after the making of this act, [26 E. 1. Inter brevina retorn. de term. Mich. in Scac. in offic. rem thesaurar. ibidem.] in which the king reciting this act, instead of these words, wee will take 'no such thing,' useth these words, 'nullam aliam customam sine communi consensu capiemus,' not only 'no such,' but 'no other.' By which you may see, that the words were then interpreted in that sence, in which I doe now interpret them.

But admitting, say they, that it bee so to bee expounded that the king will lay 'no other imposition' without assent in parliament, that is to be understood, say they, 'no other imposition upon wools,' and not otherwise; which is their second objection. It were a very strict construction for a statute of so beneficiall an intent as this is so to restraine it; if there were no other words in the statute that did enlarge the exposition. But by the words following it is most evident, that the scope of this law is more liberall then so; and that the kings intent was for ever to secure his subjects, against all charges of this nature, I meane impositions, not upon wools only, but upon any other merchandise whatsoever, which I collect from laying all the parts of the law together.—The petition for present ease is to be released onely of the *maltoit* of foure shillings upon a sack of wool, which is yielded to. The security for the time to come is 'we will take no such thing.' The saving, which followeth that, is, 'saving the custome of wools, woolfells, and leather.' I observe, the saving extends not to wools alone, as the petition doth, but also to woolfells and leather, by expresse name; by which it is evident, that the securitie for the time to come is of a larger extent than to stretch onely to wools, as hath been objected. For else, to what end should woolfells and leather be excepted in the saving, if they had not been contained in the generall words, 'no such thing?' An exception cannot be but of a thing contained in former words. If therefore the grant would have extended to woolfells, if they had not been specially excepted, then do I conclude by the same reason, that it doth extend to all other merchandizes not excepted; for the words are generall. And so I leave this law cleered of all objections, and very full against impositions.

The next [fourth] statute made against them is 14 Ed. 3. cap. 21. By the first part of which law you may perceive, that, whereas the commons had prayed the king not to take of wools, woolfells, leather, tyn, or lead, any more than the ancient custome, the king prayed them to grant him forty shillings upon a sack of wool for a yeer and a halfe, which they granted. Whereupon the king, by way of retribution, and in answer of their petition, as touching the wool, causeth it to be enacted for their security in time to come, 'that neither he nor his heirs would demand, asseesse, nor take more custome of a sack of wooll than sixe shillings

VOL. II.

'eight pence: and so likewise upon wools and leather, no more than the ancient custome, without assent of parliament.' All this while there is no answer given touching the tyn and lead mentioned in the petition; upon which, as it appeares, the king had also laid impositions. But there doe follow certain generall words, by which not onely tyn and lead, but all other commodities whatsoever are freed from impositions. The words are, 'the king promised in the presence of his earles, barons, and others of his parliament, no more to charge, set, or asseesse upon the custome, but in manner aforesaid.' Except these words doe extend to lead and tyn, to free them from impositions for times to come, as well as wools, woolfells, and leather are freed by the former speciall words, their petition touching tyn and lead is no way answered. And if they doe extend to tyn and lead, by reason of the generality of the words, they doe by the same reason extend to all commodities; for what more liberall words can there be than these; 'that the king will not charge, set, or asseesse upon the custome?' These words, 'the custome,' being words indefinite, are, you know, equivalent to an universall, according to the rule, 'indefinitum aequipollet universali.' And although the king doe but promise, yet I doubt not but in this case his promise is a law. And it is worthy the observing, that the lords doe in very extraordinary and unusuall manner solemnly undertake, as much as in them lyeth, that they shall procure the king to hold the same, and 'that they shall in no wise assent to the contrary, if it be not by the assent of the prelates, earles, barons, and commons, and that in full parliament;' and for the greater surety, and to give cause to eschew all counsel to the contrary of this ordinance, 'the prelates have promised to give sentence upon them that counsell against the same in any point;' which are the very words of the statute in print.

The statute of 14 Ed. 3. cap. 21. [No. 5. Ro. Par.] was yielded unto by the king, upon a petition exhibited the parliament before, both by the lords and the commons, praying that a law might be made against impositions, as may appeare by the records of the 13th yeere of Ed. 3. at which time they likewise prayed, that the king would be pleased to grant them a charter to the same effect, to be enrolled in parliament. The statute you have heard. The charter followeth in our printed books immediately after the statute, where the king in the preamble thereof, reciting the great gift that he had given him at the same parliament, that is to say, the 9th fleece, 9th sheep, and 9th lamb throughout the kingdom, which indeed, was a very extraordinary great gift, (and therefore his grant, in regard thereof, is to be intended so much more beneficially) doth in lieu thereof, for him and his heirs, grant to his subjects in these words: 'From henceforth they shall not be charged, nor grieved, to make any ayde, or to susteine charge, if it be

2 11



'not by the common assent of the prelates, earles, barons, and other great men, and the commons of our said realme of England, and that in parliament.' It hath been objected, that these words, aide and charge, are to be understood of charges within the land, such as are taxes and tallages, and not of impositions upon merchandizes. And this is the only objection made, or indeed can be made against this statute; for the clearing of which, I can say no more then already I have proved by matter of record for the opening of the sence of this statute, viz. that this charter and the last statute were made upon a petition exhibited in parliament, for a law and charter to be made against impositions upon merchandizes. And therefore that conjecture of theirs, that it should extend only to taxes, and not to impositions, cannot but fall to the ground; especially since there is not in the petition, any mention at all of taxes or tallages, or of any other charge or aide but impositions onely, then which there cannot almost be a clearer proof, then that this law being made upon this petition, is to be expounded against impositions. Which, if this petition had not been extant, would with no lesse cleernesse have been proved, by considering the mischief at the time of the making of this law, which was not tallage or taxes, but those heavie impositions of foure pound and five pound upon a sack of wool, by way of dispensation with the statute of 11 E. 3. cap. 1. of which I have formerly made mention. So as this statute, being made in the first intention against dispensations for money with a penall law, though the occasion were particular, yet, the words being generall, I hold, that with reason it may be extended against all dispensations with penall lawes for money. In particular, I hold, that the raising of money, by Dispensations with the statutes against ale-houses, is, if not by the common law, yet by the force of this law, unlawfull; for certainly, 'quod prohibitum est una via, non debet alia permitti.'

As for the words Ayde and Charge, I have already proved, that it was a terme by which impositions were commonly called in those times. That they were also called Charges is evident by very many records of those times, where complaint is made against them, as 21 Ed. 3. numb. 11. 'Les commons prient que la charge de 21s. sur sack de lane soit ouste,' 21 Ed. 3. numb. 16. 'The commons pray that no Charge be set upon them without assent of parliament.' The kings answer is, if any Imposition be levyed unduely it shall be taken away. Of this kinde there are very many presidents, so as if the precedent petition had not assured us of the scope of this lawe as it doth, the very words themselves, rightly understood, would have made it cleere.

In the same charter there is another clause as beneficiall as this, to this effect, 'all merchants denizens and forreins, except those which be of our comitie, may without let safely come into the realm of England with their

'goods and merchandizes, and safely tarry, and safely returne, paying the customes, subsidies, and other profits reasonably thereof due.' The objection to this clause is very obvious, for what, say they, can these words, 'other profits reasonably due,' signifie other than Impositions; for, by the words going before, custome and subsidies are expressly named, and there is, say they, no other third profit upon merchandize but impositions, and indeed this statute they themselves have vouched in maintenance of impositions. To this objection it might serve for a full answer, that there are other duties then customes and subsidies due upon the landing of wares; for example wharfage, crantage, scavage, and such like, the which with more probability I may conjecture to be intended by these words, 'other duties,' then they can conjecture it to be meant of Impositions. *Sed in planis non opus est conjecturis.* The best expositors of this act are those that lived in the same times, and they doe cleerely expound this clause to be made against impositions, as may appeare by the record of 21 E. 3. No. 29. for you shall there find a petition exhibited in parliament by the commons to be relieved touching an imposition upon wools, alledging for a reason of their petition, 'that every man ought freely to passe, paying the ancient custome as it was ordained by the kings charter.' This petition against impositions was exhibited by the whole parliament, within six yeeres after the making of the charter, as may appeare by comparing the times; and if they had not then thought, that Impositions had been meant to have been provided against by this charter, they would not certainly have made such a speciall reference thereunto.

In discovering the weaknesse of the reasons alledged in maintenance of Impositions, I shall not greatly neede to say any thing more then hath been said; because the state of the question hath beene already so thoroughly opened unto you, that whatsoever can, with any colour of reason, be said for impositions, may receive an answer out of that which hath beene spoken against them. Nevertheless, I will in a few words recall to your memories their reasons; and in as few apply the answers to them, with some additions of mine owne, that, by laying both together in your view at one time, the weaknesse of the one and strength of the other may the better appeare unto you.

It hath beene said, that the old custome of a demi-marke upon a sack of wool must have his beginning, either by the kings absolute power, or by a legall assent of the people, which can be no where but in parliament, and cannot but appeare of record; but because no such assent can be showne, therefore they conclude, that it began by the kings absolute power, and inferre that the same power remains still. The substance of this argument is found in my lord Dyer in the place cyted by me. It was much enforced in the Exchequer. But as touching the particular of the old custome of a demi-marke upon a sack, and the other old custome

upon fells and leather, it is now no longer urged; because it appears expressly by divers records of 3 E. 1. in the Tower—that it was granted ‘per les grandes et al prier des comons et de les merchants de tout Engleterre,’ and by a record of 25 E. 1. cap 7. stat. printed, ‘per communitatem regni nostri Angliæ,’ which concurreth also with the statute of 25 E. 1. cap. 7. in print; [Ro. fin. intus. M. 24.] ‘saving to us and our heires the customes of wools, skins and leather granted heretofore by the communitaty aforesaid.’ The patten roll of 3 E. 1. [M. 1. Ro. Par.] which lieth these words, ‘cum prelati magnates ac tota comunitas mercatorum regni nostri nuper nobis concesserunt quandam novam consuetudinem, viz. de quolibet sacco lanae 6s. 8d. &c.’ being something obscure, are by the concurrence of all those other records so cleerly expounded, as there cannot be, neither now is there, any question made, but that the custome of a demy-marke, and the other old customes, which by my lord Dyér, and by all those who argued for or against impositions in the Exchequer, was held to be due by the common-lawe, was by grant in parliament. Nevertheless the strength of the argument they still retaine. Though the demy-mark and those old customes upon the staple commodities were by act of parliament; yet, say they, before that increase by parliament the king had custome, and no doubt a some certaine. Otherwise could not this increase be called *nova consuetudo*. Besides, say they, the custome reduced to a certainty by 3 E. 1. is only upon three commodities, wool, skins, and leather. There are many other commodities, which did likewise pay custome. How began that custome, say they, if not by the kings absolute power? And when was that power taken away? I answer, admit it were by the kings absolute power, yet that the king hath cleerly discharged himself of that power by act of parliament, I hope I have cleerly proved. But this question, how began the first customs, is best answered by another question, how began the fine for purchase of originall writs, the fine *pro licentia concordandi*, the certainty of prisage? Nay, who reduced it first to certaintie, that the tryall of issues should be by twelve jurors, no more nor no lesse; that the full age of a man should be accounted twenty-one yeeres; of a woman fourteene, twelve yeeres her age of consent, and nine yeeres capable to bee endowed; a yeere and a day given to sue an appeale; the like limitation of ayeere and a day in very many other cases? In effect, who reduced all the known grounds of the common-law to that certaintie that now they are? Because wee cannot tell how or when they began, shall wee therefore conclude, that they began by the kings absolute power, and inferre, that by the same reason, they may bee changed at his pleasure? If the king may increase his fines upon the purchase of originall writs (which by the same reason hee may doe, that hee may doe his custome, nay, hee hath more colour for this then for that, because there is no statute

against this) hee might easily raise that revenue to the value of his customes. But no man can, nor will I hope offer to mainteine it to bee lawfull. You see the weaknesse and the dangerous consequence of this argument, by comparing it to other cases of like nature. To say the truth, all these things began no man can say certainly when or how, but by a tacit consent of king and people, and the long approbation of time beyond the memory of any man, and yet no man can directly affirm but that most of them might begin by act of parliament, though now there bee no records extant of such antient parliaments. The first parliament was not kept 9 H. 3. though it be the first in our bookes. If we will give credit to other records, and to our best chrouiclers, we shall heare and reade of divers parliaments in the reigne of king John, and of his predecessor Rich. 1. and in the reigne of H. 2 of two famous parliaments, one at Claringdon in Wiltshire, the other at Gedington in Northamptonshire. And although our chrouicles say, that the first parliament kept in this realme was held 19 Aprilis, 16 H. 1. yet I am of opinion, that William the conqueror held parliaments; for what can be else understood by these words, ‘per commune consilium totius regni nostri stabilitum fuit,’ which I finde in Mr. Lamberts collection of the ancient lawes of England, in the beginning of the laws of William the conqueror? Many of the statutes of E. 1. have no other words. Nay, long before him, in the yeere of our Lord 712, in the time of Inas king of the West-Saxons, I assure myself there were parliaments held, and that of the three estates, as at this day; as may appeare by these words in the beginning of the lawes of king Inas, in Mr. Lambert, ‘Suasu et instituto episcoporum nostrorum omnium, senatorum nostrorum, et natu majorum, populi nestri in frequentia magna;’ and more plainly in the conclusion of some other of his lawes; ‘hoc factum fuit per commune consilium et assensum procerum, comitum, et omnium sapientium seniorum, et popalorum totius regni, et per præceptum regis Inæ,’ which are the same in Latine which ours is in English, ‘by the king, the lords spirituall and temporall, and the commons.’ Why might not the custome upon wools be first granted at one of these parliaments, as well as to have it first begun by the kings absolute power? There is no more probability of the one than the other. Because most of the ancient records were burnt in H. 2’s time, when the Exchequer was burnt, shall we conclude therefore that there were never any such? You see the weaknes of this argument in all the points thereof. I leave it, and passe to another.

The king may, say they, restrain the passage of merchants at his pleasure, which they prove by divers records; 2 E. 1. m. 18. Ro. Par. 2 F. 1. m. 17. Ro. fin. 31 E. 1. n. 44. Ro. Pat. 17 H. 6. Ro. Cla. in dorso. Upon which they inferre, that if he may restraine a merchant that he shall not passe at all, he may much

more so restraine him that he shall not passe except he pay a certain sum of money: for this, say they, is lesse than totally to restraine him; and *cui licet quod majus, licet etiam quod minus*. Of this argument my lord Dyer gave light in his Case of Impositions, 1 Eliz. and this hath been diversly enforced by all that have argued for impositions. In answer of which, I will consider, how farre the king may restrain the passage of merchants; and then will examine the consequence of the argument.

For my part, I think the king cannot restrain the passage of merchants, but for some speciall cause; wherein to define certainly and resolutely, to say for what causes he may, and for what not, I will not undertake. Onely let me inform you, that there is not one of these presidents vouched by them to prove the kings power to restraine, but they are upon speciall reasons; as by reason of enmity with such a nation from whence they are restrained, or because such a commodity may not be spared within the kingdome. Besides, they are not restraints from all places, and of all manner of merchandizes, but from certain places onely, and for certain sorts of merchandizes. And for my part I thinke that restraints in all these cases, and of like nature, are by the common-law left to the kings absolute power; for if it were otherwise, it should be in the power of a merchant for a little private lucre to enrich the kings enemies, or to furnish them with munition to be employed against the state, or utterly to ruine the common-wealth, by carrying out a commodity which may not be spared, or by bringing in of some that may be hurtfull. Nay, which is more, such may be the occasion, that the king may, I doubt not, stop the passages of all merchants from all places for a short time, as upon the death of the late queen it was put in practise, to prevent intelligence. There may likewise be such necessary use of their ships, as the want of them upon some sodaine attempts may be a cause of the overthrow of the whole state. In such cases as these, if the common-law did not give the king leave to restrain their passage by his absolute power, it were very improvident in the highest points, which cannot be imagined of so wise a law. And yet the kings of this realme have alwayes been sparing in the practise of their absolute power in this point; for there are little lesse then 30 acts of parliament, touching the opening and shutting up of the passage of merchants, most of which, as I conceive, were made rather for the increase of punishment, then for want of power in the king; for the breach of a restraint by absolute commandment is punishable, as all other contempts, onely by fine and imprisonment, and not by forfeiture of the merchandizes, as in the president of the wines, an. 5. of queene Mary, vouched by me, and is in some of those old presidents. If it be otherwise, I must confesse I know not the reason of the difference of this from other contempts. You see, that I have yielded to their proposition, 'That the king

may by his absolute power restraine the passage of merchants,' and have therein granted more then their presidents prove. But is the consequence good, that because the king may restrain, therefore he may impose upon such as passe? First I denie, that in our case there is any restraint at all, as there was in the case of the French wines, by queen Mary, by her proclamation going before the imposition. For prooffe of which I referre you to the kings letters patents prefixed before the last booke of rates; by which instrument, the impositions now complained of were altogether raised. You shall finde it no other then a declaration of the kings pleasure so to have it, and a course prescribed for levying of it. But admitting, that the very laying of an imposition did imple a restraint, yet I denie the consequence, because the king may restrain totally, that therefore, he may restraine for a time, or from certaine places, or certaine commodities, or certaine merchants; this indeed is a good argument, *à majori ad minus*. But because he may restraine totally, therefore, that he may give passage for money, is no good consequence; for in our case, there is no restraint at all, but it is rather a passage for money. If there be just occasion of restraint, the law giveth the king power to restraine. But when merchants may without hurt to the state have passage, as in our case, to enforce them to pay for that passage is in my opinion as unlawfull, as to enforce any man whatsoever to pay for doing that which he may lawfully doe. Merchants have, as I may so say, as good inheritance in their trade, as any man in his lands; and when it may stand with the good of the state, that they may passe, they ought to passe as freely without charge imposed on them, as any man ought to hold his inheritance, or any artificer or other tradesman ought to exercise their lawfull trades and means of living, free from burdens to be laid on by the kings absolute power. If all others should be free, and onely merchants, who adventure their persons and estates in so many dangers, to bring us from farre places such things, as without which we cannot subsist, and to return us profit for our superfluities, should be subject to involuntarie burthens, their estate were of all other mens most unhappy and slavish, which, of all other trades, is indeed the noblest, and most worthy to be cherished.

And here by the way I note, that; in all other nations of the world, where the merchant is subject to impositions at the kings pleasure, the landlord, the farmer, the artificer, the very plowman, and all others, are in like sort subject to taxes and burdens, when the king pleaseth. The merchant is not the man alone that is subject to taxes, and all other men free. If, in the frame of our common-wealth, it were thought fit to free all other trades and professions from taxes, much more ought it to be thought reasonable, that our merchants should be free, and by all means possible encouraged in their trade; for our case is not as it is with other nations of the continent. We are island-

ers, and divided by the sea from all the world, and in that respect have such use of merchants as we cannot live without them. If therefore any should be free amongst us, it should be the merchant; and not the quite contrary, onely the merchant charged, and all others free. Plato in his 8th book de Rep. is of opinion, that the merchant, for his encouragement to trade, should be free from all custome whatsoever. We seek only to be free of involuntary impositions. But to return to the argument of restraint, from whence I am a little digressed. If it be a good argument, that because the king may restraints in *toto*, he may restrain in *tanto*; it will not be denied unto me, for it followeth necessarily, that in cases where he cannot restraints in *toto*, he cannot restraints in *tanto*. But there is no man that will say, that he may restraints the entrance and passage of all merchants, to and from all the parts of the world whatsoever, without any limitation of time, but the restraint to endure for ever, and for all kinds of merchandizes whatsoever, of most necessary and common use, to be brought into, or carried out of the realme. There is no man I suppose will say, that the law hath given the king power to make so unreasonable a restraint as this; for it were to give him a power to destroy merchandize, and consequently to ruine the common-wealth. Beside, it were against the law of nations, and of reason itself. It cannot be imagined, that any wise law in the world should allow it. But if our impositions, as it is said, doe imple a restraint, and that a restraint be always the fore-runner of all impositions, then such an unreasonable restraint, as I have spoken of, must needs be presupposed to have been the ground or fore-runner of our present imposition. For in our impositions, are not all the merchandizes of necessary and common use charged? Are not all the merchants, citizens and strangers, importing from any part, or exporting to any part of the world, subject to the charge? Is there any limitation of time, but to endure for ever? If I say such a restraint had been unlawfull, which I suppose no man will deny, then whatsoever implieth such a restraint, which our impositions doe, is likewise unlawfull. But the ill consequence of this their argument drawne from the kings power of restraint, will best appeare by comparing it to other cases.

I little doubt, but the king upon some occasion may lawfully restraints the passage of all men through the gates of London; as for the purpose, when the citie shall be besieged, or in the time of an extreme plague. Nay, is it not by authoritie derived onely from him, that the gates are shut every night? Doth it follow therefore, that because he may doe it upon some extraordinary occasion, or at some time, that he may shut up the passage for ever; or that presupposing such a restraint by his absolute power, he may lay an imposition upon every barthen of any thing brought in, or carried out, as the duke of Florence and many other states in Italy and Germany doe, or upon

every man by the poll, that shall passe through the gates?

You see the weaknesse and danger of the consequence of this argument, and how it tends to justifie impositions within the land. And so I leave it, and proceed to the next.

'The ports and haven townes of England are,' say they, 'the kings; and, in regard thereof, he may open and shut them upon what conditions he pleaseth.' I answer,—1. That the position, that all the ports are the kings, is not generally true; for subjects may also be owners of ports, as may appeare by the patent roll of 3 E. 1. M. 1. parl. where you shall finde, that king Ed. 1 granted to the lords of port townes the forfeitures granted to him by parliament, for not duly paying the new custome of the demy-marke within every severall port of theirs, where the merchandizes should happen to be imported or exported. But admitting the truth of the position, yet is the consequence as weake and dangerous, as of any of the rest of their arguments. For are not all the gates of cities and townes, and all the streets and highways in England the kings, and as much subject to be open or shut at his pleasure, as the ports are? Nay, whensoever we speak of the highway in any law businesse, we call it *via regia*, the kings highway; and the king in his commissions, speaking of London, or any other citie, calls it *civitas nostra* London, or *civitas nostra* Exon. Doth it follow therefore, that the king may lay impositions upon every man, or upon all commodities that shall passe through any of these places? Nay, the gates of the kings owne house, for the purpose his palace of Westminster, are his in a farre neerer degree then any of these. May he therefore by his proclamation impose upon every man that shall passe in or out at Westminster-hall doore a summe of money? Doubtlesse he may not; because the king is a person publike, and his subjects ought to have access to him, as to the fountaine of justice, and to the courts of justice sitting by his authoritie. I make little doubt, but his majestie may upon just occasion cause any of these passages to be shut, as he may also the passage at the havens. But when the passage may without danger to the state be open, and that the subjects may passe, his majestie may not then exact money for their passage; for the law hath given the king power over these things, for the good of the common-wealth, and not thereby to charge and burden the subject. If the king may not exact money for passage in and out of his court gates, because of the publikenesse of his person; nor for passage through the gates of cities; much lesse may he for passage out at the ports, which are the great gates of the kingdom, and which the subject ought as freely to enjoy, us the ayre or the water.

Another of their Arguments [the fourth] is this. 'The king is bound to protect merchants from spoile by the enemy; he ought to fortifie the havens, that their ships may there abide in safety; he ought, if occasion be, to

'send ambassadors to forreine princes, to negotiate for them;' and many the like charges is the king by the law to undergoe for the protection of his merchants. It is reason, therefore, that his expence be defraied out of the profit made by merchants; and consequently, that he may impose upon merchandize a moderate charge, thereby to repay himself. The consequence of this argument is thus farre true. The law expects, that the king should protect merchants. Therefore it alloweth him out of merchandize a revenue for the maintenance of his charge, which is the old custome due, as at first I said, by the common-law. But it is no good consequence, that therefore he may take what he list, no more then he may at his pleasure increase that old revenue, which the law giveth him for protecting of subjects in their suits, or for protecting wards, &c.

Another Argument of theirs [the fifth] is this. 'All other princes of the world may impose upon merchandize at their pleasure; and so may make our merchandizes less vendible with them, by laying an imposition upon them, to be paid by us, when they are brought into their territories, whereby their owne commodities of the same nature may be sold more to the gaine of their merchants, and our merchant impoverished, or driven from his trade. They may also lay impositions upon our merchants fetching commodities from thence, and leave their owne merchants free from any imposition in the same case; by which their merchants shall reape all the profit by that commoditie, in affording it better cheape to us here, then we can fetch it, and consequently our merchants shall be undone.' Many the like cases have been put to prove, that if the king of England may not impose, as other princes may, they shall be able at their pleasure to destroy our trading. This I conceive was the same as now it is, during all that time from Ed. 3, till queen Mary; and doubtlesse it could not but sometimes, during that long space, so fall out, that forreine princes did put their power in practise to our prejudice, and yet we heare not of any imposition laid by any of our kings by their absolute power; which may give any man assurance, that they tooke some other course to meet with the inconvenience; and indeed the meanes are divers, which these our kings used to prevent it.—First, they were carefull in all their leagues and treaties with forraine princes, especially to provide for it; as may appeare by the records of the ancient leagues. Neither is there any league of late time, that hath not had an article for provision in this point; which leagues for the most part are upon oath on both parts. And yet, for further securitie, our kings have always had ambassadors resident in the courts of such forraine princes, to put them in minde of their leagues, if upon any occasion our merchants have in that case happened to be never so little wronged by them; and if upon complaint of the ambassador, our merchants

have not found redresse, our kings have held the league as broken, and denounced warre, or seized all the goods of the same princes subjects within England; and I dare say there have been more warres undertaken by our princes against forraine nations onely for this cause, then for any one other cause whatsoever.

Besides, our kings have in this case sometimes made use of that their prerogative of restraint, either by prohibiting our merchants from carrying our commodities into those parts, where they are charged with impositions, that so by the want of our commodities, forraine princes might be enforced to abate their impositions laid upon them; or by restraining the merchants of forraine princes to import or export commodities from hence; by which meanes forraine princes have been compelled to deale favourably with our merchants for the good of their owne subjects. All these are lawfull and ordinary means to prevent or redresse the inconvenience which may grow by the impositions of other princes. If all these ordinary means should happen to faile, which can hardly so fall out, and that the laying of impositions be indeed the only means that is left to redresse the inconvenience, why should not that be done by act of parliament as well in these times, as it was in 7 Hen. 7. c. 7. to take downe the imposition of foure ducates upon a but of malmsey, imposed by the Venetians, and as it was done by queen Eliz. the 19th yeere of her reigne, to prevent the laying of impositions by forraine princes upon salt-fish, as may appeare by the printed statutes of 19 Eliz. c. 10. ? But, as I have said, the providence of the prince and ordinary power of restraint may very well meet with the inconvenience.

These are the chiefe Reasons made in maintenance of Impositions. The weaknesse of them, and their dangerous consequence, you cannot but perceive; for, by the same reasons, taxes within the land may be as well proved to be lawfull. On the contrary part, you have heard the reasons against Impositions fortified by many records and statutes in the point. So as I conclude, that Impositions, neither in the time of warre, or other the greatest necessitie or occasion that may be, much lesse in the time of peace, neither upon forraine nor inlaud commodities of whatsoever nature, be they never so superfluous or unnecessary, neither upon merchants strangers nor denizens, may be laid by the kings absolute power, without assent of parliament, be it for never so short a time, much lesse to endure for ever, as ours. Though this be now my opinion, yet am not I so obstinate therein, but if yet I heare better reason, I will once againe change my minde. In the meane while, you see I had reason to alter my first opinion, as being grounded upon very weak reasons, as now they appeare unto me. And so I suppose they doe also unto you.

## MR. YELVERTON'S ARGUMENT AGAINST IMPOSITIONS BY THE CROWN.\*

The question is, Whether the King, without Assent of Parliament, may set Impositions upon the Wares and Goods of Merchants exported, and imported, out of, and into this Realme?

THREE things have been debated in this parliament, that have much concerned the right of our whole nation, of which every one of them hath exceeded the other by a gradation in weight and moment.—The first was the change of our Name, which was a point of ho-

\* By an order of the commons licencing the publication, this Argument appears to have been first printed in 1641. But it is here extracted from an edition of 1658. The title runs thus: 'The Rights of the People concerning Impositions, stated in a learned Argument; with a Remonstrance presented to the kings most excellent majesty, by the honourable House of Commons, in the parliament, A. D. 1610. annoq. regis Jac. 7. By a late eminent Judge of this nation.—The following Address to the Reader was prefixed. To the courteous Reader. This excellent Treatise of the no less worthy author, happily falling into my hands, I instantly thought it my duty to make that public, which had given so much useful satisfaction to many learned, and judicious, in private; remembering that antient adage, *bonum quò communius, eò prætantius*.—I hope it is needless to commend either the reverend author deceased, the treatise, its use, or stile; since the authority by which it is published, is a sufficient argument of their known worth.—If thou kindly accept of his good meaning, whose onely aim in the publishing hereof was the common good, it will be an encouragement to him (and others) to present to thy view, what may hereafter fall into his hands worthy thy further perusal. Thine; J. B.'

The Address to the Reader was preceded with the following Remonstrance, which was made to king James by the house of commons 24th May 1610.

A Remonstrance delivered to his majesty in writing, after the inhibition given by him to the commons house of parliament, as well by word of mouth, as by letters, not to proceed in the examining his right to impose without assent of parliament.

To the King's most excellent Majesty.

Most gracious Sovereign; whereas we your majesties most humble subjects, the commons assembled in parliament, have received first by message, and since by speech from your majesty, a command of restraint from debating in parliament your majesties right of imposing upon your subjects goods exported, or imported out of, or into this realm; yet allowing us to examine the grievance of these

hour, wherein we shewed ourselves not willing to leave that name, by which our ancestors made our nation famous; yet have we lost it, [the name of Britaine not admitted in legall proceedings,] saving onely in those cases, where our ancient and faithfull protector, the common-law, doth retaine it.—The second was the Union, a question of greater moment; for that concerned the freehold of our whole nation; not in so high a point as having, or not having, but in point of division and participation, that is, whether we should enjoy the be-

impositions in regard of quantity, time, and other circumstances of disproportion thereto incident: we your said humble subjects nothing doubting but that your majesty had no intent by that command to infringe the antient and fundamental right of the liberty of parliament in point of exact discussing of all matters concerning them, and their possessions, goods, and rights whatsoever, which yet we cannot but conceive to be done in effect by this command, do with all humble duty make this remonstrance unto your majesty.—First, we hold it an antient, general and undoubted right of parliament, to debate freely on all matters which do properly concern the subject, and his right or estate; which freedom of debate being once fore-closed, the essence of the liberty of parliament is withal dissolved.—And whereas in this case the subjects right on the one side, and your majesties prerogatives on the other, cannot possibly be severed in debate of either: we alledge, that your majesties prerogatives of that kinde concerning directly the subjects right and interest, are daily handled and discussed in all courts at Westminster, and have been ever freely debated upon all fit occasions, both in this and all other former parliaments, without restraint; which being forbidden, it is impossible for the subject, either to know, or to maintain his right and propriety to his own lands and goods, though never so just and manifest.—It may further please your most excellent majesty to understand, that we have no minde to impugn, but a desire to inform ourselves of your highness prerogative in that point, which (if ever) is now most necessary to be known; and though it were to no other purpose, yet to satisfie the generality of your majesties subjects, who, finding themselves much grieved by these new impositions, do languish in much sorrow and discomfort.—These reasons, dread sovereign, being the proper reasons of parliament, do plead for the upholding of this our antient right and liberty. Howbeit seeing it hath pleased your majesty to insist upon that judgment in the Exchequer, as being direction sufficient for us without further examination: upon great desire of leaving your majesty unsatisfied in no one point of one of our intents and proceed-

nefits and liberties of the kingdome ourselves onely, as we and our ancestors have done, or admit our neighbour nation to have equall right in them, and so make our own part the less, by how much the greater number should be among whom the division was to be made. This was adjudged against us both legally and solemnly, [Coke l. 7. Calvin's case.] and therefore in that we rest, hoping of that effect of this judgement which we read of in the poet,

'Tros Triusque mihi nullo discrimine habetur.'

The third is the question now in hand, which exceedeth the other two in importance and consequence, concerning the whole kingdome; for it is a question of our very essence; not what we shall be called, nor how we shall divide that we have, but whether we shall have any thing or nothing; for if there be a right in the king to alter the property of that which is ours without our consent, we are but tenants at his will of that which we have. If it be in the king and parliament, then have we property, and are tenants at our own will; for that which is done in parliament is done by all our wills and consents. And this is the very state of the question which is proposed, that is, whether the king may impose without consent of parliament.

Impositions are of two natures, forreigne and intestine.—Intestine be those which are raised within our land in the commerce and dealing that is at home within ourselves, and may aswell for that reason be so called, as for that 'vescuntur intestinis reipublice,' they are fed and nourished with the consuming and wasting of the entrails of the common-wealth. Against these I need not to speake; for the king's learned councill have with great honour

'ings, we profess touching that judgment, that we neither do nor will take upon us to reverse it; but our desire is to know the reasons whereupon the same was grounded; and the rather, for that a general conceit is had, that the reasons of that judgment may be extended much further, even to the utter ruine of the antient liberty of this kingdom, and of your subjects right of propriety to their goods and lands.—Then for the judgment itself, being the first and last that ever was given in that kind (for ought appearing unto us,) and being onely in one case, and against one man, it can binde in law no other but that person; and is also reversible by writ of error granted heretofore by act of parliament; and neither he nor any other subject is debarred by it from trying his right in the same or like case, in any of your majesties courts of record at Westminster.—Lastly, we nothing doubt, but our intended proceeding in a full examination of the right, nature, and measure of these new impositions (if this restraint had not come between) should not have been so orderly and so moderately carried and employed to the manifold necessities of these time, and given

and conscience in full councell acknowledged them to be against the law.—Therefore I will apply myself to speak of impositions forreine, being the single question now in hand, and maintained on the king's behalfe with great art and eloquence.

The inconvenience of these impositions to the common-wealth, that is, how hurtfull they are to the merchants, in impoverishing them in their estates: to the king in the increasing of his revenues by decay of traffique; and to the whole people in making all commodities excessive deare, is confessed by all, and therefore need no debate. The point of right is now only in question, and of that I will speak with conscience and integrity, rather desirous that the truth may be knowne, and right be done, than that the opinion of myself or any other may prevaile.—The occasion of this question was given by the Book of Rates lately set out, affronted with the copy of letters patents, dated July 28, 6 Jac. In which book, besides the rates, is set down every kind of merchandise, exported and imported, for the true answering of subsidy to the king, according to the statute of tonnage and poundage.

In the first yeare of his reigne there is an addition of impositions upon all those kind of wares, which within the book are expressed, and the rate of the imposition as high and in some cases higher than the rate of the subsidy; and this declared to be by authority of those letters patents. Hereupon considering with my selfe, that heretofore the setting on of one only imposition without assent of parliament, upon some one kinde of merchandise, and that for a small time, and upon urgent necessity of actual war, did so affect our whole nation, and especially the great councill of the parliament, being the representative body of the whole

' your majesty so true a view of the state and right of your subjects, that it would have been much to your majesties content and satisfaction, (which we most desire,) and removed all causes of fears and jealousies from the royal hearts of your subjects, which is (as it ought to be) our careful endeavour: whereas contrariwise in that other way directed by your majesty, we cannot safely proceed without concluding for ever the right of the subject, which without due examination thereof we may not do.—We therefore your loyal and dutiful commous, not swerving from the approved steps of our ancestors, most humbly and instantly beseech your gracious majesty, that, without offence to the same, we may, according to the undoubted right and liberty of parliament, proceed in our intended course of a full examination of these impositions; that so we may chearfully pass on to your majesties business, from which this stop hath by diversion so long withheld us. And we your majesties most humble, faithful, and loyal subjects shall ever (according to our bounden duty) pray for your majesties long and happy reign over us.'

common-wealth, that neither the sun did shine, nor the rivers run their courses until it was taken off by the public judgment of the whole state; I thought it concerned me, and other members of that councell, that were no less trusted for our country than those in former times, and have their actions to guide and direct us, to have the same care they had in preserving the rights and liberties of the people, having now more cause than they had, for that the impositions now set on without assent of parliament, are not upon one or two speciall kinds of goods, but almost indefinite upon all, and do extend to the number of many hundreds, as appeareth by that printed book of rates, and are set in charge upon the whole kingdome as an inheritance to continue to the king, his heires and successors for ever; which limitation of estate in matter of impositions was never heard of, nor read of before, as I conceive.—The inducements expressed in these letters patents are much upon point of state, and with reference to the rights and practise of forraine princes. For this I will not take upon me to enter into the consideration of such great mysteries of policie and government, but will only put you in minde of that I observe out of Tit. Livius [l. 3.] the Roman historiographer. ‘Omne divini humanique moris memoriam abolemus, cum nova peregrinaque patriis et priscis preferimus.’

To that which hath been spoken for the kings prerogative, I will give answer to so much of it as I may conveniently in my passage through this debate: wherein I will principally endeavour to give satisfaction to such new objections as were made by the worthie and learned counsellor of the king, that spake last in maintenance of his majesties prerogative.

The case in termes is this. The king by his letters patents before recited, hath ordained, willed, and commanded, that these new impositions, contained in that book of rates, shall be for ever hereafter payd unto him his heires and successors, upon paine of his displeasure. [Pat. July 28 Jac. 6.] Hereupon the question ariseth, whether by this edict and ordinance so made by the king himselfe, by his letters patents of his own will and power absolute, without assent of parliament, he be so lawfully intituled to that he doth impose, as that thereby, he doth alter the property of his subjects goods, and is enabled to recover these impositions by course of law.

I think he cannot; and I ground my opinion upon these four reasons.—1. It is against the naturall frame and constitution of the policie of this kingdome, which is *jus publicum regni*, and so subverteth the fundamentall law of the realme, and induceth a new forme of state and government.—2. It is against the municipall law of the land, which is *jus privatum*, the law of property and of private right.—3. It is against divers statutes made to restraine our king in this point.—4. It is against the practice and action of our common wealth, *contra morem majorum*; and this is the modestest rule

to limit both king's prerogatives, and subjects liberties.

Upon the first and fourth of these four principal grounds I will more insist then upon the second and third, both for that in their own nature they are a more proper matter for a councel of state, to the judgment of which I apply my discourse, and they have not been enforced by others; as also for that the other two, as more fit for a barre, and the courts of ordinary justice, have by some professors of the law been already most learnedly and exquisitely discussed.

For the first, it will be admitted for a rule, and ground of state, that in every common-wealth and government there be some rights of sovereignty, *jura majoritatis*, which regularly and of common right doe belong to the sovereign power of that state; unless custome, or the provisional ordinance of that state, doe otherwise dispose of them: which sovereign power is *potestas suprema*, a power that can controule all other powers, and cannot be controuled but by itself.—It will not be denied, that the power of imposing hath so great a trust in it, by reason of the mischiefs may grow to the common-wealth by the abuses of it, that it hath ever been ranked among those rights of sovereign power.—Then is there no further question to be made, but to examine where the sovereign power is in this kingdome; for there is the right of imposition.—The sovereign power is agreed to be in the king: but in the king is a two-fold power; the one in parliament, as he is assisted with the consent of the whole state; the other out of parliament, as he is sole, and singular, guided merely by his own will. And if of these two powers in the king one is greater than the other, and can direct and controule the other; that is *suprema potestas*, the sovereign power, and the other is *subordinata*.—It will then be easily proved, that the power of the king in parliament is greater than his power out of parliament; and doth rule and controule it; for if the king make a grant by his letters patents out of parliament, it bindeth him and his successors: he cannot revoke it, nor any of his successors; but by his power in parliament he may defeate and avoyd it; and therefore that is the greater power.

If a judgement be given in the King's-bench, by the king himselfe, as may be, and by the law is intended, a writ of error, to reverse this judgement, may be sued before the king in parliament; which writ must be granted by the chancellor, upon bill indorsed by the king himselfe as the book is 1 H. 7. 19. 6 [Lib. Intrac. fol. 302. c. 1.] And the forme of the writ of error is, that it being directed to the chiefe justice of the King's-bench; ‘quia in recordo et processu, ac etiam in redditione judicii loquelæ, quæ fuit in curiâ nostrâ coram nobis, error intervenit manifestus ad grave damnum, &c. nos errorem (si quis fuerit) modo debito corrigi, et partibus prædictis plenam et celerem justitiam fieri volentes, in hæc parte vobis



mandamus, quod recordum et processum loquelæ illius cum omnibus ea tangentibus, in præsens parliamentum nostrum sub sigillo tuo distinctè et apertè mittas et hoc breve, ut inspectis, &c. nos de consilio et advisamento dominorum spiritualium et temporalium, ac communitatis in parlamento nostro prædicto existentis, ulterius pro errore illo corrigendo fieri faciamus, quod de jure et secundum legem et consuetudinem regni nostri Angliæ fuerit faciendum.' So you see the appeal is from the king out of the parliament, to the king in parliament; the writ is in his name; the rectifying and correcting the errors is by him, but with the assent of the lords and commons, than which there can be no stronger evidence to prove, that his power out of parliament is subordinate to his power in parliament: for in acts of parliament, be they lawes, grounds, or whatsoever else, the act and power is the kings, but with the assent of the lords and commons, which maketh it the most soveraigne and supreme power above all, and controulable by pope. Besides this right of imposing, there be others in the kingdome of the same nature. As the power to make lawes; the power of naturalization; the power of erection of arbitrary government: the power to judge without appeal; the power to legitimate; all which do belong to the king only in parliament. Others there be of the same nature, that the king may exercise out of parliament, which right is grown unto him in them, more in those others by the use and practice of the common-wealth, as denization, coynage, making warre; which power the king hath time out of minde practised, without the gain saying and murmuring of his subjects. But these other powers before-mentioned have ever been executed by him in parliament, and not otherwise, but with the reluctance of the whole kingdome.

Can any man give me a reason, why the king can only in parliament make lawes? No man ever read any law whereby it was so ordained; and yet no man ever read that any king practised the contrary. Therefore it is the originall right of the kingdome, and the very natural constitution of our state and policy, being one of the highest rights of soveraigne power. So it is in naturalization, legitimation, and the rest of that sort before recited.

It hath been alleadged, that those, which in this cause have enforced their reasons from this maxime of ours, 'That the king cannot alter the law,' have diverted from the question.—I say under favor they have not; for that in effect is the very question now in hand; for if he alone out of parliament may impose, he altereth the law of England in one of these two maine fundamental points. He must either take his subjects goods from them, without assent of the party, which is against the law; or else he must give his own letters patents the force of a law, to alter the property of his subjects goods, which is also against the law.

That the king of England cannot take his

subjects goods, without their consent, it need not to be proved more than a principle. It is *jus indigenæ*, an old homeborne right, declared to be law by divers statutes of the realme. As in 34 E. 3, cap. 2. that no officer of the kings, or of his heires, shall take any goods of any manner of person without the assent and goodwill of the party to whom the goods belonged. The same is declared in many other statutes made against prisages and purveyances. Neither have ever any kings attempted to go plainly and directly against that right, but have devised certaine legal colours and shadows for their wrongfull doing in that kind, which I doe find were of three sorts: by way of Commission; by way of Loan; by way of Benevolence. Commissions of all other were the most insolent; for they went out, as it were by authority, to levy ayd of the people upon great necessity of the common-wealth. These were condemned in parliament, 21 E. 3, numb. 16, upon a grievous complaint made of the use of them by the commons, unto the king in parliament: wherein the people doe pray the king, that he would be pleased to remember, how at the parliament held the 17th year of his reign, and at the last parliament, it was then accorded, and granted by their said lord the king and his counsell, that there should goe out no commissions out of Chauncery for hobbeleries, archers, and other charges to be levied upon the people, if they were not granted in parliament; which ordinances were not observed, by reason whereof the people were impoverished and decayed, for which they prayed the king, that he would be pleased to take pity of his people, and the ordinances and grants made to his people in parliament to affirme and hold; and that if such commissions goe out without assent of parliament, that the commons, which are grieved there by, may have writs of *supersedeas*, according to the said ordinance, and that the people be not bound to obey them.

To this the kings Answer is,—'Si ul tiel imposition fuit fait per grand necessitie, et ceo del assent des prelates, countes, barons, et autres grandes et aautres homes des commons adonq; presents, meant moins nostre seignior le roy ne vuet, que tiel imposition non dument fait soit treit in consequence, eins voet que les ordinances dont cest petition fait mention soit bienment gardes.'

The last time that ever king attempted that course of exaction was 17 H. 8, upon the taking of the French king at Pavia, by the forces of Charles the fifth. [Stowes Annals, 17 H. 8.] Cardinal Wolsey, having a purpose to put the king into a warre about that quarrel, and finding his coffers empty, advised this way, to send out commissions, and by them to levie ayd of the people, according to the value of their estate. But this gave such discontent to the whole realme, that it caused in many places an actual rebellion; and the cardinal, being called to give an account of this bad advice, did justify this fact by the example of Joseph, who

advised Pharaoh to take the fifth part of his subjects goods. But when he saw that would not serve the turne, he falsely laid it upon the judges, informing the king, he did it by their advice, being resolved by them of the lawfulness of the fact. So you see, that great churchmen found more safety in matter of government of our common-wealth, in making a false report of a point of the common-law, then in a true text of the scripture. And if any churchmen will endeavor by application of the text of scripture, to overthrow the antient laws and liberties of the kingdom, I would advise them to be admonished by the ill success of the cardinal in this particular action, and by the miserable catastrophe of his whole life and fortunes.

Loans and apprests were those which we call privy seals, which though they were more moderate in shew, yet being made against the good-will of the parties, were as injurious indeed as the other. The commons in parliament, 25 E. 3, [Rot. Par.] num. 16, made a grievous complaint to the king against the use of them, and prayed, that none from henceforth should be compelled to make loans against their will; and they gave this reason, in their petition, for that it is against reason, and the franchise of the land, and prayed that restitution might be made to those that have made such loans.—To this the kings rescript was; 'It pleaseth our lord the king it be so.'

Lastly, came in those kinde of exactions, which were termed by the fair name of Benevolences; but they became so odious, as they gave the occasion of a good law to be made against themselves, and against all other shifts and devices, by what new terms soever imposed upon the subjects. The law is, 1 R. 3, cap. 2. and is thus. The king, remembering how the commons of this his realm, by new and unlawful inventions and inordinate covetise, against the law of this realm, have been put to great servitude and important charges and exactions, and especially by a new imposition called a Benevolence, enacted by the advise, &c. that the subjects and commons of this land from henceforth shall in no wise be charged by any such charges or impositions called the Benevolence, nor by such like thing.—But if you will deny, that the king doth in this case take the goods of his subject without his assent, then you must fall upon mine alternative proposition, that the kings patent hath in this case the power of a law, to alter property; for how can he recover the imposed by a legal course of proceeding, and by judgment in his court, but upon a title precedent him, before the action brought, which title must be a property in the same imposed; and how cometh he by that property, but by his own letters patents, by which he declareth he will have that same as an imposition? For the judgment giveth not the right, but only doth manifest and declare it, and giveth execution of it. So in this point the question is, whether the kings patent hath the force and power of the law, or

not; for if it be not maintained that it hath, it can never be concluded, that he can transfer the property of his subjects goods to himself, without the assent of them; for 'quod meum est, sine facto meo alterius fieri non potest.' And if you give this power to the kings patent, you subject the law, and take away all rules and bounds of settled government, and leave in the subject no property of his own, neither do you by this advance the kings power and prerogative, but you make him no king; for, as Bracton saith, [l. 1. c. 8.] 'ex est, ubi dominatur lex, non voluntas.'

So we see, that the power of imposing and power of making laws are 'convertibilia et coincidentia;' and whatsoever can do the one, can do the other. And this was the opinion of sir John Fortescue, that reverend and honorable judge, a very learned professor of the common-law, and chief justice of the Kings-bench, in the time of Henry 6. his words are these, in his book De laudibus Legum Angliæ, cap. 9. 'Non potest rex Angliæ ad libitum leges mutare regni sui; principatu namque nedum regali, sed et politico, ipse dominatur. Si regali tantum præset iis, leges mutare posset; tallagia quoque, et cætera onera imponere, ipsis inconsultis, quale dominium leges civiles indicant, cum dicunt quod principi placuerit legis habet vigorem. Sed longè aliter potest rex politicis imperans; quia nec leges ipse sine subditorum assensu mutare poterit, nec subjectum populum renitentem onerare peregrinis impositionibus.' In which place I must interpret unto you, that 'peregrinæ impositiones' be not strange and unheard of impositions, as was urged by the worthy gentleman that spake last; but impositions upon traffick into and out of forrain countries, which is the very thing in question. Further, in the 36th chapter, he saith of the king of England, 'neque rex ibidem per se aut ministros suos tallagia, subsidia, aut alia quævis onera imponit liges suis, aut leges eorum mutat, vel novas condit, sine concessione vel assensu totius regni sui in parlamento.' So he maketh these two powers of making law and imposing to be concomitant in the same hand, and that the one of them is not without the other. He giveth the same reason for this, as we do now, but in other words; because (as he saith) in England it is 'principatus mixtus et politicus,' the king hath his sovereign power in parliament, assisted and strengthened with the consent of the whole kingdom, and therefore these powers are to be exercised by him only in parliament. In other countries they admit the ground of the civil law, 'quod principi placuerit legis habet vigorem.' Because they have an absolute power to make law, they have also a power to impose, which hath the force of a law in transferring property. Philip Comines, that lived at that time, in his fourth book, the first chapter, the fifth book, the eighth chapter, taketh notice of this policy of England, and commends it above all other states, as settled in most security; and further to our purpose laith this

ground, that a king cannot take one penny from his subjects without their consent, but it is violence. And you may there note the mischiefs that grew to the kingdom of France, by the voluntary impositions first brought in by Charles 7, and ever since continued, and encreased, to the utter impoverishment of the common people, and the loss of their free council of three estates. And if this power of imposing were quietly settled in our kings, considering what is the greatest use they make of assembling of parliaments, which is the supply of money, I do not see any likelihood to hope for often meetings in that kind, because they would provide themselves by that other means. And thus much for my first reason, grounded upon the natural constitution of the policy of our kingdom, and the publike right of our nation.

2. For the point of common-law, which is my second Reason, it hath been well debated, and nothing left unspoken that can be said in it; and therefore I will decline to speak of that, which other men have well discussed; and the rather, for that there is nothing in our law-book directly, and in point of this matter; neither is the word (imposition) found in them, until the case in my lord Dier, 1 Eliz. 165; for we shall finde this business of an higher strain, and alwaies handled elsewhere, as afterwards shall appear. Yet I will offer some answers to such objections as have been made on the contrary in point of common-law, and have not been much stood upon by others to be answered.

The objections that have been made are these; that from the first book of the law to the last, no man ever read any thing against the kings power of imposing. No judgement was ever given against it, in any of the kings courts at Westminster. Other points of prerogative as high as this, disputed and debated, his excess in them limited; as in the book of 42. Ass. pl. 5. where the judges took away a commission from one, that had power given by it to him under the great seal to take ones person, and to seize his goods before he was indicted. So master Scrogs case 1 and 2. Eliz. Dier. 175. the power of the king in making a commission to determine a question of right depending between two parties, notably debated, and ruled against the king, that he could not grant it.

To this I answer, that cases of this nature, of which the question now handled is, have ever been taken to be of that extraordinary consequence, in point of the common right of the whole kingdom, that the state would never trust any of the courts of ordinary justice with the deciding of them; but assumed the cognisance of them unto the high court of parliament, as the fittest place to decide matters so much concerning the whole body of the kingdom. As 2 Ed. 3. 7. it appears that Ed. 1. had granted a charter to the men of Great Yarmouth, that all the ships of merchants, coming to the port of Yarmouth, should land their goods at their

haven, and not at any other haven at that port, as at Garneston, and Little Yarmouth, which were members of that port. This was very inconvenient for the merchants, and a great hurt to traffick, and therefore the charter was questioned in the time of Ed. 2. and adjudged good by the council. But the parties not contented with this judgment, in the second year of king E. 3. by an order in parliament made upon a petition there exhibited against this grant, brought a *scire facias* out of the Chaucery returnable in the Kings-bench, to question again the lawfulness of the patent. And in that suit the cause was notably debated, and those reasons much insisted upon that have been enforced in this case; as that of the kings power in the custody of the ports. But the matter so depending in the ordinary court of justice, a writ came out of the parliament, and did adjourn it thither again, where it gave occasion of a good law to be made to prevent the like grants, and to make them void notwithstanding any judgment given upon them, and to make such judgments also void. The statute is 9 E. 3. c. 1. And in the parliament rolls, 2 H. 4. num. 109. we finde a notable record, which gives warrant for the proceeding in parliament in this manner as hath been in this case, notwithstanding the judgment in the Exchequer, and declares to the kingdom, that, notwithstanding the great wonder made by some men, nothing hath been done in this business by those that serve in the parliament, but in imitation of their worthy predecessors in the like case. In the second year of H. 4. the commons shew that in the time of R. 2. by the means of John Waltham, bishop of Salisbury, treasurer of England; wrongfully, without authority of parliament, and by reason of a judgment given in the Exchequer, 16 and 17 R. 2. by the barons there, against certain merchants of Bristol, and other places, passage had been taken for wines otherwise then in ancient times had been, and therefore they prayed, they might pay their prise wines in the manner they had used to pay, notwithstanding any judgment given in the Exchequer, or other ordinance made by the said treasurer, contrary to the antient usage; which petition the king granted, and the judgment thereupon became void, and the prisage wine hath been paid contrary to the judgment ever since.

In 1 El. Dier. 165, upon the complaint, made by the merchants, of the impositions set upon cloth by queen Mary, by her absolute power, without assent of parliament; the cause was thought too weighty to be decided in any one court; but, as it appeareth in the book, it was referred to all the judges of England, who divers times had conference about it. So it may well be, there is nothing against it in our year books, for there is nothing of it.

Another objection was this, which was made in the last argument, viz. that custom is originally due by the common law of England; it can then have no other ground or cause, but meerly by the kings royal prerogative, as a

right and duty originally belonging to his crown: which if it be, it must necessarily follow he may impose, for that is but the exercising of that right. To prove this was alleaged the case 39 Eliz. 3. 13. by which case it appeareth, that king John had a custom of 8*d.* on a tun of wine in the port of Southampton, but the book doth not tell you that the king had it by prerogative, and he might have it as well otherwise; as by prescription, or convention, which shall rather be intended, by reason of the certainty of the sum paid; for if it were by prerogative, he might take sometimes more, sometimes less at his will, the right being indefinite, and the quantity limited only by his own discretion. A common person may have such a custom certain, as 18 El. Dier. 352. The mayor of London hath the twentieth part of salt brought into the city by aliens, which is a great imposition, but is good by prescription originally, and hath received greater strength since, by acts of parliament made for the confirmation of the liberties and customs of the city of London. So it appeareth that John of Britain had custom of the ships that arrived at his port of Little Yarmouth, worth 20*l.* per annum. And these instances do infer, that a custom may be otherwise then by prerogative, and therefore it is no good argument to conclude, 'the king had such a custom, therefore he had it by prerogative.'

The book in 30 H. 8. Dier. 43. was much pressed on this point, which saith that custom belonged to the king at common law, and doth instance in wooll, woollfells, and leather, begun at the common law, but abridged by the statute of 14 E. 3. cap. 21. stat. 1. But this appeareth to be a great error, and mistaking in the book; for we do finde, that that custom of woolls, woollfells, and leather, was begun by a grant in parliament, as appeareth in statute 15 E. 1. cap. 7. The words be, 'granted to us by the commonalty aforesaid;' and the last mention before was that the king had granted to the bishops, earls, barons, and all the commonalty of the land, &c. Novemb. 3 Ed. 1. The king recited in his letters patents, that 'prelati, magnates, ac tota communitas mercatorum regni,' granted this new custom. And so the ground and motive of that opinion being false, all grounded upon that must needs be erroneous.—It was objected, that the king holdeth at this day the increase of 4*d.* in the pound, over due custom, paid by merchants aliens according to the purport of the Charta Mercatoria 31 Ed. 1. [Rot. Char. num. 42. in Turri.] by meer right of prerogative at the common law; for by that grant of the merchants he cannot hold it, they being no body politick at the time of the grant; and therefore the grant is meerly void to binde in succession; and yet the merchants aliens do pay it at this day.

It is agreed, that by the common law a contract with a number not incorporate bindeth not succession. But we must take notice, that they, by whom that grant was made, of the augmentation of custom, by 3*d.* in the pound,

and other encreases, 31 E. 1. were merchants aliens, who by the law of merchants and nations may contract to bind their successors in matters of traffick. For their contracts are not ruled by the common law of the land, but by the law of nations, *et per legem mercatoriam*, as the book case is, 3 E. 4. 10. and there was a good consideration given them by the king for this encrease of custome, as discharge of prise wines for 2*s.* the tun, and other immunities, which all merchants aliens hold and enjoy at this day, by force of that contract made, 31 E. 1. for a stranger paieth now but 2*s.* the tun for prisage, whereas it standeth an Englishman in much more. The rule of commutative justice maketh the contract available to the king against the merchants, because he parteth with that part of his prisage to the merchant; and maketh it available to the merchant against the king, because he giveth him encrease of custom above that is due by law. But the statute of 27 E. 3. cap. 26. heretofore cited, doth make this point clear without scruple, which confirmeth the charter of 31 E. 1. entirely; and by that the encrease of custom by 3*d.* in the pound, which is by name mentioned in the statute, is now due by act of parliament.

If you will have the king hold this encrease of custom by prerogative, you go directly against his meaning; for it appeareth by that which presently followed this grant, that the king took this encrease of custom by way of contract onely, and not by way of prerogative; for the same year following he directeth his writs to the officers of his ports, reciting the contract made with the aliens by Charta Mercatoria; adding further, that some denizens were willing to pay the like custom, upon the same immunities to them to be granted, and doth assign his officers to gather it, but with this clause, 'si gratanter et absque coertione solvere voluerint, ita quod aliquem mercatorem de regno et potestate nostrâ ad præstationes et custodias hujusmodi invite solvendas nullatenus distringatis.' Nothing can more plainly express, that the kings intention was not to demand this by way of prerogative, but by force of the contract. If there were such a prerogative in the crown, as of right to have custom, how cometh it to pass this prerogative never yet had fruit or effect? For this I can maintain, that the king of England hath not 1*d.* custom of imposition upon merchandizes, elder then the 4th year of queen Mary, that he holdeth not by act of parliament, and by the peoples grant. The eldest, that he hath, is that of woolls, woollfells, and leather, and that is by act of parliament, as appeareth in the statute 25 E. 1. cap. 7. the tonnage and poundage by parliament in the first year of every kings reign, and the aliens encrease of custom by parliament 27 E. 3. cap. 26. Then this prerogative hath been much neglected, that it was never called on to be put in execution, untill now of late years.

Concerning the statutes made for restraining our kings from the exercise of this pretended prerogative, which is the third matter I stand

upon; those that have maintained the kings prerogative in this point, have endeavoured to interpret those statutes to extend onely to restrain him from imposing upon wooll, woollfells, and leather, which are staple commodities. And the reason they give for this restraint, more then for other goods, is, because the king by statute is restrained to a custom certain for those commodities, as the half mark a sack of wooll, and half a mark 300 woollfells, and 13 s. and 4 d. a last of leather; and therefore great reason he should not exceed this custom in these commodities.

This objection receiveth many answers. First, it appeareth both by the express letter of divers of the laws made in this point, by the occasion that induced the making of the laws, and by the execution of them, that all other wares and merchandises, as well as those of the staple, were within the purpose and intent of those laws. Secondly, the reason alledged, why there should be restraint for the staple commodities, rather then for the other, is mistaken; for the lords and commons did grant to E. 1. by act of parliament the custom of the half mark for wooll, woollfells and leather, which was matter of meer grace and liberality, and includeth no restraint in it, but rather a favourable extention, quite contrary to the sence of the objection, according to that rule of interpretation, *gratiosa ampliari decet, odiosa restringi*. And admit some laws be made expressly to restrain impositions upon wooll, wooll-fells and leather, by reason that the occasion of making such laws was the actual imposing upon those goods at that time, shall we not by good construction, *secundum mentem extensivam legis*, extend this law to other wares and merchandizes that are within the same mischief? If we look to the reason of the law, we shall make no doubt of it: for that is, because the impositions were without assent of parliament, not because they were upon such and such commodities. Besides, those laws so made are *declarative juris antiqui, non introductiva novi*.

In the enumeration of those statutes which I conceive make directly to this purpose, I will endeavour rather to answer the objections made against them, then to enforce the sence and meaning of them, which is very plain and open, and needs no interpretation. The first statute enforced is Mag. Charta, cap. 30, made in the ninth year of H. 3. by which it is enacted, that all merchants shall have free egress and regress out of and into this realm, with their goods and merchandizes, to buy and sell, 'sine omnibus malis tolneis per antiquas et rectas consuetudines.' In which words we may infer, that both the use and right of imposing are absolutely excluded, and debarred: for *consuetudo*, which in this case is to be taken for *usage*, which is *mos*, (not improperly for *portorium*, a duty paid in money, as our English word custom in one sence doth signifie) implieth a beginning and continuance by consent and will of the parties, not by power and enforcement,

which cannot be a custom; and therefore it cannot be an imposition; for that ariseth meerly out of the will and power of the imposer, and is against the will of him upon whose goods it is set. But take *consuetudo* either for *mos* or *portorium*, the epithites with which it is qualified, *antiquum* and *rectum*, do describe it to be of that nature that it cannot be an imposition. For *antiquum*, in legal construction, is that which is time out of mind, that is not an imposition; for then by continuance of time it should grow a right by prescription, and were justifiable. *Rectum* implieth a limited right, which inferreth there may be a wrong, and exceeding of that right, which is not in impositions; for if there be a right in the king to impose, the quantity, time, and other circumstances are in his discretion; the right is illimited. And if he set on never so great an imposition, there is as much right in it, as if it be never so small. The excess maketh it a burthen, but not a wrong.

We may further observe, that, in the statute, *malum tolneum*, which is evil toll, is set down by way of antithesis to *antiqua*, and *recta consuetudo*; by which is inferred, that exactions upon wares and merchandizes not qualified with these two properties of *antiquum* and *rectum*, are evil and unjust. This is made more evident by a record in the Tower of 16 H. 3. which was a mandat sent by the king to the customers of his ports for the execution of this law made in 9 H. 3. whereby it is commanded, 'quod omnibus mercatoribus in portum suum venientibus cum viniis, et aliis merchandizis, scire faciant, quod salvo et secure in terram Angliæ veniant cum viniis et merchandizis suis, faciendo inde rectas et dubitas consuetudines, nec sibi timeant de malis tolneis, quæ iis faciat rex, vel in terrâ suâ fieri permittat.' By this record the word *consuetudo* is interpreted to be *mos*, not *portorium*; otherwise it should have been *solvendo consuetudines*, not *faciendo*. Also these words *antiquum et rectum* in the statute in this writ are *rectum et debitum*, which doth more enforce a certainty of right and duty, which by no means can be intended in impositions.—Objections against this law were made in the last argument. First, that it was made for aliens. This is true; the words of the law do plainly shew it was made for aliens. But if the state was so careful to provide for them, shall we not judge, that with denizens it was so already? And that this statute was made to extend that liberty by act of parliament to aliens, which denizens had by the common law, succeeding times did so conceive of it, as appeareth by the statute of 2 E. 3. cap. 9. The words are, that all merchants strangers and princes may go and come with their merchandizes in England after the tenor of the Great Charter, and that writs be thereupon sent to all the sheriffs in England, and to mayors and bayliffs of good towns, where need shall require.

A second objection was made in the last argument, out of these words of the statute of

Magna Charta, that merchants might freely traffique, 'nisi publicè antea prohibiti fuerint:' by which was enforced, that the king had power to restrain and prohibit traffique; therefore to impose.—It is agreed there may be a public restraint of traffique, upon respects of the common good of the kingdom; but whether that which is called *publica prohibitio* in the statute, be intended by the king alone, or by act of parliament, is a question: for such restraints have still been by parliament. But admit the king may make a restraint of traffique in part for some public respect of the commonwealth, he doth this in point of protection, as trusted by the commonwealth to do that which is for the public good of the kingdom; but if he use this trust to make a gain and benefit by imposing, that is a breach of the trust, and a sale of government and protection. But more of this shall be hereafter spoken in the answering of the main objections.

The next law is that notable statute of E. 1. [cap. 7.] in the 25th year of his reign, made upon the very point in question. The words are these. 'And forasmuch as the most part of the commonalty of this realm find themselves sore grieved with the male toll of wools, that is, to wit, a toll of forty shillings for every sack of wooll, and have petitioned to us for to release the same; we at their request have clearly released it, and have granted for us and our heirs, that we shall not take such things without their common consent and good will, saving to us and our heirs the customs of wools, skins, and leather, granted before by the commonalty aforesaid.'—Against the application of this law to the question now in hand, many objections were made; some out of matter precedent to the law, some out of the law itself, some out of matter subsequent and following after the law.

For matter precedent, it was objected out of Thomas Walsingham, an historiographer of good credit, [fo. 71, 72, 73. edit. per W. Camb. impres. Francof. 1603.] that writ of that time when the statute was made, that in the petition of grievances given to king E. 1. by the people in the 25th of his reign, upon which petition the statute was made, that they found themselves not grieved, in point of right, but in point of excess. The words are, 'communitas sentit se gravatam de vectigali lanarum, quod nimis est onerosum, viz. de quolibet sacco 40s. et de lanà fractâ septem marcus.' So they express the cause of their grief, that it was too heavy; which is to be applied to the point of excess, not of right.

To this I answer, that if the words had been, 'quia est nimis onerosum,' this construction might have been made out of them; because the word *quia* had induced a declaration of the cause of that which was formerly affirmed: but the words are, 'quod nimis onerosum,' which doth only positively affirm, that the imposition *de facto* was intolerable for the greatness of it, which doth not therefore admit, that it is tolerable in respect of the right the king had to

impose. But this is made clear by the general word precedent in the preamble of the petition, which doth evidently infer, they grounded their complaint upon point of right, not upon point of excess. The words are these, 'tota terræ communitas sentit se valdè gravatam, quia non tractantur secundum leges et consuetudines terræ, secundum quas tractari antecessores sui solebant habere, sed voluntariè excluduntur.' After which preamble, among the particulars, this of forty shillings upon a sack of wooll is ranked, but with a dependency of that expressed in the preamble for the point of right. But seeing we light upon history, which though it be of small authority in a law argument, yet being the history of our own realm, hath fit and proper use in the common council of the realm, I will pursue it a little further, out of Matth. Westm. a writer that lived much nearer the time of the law made, then Thomas Walsingham. He saith, [fo. 430. edit. per H. Savilemil. Francofurti 1601.] that the commons by their petitions required 'ne rex de cætero tallagia usurparet, et voluntarias super his inductas exactiones de cætero quasi in irritum revocaret,' by which it appeareth, that the point of the complaint was that the exactions laid on them were voluntary, that is, at the kings will without assent of parliament.

Out of the law it self it hath much been pressed, as first the commons made petition to the king; whereupon they infer out of the nature of the word petition, that their proceeding was by way of grievance, for the excess and inconvenience, as a matter of grace, not in course of justice for the wrong.—To this I answer, that considering the quality of the parties to this action, it being between the king and the subject, duty and good manners doth induce gentleness and humility of terms, without bluish or diminution of the force of right. It is according to the demeanor of Job, ix. 15. 'though I were just, yet would I not answer, but I would make supplication to my judge.' But in our forms of law, be the right of the subject never so clear, manifest, and acknowledged by all; yet if his own be detained from him by the king, he hath no other writ or action to recover, but a meer petition *supplicat celsitudini, &c.* So as if the word petition to the king infer defect of right in the petitioner, there can be no case where the king can do the subject wrong.

A second objection out of the body of the law is, that the king doth release that imposition of forty shillings, which implieth a right settled in him.—But to this I answer, that it is no necessary inference, wheresoever a release of right is; for it is used for claim onely, or where possession was, though wrongful, and that 'in majorem securitatem, quia abundans cautela non nocet.' But in this case, a release was very expedient, and for some respect necessary, to extinguish a right the king had in this imposition against the merchants themselves. For this imposition, though it were not set on by assent of parliament, yet was it not set on by the kings absolute power; but

was granted to him by the merchants themselves, who were to be charged with it. So the grievance was the violation of the right of the people, in setting it on without their assent in parliament, not the damage that grew by it; for that did onely touch the merchants, who could not justly complain thereof, because it was their own act and grant. This appeareth by two notable records, the one 22 E. 1. [Origin. in Scac. Rem. Thes.] a writ to the treasurer and barons of the Exchequer in Ireland, to discharge the merchants there of impositions on woolls; in which the king reciteth, 'licet in subsidium guerræ regis pro recuperandâ terrâ Vnscopiâ mercatorum gratanter concesserunt per biennium vel triennium, si tantum duravit guerra, de sacco lanae, &c.' The other record is the writ of publication, that in 26 E. 1. [Mem. Scac. Rem. Thes.] went out after the statute of 25, in which writ the king reciteth thus, 'cum nos ad instantium communitatis regni nostri remiserimus custumam 40s. nobis nuper in subsidium guerræ nostræ contra regem Franciæ concessum, &c.'

A third objection made out of the body of the statute, by those which have argued on the contrary part, was upon these words, that the king would take no such things without common consent; by which words they conceived the intention of the law was limited precisely to impositions set upon wooll, and not on other commodities, which are not such things, but other: and for this they alledge this reason, that it was not probable, when the complaint was only for an imposition on wooll, that the king would give a remedy for other things not spoken of, for which there was no cause of complaint.—To this a full answer is given many ways. First, out of the saving in the act, which extends to other things then to wooll, as to wooll-fells and leather; therefore the purview of the act by these words, 'such things,' extendeth to more then the wooll; for there needs no saving, but for that which is contained in the purview. Secondly, the reason alledged, that no more by likelihood should be remedied but for wooll, because onely that was complained of, is false: for the complaint of the commons was not onely for this imposition on wooll, but divers other burthens and grievances of the like nature. And this will appear if we compare all the parts of the law, the one with the other; for this law is in the form of a charter written in French, and beginneth, 'Edward by the grace of God, &c.' and is an entire grant, and instrument without fractions, sections, and chapters, as it is now printed, and contained in it, next before this last clause concerning the impositions on woolls, which in the printed book is cap. 6. that the king, for no business from thenceforth, will take no manner of aids, mises nor prises, but by common assent. This word *mises*, in French signifieth properly impositions, derived of the word *mitto* in Latine *so put*. So the word 'such things,' is a conclusion to all the premises, and hath relation not onely to that which is made cap. 7. by the

printer, and concerneth the male toll of woolls, but to that precedent, which is all other aids impositions and takings. The writ of publication of this statute sent out to all parts in 26 E. 1. [Mem. Scac. Rem. Thes.] maketh plain this construction. The words of it are, 'concedentes quod custumam illam vel aliam, sine voluntate vel communi assensu non capiamus.' These words, 'vel aliam,' are indefinite, and extend to any other whatsoever, besides that of woolls. The writ doth further discharge merchants for the commodities of wooll-fells and leather, which are not complained of by name in the statute; and therefore the law was intended to other impositions as well as to those upon woolls.—The objection made out of matter subsequent to the statute was this, that notwithstanding this law of 25 E. 1. impositions, that before the statute had been set on other merchandize then woolls, were still answered after the statute; and for instance of this was alledged, that whereas 16 E. 1. [Orig. R. Thes.] an imposition of 40s. the tun was set upon wines brought into the kingdom, an account was made of this in the Exchequer in 26 E. 1. as by the records there appeareth; by which it seemeth that the law of 25 E. 1. was not taken to extend to wines, and such other commodities, other then woolls named in the statute. It is true, such an imposition was set on by E. 1. in the sixteenth year of his reign, and an account made for it 25. and 26. But it appeareth by the record [T. Mich. R. Thes.] of the account, that it was made for the time ended before the statute made: as from the eighteenth of May, 16 E. 1. to 23 Jul. 22 E. 1. But there is no record, that ever any account was made for any money received for that imposition for the time after the statute made; neither was it very willingly answered before; for it appeareth by the record that it was ten years after the setting of it.

The third statute alledged, on the behalf of the subject, is that 34 E. 1. c. 1. the words are these, 'No tallage or aid shall be taken or levied by us, or our heirs in our realm, without the good will and assent of our arch-bishops, bishops, earls, barons, knights, burgesses, and other freemen of the land.' Against this was objected, that this statute was intended onely upon the taxes and impositions of things. The word *auxilium* makes it clear, that it is to be intended further then of things within the realm: for *tallagium* is commonly intended of domestical taxes, but *auxilium* is the most usual term for impositions upon goods imported and exported; as by the acts of parliament by which such impositions are given to the king, in which they are called most commonly by the name of aids, as proceeding of good will and benevolence.

The fourth statute alledged on this part is that of 5 E. 2. c. 14. just in point of the matter in question; and therefore I will set it down as I finde it *verbatim* in the record in the Tower. 'Ensement novelles customes sont levies, et antients enhauces, come sur levies

‘drapes, vine aver du pois, et autre choses, purquoy les merchantes veynont plus vollement, et meynes de bien, menyent en la terre, et les merchants estrangiers demurront plus longment que ils soleyent faier, pur le quel demeure le choses sont le plus enhaunces que ils ne soloyent estre, al damage de roy, et de son people. Nous ordonons que tout manners de male tolls, levies puies de coronement de roy Ed. fils de roy Henry, soient entirement oustes; et de tout estreints pur tout jours, nient contriteant le chartre que le dict roy Ed. fist a merchants aliens, pur ceo que il fuit fait contre le grand chartre et encontre le franchise de la city de Londres, et sans assent de baronage, &c. Savant neque dent al roy le custome de leynas, peulx, et de quirs, &c. si aver les doet.’

By this law is recited, that by the levying of new customes, and by the raising of old, traffique was destroyed, and all things made dear; and therefore all new impositions and customs were discharged Charta Mercatoria, by which, custom, that was increased on aliens, was taken away; and the reason alledged; because it was ‘sans assent de baronage,’ and against the Great Charter. And this is further with this clause, saving to the king his custom of wooll, wooll-fells, and leather, ‘si aver les doet.’

Great wars have been raised against the credit of this law in the parliament house, and three things have been especially objected against it.—First, that it is no law; for it was enforced upon the king by some of the nobility that were too strong for him, the realm being then in tumult and mutiny about the quarrel of Peirce of Gaveston, so never had the kings free consent; but he gave way unto it for fear of greater mischief. Secondly, that in itself it is unjust, as in taking away the custom granted to the king by Charta Mercatoria, 31 E. 1. and in making doubt, whether the king should have the custom of woolls, &c. by those words, saving it to him, ‘si aver les doet.’ The third objection is, that if it were a law, it is repealed. To these I give particular answers.

To the first, that this statute was made both at the instance of the king and people, with a purpose and intention on all parts to settle things in a stay and order, both in the kings house and commonwealth: the king and his nobles standing in good terms, when this business was taken in hand. And it was begun and ended with great solemnity and ceremony. For the king in the third year of his reign gave commission [Com. 16. Mar. 3 E. 2. Rot. Ordin. 5 E. 2.] under his great seal to 32 lords spiritual and temporal; of which there were 11 bishops, 8 earls, and 13 barons; they being as committees of the higher house to devise ordinances for the good government of his house and his realms. In which commission he doth for the honor of God, the good of him and of his realm, of his free will, grant to the prelates, earls, and barons, and others elected by the whole kingdom, full power to ordain the state of his house and realm by such ordinances as by them should be

VOL. II.

made, to the honor of God, the honor and profit of holy church, the honor of himself, the profit of him and his people, according to right and reason, and the oath he made at his coronation. These joyning with others of discreet commons in parliament, and taking every of them a solemn oath for their sincere demeanor in the business, did make this and other ordinances, which were so well liked of by the king, that, after they were made, he took an oath to observe them, and caused them to be published in Paul's church yard by the bishop of Salisbury, by denouncing excommunication against all that should wilfully infringe them; and by his letters pattents [Public. 8. Kal. Oct. 5 E. 2. Rot. Ord. Pat. 5. Oct. 5 E. 2. Rot. Ord.] dated 5 Oct. 5. regni sui, did send them through the realm to be published, and from thenceforth to be observed, thereby signifying his great liking and approbation of them; after which they had the force and power of laws given unto them in the parliament, in the fifth year of his reign.

The second objection, which is the unjustness of the law, instanced in two points; the taking away of Charta Mercatoria, and the doubting of the kings right to the custom of wooll-fells and leather, &c.—To the first of these, I deny it to be unjust, but to be according to the law of England, and liberty of the kingdom: for that charter did contain in it divers grants of things which were not in the power of the king to grant without assent of parliament; the trial *per medietatem linguæ*, and other things tending to the alteration of the law, and burdening of the people; and therefore that charter never had his undoubted and settled force, until it was confirmed by act of parliament, but lay asleep almost 20 years together, without being put in execution, between 5 E. 2. and 27 E. 3. when it was confirmed. For the doubt that is supposed to be made in the statute of the kings right to the custom of wooll, wooll-fells and leather, I take it, there is no such doubt made: for the words, ‘saving the kings right to the custom of woolls, si aver les doet,’ have this construction, that is, at such times as he ought to have it: so the word *si* hath the signification of *quando*; for it had been a folly to have made a saving of that, of the right whereof they had doubted; neither is it likely but that they would have taken it away, if it had not been lawful. But there was no colour to doubt of the right of it; for it was given by act of parliament, and ever continued in force without challenge or exceptions to the lawfulness of it.

The third objection is, that this statute is repealed. To this I plead, *nullum valet recordum*. If it be repealed, it must be by act of parliament; for ‘*unum quodque dissolvitur iisdem modis quibus est colligatum*.’ I and others have searched the records of the realm, and endeavoured by all means to inform our selves of the truth herein, and we can find no act of parliament of repeal. The truth is, some kings, finding these laws not to sort to their wills and humors, have endeavoured to suppress them;

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but they did never yet obtain a repeal of them by act of parliament.

But it is further urged, that although there were no formal repeal of the law, yet it was never put in execution as a law, but even presently upon the making was rejected, and use and practice went quite against it: and for instance hereof, a record was vouched, that E. 2. held himself so little bound by it, as that in the 11th year of his reign he set an imposition without assent of parliament upon wooll, wooll-fells, leather, wines, cloth, *aver de pois*, and divers other kind of merchandizes. To this I answer, that if it were true, that a weak and impotent king, as he was, did contrary to the law, doth this make the law void, and no law? but if we look into the whole record, and scan this action of E. 2. from the beginning of it unto the end, we shall finde it a very good instance to prove the practice and execution both of this law of 5 E. 2. and of that in 25 E. 1. For it is true, that E. 2. in the 41th year of his reign did borrow of the merchants a certain sum of money, above the due custom of woolls, wooll-fells, wine, *aver de pois*, leather, and such other goods imported and exported. But it appeareth by the record, [Rot. Claus. 11 E. 2.] he took it but for one year; he took it by the advice and counsel of the merchants; and he took it *per viam mutui*, as a loan. The direction of the writ is, 'collectoribus mutui nobis per mercatores alienigenas et indigenas de certis rebus et merchandis usque ad certum tempus faciendi.' This was done in good terms, he did not claim it as his right, but did borrow it, which I do think is a good evidence against his right. But what became of this? the state would not abide it, for all these fair shews. And therefore afterwards the king sendeth out other writs, by which he dischargeth all merchandizes of this loan, saving only wooll, wooll-fells and leather; and for the loan taken upon those commodities, it was limited to continue but until Michaelmas after, and good security was given to the merchants by the customers to pay themselves, by way of defalcation, out of the customs which should be due after Michaelmas, those sums which were so borrowed of them. The words of the record are worth the observing, 'cum pro expeditione guerræ Scotiæ, et aliis arduis et urgentibus necessitatibus nobis multipliciter incumbētibz, pro quarum exemptione quasi infinitam pecuniam refundere oportebit, pecunia plurimum indigeamus in præsentī, et nuper pro eo quod exitus regni et terrarum nostrarum, simul cum pecunia nobis in subventi ne præmissorum tam per clerum quam communitatem regni nostri concessa, ad sumptus prædictos cum festinatione qua expediret faciendos, non suffieunt; exquirentes vias et modos, quibus possemus pecuniam habere commodius et decentius pro præmissis, de consilio et advisamento quorundam mercatorum tam alienigenarum quam indigenarum viam invenimus infra script. viz.' and so setteth down the manner of the loan, and the security for the payment of it. This, I take it, was nei-

ther an imposition, nor a wrong in any respect. Also by the first record it appeareth, that the loan set on wines, *aver de pois*, and such other commodities, besides wooll, wooll-fells and leather, were presently discharged by E. 2. which sheweth they were taken to be within the intent of the statute of 25 E. 1.

The fifth statute alledged on the behalf of the subject is that of 13 E. 3. stat. 1. cap. 21. by which the commons pray the king to take no more then the old custom of the half mark. The king prayeth aid of the commons for a time above the custom upon his necessity of wars. And the conclusion is, that by that act the king doth grant, that after the feast of Pentecost, 12 moneths following, he will take no more of woolls, wooll-fells, and leather, but the old custom, and doth promise to charge, set, or assess upon the custom but in manner as aforesaid.

The sixth statute is 14 E. 3. stat. 2. cap. 1. The king doth grant by way of charter to the prelates, earls, barons, commons, citizens, burgesses, and merchants, that they be not from henceforth charged nor grieved to make any aid or sustain charge, if it be not by the common consent of the prelates, earls, barons, and other great men, and commons of the realm, and that in parliament.

These two statutes grew upon an occasion of an imposition set on wooll by the king without assent of parliament. Little hath been objected against them, but only to the first, that it was obtained of grace, and not upon instance of right, which they gather out of the words of the law, which are, 'the commons pray the king that he would stablish, that from henceforth no more then the old custom be taken.' The like reason may be made against the king out of the same words in the same law; for the king in the same act prayeth the commons to give him an imposition upon woolls for a time above the old custom. But the record of the petitions exhibited in parliament, on which these two laws are made, clearerth the objection. The first was delivered by the lords in this form, [Rot. Par. 13 E. 3. num. 5.] *les grands volunt*, that the male toll, set on woolls, newly, be altogether abated, and that the old custom be held, and that they may have this in point of charter, and by enrolment in parliament. This word, *volunt*, had been too high for a suit of grace, and therefore must be intended of right. The common petition [lb. num. 13.] in form is somewhat humble, but in effect and purpose is rough and stern. The words are these: 'the commons pray that the male toll of woolls be taken as it was used in antient time, which is now enhanced without the assent of the commons, and *grandes*, as we conceive; and that if it be otherwise demanded, that every one of the commons may arrest them without being challenged.' According to these petitions, the first of these two laws is by enrolment in parliament; the second is in form of a charter: the first doth express some special commodities; the second doth reach generally at all.

The seventh law directly touching this point is that 14 E. 3. stat. 2. cap. 2. the king doth grant according to the Great Charter, that all merchants, denizens, and foreigners, may without let safely come into the realm of England with their goods and merchandizes, and safely tarry, and safely return, paying the subsidies, customs and other profits reasonably due. Upon the words of this law, was great advantage taken in this, that besides custom and subsidy, which comprehend all the certain and ordinary duties the king hath upon the wares and goods of merchants, there are other profits spoken of to be due. These they affirm cannot be understood but of impositions by the king without assent of parliament.—To this I answer; if they were not duties due to the king besides custom and subsidy, which might satisfy the intention of these words, this objection might have had some colour in it; but it is plain, that besides these two, there are other profits due to the king upon merchants goods, as *scavage*, *tonnage*, and the like. And you shall finde a petition in parliament, 50 E. 3. against the raising of these above the old rate.

The eighth law is 15 E. 3. stat. 2. cap. 5. whereby it is enacted, that every merchant may freely buy and sell, and pass the sea with their merchandizes of wooll and all other things, paying the custom of old time used, according to the statute made in the last parliament in Mid-Lent, which was the stat. 14 E. 3. stat. 2. cap. 2. This law doth expressly exclude the novelty of impositions.

The ninth law is that 18 E. 3. stat. 1. cap. 3. whereby it is enacted, that the sea be open to all manner of merchants to pass with their merchandizes where it shall please them.

The tenth is, 27 E. 3. stat. 2. cap. 2. for the assurance of merchants-straungers and other, the king doth will and grant for him and his heirs, that nothing shall be taken over the due customs, nor taken of them to his use by colour of suit, or in other manner against their wills.

The eleventh is 38 E. 3. cap. 2. that all manner of merchants aliens and denizens may buy and sell all manner of merchandizes, and freely carry them out of the realm, paying the customs and subsidies thereof due.

The last is 23 H. 8. cap. 8. by which it was enacted, that tables should be set up in ports, by which the certainty and very duty of every custom, toll, and duty, or sum of money, to be demanded and required of wares and merchandizes, shall and may plainly appear and be declared, to the intent that nothing be exacted otherwise then in old time hath been used and accustomed.—By this late law it appeareth, that the judgment of the whole parliament was at that time, that nothing was due upon wares and merchandizes but that which was certain, and had been antiently due; by which impositions are excluded, whose qualities are novelty and uncertainty, as being set on as present occasion moveth, and proportioned for quantity and other circumstances as the will of the king directeth.

These are the laws, which I conceive most directly tend to the restraining the kings of England from the exercise of that irregular power of imposing, at the first offered by them to be put in execution, yet not pressed as their right, and never practised but upon opposition of the whole state, and at last deserted and given over until of late; as by that which followeth in the fourth place will appear.

My fourth and last assertion is, that this practice of imposing without assent of parliament is *contra morem majorum*. In this I will make an historical perlustration of the times past, whereby I will discover and make known, what passages have been in this business in this kingdom, and especially in the high court of parliament for the space of 300 years and more last past, since the beginning of the reign of E. 1. sithence which time, and not before, this kingdom hath grown into the glory and reputation of forraigne traffique. And as a worthy gentleman of the kings learned council made certain considerations upon this question, framed and strengthened out of the greatness of his wit and reason; so I grounding myself upon the practice of former times, which is the safest rule whereby to square the right both of king and people in this commonwealth, where their right is *jus consuetudinarium*, a right that groweth by use and practice, I will propose unto you certaine observations out of the action and experience of former times untill the raignes of the two late queens; by which you may the better ground and frame your judgements in the determination of the right in this question.

1. My first observation is in point of circumstance, that there never was any imposition set, but in time of actuall war, and *duplucatis vexillis*; they were set on very rarely and sparingly, but for a short time, and that certaine and definite, and upon some few commodities, and that by the assent of the merchants that were to beare the burthen. In our time the occasion not so sensible, the continuance to be perpetual, the number many hundreds, almost no kinde of commodity spared. I will give you some few instances of these circumstances out of the records themselves.

The maletole of wooll, set on by E. 1. which gave the occasion of the stat. 25 year of his raigne, was given by merchants. The record saith, *mercatores gratanter concesserunt in subsidium guerræ regis*. It further sheweth, it was for his necessity of warre, which then was great also.

For the time of E. 3 there need not many instances; for his whole raigne was almost an actuall warfare. As in the 6th year of his raigne for his war in Scotland and Ireland, in the 13th year of his raigne for his war in France, severall impositions were set on.—In the 17th year of E. 3, the record in the Tower mentioneth, that 40s. imposition was upon a sacke of wooll by the grant of merchants, and it was in the time of war.—In the 20th year of E. 3, it appeareth in the record, that the imposition

then put upon woolls was by the assent of merchants for two years, for the necessity the king had in his passage over the sea, to recover his right, and to defend the realme.

2. My second observation is, never any imposition was set on by the king out of parliament, but complaint was made of it in parliament; and not one that ever stood after such complaint made, but remedy was afforded for it; 'et quod rex inconsulto fecit, consulto revocavit,' his soveraigne power controlled his subordinate. In which it is a thing very notable, that the king in no one case ever claimed, or so much as ever named his right or prerogative, which no doubt would have been done, if it had been thought due, but gave satisfaction to the complaint by one of these three waies;—Either by discharging them quite, and making some good law against them. 2dly, by entreating the people to hold them some short time by their favour.—3dly, by waving his present possession, and taking that of their gift by act of parliament, as an aide which he had set on by his absolute power as an imposition.

Instances of the first; 25 E. 1. the impositions of woolls taken off, and a law made against it, and the king undertook for him and his successors to doe so no more. 38 E. 3. 26. the imposition of 3s. 4d. on a sacke of wooll put off upon complaint; and a law made against it, 38 E. 3. c. 2. The like statute 45 E. 3. ca. 4. upon a complaint of an imposition on woolls made in parliament, 45 E. 3. n. 47. Rot. Parl.

Instances of the second; 21 E. 3. nu. 11. a petition upon an imposition of 2s. upon a sacke of wool, 2s. upon a tunne of wine, and 6d. upon *aver de pois*, all discharged presently, saving the 2s. upon a sacke of wool, and for that intreated that it might stay till Easter following, and so it did, and was then taken away.

Instance of the third. 25 E. 3. nu. 22. the commons made petition against an imposition of 40s. upon a sack of wool, granted to the king by the merchants, shewing that they ought not to be bound by their act. The king did not claime right or justice; but because his warres were great, upon his request had it granted unto him for two yeeres by act of parliament, and pretended no title of prerogative, neither was it ever spoken of.

3. My third observation is, that our kings have acknowledged that it is not their right. E. 1. in his writs he sent to the officers of his ports to levie 3d. on the pound over the old custome of the denizens as well as of the aliens, and to suffer the denizens to enjoy those privileges the aliens did enjoy by the payment of the encrease of custome, doth give this direction expressly: that they should not take it of denizens against their will. The words of the record express it very fully: 'cum mercatores extranei et alienigenæ, pro quibusdam libertatibus eis per nos concessis et priscis nostris quibuscunque remissis, nobis de bonis et merchandisiis suis quibuscunque infra regnum et potestatem nostram adducend. ultra anti-

quas custumas dare concesserint præstationes et custumas subscriptas, viz.' and so setteth down the increases, and amongst the rest this 3d. upon the pound, and so proceedeth, 'ac quidam mercatores de regno nostro et potestate nostra, ut ipsis dictis libertatibus et immunitatibus uti et gaudere, et quod de prisus nostris quieti esse possint, præstationes et custumas hujusmodi de bonis et merchandisiis suis nobis solvere velint, ut accepimus, assignavimus vos, &c. ad custumas et præstationes predictas de mercatoribus de regno et potestate nostra colligend. qui eas gratanter et sine coercionem solvere voluerint; iter tamen quod aliquem mercatorem de dicto regno et potestate nostra ad præstationes et custumas hujusmodi nobis invito solvend. nullatenus distringatis.' Surely if E. 1. had claimed the prerogative of imposing, he would never have given these cautions in the requiring of that which he had taken to be his due, as that they should not exact it of any of his subjects that were not willing to pay it, nor trouble nor distraigne them for it.

In the twelfth yeere of E. 3. we find the record [Rot. Alem. 12 E. 3. dorm. 21. in Turr.] of certain letters written from the king, being then at Barwick in the Scottish warres, unto the archbishop of Canterburie, in which letters the king seemeth to have a great confidence in the devotion of the archbishop, and therefore earnestly intreateth him to further his enterprises with his prayers to God, and then addeth further: 'Ad hoc pater, cum populus regni nostri variis oneribus, tallagiis, et impositionibus, hactenus prægravetur (quod doleantes referimus) sed inevitabili necessitate compulsi de eisdem oneribus ipsum adiacere levare non valemus dictum populum, ut tantam necessitatem nostram humiliter et benigne patiatur et caritative sustineat, et priorem, quam penes nos concepit de cetero iustanter in orationibus et elemosynis suis, (oneribus predictis, quæ non ex malicia vel presumptione voluntaria ipsum gravant, non obstantibus) exhibeant caritatem, indulgentiam muneribus et aliis modis, quibus secundum Deum videbitis piis exhortationibus inducatis, et nos penes eundem excusetis; speramus namque per Dei gratiam, cujus manus cunctis indigentibus sola sufficiens, et largiflua comprobatur, beneficiis compensatis dictum populum visitare et consolari pro loco et tempore opportunis.'

The principall thing I note out of this record, upon the very point of this my third observation, is, that the king intending to excuse himself of the burthens by him laid on the people, and to avoid the blemish of wrong and injustice in laying thereon, saith they were not 'onera ex presumptione voluntaria,' that is, burthens that he presumed to lay on at his owne will, whereby he condemneth impositions without assent of parliament, which are, 'onera ex voluntate regis,' to proceed of presumption, which doth clearly exclude claime of right, and disproveth the lawfulness of the act.

But there are divers other notable passages in the record worthy our marking. As out of the word 'prægravantur' used by the king, wee may gather he did accept these impositions a grievous burden to his people, which sheweth his owne pity of them. He saith further, 'dolentes referimus,' shewing his griefe and remorse at it; 'et inevitabili necessitate compulsi,' he did it constrained by unavoidable necessity, shewing he was forced to it against his will, by that which violateth and breaketh all law; which inferreth, he would not maintain his action by law. 'Adhuc relevare non valemus;' this insinuates, he would ease them in good time. 'Caritatem exhibent,' they should afford him charity in the bearing of them, as if so be in point of justice or right they need not. 'Penes eundem excusetis,' the bishop should excuse him to the people. By this he did clearly leave the point of justification, and so of right. Lastly, he promiseth he would visit and comfort them 'beneficiis compensativis,' would give them recompence for those summes he had so raised of them; which sheweth that he claimed them not as due, for then he needed not give recompence for them.

In the 21st E. 3, a petition was exhibited in parliament, that levies be not made by commission, so they be in this case, nor other things laid upon the people unless they be granted in parliament. The kings answer is, if any such impositions were made, it was by great necessity, and with assent of the prelates, barons, and some of the commonns present; yet he will not that such impositions not duly made be drawne in consequence. Here the king acknowledgeth an imposition not to be duly made, though with the consent of the higher house and some of the commonns, because it was not in full parliament: much rather he would have thought so, if it had been by the king alone.

King E. 4, that was a rough and warlike prince, and was more beholding to his sword in the recovery of his right to the crowne then to the affection of the people, at a parliament held the seventh yeere of his raigne made a speech to the commonns, sir John Say being then Speaker, in which speech is contained very notable matter, and very pertinent to our purpose; and because the record is not in print, I will set downe the kings speech *verbatim* as it is entred upon the parliament roll, [Rot. Parl. 7 E. 4. The record begins, 'memorandum quod die Veneris, 3 die Parl.] and then I will make a paraphrase upon it. 'John Say, and ye sirs come to this my court of parliament for the commonns of this my realme. The cause why I have cald and summoned this my present parliament, is, that I purpose to live upon mine own, and not to charge my subjects but in great and urgent causes, concerning more the weale of themselves, and also the defence of them and of this my realme, rather than mine owne pleasure, as heretofore by commonns of this land hath bene done, and borne unto my progenitors

'in time of need; wherein I trust, that yee sirs, and all the commonns of this my land, will be as tender and kinde unto me in such cases as heretofore any commonns have been to any of my progenitours. And for the goodwill, kindness, and true hearts that yee have borne, continued, and shewed to me at all times heretofore, I thanke you as heartily as I can. Also I trust yee will continue in time coming; for which by the grace of God I shall be to you as good and gracious a king, and reigne as righteously upon you, as ever did any of my progenitors upon commonns of this my realme in dayes past, and shall also in time of need apply my person for the weale and defence of you, and of this my realme, not sparing my body nor life for any jeopardy that might happen to the same.'

Out of this, we may observe first the kings protestation to live of his owne, and not to charge his subjects; by which I gather he did acknowledge a certain and distinct property of that which was his subjects from that which was his own, which excludeth the right to impose at his will; for if that be admitted, the subjects property is *proprietas precarius*, not certaine how much of his is his owne: for that is his which the king will leave him; for there is no limit or restraint of the quantity, the right being admitted, but onely the kings will.—The second thing I observe is this, that in charging of his subjects he would confine himselfe between these two bounds. The one, it should bee in great and urgent causes concerning more the weale of them, and the defence of them and his realme, than his own pleasure; wherein he condemneth those occasions that grew upon excesse of private expence by over great bounty, or otherwise, and admitteth onely such as grow by reason of warres, or other such like publique causes concerning the whole state. The other bound or limit is, that those burdens should be *secundum morem majorum*, as heretofore had been done and borne by the commonns to his ancestours in time of need.—The third thing I observe is, that he acknowledged these burdens did proceed out of their good-will and kindness, and not out of his right and prerogative; out of these words, that he trusted they would bee as tender and kinde to him in such cases, as heretofore any commonns had been to his progenitors.—And lastly, wee may note the recompence promised by the king to his subjects, for their good wills and kindness, his goodness and grace, his just and righteous government, the jeopardy of his body and life for their weale and defence. Did this king assume to himselfe a right to lay burdens on his subjects at his own will without their assents, that offered to buy them at his need with the price of his blood, the most sacred relique in the kingdome?

4. My fourth observation is, that in all petitions exhibited by the commonns in parliament against impositions, the very knot of their griefe, and the principal cause of their complaint, hath been expressed in those petitions,

that the impositions have been without assent of parliament; by which is necessarily inferred, that their griefe was in point of right, not of burden.—In 21 E. 3, nu. 11. the complaint of the imposition of 2s. upon a sacke of wooll, 2s. upon a tonne of wine, 6d. upon *over de pois*, the cause of grievance expressed, because it was done 'sans assent de commons'.—25 E. 3, nu. 22. In a petition the commons complaine, that an imposition upon woolls was set by the consent of the merchants; they pray that commissions bee not made upon such singular grants, if they be not in full parliament; and if any such grants be made, they may be held as void.—17 E. 3. nu. 28. The commons in their petition informe the king, it is against reason they should be charged with impositions set on by assent of merchants, and not in parliament.

5. My fifth observation is, that, whensoever any petition was exhibited against impositions, there was never any respect had of the quantity, but they were ever intirely abated, as well where they were small, as where they were great; no request ever made to make them less when they were great, nor excuse made of their ease when they were exceeding small; which sheweth, that it was not the point of burden or excess was respected in their complaint, but the point of meere right.—25 E. 3, nu. 22. Fourty shillings set an imposition upon a sacke of wooll, upon complaint, all taken off, and no suit to be eased of part because it was too great.

36 E. 3. nu. 26. 3s. 4d. upon a sacke of wooll all taken off, and no excuse made for the smallness; for 21 E. 3. nu. 11. 2s. a sacke, 2s. tonnage, and 6d. poundage.—50 E. 3. nu. 163. A great complaint was made in parliament by the commons, that an imposition of a penny was set upon woolls for tonnage over and above the ancient due, which was but a penny, and so the subject was charged with 2d.; also that a penny was exacted for mesonage, which impositions the record doth express did amount to 100*l.* a yeere.—This petty imposition was as much stood upon in point of right, as the other great one of 40*s.*, and was taken off upon complaint in parliament, without either justification or excuse for the smallness of it.

6. My sixth observation is, that those which have advised the setting on of impositions without assent of parliament, have been accused in parliament for giving that advice, as of a great offence in the state, and have suffered sharpe censure and great disgrace by it.—Neither doe I finde that the quality of the person hath extenuated the blame; as 50 E. 3. William lord Latimer chamberlaine to the king, and one of his private counsell, was accused by the commons in parliament of divers deceits and extortions and misdeeds, and among other things, that he had procured to be set upon wooll, woollfells, and other merchandizes, new impositions, to wit, upon a sack of wooll 11*s.*, which the lord Latimer sought to excuse, because he had the consent and good liking of

the merchants first. But judgment was given against him, that he should be committed to prison, be fined and ransomed at the kings will, and be put from being of the council: and this procuring of impositions to be set on without the assent of parliament is expressly set down in the entry of the judgment for one of the causes of his censure.—Richard Lyons, a farmer of the customs in London, the same year was accused in parliament for the same offence. He pleaded, he did it by the kings command, and had answered the money to the kings chamber: yet was condemned and adjudged in parliament to be committed to prison, and all his lands and goods were seized into the kings hand. And at the last the hate against these authors of impositions grew so, that 50 E. 3. in the same parliament, a petition was exhibited in parliament to make this a capital offence. The record [Rot. Parl. 50. E. 3. n. 17, 18, 19, 20.] is very short, and therefore I will set it down verbatim. 'Item 'prie le dit common, que soit ordaine per statute en cest present parliament de tous ceux, 'queux cy en avant mitton ou font par leur 'singular profit novels impositions per leur 'thortie demesn, accrocheants de eux eny ul 'power de riens que soit establi en parliament, sans assent de parliament, que ils eyent 'judgement de vie et member, et de forisfacture.' To this rough petition the king gave a milde and temperate answer, 'courre la counmon ley come estoit al avant use.'

7. My seventh observation is, the cessation between 50 E. 3. after this censure in parliament, and 4 Maria, almost 200 years, during which time no king did attempt to impose without assent of parliament. And yet we finde in the parliament rolls, that there was not one of those kings that reigned in that time, but had impositions granted him upon fit occasion by act of parliament upon all goods and merchandizers, and at divers times during their reigns, sometimes more, sometimes less upon the ton and pound, but ever for a time certain, and indefinite. So the use of them was not given over, but the power of imposing was so clearly and undoubtedly held to be in the parliament, as no king went about to practice the contrary.—But to this cessation, that was of great weight and credit in our evidence, a colour was given by the other side, to avert the inference made upon it against the kings right, that is, that during that time there was so great a revenue grew to the crown by double custom paid for all merchandizes both in England and at Callais, by reason of an act of parliament made 8 H. 4. which was, that no goods should be carried out of the realm but to Callais, and by reason that the merchants paid customs both there and here for the same goods, that in 27 Hen. 6, the custom of Callais was 68,000*l.* the year; a great sum, if you consider the weight of money then, what price it bare; and by reason hereof princes not delighting to charge their murmuring subjects but when need is, being so amply supplied otherwise, did not

put that prerogative in practice.—To this I answer, that if that were true that was urged, it might be some probable colour of the forbearance of imposing. But I finde it quite contrary, and that by record: for there was no such restraint of all commodities not to be transported to any place but Callais, but onely woolls, woolfells, leather, tinn, and lead, that were staple wares, which by the statute 37 E. 3: were to be transported thither, and not to any other place, and the staple continued at that place for the most part from that time untill long after, 27 H. 6. but there was no double custom paid both here and there by the same owner: but the yearly profits of the customs of Callais at those times were so far short of that which hath been alleged in 27 H. 6. that it appeareth in an act of parliament, 27 H. 6. cap. 2. printed in the book at large, that the commons do complain, that, whereas in the time of E. 3. the custom of Callais was 68,000*l.* per annum, at that time, which was 27 H. 6. by reason of the ill usage of merchants, it was fallen to be but 12,000*l.* the year. So then there was great cause in that respect to have set on impositions by reason of that great abatement of customs, and yet it was not then offered to be done without assent of parliament. But if you look a little further into the extreme necessities of those times, you shall finde there never was greater cause to have strained prerogatives; for it appeareth in an act of parliament, 28 H. 6. that it was then declared in parliament by the chancellor and treasurer, who demanded relief of the people for the king, both for payment of his debts and for his yearly livelihood, that the king was then indebted 372,000*l.* which now by the weight of money amounteth to above 1,100,000*l.* and that his ordinary expences were more then his yearly revenue by 19,000*l.* yearly. So if ever there was cause to put a king to his shifts, it was then; yet we see they did not venture to put in practice this supposed prerogative. It further appeareth in that statute, that the people, among those reasons they alleaged, why they were not able to retain the king, gave this for one, that they had so often granted him tonnage and poundage upon merchandizes, by which it appeareth he took nothing of merchants by imposition without grant; for if he had, no doubt they would not have stuck to have put him in mind of it. But I pray consider, what became of this motion of the chancellor and treasurer. The proposition had depended in parliament many years. The effect was, the people entreated the king to resume all grants he had made from the beginning of his reign, untill that time, being the 28th year of his reign, excepting such as were made upon consideration valuable, that he might so enable himself by that mean by which he had impoverished himself and the whole kingdom. This took effect, and the statute of resumptions was thereupon made the same year; which record, because it is not in print, and declareth these things with great gravity and authority,

[28 H. 6. Stat. de Resump. in Turri Lond. not printed.] I will set down the very text of it, so much as is material to our purpose.

‘Prayen your commons in this your present parliament assembled to consider, that where your chancellor of your realm of England, your treasurer of England, and many other lords of your coucill, by your high commandment to your said commons, at your parliament holden last at Westminster, shewed and declared the state of this your realm, which was that ye were indebted 372,000*l.* which is grievous, and that your livelihood in yearly value was but 5000*l.* And forasmuch as this 5,000*l.* to your high and notable state to be kept, and to pay your said debts, will not suffice: therefore that your high estate may be relieved. And furthermore it was declared, that your expences necessary to your household without all other ordinary charge came to 24,000*l.* yearly, which exceedeth every year in expence necessary over your livelihood 19,000*l.* Also pleaseth it your highness to consider, that the commons of your said realm be as well willing to their power, for the relieving of your highness, as ever was people to any king of your progenitors that reigned in your said realm of England: but your said commons been so impoverished, what by taking victual to your household, and other things in your said realm, and nought paid for it, and the quinzime by your said commons so often granted, and by the grant of tunnage and poundage, and by the grant of subsidy upon woolls, and other grants to your highness, and for lack of execution of justice, that your said poor commons be full nigh destroyed; and if it should continue longer in such great charge, it would not in any wise be had, ne born. Wherefore pleaseth it your highness, the premisses graciously to consider, and that ye by the advice and assent of your lords spiritual and temporal, and by the authority of this your present parliament, for the consideration of your high estate, and in comfort and ease of your poor commons, would take, resume, seise and retain in your hands and possession all honors, &c.’

This was very plain dealing by the people with their king, and this is the success of the demand of supply and support had in those days, being required in point of gratification, without any recompence or retribution for it. Thus then we have cleared this point, that between 50 E. 3. and 4 Mariz, there was not one imposition set without assent of parliament.

Queen Mary in the fourth year of her reign, upon the wars with France, set an imposition upon clothes for this consideration, that the custom of woolls was decayed, by reason for the most part they were made into clothes, which afforded little custom; for that which in wooll paid for custom and subsidy 40s. made into cloth paid but 4s. 4*d.* To recompence this by an indifferent equality, there was set upon a cloth 5s. 6*d.* which imposition did not make up the loss sustained in the custom of wooll, by

13s. 4d. in 40s. This was *justum*, but not *juste*. This religious prince, invironed with infinite troubles in the church and commonwealth, and much impoverished by her devotion, in renouncing the profits of the church-lands that were in the crown by the suppression, was the first that made digression from the steps of her worthy progenitors, in putting on that imposition without assent of parliament; for that very consideration of the loss of custom, by turning of wooll to cloathing, came into treaty in the 24th year of E. 3. when the art of clothing began first to be much practised in this kingdom; and then in the recompence of the loss so sustained in the decay of custom of woolls, there was set upon a cloth by act of parliament above the olde custom, 14d. for a denizen, and for an alien 21d. This is recited in a record in the Exchequer, 48 E. 3. Rot. 2. R. Thes. in origin. But I pray you examine, how this imposition of queen Mary was digested by the people. We see in the case of my lord Dier, 1 El. fol. 165. that the merchant found great grief at it, and made exclamation and suit to queen Eliz. to be unburdened of it. The very reason of their grief expressed in that case is, because it was not set on by parliament, but by the queens absolute power; so that was the ground of that complaint, the very point of right.—This cause was referred to all the judges, to report whether the queen might set on this imposition without assent of parliament. They divers times had conference about it, but have not yet made report for the king; which is an infallible presumption, that their opinions were not for him. For it is a certain rule among us, that if a question, concerning the kings prerogative or his profit, be referred to the judges, if their opinions be for the king, it will be speedily published, and it were indiscretion to conceal it; but if there be no publication, then we make no doubt, but that their opinions are either against the king, or at least they stick, and give none for him.

The same queen Mary, upon restraint of bringing in of French commodities occasioned by the then wars with France, set an imposition upon Gascoyn wines, which continueth yet. So the kingdom of England by the injustice of that prince was clogged with these two heavy impositions, contrary to the right of the kingdom and the acts of her progenitors.

Queen Elizabeth set on that upon sweet wines, which grew also upon the occasion of the troubles with Spain. That upon allome was none. It was rather a monopoly to master Smith the customer of London, for the ingrossing of all allomes into his own hands, for which priviledge he gave a voluntary imposition upon that commodity. It was like the priviledge granted to John Pechey of the sweet wines by E. 3. for which the patentee was called into the parliament house, 50 E. 3. and was there punished, and his patent taken away and cancelled.

What impositions have been set on in the kings time, I need not express. They are set

down particularly in the book of rates that in print. They are not easily numbered. The time for which they are raised is not short. The patent prefixed to that book, bearing date 28 Julii, 6 Jacobi, will instruct you sufficientl in that point. They be limited to the king, his heirs and successors; which I suppose is the first estate of fee simple of impositions that ever man read of.

8. My eighth and last observation is upon tannage and poundage given to the king of the realm, upon wares and merchandizes exported and imported, which is an imposition by act of parliament, and, as it will appear, was given out of the peoples good-will, as a very gratification to the king, to enjoyn him thereby from the desire of voluntary impositions, and to conclude him by that gift in parliament from attempting to take any other without assent of parliament. For after the ceasing of voluntary impositions, these parliamentary ones were frequent in the times of the king that succeeded. But they were never given but for year with express caution how the money should be bestowed; as towards the defence of the sea protection of traffic, or some such other public causes. Sometimes special sequestrators made by act of parliament, by whose hands the money should be delivered, as 5 R. 2. c. 3. in a printed statute. The rates that were given were very variable, sometimes 2s. tannage, and 6d. poundage, as 7 R. 2. 3s. tannage, and 12d. poundage, 10 R. 2. which grants were not to endure, the longest of them, above a year 18d. tannage, 6d. poundage, in 17 R. 2. 3 tannage and 12d. poundage granted to H. 4. in the thirteenth year of his reign for a certain time, in which statute there is this clause, that this aide in time to come should not be taken for an example to charge the lords and commons in manner of subsidy, unless it be by the wills of the lords and commons, and thereby a new grant to be made in full parliament in time to come. This clause in good and proper construction may be taken to be a convention between the king and his people in parliament, that he should not from thenceforth, nor any of his successors, set on impositions without assent of parliament. The like imposition was granted to H. 5. in the first year of his reign for a short time towards the defence of the realm, and safeguard of the sea: upon condition expressed in the act, that the merchants denizens and strangers coming into the realm with their merchandizes, should be well and honestly used and handled, paying the said subsidy as in the time of his father, and his noble progenitors kings of England, without oppression or extortion. In the end of which act the commons protested being bound by the grant in time to come, for the purposes aforesaid.

H. 6. in the 31st year of his reign, had tannage and poundage given him for his life. E. 6. had it given him the third year of his reign, as it appeareth in a statute 12 E. 4. cap. 3. H. 6. in the sixth year of his reign, and all since

the first year of their reigns have had it given them for term of their life; and being now so certainly settled, do reach further at that, from which they are in conscience and honor excluded by this voluntary gratification. For can any man give me a reason, why the people should give this imposition of tunnage and poundage above the due custom upon all commodities, if the king by his prerogative might set on impositions without assent of parliament? And were not that a weak action in a king, to take that of his people as a benevolence from them, with limitation of the same, and in what it should be employed, and how they will be used for it, and for what time he shall have it, which he might justly take without their consents, unclogged of these unpleasant incumbrances?—The statutes of tunnage and poundage made in our times, that are altogether inclined to flattery, do yet retain in them certain shews and rumours of those ancient liberties, although indeed the substance be lost. As in the statute 1 Jac. cap. 33. we declare, that we trust, and have sure confidence of his majesties good will towards us, in and for the keeping and sure defending of the seas; and that it will please his highness, that all merchants, as well denizens as strangers, coming into this realm, be well and honestly entreated and demeaned for such things whereof subsidy is granted, as they were in the time of the kings progenitors and predecessors, without oppression to them to be done. By this clause, as it now continueth, the true intent of this statute appeareth to be, that there ought no other imposition to be laid upon merchants, besides those given by this statute; and this intention hath been well interpreted by use and practice from the time of E. 3. to the time of queen Mary, as before is declared.

Thus much of this last reason, made from observation, and the action of our nation.

I will answer now such main objections as have been made against the peoples right, and have not been touched by me *obiter* in my passage through this discourse.

That which hath been most insisted upon is this, that the king by his prerogative royal hath the custody of the havens and ports of this island, being the very gates of this kingdom; that he in his royal function and office is only trusted with the keys of these gates; that he alone hath power to shut them, and to open them when, and to whom he in his princely wisdom shall see good; that by the law of England he may restrain the persons of any from going out of the land, or from coming into it; that he may of his own power and discretion prohibit exportation and importation of goods and merchandizes; and out of his prerogative and pre-eminence, the power of imposing, as being derivative, doth arise and re-ut; for *'cui quod majus est licet, et ei quod est minus licitum est.'* So their reason briefly is this; the king may restrain the passage of the person, and of the goods; therefore he may suffer them not to pass, but *sub*

*modo*, paying such an imposition for his sufferance, as he shall set upon them.

For the grounds and propositions laid in this objection, I shall not be much against any one or them. Others of them must be qualified, ere they be confessed. But the inference and argument made upon them, I utterly deny; for in it there is *mutatio hypothesis*, and a transition from a thing of one nature to a thing of another. As the premises are of a power in the king onely fiduciary, and in point of trust and government, the conclusion infers a right of interest and gain—Admi the king had *custodiam portuum*; yet he hath but the custody, which is trust, and not *dominium utile*. He hath power to open and shut upon consideration of public good to the people and state, but not to make gain and benefit by it. The one is protection, the other is exipation. The ports in their own nature are publike, free for all to go in and out; yet for the common good this liberty is restrainable by the wisdom and policy of the prince, who is put in trust to discern the times when this natural liberty shall be restrained. In 1 H. 7. fol. 10. in the case of the Florentines for their Allome, the lord chief justice Hussey doth write a case, that in the time of E. 4. a legute from the pope being at Callais to come into England, it was resolved in full council, as the book saith, before the lords and judges, that he should not have licence to come into England unless he would take an oath at Callais, that he would bring nothing with him that should be prejudicial to the king and his crown.—The king by the common law, may send his writ, *ne exeat regnum*, to any subject of the realm; but the summe of the writ is, *'quia datum est nobis intelligi, quod tu versus partes exteras absque licentia nostra clam destinas te divertere, et quam plurima nobis et coronæ nostræ prejudicia prosequi.'* Fitzh. N. B. 85. b. So in point of government, and common good of the realm he may restrain the person. But to conclude therefore he may take money not to restrain, is to sell government, trust and common justice, and most unworthy the divine office of a king.

But let us compare this power of the king in foreign affairs, with the like power he hath in domestick government. There is no question but that the king hath the custody of the gates of all the towns and cities in England, as well as all the ports and havens, and upon consideration of the weal publike may open and shut them at his pleasure. As if the infection of the sickness be dangerous in places vicine to the city of London, the king may command that none from those places shall come into the city. May he therefore set an imposition upon those that he suffereth to come into the city? So, if by reason of infection he forbid the bringing of wares and merchandizes from some cities or towns in this kingdom to any great fair or mart, shall he therefore restrain the bringing of goods thither, unless money be given him by way of imposition? The king in his discretion,



13s. 4d. in 40s. This was *justum*, but not *justū*. This religious prince, invironed with infinite troubles in the church and commonwealth, and much impoverished by her devotion, in renouncing the profits of the church-lands that were in the crown by the suppression, was the first that made digression from the steps of her worthy progenitors, in putting on that imposition without assent of parliament; for that very consideration of the loss of custom, by turning of wooll to cloathing, came into treaty in the 24th year of E. 3. when the art of clothing began first to be much practised in this kingdom; and then in the recompence of the loss so sustained in the decay of custom of woolls, there was set upon a cloth by act of parliament above the olde custom, 14d. for a denizen, and for an alien 21d. This is recited in a record in the Exchequer, 48 E. 3. Rot. 2. R. Thes. in origin. But I pray you examine, how this imposition of queen Mary was digested by the people. We see in the case of my lord Dier, 1 El. fol. 165. that the merchant found great grief at it, and made exclamation and suit to queen Eliz. to be unburdened of it. The very reason of their grief expressed in that case is, because it was not set on by parliament, but by the queens absolute power; so that was the ground of that complaint, the very point of right.—This cause was referred to all the judges, to report whether the queen might set on this imposition without assent of parliament. They divers times had conference about it, but have not yet made report for the king; which is an infallible presumption, that their opinions were not for him. For it is a certain rule among us, that if a question, concerning the kings prerogative or his profit, be referred to the judges, if their opinions be for the king, it will be speedily published, and it were indiscretion to conceal it; but if there be no publication, then we make no doubt, but that their opinions are either against the king, or at least they stick, and give none for him.

The same queen Mary, upon restraint of bringing in of French commodities occasioned by the then wars with France, set an imposition upon Gascoyn wines, which continueth yet. So the kingdom of England by the injustice of that prince was clogged with these two heavy impositions, contrary to the right of the kingdom and the acts of her progenitors.

Queen Elizabeth set on that upon sweet wines, which grew also upon the occasion of the troubles with Spain. That upon allome was none. It was rather a monopoly to master Smith the customer of London, for the ingrossing of all allomes into his own hands, for which priviledge he gave a voluntary imposition upon that commodity. It was like the priviledge granted to John Pechey of the sweet wines by E. 3. for which the patentee was called into the parliament house, 50 E. 3. and was there punished, and his patent taken away and cancelled.

What impositions have been set on in the kings time, I need not express. They are set

down particularly in the book of rates that is in print. They are not easily numbered. The time for which they are raised is not short. The patent prefixed to that book, bearing date 28 Julii, 6 Jacobi, will instruct you sufficiently in that point. They be limited to the king, his heirs and successors; which I suppose is the first estate of fee simple of impositions that ever man read of.

8. My eighth and last observation is upon tunnage and poundage given to the king of this realm, upon wares and merchandizes exported and imported, which is an imposition by act of parliament, and, as it will appear, was given out of the peoples good-will, as a very gratification to the king, to enjoy him thereby from the desire of voluntary impositions, and to conclude him by that gift in parliament from attempting to take any other without assent of parliament. For after the ceasing of voluntary impositions, these parliamentary ones were frequent in the times of the king that succeeded. But they were never given but for years, with express caution how the money should be bestowed; as towards the defence of the seas, protection of traffic, or some such other public causes. Sometimes special sequestrators made by act of parliament, by whose hands the money should be delivered, as 5 R. 2. c. 3. in a printed statute. The rates that were given were very variable, sometimes 2s. tunnage, and 6d. poundage, as 7 R. 2. 3s. tunnage, and 12d. poundage, 10 R. 2. which graunts were not to endure, the longest of them, above a year; 18d. tunnage, 6d. poundage, in 17 R. 2. 3s. tunnage and 12d. poundage granted to H. 4. in the thirteenth year of his reign for a certain time, in which statute there is this clause, that this aide in time to come should not be taken for an example to charge the lords and commons in manner of subsidy, unless it be by the wills of the lords and commons, and that by a new grant to be made in full parliament in time to come. This clause in good and proper construction may be taken to be a very convention between the king and his people in parliament, that he should not from thenceforth, nor any of his successors, set on impositions without assent of parliament. The like imposition was granted to H. 5. in the first year of his reign for a short time towards the defence of the realm, and safeguard of the sea, upon condition expressed in the act, that the merchants denizens and strangers coming into the realm with their merchandizes, should be well and honestly used and handled, paying the said subsidy as in the time of his father, and his noble progenitors kings of England, without oppression or extortion. In the end of which act the commons protested being bound by any grant in time to come, for the purposes aforesaid.

H. 6. in the 31st year of his reign, had tunnage and poundage given him for his life. E. 4. had it given him the third year of his reign, as it appeareth in a statute 12 E. 4. cap. 3. H. 8. in the sixth year of his reign, and all since in

the first year of their reigns have had it given them for term of their life; and being now so certainly settled, do reach further at that, from which they are in conscience and honor excluded by this voluntary gratification. For can any man give me a reason, why the people should give this imposition of tunnage and poundage above the due custom upon all commodities, if the king by his prerogative might set on impositions without assent of parliament? And were not that a weak action in a king, to take that of his people as a benevolence from them, with limitation of the same, and in what it should be employed, and how they will be used for it, and for what time he shall have it, which he might justly take without their consents, unlogged of these unpleasant incumbrances?—The statutes of tunnage and poundage made in our times, that are altogether inclined to flattery, do yet retain in them certain shews and rumours of those ancient liberties, although indeed the substance be lost. As in the statute 1 Jac. cap. 33. we declare, that we trust, and have sure confidence of his majesties good-will towards us, in and for the keeping and sure defending of the seas; and that it will please his highness, that all merchants, as well denizens as strangers, coming into this realm, be well and honestly entreated and demeaned for such things whereof subsidy is granted, as they were in the time of the kings progenitors and predecessors, without oppression to them to be done. By this clause, as it now continueth, the true intent of this statute appeareth to be, that there ought no other imposition to be laid upon merchants besides those given by this statute; and this intention hath been well interpreted by use and practice from the time of E. 3. to the time of queen Mary, as before is declared.

Thus much of this last reason, made from observation, and the action of our nation.

I will answer now such main objections as have been made against the peoples right, and have not been touched by me *obiter* in my passage through this discourse.

That which hath been most insisted upon is this, that the king by his prerogative royal hath the custody of the havens and ports of this island, being the very gates of this kingdom; that he in his royal function and office is onely trusted with the keys of these gates; that he alone hath power to shut them, and to open them when, and to whom he in his princely wisdom shall see good; that by the law of England he may restrain the persons of any from going out of the land, or from coming into it; that he may of his own power and discretion prohibit exportation and importation of goods and merchandizes; and out of his prerogative and pre-eminence, the power of imposing, as being derivative, doth arise and result; for *'cui quod majus est licet, et ei quod est minus licitum est.'* So their reason briefly is this; the king may restrain the passage of the person, and of the goods; therefore he may suffer them not to pass, but *sub*

*modo*, paying such an imposition for his sufferance, as he shall set upon them.

For the grounds and propositions laid in this objection, I shall not be much against any one of them. Others of them must be qualified, ere they be confessed. But the inference and argument made upon them, I utterly deny; for in it there is *mutatio hypothesis*, and a transition from a thing of one nature to a thing of another. As the premises are of a power in the king onely fiduciary, and in point of trust and government, the conclusion infers a right of interest and gain—Admi the king had *custodiam portuum*; yet he hath but the custody, which is trust, and not *dominium utile*. He hath power to open and shut upon consideration of public good to the people and state, but not to make gain and benefit by it. The one is protection, the other is expropriation. The ports in their own nature are publicke, free for all to go in and out; yet for the common good this liberty is restrainable by the wisdom and policy of the prince, who is put in trust to discern the times when this natural liberty shall be restrained. In 1 H. 7. fol. 10. in the case of the Florentines for their Allome, the lord chief justice Hussey doth write a case, that in the time of E. 4. a legate from the pope being at Callais to come into England, it was resolved in full council, as the book saith, before the lords and judges, that he should not have licence to come into England unless he would take an oath at Callais, that he would bring nothing with him that should be prejudicial to the king and his crown.—The king by the common law, may send his writ, *ne exeas regnum*, to any subject of the realm; but the surmise of the writ is, *'quia datum est nobis intelligi, quod tu versus partis exteras absque licentia nostra clam destinatus ad divertere, et quam plurima nobis et coronæ nostræ prejudicia prosequi.'* Fitzh. N. B. 85. b. So in point of government, and common good of the realm he may restrain the person. But to conclude therefore he may take money not to restrain, is to sell government, trust and common justice, and most unworthy the divine office of a king.

But let us compare this power of the king in foreign affairs, with the like power he hath in domestick government. There is no question but that the king hath the custody of the gates of all the towns and cities in England, as well as all the ports and havens, and upon consideration of the weal publicke may open and shut them at his pleasure. As if the infection of the sickness be dangerous in places vicine to the city of London, the king may command that none from those places shall come into the city. May he therefore set an imposition upon those that he suffereth to come into the city? So, if by reason of infection he forbid the bringing of wares and merchandizes from some cities or towns in this kingdom to any great fair or mart, shall he therefore restrain the bringing of goods thither, unless money be given him by way of imposition? The king in his discretion,

in point of equity, and for qualifying the rigour of the law, may enjoy any of his subjects by his chancellor from suing in his court of common-law. May he therefore make a benefit by restraining all from suit in his courts, unless they pay him an imposition upon their suits? In 2 E. 3. in the case of the earl of Richmond before-cited, the king had granted unto the men of Great Yarmouth, that all the ships that arrived at the port of Yarmouth, which consisted of three several ports, Great Yarmouth, Little Yarmouth, and Gerneston, should arrive all at Great Yarmouth, and at no other place within that port. The lawfulness of this patent being in question in the kings court, it was reasoned in the kings behalf for the upholding of the grant, as it is now, that the king had the custody of the port; he might restrain merchants from landing at all in his kingdom; therefore out of the same power might appoint where, and in what haven they should land, and no other. This patent was demurred on in the Kings-Bench, as being granted against the law; but the case depending was adjourned into parliament for the weight and consequence of it, and there the patent was condemned, and a law made [9 E. 3. cap. 1.] against such and the like grants.—The presidents, that were vouched for maintenance of this power of restraint in the king, were four produced almost in so many hundred years, whereof two were in 2 E. 1. one in 10 E. 3. another in 17 H. 6. since which time we hear of none but by act of parliament, as they had been usually and regularly before. To these I will give answer out of themselves, out of the common-law, out of divers statutes, and out of the practice of the common-wealth. The restraints in the time of E. 1. one of them was to forbid the carrying of wooll out of the realm, the other was to forbid all traffick with the Flemings. That of 10 E. 3. was to restrain the exportation of ship-timber out of the realm. That of 17 H. 6. to prohibit traffique with the subjects of the duke of Burgundy. These presidents are rare, yet they have in them inducements out of publique respects to the common-wealth. For the rule of common-law in this case, I take it to be as the reverend judge sir Anthony Fitzherbert holds in his writ of *ne creas regnum* in Nat. Br. 85. that by the common-law any man may go out of the kingdom, but the king may upon causes touching the good of the commonwealth restrain any man from going by his writ or proclamation, and if he then go, it is a contempt. This opinion of his is confirmed by the book, 1 Eliz. fol. 165. Dier, 12 & 13 Eliz. Dier, 296. In like manner, if a subject of England be beyond sea, and the king send to him to repair home, if he do it not, his lands and goods shall be seised for the contempt; and this was the case of William de Britain earl of Richmond, 19 E. 2. He was sent by the king into Gascoyne on a message, and refused to return, for which contempt his goods, chattels, lands, and tenements were seised into the king's hands. *The record is cited 2 & 3 Philip and Mary, in*

my lord Dier. fol. 128. b. and the law there held to be so at that time upon a question moved in the queen's behalf against divers, that being beyond the seas refused to return upon commandment sent unto them to that purpose. The same is again for law confirmed in the dutchess of Suffolke's case, 2 Eliz. Dier. 176. But the common-law was altered in this point by the statute of 5 R. 2. cap. 2, by which the passage of all people is defended, that they may not go without licence, except the lords and other great men of the realm, merchants, and souldiers. So for the merchants, which are the people dealt withal, in the business in hand, the common-law remaineth as it was before the statute; and so it was held, 12 Eliz. Dier, 196, where the case was, an English merchant, being a papist, went over-sea, and, being there, did settle himself to remain there for the enjoying the freedom of his conscience. It was moved here in England, that his going without licence should be a contempt; because he went not to traffique as a merchant, but for the cause of religion. It was resolved, no such averment would be taken in this case; for that the very calling and vocation of being a merchant did give him liberty to go out of the kingdom when he would, and therefore the secret intent of his going was not to be enquired after. '*Sed lex inspicit quod verisimilius.*' Therefore it was in this case held no contempt. But at this day the law is as it was before, 5 R. 2, cap. 2, for that statute is repealed, 4 Jac. cap. 1. And all men whatsoever are now at liberty by the common-law to pass out of the realm. There is only against this inconvenient liberty a proclamation dated at Westminster, 9 Jul. 5 Jac. to the very same effect in point of restraint of passage with the statute of R. 2. So the subject is in this much the more at ease and liberty then he was before, that his going over-sea without licence doth not induce any forfeiture, but onely incurreth the censure of a contempt; and therefore it were to be wished that some firm law might be made in the case, both for the execution of so good a point of policy, and for the more quiet of the state, in knowing the certainty of the punishment for the offence.

This liberty and freedom of merchants hath been strengthened and confirmed by many notable laws before recited, as 14 E. 3. stat. 2. cap. 2. 15 E. 3, stat. 2, cap. 5. 18 E. 3. stat. 1, cap. 3, and divers other. And therefore though it be admitted that the king may restrain persons and goods, yet it may well be denied, that he hath power of himself alone without assent of parliament simply and indefinitely to restrain all traffique in general, or to shut up all the havens and ports, and to bar the vent and issuing of wares and merchandizes of the whole kingdom; as it appeareth plainly, that this hath been done this 300 years, or near thereabouts, by act of parliament onely, and that the kingdom of England made this matter of traffique so tender a case to deal in, as that it hath ever held it a matter fit for the consulta-

tion of the great council of the kingdom, and for no other.

In 11 E. 3, the exportation of woolls was prohibited by act of parliament, in which statute there was this clause, untill that by the king and his council it be thereof otherwise provided: which power so given to the king, to be used for the good of the commonweath, gave occasion to him to abuse it to his profit and commodity, by giving licences of transportation to all; that would give forty shillings upon a sack of wooll above the due custom. This appeareth in the records in the Exchequer, 13 E. 3, Rot. 2. Rem. Thes. I will describe the record, that you may perceive the ground of it the better. 'Rex collectoribus customæ in portu magnæ Jermouth salutem. Quia concessimus dilecto et fideli nostro Hugoni de Wriothsley, quod ipse viginti et septem saccos lanæ et dimid. de lanis suis propriis in portu prædicto carriare, et eas usque Antwerpe ad stapulam nostram ibidem ducere possit, solvendo ibidem dilecto clerico nostro Willielmo de Northwel custodi guarderobæ nostræ 40s. pro quolibet sacco pro custumæ et subsidio inde nobis debitis, &c. vobis mandamus, quod prædict. Hugon. dictos viginti septem saccos lanæ et dimid. in portu prædicto carriare permittatis, &c.' And another the same year. 'Rex collectoribus customæ, &c. Cum nuper ordinaverimus, quod passagium lanarum, &c. apertum existeret, et quod sigillum nostrum, quod dicitur coket, quod prius claudi et sub serra custodiri mandavimus, aperiretur, et apertum teneretur; ideo vobis mandavimus, quod sigillum prædictum in portu prædicto aperiri, et apertum teneri faciatis, et omnes illos, qui hujusmodi lanas carriare et ducere velint, permittatis, receptis prius ab iisdem, viz. de mercatoribus et aliis indigenis 40s. de quolibet sacco lanæ.' Divers other such sales of traffick occasioned by this parliamentary restraint were made between 11 E. 3, that the restraint was made, and 14 E. 3, that this inconvenience being espied, the sea was opened by statute, and the restraint removed, 14 E. 3, stat. 2. c. 2. 15 E. 3, cap. 5. stat. 2. And this 40s. so exacted was complained of as an imposition in parliament, and the occasion and the effect were both taken away together by act of parliament, 14 E. 3, stat. 1. cap. 21. and stat. 2. cap. 1.

It followed in all kings times sithence the death of E. 3, that this opening and shutting of the havens, restraining and enlarging of traffick, was done by act of parliament.—I will give one instance in the reign of every king. 5 R. 2, cap. 2. stat. 2. for the passage of wooll wooll-fells and leathers. 6 H. 4, cap. 4. for the traffique and commerce with merchants aliens. 2 H. 5, cap. 6. stat. 2. for the restraint of staple commodities to places certain, and for the traffique of the merchants of the west. 27 H. 6, cap. 1. that is enacted in parliament, which is contained in the proclamation 17 H. 6, cited for a precedent, that is, because the duke of

Burgundy made an ordinance whereby the traffick of the English nation was restrained, that therefore the Englishmen should not traffick with the subjects of the duke of Burgundy. The same thing enacted upon the like occasion, 4 E. 4, c. 1. 19 H. 7, c. 21. the importation of divers commodities forbidden, as being prejudicial to the manufactures within the realm. 6 H. 8, cap. 12. the exportation of Norfolk woolls out of the realm forbidden. 26 H. 8, cap. 10. power is given to the king to order and dispose of the traffick of merchants at his pleasure; and the reason is given, because otherwise the leagues and amities with foreign princes might be impeached by reason of restraint made by divers statutes then standing on foot; whereby it appeareth that it was not then taken to be law, that the king had an absolute power in himself to order and dispose of the course of traffick without help of a statute. 2 E. 6, cap. 9. exportation of leather restrained. 1 et 2 Ph. et Mar. the exportation of herring, butter, cheese, and other victuals forbidden. 18 Eliz. cap. 8. the exportation of tallow, raw hides, leather. So in all times no use of proclamations in matters of this nature, but acts of parliament still procured. Wherefore in mine opinion it behoveth them that do so earnestly urge this argument, the king may restrain traffick, therefore may impose, to prove better then they have done, that the king may restrain traffick of his own absolute power: for as the natural policy and constitution of our commonwealth is, we may better say, that is law which is *de more gentis*, then that which floweth from the reason of any man guided by his general notion and apprehension of power regal, *in genere*, not *in individuo*.

The last assault made against the right of the kingdom, was an objection grounded upon policy, and matter of state; as, that it may so fall out that an imposition may be set by a foreign prince that may wring our people, in which case the counterpoise is, to set on the like here upon the subjects of that prince; which policy, if it be not speedily executed, but stayed until a parliament, may in the mean time prove vain and idle, and much damage may be sustained that cannot afterwards be remedied.—This strain of policy maketh nothing to the point of right. Our rule is in this plain commonwealth of ours, 'oportet neminem esse sapienterem legibus.' If there be an inconvenience, it is fitter to have it removed by a lawful means, then by an unlawful. But this is rather a mischief then an inconvenience; that is, a prejudice in present of some few, but not hurtful to the commonwealth. And it is more tolerable to suffer an hurt to some few for a short time, then to give way to the breach and violation of the right of the whole nation; for that is the true inconvenience. Neither need it be so difficult or tedious to have the consent of the parliament, if they were held as they ought, or might be. But our surest guide in this will be the example of our ancestors in this very case, and that in the time

one of the most politick princes that ever reigned in this kingdom. 7 H. 7, cap. 7. you shall finde an act of parliament, in which it was recited that the Venetians had set upon the English merchants that laded malunseys at Candy four duckets of gold upon a butt, which in sterling is eighteen shillings the butt. It was therefore enacted, that every merchant stranger, that brought malunsey into this kingdom, should pay eighteen shillings the butt over and above the due custom used; this imposition to endure, until they of Venice had set aside that of four duckets the butt upon the Englishmen.

Much hath been learnedly uttered upon this argument in the maintenance of the peoples right, and in answering that which hath been pressed on the contrary. But my meaning is

not to express in this discourse all that hath or may be said on either side, but only to make a remembrance somewhat larger of that which I myself offered as my *symbolum* towards the making up of this great reckoning of the commonwealth, which if it be not well audited, may in time cost the subjects of England very dear. My hope is of others, that labored very worthily in this business, that they will not suffer their pains to die, and therefore I have forborn to enter into their province. I will end with that saying of that true and honest counsellor Philip Comines in his fifth book, the 18th chapter, "That it is more honorable for a king to say, 'I have so faithful and obedient subjects, that they deny me nothing I demand,' then to say, 'I levy what me list, and I have priviledges so to do.'"

[“ At the end of the foregoing Argument by Yelverton, an Extract from a Petition of Grievances addressed by the Commons to King James in 1610 is added, one subject of which is Impositions by Prerogative. But the whole Petition is in Mr. Petyt's *Jus Parliamentarium*; and as we are not aware, that it is to be found either in the Parliamentary History, the Journals of the Commons, or any other printed book, except the two before mentioned, it is here inserted as a fragment of some curiosity. To this Petition, we shall add lord Bacon's Speech on presenting it to the king. The king's Answer to so much of the Petition as regarded Impositions, is in the Parliamentary History, vol. i. p. 1132. Mr. Petyt, in his book before cited, gives some remarks of his own on the subject, with an extract from the Journal of the Lords for 23d May and 6th June 1612, when it was unsuccessfully attempted to obtain the Opinion of the Judges on the Question of Imposition.” Hargrave.]

PETITION OF GRIEVANCES by the Commons in 1610, from Petyt's *Jus Parliamentarium*, page 321.

To the king's most excellent Majesty.

MOST gracious Sovereign; Your majesty's most humble commons assembled in parliament, being moved as well out of their duty and zeal to your majesty, as out of the sense of just grief, wherewith your loving subjects are generally through the whole realm at this time possessed, because they perceive their common and ancient right and liberty to be much declined and infringed in these late years, do with all duty and humility present these our just complaints thereof to your gracious view, most instantly craving justice therein, and due redress.—And although it be true, that many of the particulars, whereof we now complain, were of some use in the late queen's time, and then not much impugned, because the usage of them being then more moderate, gave not so great occasion of offence, and consequently not so much cause to enquire into the right and validity of them; yet the right being now more thoroughly scanned, by reason of the great mischiefs and inconveniencies which the subjects have thereby sustained: we are very confident that your majesty will be so far from thinking it a point of honour or greatness to continue any grievance upon your people, because you found them begin in your predeces-

sor's times, as you will rather hold it a work of great glory to reform them; since your majesty knoweth well that neither continuance of time, nor errors of men, can or ought to prejudice truth or justice; and that nothing can be more worthy of so worthy a king, nor more answerable to the great wisdom and goodness which abound in you, than to understand the griefs, and redress the wrongs of so loyal and well deserving people.

In this confidence, dread sovereign, we offer these Grievances, the particulars whereof are hereunder set down, to your gracious consideration.—And we offer them out of the greatest loyalty and duty, that subjects can bear to their prince; most humbly and instantly beseeching your majesty, as well for justice sake, more than which, as we conceive, in these petitions we do not seek, as also for the better assurance of the state, and general repose of your faithful and loving subjects, and for testimony of your gracious acceptation of their full affections; declared as well by their joyful receiving of your majesty at your happy entrance into these kingdoms, which you have been often pleased with favour to remember, as also by their extraordinary contributions granted since unto you, such as have been never yielded to any former prince, upon the like terms and occasions, that we may receive to these our complaints your most gracious answer. Which we cannot doubt but will be such as may be wor-

thy of your princely self, and will give satisfaction and great comfort to all your loyal and most dutiful loving subjects, who do and will pray for the happy preservation of your most royal majesty.

#### *New Impositions.*

The policy and constitution of this your kingdom appropriates unto the kings of this realm, with the assent of the parliament, as well the sovereign power of making laws, as that of taxing, or imposing upon the subjects goods or merchandizes, wherein they have justly such a propriety, as may not without their consent be altered or changed.

This is the cause that the people of this kingdom, as they ever shewed themselves faithful and loving to their kings, and ready to aid them in all their just occasions with voluntary contributions; so have they been ever careful to preserve their own liberties and rights, when any thing hath been done to prejudice or impeach the same.—And therefore, when their princes, occasioned either by their wars, or their over great bounty, or by any other necessity, have without consent of parliament set impositions either within the land or upon commodities either exported or imported by the merchants; they have in open parliament complained of it, in that it was done without their consents; and thereupon never failed to obtain a speedy and full redress, without any claim made by the kings of any power or prerogative in that point.—And though the law of propriety be originally and carefully preserved by the common laws of this realm, which are as ancient as the kingdom itself; yet these famous kings, for the better contentment and assurance of their loving subjects, agreed, that this old fundamental right should be farther declared and established by act of parliament: wherein it is provided, that no such charges should ever be laid upon the people, without their common consent; as may appear by sundry records of former times.

We therefore, your majesty's most humble commons assembled in parliament, following the example of this worthy care of our ancestors, and out of a duty to those for whom we serve, finding that your majesty, without advice or consent of parliament, hath lately in time of peace set both greater impositions, and far more in number, than any your noble ancestors did ever in time of war, have with all humility presumed to present this most just and necessary Petition unto your majesty, that all impositions set without the assent of parliament may be quite abolished and taken away: and that your majesty, in imitation likewise of your noble progenitors, will be pleased, that a law may be made during this session of parliament, to declare, that all impositions set or to be set upon your people, their goods or merchandises, save only by common assent in parliament, are and shall be void: wherein your majesty shall not give your subjects good satisfaction in point of their right, but also bring exceeding joy and

comfort to them which now suffer; partly through the abating the price of native commodities, and partly through the raising of all foreign: to the overthrow of merchants and shipping; the causing of a general dearth and decay of wealth among your people, who will be hereby no less discouraged than disabled to supply your majesty, when occasion shall require it.

#### *Ecclesiastical Commissions.*

Whereas by the statute 1 Eliz. cap. 1. intitled 'An Act restoring to the crown the ancient Jurisdiction over the state Ecclesiastical,' &c. power was given to the queen and her successors, to constitute and make a commission in causes ecclesiastical; The said act is found to be inconvenient and of dangerous extent in divers respects: 1. For that it enableth the making of such a commission, as well to any one subject born as to more. 2. For that, whereas by the intention and words of the statute, ecclesiastical jurisdiction is restored to the crown, and your highness by that statute enabled to give only such power ecclesiastical to the said commissioners; yet under colour of some words in that statute, where the commissioners are authorised to execute their commission, according to the tenor and effect of your highness's letters patents, and by letters patents grounded thereupon; the said commissioners do fine and imprison, and exercise other authority not belonging to the ecclesiastical jurisdiction restored by that statute; which we conceive to be a great wrong to the subject; and that those commissioners might as well, by colour of those words, if they were so authorised by your highness's letters patents, fine without stint, and imprison without limitation of time; as also, according to will and discretion, without any rules of law, spiritual or temporal, adjudge and impose utter confiscation of goods, forfeiture of lands; yea and the taking away of a limb, and of life itself; and this for any matter whatsoever pertaining to spiritual jurisdiction. Which never was nor could be meant by the makers of that law. 3. For that by the statute, the king and his successors (however your majesty hath been pleased out of your gracious disposition otherwise to order) may make and direct such commission into all the counties and dioceses, yea into every parish of England; and thereby all causes may be taken from jurisdiction of bishops, chancellors and archdeacons, and laymen solely to be enabled to excommunicate and exercise all other censures spiritual. 4. That every petty offence, pertaining to spiritual jurisdiction, is by colour of the said words and letters patents, grounded thereupon, made subject to excommunication and punishment by that strange and exorbitant power and commission; whereby the least offenders, not committing any thing of any enormous or high nature, may be drawn from the most remote places of the kingdom to London or York; which is very grievous and inconvenient. 5. For that limit touching causes

subject to this commission, being only with these words; viz. 'such as pertain to spiritual or ecclesiastical jurisdiction;' it is very hard to know what matters or offences are included in that number: and the rather because it is unknown, what ancient canons or laws spiritual are in force, and what not. From hence ariseth great inconveniency, and occasion of contention.

And whereas upon the same statute a Commission Ecclesiastical is made, therein is grievance apprehended thus: 1. For that thereby the same men have both spiritual and temporal jurisdiction, and may both force the party by oath to accuse himself of any offence, and also enquire thereof by a jury: and lastly, may inflict for the same offence at the same time, and by one and the same sentence, both a spiritual and a temporal jurisdiction. 2. Whereas upon sentences of deprivation or other spiritual censures given by force of ordinary jurisdiction, an appeal lyeth for the party aggrieved, that is here excluded by express words of the commission. Also here is to be a trial by jury, yet no remedy by traverse nor attain; neither can a man have any writ of error, though a judgment or sentence be given against him, amounting to the taking away of all his goods, and imprisoning of him during life, yea, to the adjudging him in case of *premunire*, whereby his lands are forfeited, and he out of the protection of the law. 3. That whereas penal laws and offences against the same cannot be determined in other courts, or by other persons than by those trusted by parliament with the execution thereof; yet the execution of many such statutes (divers whereof were made since the first of Eliz.) are commended and committed to these commissioners ecclesiastical, who are either to inflict the punishment contained in the statute being *premunire*, and of other high nature, and so enforce a man upon his own oath to accuse and expose himself to those punishments, or else to inflict other temporal punishments at their pleasure. And yet besides and after that done, the party shall be subject, in the courts mentioned in the acts, to punishment by the same acts appointed and inflicted. Which we think very unreasonable. 4. That the commission giveth authority to enforce men called into question, to enter into recognizance, not only for appearance from time to time, but also for performance of whatsoever shall be by the commissioners ordered.

And also that it giveth power to enjoin parties defendant or accused to pay such fees to the ministers of the court, as by the commissioners shall be thought fit.

And touching the execution of the commission, it is found grievous these ways among other: 1. For that laymen are by the commissioners punished for speaking (otherwise than in judicial places and courses) of the simony and other misdemeanors of the spiritual men, though the thing spoken be true, and the speech tending to the inducing of some condign punishment. 2. In that these commissioners usually

appoint and allot to women discontented at and unwilling to live with their husbands, such portion and allowance for present maintenance, as to them shall seem meet; to the great encouragement to wives to be disobedient and contemptuous against their husbands. 3. In that their pursuivants and other ministers employed in the apprehension of suspected offenders in any thing spiritual, and in the searching for any supposed scandalous books, use to break open mens houses, closets, and desks, rifling all corners and secret custodies, as in cases of high treason or suspicion thereof.

All which premises, amongst other things considered, your majesty's most loyal and dutiful commons in all humbleness beseech you, that for the easing of them, as well from the present grievance, as from the fear and possibility of greater in times future, your highness would vouchsafe your royal assent and allowance to and for the ratifying of the said statute, and the reducing thereof, and consequently of the said commission, to reasonable and convenient limits, by some act to be passed in the present session of parliament.

#### *Proclamations.*

Amongst many other points of happiness and freedom, which your majesty's subjects of this kingdom have enjoyed under your royal progenitors, kings and queens of this realm, there is none which they have accounted more dear and precious than this, to be guided and governed by certain rule of law, which giveth both to the head and members that which of right belongeth to them; and not by any uncertain or arbitrary form of government.—Which, as it hath proceeded from the original and constitution and temperature of this estate, so hath it been the principal means of upholding the same in such sort, as that their kings have been just, beloved, happy and glorious; and the kingdom itself peaceable, flourishing and durable, so many ages.—And the effect, as well of the contentment that the subjects of this kingdom have taken in this form of government, as also of the love, respect and duty, which they have, by reason of the same, rendered unto their princes, may appear in this, that they have, as occasion hath required, yielded more extraordinary and voluntary contributions to assist their kings, than the subjects of any other known kingdom whatsoever.—Out of this root hath grown the indubitable right of the people of this kingdom, not to be made subject to any punishment that shall extend to their lives, lands, bodies or goods, other than such as are ordained by the common-laws of this land, or the statutes made by their common consent in parliament.—Nevertheless, it is apparent, both that Proclamations have been of late years much more frequent than heretofore, and that they are extended, not only to the liberty, but also to the goods, inheritances, and livelihood of men; some of them tending to alter some points of the law, and make them new: Other some made shortly after a session of

parliament, for matter directly rejected in the same session: Other appointing punishments to be inflicted before lawful trial and conviction; Some containing penalties in form of penal statutes; Some referring the punishment of offenders to the courts of arbitrary discretion, which have laid heavy and grievous censures upon the delinquents: Some, as the proclamation for starch, accompanied with letters commanding enquiry to be made against transgressors at the quarter sessions: And some vouching former Proclamations, to countenance and warrant the latter; as by a catalogue hereunder written more particularly appeareth. By reason whereof there is a general fear conceived and spread amongst your majesty's people, that Proclamations will by degrees grow up and increase to the strength and nature of laws. Whereby not only that ancient happiness [freedom] will be as much blemished (if not quite taken away) which their ancestors have so long enjoyed; But the same may also in process of time bring a new form of arbitrary government upon the realm. And this our fear is the more increased, by occasion as well of certain books lately published, which ascribe a greater power to proclamations than heretofore hath been conceived to belong unto them: as also of the care taken to reduce all the Proclamations made since your majesty's reign into one volume, and to print them in such form as acts of parliament formerly have been, and still are used to be; which seemeth to imply a purpose to give them more reputation and more establishment than heretofore they have had.

We therefore, your majesty's humble subjects, the commons in this parliament assembled, taking these matters into our consideration, and weighing how much it doth concern your majesty both in honour and safety, that such impressions should not be enforced to settle in your subjects minds, have thought it to appertain to our duties as well towards your majesty, as to those that have trusted and sent us to their service, to present unto your majesty's view these fears and griefs of your people; and to become humble suitors unto your majesty, that thenceforth no fine or forfeiture of goods, or other pecuniary or corporal punishment, may be inflicted upon your subjects, (other than restraint of liberty, which we also humbly beseech may be but upon urgent necessity, and to continue but 'till other order may be taken by course of law) unless they shall offend against some law or statute of this realm in force at the time of their offence committed; and for the greater assurance and comfort of your people, that it will please your majesty to declare your royal pleasure to that purpose, either by some law to be made in this session of parliament, or by some such other course, whereof your people may take knowledge, as to your princely wisdom shall seem most convenient.

*A Catalogue of some of the Proclamations complained of.*

1. Proclamations importing alterations of

some points of the law, and making new: 11 Jan. 1 Jac. fol. 57. forbiddeth chusing of knights and burgesses bankrupt or outlawed; and commandeth choice of such as are not only taxed to subsidies, but also have ordinarily paid and satisfied the same, fol. 57.—If returns be made contrary to proclamation, they are to be rejected as unlawful and insufficient, fol. 60.—25 Aug. 5 Jac. fol. 151. That the Proclamation should be a warrant to any officer or subject to seize starch, and to dispose or destroy any stuff, &c. And restraineth all men not licenced to make starch, fol. 154.

2. A Proclamation made shortly after parliament, for matter directly rejected the precedent session: 1 March, 2 Jac. fol. 112. A proclamation for building with brick, after a bill to that end rejected.

3. Proclamations touching the freehold livelihood of men: 16 Sept. 1 Jac. fol. 41. Raising and pulling down houses authorised, and prohibition to build them again at any time.—12 Oct. 5 Jac. fol. 160. Forbidding building and taking away the materials; and appointing the owners land to be lett by other men at what price they please, fol. 101.

4. Proclamations, referring punishments to be done by justices of the peace, mayors, bailiffs, constables, and other officers; or seizure by persons who have no authority to enquire, hear and determine of those offences; so it is to be inflicted before lawful trial and conviction. 8 Jan. 2 Jac. fol. 72. A proclamation for folding wools, &c. 23 August, 5 Jac. fol. 151. A seizure of starch, &c.

5. Proclamations penned with penalties, in form of penal statutes: 4 Nov. 1 Jac. fol. . . . Pain of confiscation of goods. 18 Jan. 2 Jac. fol. 72. Ten days imprisonment, and standing in the pillory.—Justices of peace to forfeit 20*l.* if they see not the proclamation of folding wools executed. 23 Aug. 5 Jac. fol. 151. Forfeiture of one moiety of starch, &c. seized, &c.

6. Punishment of offenders in courts of arbitrary discretion, as Star-Chamber: 1 March, 4 Jac. fol. 102, Proclamation for building.—12 Oct. 5 Jac. fol. 159, a Proclamation for building.—July, 6 Jac. fol. 177, Proclamation for starch.—25 July, 6 Jac. fol. 180, Proclamation for building.

7. Former Proclamations become precedents, and vouched in latter Proclamations. 18 June, 2 Jac. fol. 75, avouched 5 Ed. 6. and 4 Eliz. fol. 73.—25 July, 6 Jac. fol. 180, mentioneth former Proclamations against buildings, and explaineth and qualifieth them.

*Writs of Prohibition, &c.*

Your majesty's commons, in this session of parliament assembled, do cheerfully acknowledge the spring and fountain of public justice of this state to be originally in your majesty. For the benefit thereof is conveyed and derived into every member of this politic body by your highness's writs.

Amongst which none are more honourable for the support of the common justice of the



realm, than the writs of Prohibition, Habeas Corpus, *et de homine replegiando*: which writs have been ever held and found to be a chief means of relief unto the poor, distressed and oppressed subjects of this kingdom, and can be no inconvenience at all: seeing they are no way conclusive against any man, and do draw no benefit to the procurers, but rather a fruitless charge, if they be obtained upon any unjust ground or pretence.—In the free granting of, and proceeding upon, some of which writs, especially that of Prohibition, there hath of late been observed to be some obstruction, by reason that upon the complaints and the importunity of some, who desire the support of inferior courts against the principal courts of the common law, (wherein your majesty hath been greatly troubled) you have taken into your royal consideration the several extents of the jurisdiction of the said several courts.—Since which time the said writs have been more sparingly granted, and with stricter cautions than anciently hath been accustomed.

It is therefore most humbly desired that it may please your majesty, whose glory is never more conspicuous than when the poorest of the commonalty are blessed with the influence of the ancient beams of justice, to require your judges in the courts of Westminster to grant the said writs, in cases wherein such writs do lye, and by law are grantable; and in such sort as that such persons whose bodies being either committed to prison, or their causes like to recover great prejudice by proceedings against them in times of vacation, may not be debarred nor deferred from having the speedy relief and benefit of those Writs, more than in former times.

#### *Four Shires near Wales.*

Forasmuch as the exercise of authority over the counties of Gloucester, Hereford, Wigorn, and Salop, by the president and council of Wales, by way of Instructions upon a pretext of a statute made in the 34th year of the reign of king Henry 8, is conceived not to be warranted by that, or any other law of this realm of England.—And for that in the second session of this present parliament, there did a bill pass the house of commons, whereby it was declared that the true intent and meaning of that before mentioned statute was not thereby to subject these counties to that kind of government by Instructions; and yet notwithstanding the inhabitants of those counties are since utterly discouraged, and in effect debarred from the trial of the right of that kind of jurisdiction over those counties, by the ordinary course of the common laws of this land, by reason of Prohibitions which were heretofore frequently granted, upon suggestion that those counties are not part of Wales, or of the marches of the same, which is the very point in question, are now very hard to be obtained, except in cases where those of that council do exceed the instructions set down to them by your majesty: As also for that, in cases where actions have

been brought at the common law, whereby that question might have come to decision, the plaintiffs have been stopped, sometimes by Injunctions out of your majesty's court of Chancery from their proceedings, sometimes before, sometimes after judgments, and also by imprisonment:—The precedents of which proceedings do concern all your majesty's loyal and dutiful subjects of this kingdom, as well in respect of the stopping of the free course of justice, as also by reason that if that kind of jurisdiction were at first extended over these four counties, and be now still continued without warrant of law; the consequence of this example may in future times give countenance to the erecting of like jurisdictions in other places of this realm.

And forasmuch as your majesty was pleased to command all the judges to consider of this question, and that they thereupon bestowed very many days in hearing the cause argued by learned counsel on both sides, and in viewing and considering great numbers of records, produced before them concerning that cause; whereby they have, no doubt, truly informed themselves of the right.

It is therefore the most humble petition of the commons in this present parliament assembled, that your most excellent majesty will also be pleased to command, that the judges may deliver their opinion upon that so exact and deliberate hearing, which was had before them, concerning the right of the afore-said jurisdiction over those four counties, by force of that statute; and that the opinion which they shall deliver therein, may be in such sort published, as that all your majesty's subjects whom it may concern, may have means to take knowledge thereof; and that your majesty will vouchsafe to declare it, by your most princely pleasure, that any of your majesty's subjects, who may have occasion thereof, may try his or their right in that point, by the due and ordinary course of the common law, either by suing out of Prohibitions, or any other your majesty's writs, without restraint; and that if the said jurisdiction over these four counties shall appear to your majesty by the opinion of the judges, or otherwise, not to be warranted by law, that then your majesty will be pleased, out of your most princely and gracious favour towards all your loyal dutiful subjects, to order the ceasing of the said jurisdiction over those counties, to the great comfort of the inhabitants of those counties, and of the rest of your subjects of all the kingdom.

#### *New Drapery.*

Complaint was made in all humble manner, the second session of this present parliament, of many disorders, outrages, and oppressions, committed upon occasion of letters patents granted to the duke of Lenox, for searching and sealing of studds and manufactures, called by the name of New Draperies.—Which patent we held in all, or the most part of it, to be questionable, and in many apparently unlaw-

ful, and the execution thereof we found stretched by the farmers and deputies beyond the extent of the said letters patents, as appears in the particulars set down in the said grievance.—To which it pleased your majesty to give this gracious answer; 'that the validity of the said patent should be left to be judged by the law, and whensoever any abuse arising in the execution thereof should appear, it should severely be punished.'—Which was for that time to our good satisfaction.—Yet finding by divers complaints made now in parliament, that not only the said letters patents are still in force, and the validity of them undecided by judgment, but disorders in the execution of them, are so far from being reformed, that they multiply every day, to the grievance of your majesty's subjects; and those of the poorer sort, who exercising these manufactures, are subject to much oppression, to the great hindrance of some, and utter undoing of many, as hath appeared in the particularities of the complaints presented to us.

Our humble desire is, that your majesty will be pleased, according to your former resolution, to give order that this cause, which hath thus long hung in suspense, be speedily brought to judgment; and that before all the judges, because it concerneth all the subjects of the land; and in the mean time that the execution of the said letters patents, so far forth as they concern the said New Drapery, may be suspended till judgment be given: whereby your subjects, who do in all humility present this grievance unto your majesty, may be relieved, and have no occasion to reiterate their complaints.

#### *Licence of Wines.*

Whereas by ancient and late statutes it hath been enacted, that Wines should be retailed at such low rates and prices, as for this 50 years past they could not be afforded; and for redress thereof, it was ordained by a statute in the 5th year of the late queen Elizabeth, that (those former laws notwithstanding) Wines might be sold at such prices, as by proclamation from time to time to be made by consent of many great officers, should be published and set down: which proclamation, nevertheless, the late queen and your most excellent majesty have been drawn to forbear, upon the earnest suit of certain persons, who therein only intended their private gain: by reason whereof, both great sums of money in fines, rents, and annual payments, have been gotten and raised unto the said persons, and their assignees, and great damage and prejudice hath likewise fallen and light upon your people; not only by enhancing the prices of wines, licencing over-many taverns, and appointing of unmeet persons, in unfit places, to keep the same; but also by reason that corrupt, mingled, evil, and unwholesome Wines have been uttered and sold, to the great hurt of the health of your highness's people: one man sometimes engrossing all the licences designed for that place.

Whereupon complaint being made to your

VOL. II.

majesty, amongst other grievances of your people, in the second session of this present parliament, your highness was pleased to answer, that your grants in that behalf were no other than such as were warrantable by the laws.—Whereas the grievance was the greater, for that all laws concerning the sale of Wines being intended and conceived to stand and be repealed, there were nevertheless, by the oversight of them which were trusted in that business, casually omitted, and left unrepealed, certain obsolete laws impossible to be observed; as namely, one, in the time of king Edward 1. commanding Wines to be sold at 1s. the sextern; and one other made in the 28th year of king Henry 8, prohibiting all persons, under penalty, to sell any French Wines above 8d. the gallon; and other Wines, as sacks and sweet Wines, above 1s. the gallon:—And one branch of a statute made in the 7th year of king Edward 6, prohibiting men to sell any Wines by retail in their houses.

Whereupon your majesty hath been induced and drawn to ground new patents of dispensation, and to grant the benefit thereof unto the lord admiral:—Whereby the like discommodities and inconveniencies have since ensued unto the commonwealth, as formerly did arise and grow upon the other repealed laws, whereof in the former petitions of your subjects, exhibited unto your majesty in the said second session, your highness never had any direct and clear information:

May it therefore please your most excellent majesty, at the humble request of your commons, (who have taken into consideration the greatest charges and expences which the said lord admiral hath been at in your majesty's service, and have considered likewise the present licences and grants, for valuable considerations unto many hundreds of your highness's subjects, which, without great loss to the said grantees, cannot be so suddenly made void) out of your princely wisdom and goodness, wherein you have professed not to extend and strain your prerogative royal, against the public good of your people, for the particular gain of any private persons, to vouchsafe: that from thenceforth there may no more grants of that nature be made unto any of your subjects whomsoever; but that the said statute of the 5th of Elizabeth for the apprising of Wines, to be published by proclamation, as time and occasion shall require, may be put in execution: and that your majesty will likewise vouchsafe to grant your royal assent to a bill of repeal of the said obsolete statutes, and all other whereupon any such *non obstantes* and dispensations might be grounded.—In which statute of repeal, provision shall be made for the indemnity of all such, as under your majesty's great seal have already procured Licence for such sale of Wines.

#### *Alc-houses.*

Whereas by the laws of this your majesty's realm of England, no taxes, aids, or impositions of any kind whatsoever, ought or can be laid

2 3

or imposed upon your people, or upon any of their goods or commodities, but only by authority and consent of parliament.—Which being undoubtedly the ancient and fundamental law of the land, is yet for more abundant clearness expressly declared in sundry acts of parliament, made and enacted in the time of sundry your majesty's progenitors, the noblest and most prudent kings of this realm: Your commons with just grief do complain unto your majesty of the late tax and imposition laid and imposed yearly upon such as are allowed to keep Victualling Houses, or sell ale and beer by retail: which imposition not being taxed by assent of parliament, but commanded and directed only by letters and instructions, your commons are persuaded that the same proceeded rather from misinformation, than by the direction and judgment of your most noble and royal heart.

Wherefore your said commons, knowing the grief of your people in this behalf, do (according to their duties) in all humility inform and signify unto your majesty: 1. That the said taxation being singular and without example, and it is in itself a precedent of dangerous consequence, and (as your people fear) may easily (in time) be extended further, as to badgers of corn, makers of malt, drovers of cattle, and such like, who in such sort are to be licenced by justices of the peace, as those persons are, upon whom, at this time, this present tax is charged and laid. 2. Such houses being oftentimes, at the best, harbours of idleness, drunkenness, whoredom, and all manner of villanies, the licences are now, (the honest sort in most places refusing to undergo the new charge,) rented and taken by the looser and baser sort of people, who have no conscience how they gain. By reason whereof all manner of vice and evil behaviour is likely every day to increase. Neither can the justices of the peace conveniently prevent the same: for that the persons licenced under the late contribution, affirm with clamour, that they have a toleration for a year, and that such persons are not friends unto the crown that seek to suppress them, and thereby to diminish your majesty's revenues.

Thirdly, many justices of the peace, (being sworn to execute their office) which for this particular conceive to be, that Ale-house keepers formerly licenced, are not to be suppressed

without just and reasonable cause, cannot be satisfied touching their said oath, but are much distracted and perplexed what to do, the late instructions notwithstanding, against such persons, as otherwise being not known to be of evil behaviour, only to refuse to pay this late taxed and imposed sum of money.

In consideration whereof, your humble commons most instantly beseech your most excellent majesty, that the former letters and instructions may be countermanded or stayed, and all further directions and proceedings in that kind forborn.

*Sea-coal.*

Among many resemblances which are observed to be between natural and politick bodies, there is none more apt and natural than this, that the diseases of both do not at one instance commonly seize upon all parts; but beginning in some one part, do by tract of time, and by degrees, get possession of the whole, unless by applying of wholesome and proper remedies in due time they may be prevented, which, as it is in many things very visible, so it is in nothing more apparent than in this matter of Impositions: which beginning at the first, either with foreign commodities brought in, or such of your own as were transported, is now extended to those commodities, which growing in this kingdom are not transported, but uttered to the subjects of the same: For proof whereof, we do in all humility present unto your majesty's view the late imposition of one shilling the chaldron of Sea-Coals, rising in Blith and Sunderland, not by virtue of any contract or grant, as in the coals of Newcastle, but under a mere pretext of your majesty's most royal prerogative: Which imposition is not only grievous for the present, especially to those of the poorer sort, the price of whose only and most necessary fuel is thereby to their great grief enhanced, but dangerous also for the future, considering that the reason of this precedent may be extended to all the commodities of this kingdom.

May it therefore please your most excellent majesty, which is the great and sovereign physician of the estate, to apply such a remedy as this disease may be presently cured, and all diseases for time to come of like nature prevented.

Speech of Sir FRANCIS BACON to the King, the 7th of July 1610, on presenting the Petition to his Majesty, who was attended on the Occasion by sir Francis and eleven other Members; taken from 2 Bacon's Works, 4to ed. p. 212.

Most gracious Sovereign; The knights, citizens, and burgesses assembled in parliament, in the house of your commons, in all humbleness do exhibit and present unto your most sacred majesty, in their own words, through by my hand, their Petitions and Grievances. They are here conceived and set down in writing, according to ancient custom of parliament; they are also prefaced according to the manner and taste of these later times. Therefore for me to make

any additional preface, were neither warranted nor convenient; especially speaking before a king, the exactness of whose judgment ought to scatter and chase away all unnecessary speech as the sun doth a vapour. This only I must say. Since this session of parliament we have seen your glory in the solemnity of the creation of this most noble prince; we have heard your wisdom in sundry excellent speeches which you have delivered amongst us. Now we hope to

And feel the effects of your goodness, in your gracious answer to these our petitions. For this we are persuaded, that the attribute, which was given by one of the wisest writers to two of the best emperors, 'divus Nerva et divus Trajanus,' so saith Tacitus, 'res olim insociabiles miscuerunt, imperium et libertatem,' may be truly applied to your majesty. For never was there such a conservator of regality in a crown, nor ever such a protector of lawful freedom in a subject.

Only this, Excellent Sovereign, let not the sound of grievances, though it be sad, seem harsh to your princely ears. It is but *gemitus columbe*, the mourning of a dove, with that patience and humility of heart which appertaineth to loving and loyal subjects. And far be it from us, but that in the midst of the sense of our grievances we should remember and acknowledge the infinite benefits, which by your majesty, next under God, we do enjoy; which

bind us to wish unto your life fullness of days, and unto your line royal a succession and continuance even unto the world's end.

It resteth that unto these petitions here included I do add one more that goeth to them all: which is, that if in the words and frame of them there be any thing offensive; or that we have expressed ourselves otherwise than we should or would; that your majesty would cover it and cast the veil of your grace upon it; and accept of our good intentions, and help them by your benign interpretation.

Lastly, I am most humbly to crave a particular pardon for myself that have used these few words; and scarcely should have been able to have used any at all, in respect of the reverence which I bear to your person and judgment, had I not been somewhat relieved and comforted by the experience, which in my service and access I have had of your continual grace and favour.

84. The Conviction and Attainder of ROBERT LALOR, Priest, being indicted on the Statute of the 16th Ed. II. cap: 5, commonly called, The Case of Præmunire in Ireland. Hill. 4 JAMES I. A. D. 1607.

[From Sir John Davies's Reports.]

THIS Robert Lalor, being a native of this kingdom, received his orders of priesthood above 30 years since at the hands of one Richard Brady, to whom the pope had given the title of bishop of Kilmore in Ulster; and for the space of 30 years together his authority and credit was not mean within the province of Leinster. He had also made his name known in the court of Rome, and held intelligence with the cardinal who was protector of this nation; by means whereof he obtained the title and jurisdiction of Vicar-General of the See Apostolick, within the arch-bishoprick of Dublin and the bishopricks of Kildare and Ferris. This pretended jurisdiction, extending well-nigh over all the province of Leinster, he exercised boldly and securely many years together, until the proclamation was published, whereby all Jesuits and priests ordained by foreign authority were commanded to depart out of this kingdom by a certain time prefixed. After which time he began to lurk and to change his name. Howbeit at last he was apprehended in Dublin, and committed to prison in the Castle there. Upon his first Examination taken by the lord-deputy himself, he acknowledged that he was a priest, and ordained by a popish titular bishop; that he had accepted the title and office of the Pope's Vicar-General in the three dioceses before-named, and had exercised spiritual jurisdiction *in foro conscientie*; and in sundry other points he maintained and justified the pope's authority. Only he said, he was of opinion that the pope had no power to excommunicate or depose his

majesty, because the king is not of the pope's religion.

*Lalor's first Indictment and Conviction.*

THE next term after he was indicted upon the statute of 2 Eliz. enacted in this realm against such as should wilfully and advisedly maintain and uphold the jurisdiction of any foreign prince or prelate in any causes ecclesiastical or civil within this realm. By which statute the first offence of that kind is punished with loss of goods, and one year's imprisonment; the second offence incurreth the penalty of the *præmunire*; and the third offence is made high treason. Upon this indictment he was arraigned, convicted and condemned, and so rested in prison during the next two terms without any farther question. He then made petition unto the lord-deputy to be set at liberty: whereupon his lordship caused him to be examined by sir Oliver St. John, sir James Fullerton, sir Jeffery Fenton, the Attorney and Solicitor-General. At first he made some evasive and indirect answers; but at last voluntarily and freely he made this ensuing Acknowledgment or Confession, which being set down in writing word for word as he made it, was advisedly read by him, and subscribed with his own hand, and with the hands of those who took his examination; and afterwards he confirmed it by his oath before the lord-deputy and council.

*Lalor's Confession or Acknowledgment.*

FIRST, he doth acknowledge, that he is not a lawful Vicar-General in the dioceses of Dub-

lin, Kildare and Fernes, and thinketh in his conscience that he cannot lawfully take upon him the said office.—Item, he doth acknowledge our sovereign lord king James, that now is, to be his lawful chief and supreme governor in all causes, as well ecclesiastical as civil, and that he is bound in conscience to obey him in all the said causes; and that neither the pope, nor any other foreign prelate, prince or potentate, hath any power to controul the king in any cause ecclesiastical or civil within this kingdom, or any of his majesty's dominions.—Item, he doth in his conscience believe, that all bishops ordained and made by the king's authority within any of his dominions are lawful bishops; and that no bishop made by the pope, or by any authority derived from the pope, within the king's dominions, hath any power or authority to impugn, disannul or controul any act done by any bishop made by his majesty's authority as aforesaid.—Item, he profeseth himself willing and ready to obey the king, as a good and obedient subject ought to do, in all his lawful commandments, either concerning his function of priesthood, or any other duty belonging to a good subject.

After this Confession made, the state here had no purpose to proceed against him severely, either for his contempt of the proclamation, or offence against the law: so as he had more liberty than before, and many of his friends had access unto him; who telling him what they heard of his Confession, he protested unto them, that he had only acknowledged the king's civil and temporal power, without any confession or admittance of his authority in spiritual causes. This being reported unto the lord-deputy by sundry gentlemen, who gave faith unto what he said, his lordship thought fit, that since he had incurred the pain of *præmunire*, by exercising episcopal jurisdiction, as Vicar-General to the pope, that he should be attainted of that offence; as well to make him an example to others of his profession, (for almost in every diocese of this kingdom there is a titular bishop ordained by the pope), as also that at the time of his trial a just occasion might be taken, to publish the Confession and Acknowledgment which he had voluntarily made, signed, and confirmed by oath before the lord-deputy and council, who have likewise subscribed their names as witnesses thereof.

*Lalor's Indictment upon the Stat. 16 Ric. 2.*

Hereupon in Hill. term, 4 Jacobi, an Indictment was framed against him in the King's Bench upon the statute of 16 Ric. 2, cap. 5. containing these several points.

1. That he had received a bull or brief purchased or procured in the court of Rome, which bull or brief did touch or concern the king's crown and dignity royal, containing a commission of authority from the pope of Rome unto Richard Brady and David Magrath to constitute a Vicar-General for the see of Rome, by the name of the See Apostolick, in the several dioceses of Dublin, Kildare and Fernes,

within this kingdom of Ireland. 2. That by pretext or colour of that bull or brief he was constituted Vicar-General of the see of Rome, and took upon him the stile and title of Vicar-General in the said several dioceses. 3. That he did exercise ecclesiastical jurisdiction as Vicar-General of the see of Rome, by instituting divers persons to benefices with cure of souls, by granting dispensations in causes matrimonial, by pronouncing sentences of divorce between divers married persons, and by doing all other acts and things pertaining to episcopal jurisdiction, within the said several dioceses, against our sovereign lord the king, his crown and dignity royal, and in contempt of his majesty, and disherison of his crown, and contrary to the form and effect of the statute, &c.

To this Indictment Lalor pleaded Not Guilty; and when the issue was to be tried, the name and reputation of the man, and the nature of the cause, drew all the principal gentlemen both of the pale and provinces that were in town to the hearing of the matter. At which time a substantial jury of the city of Dublin being sworn for the trial, and the points of the indictment being opened and set forth by the king's serjeant; the attorney-general thought it not impertinent, but very necessary, before he descended to the particular evidence against the prisoner, to inform and satisfy the hearers in two points. 1. What reason moved us to ground this indictment upon the old statute of 16 Ric. 2, rather than upon some other later law made since the time of Hen. 8. 2. What were the true causes of the making of this law of 16 Ric. and other formal laws against provisors, and such as did appeal to the court of Rome in those times, when both the prince and people of England did for the most part acknowledge the pope to be the thirteenth apostle, and only oracle in matters of religion, and did follow his doctrine in most of those points wherein we now dissent from him.

1. For the first point, we did purposely forbear to proceed against him upon any latter law, to the end that such as were ignorant might be informed, that long before Henry 8. was born divers laws were made against the usurpation of the bishop of Rome upon the rights of the crown of England, well-nigh as sharp and severe as any statutes which have been made in later times; and that therefore we made choice to proceed upon a law made more than 200 years past, when the king, the lords and commons, which made the laws, and the judges, which did interpret the laws, did for the most part follow the same opinions in religion which were taught and held in the court of Rome.

2. For the second point, the causes that moved and almost enforced the English nation to make this, and other statutes of the same nature, were of the greatest importance that could possibly arise in any state. For these laws were made to uphold and maintain the

sovereignty of the king, the liberty of the people, the common law, and the commonwealth, which otherwise had been undermined and utterly ruined by the usurpation of the bishop of Rome.

For albeit the kings of England were absolute emperors within their dominions, and had under them as learned a prelacy and clergy, as valiant and prudent a nobility, as free and wealthy a commonalty, as any was then in Christendom; yet if we look into the stories and records of these two imperial kingdoms, we shall find, that if these laws of provision and *praemunire* had not been made, they had lost the name of imperial, and of kingdoms too, and had been long since made tributary provinces to the bishop of Rome, or rather part of St. Peter's patrimony in demesne. Our kings had had their scepters wrested out of their hands, their crowns spurned off from their heads, their necks trod upon; they had been made laquies or footmen to the bishop of Rome, as some of the emperors and French kings were; our prelates had been made his chaplains, and clerks, our nobility his vassals and servants, our commons his slaves and villains, if these acts of manumission had not freed them. In a word, before the making of these laws, the flourishing crown and commonwealth of England was in extreme danger to have been brought into most miserable servitude and slavery, under colour of religion and devotion to the see of Rome. And this was not only seen and felt by the king, and much repined at and protested against by the nobility, but the commons, the general multitude of the subjects, did exclaim and cry out upon it. For the commons of England may be an example unto all other subjects in the world in this, that they have ever been tender and sensible of the wrongs and dishonours offered unto their kings, and have ever contended to uphold and maintain their honour and sovereignty. And their faith and loyalty have been generally such, though every age hath brought forth some particular monsters of disloyalty, as no pretence of zeal or religion could ever withdraw the greater part of the subjects to submit themselves to a foreign yoke, no not when popery was in her height and exaltation; whereof this act and divers others of the same kind are clear and manifest testimonies. For this act of 16 Rich. 2. was made at the prayer of the commons: which prayer they make not for themselves, neither shew they their own self-love therein, as in other bills which contain their grievances, but their love and zeal to the king and his crown. When after the Norman Conquest they importuned their kings for the Great Charter, they sought their own liberties; and in other bills preferred commonly by the commons against shrieves, escheators, purveyors, or the like, they seek their own profit and ease. But here their petition is to the king, to make a law for the defence and maintenance of his own honour. They complain, that by bulls and processes from Rome, the king is deprived

of that jurisdiction which belongs of right to his imperial crown; that the king doth lose the service and council of his prelates and learned men by translations made by the bishop of Rome; that the king's laws are defeated at his will, the treasure of the realm is exhausted and exported to enrich his court; and that by those means the crown of England, which hath ever been free, and subject unto none, but immediately unto God, should be submitted unto the bishop of Rome, to the utter destruction of the king and the whole realm; which God defend, say they: and thereupon, out of their exceeding zeal and fervency, they offer to live and die with the king in defence of the liberties of the crown. And lastly, they pray and require the king by way of justice, to examine all the lords in parliament, what they thought of these manifest wrongs and usurpations, and whether they would stand with the king in defence of his royal liberties, or no. Which the king did according to their petition: and the lords spiritual and temporal did all answer, that these usurpations of the bishop of Rome were against the liberties of the crown, and that they were all bound by their allegiance to stand with the king, and to maintain his honour and prerogative. And thereupon it was enacted with a full consent of the three estates, that such as should purchase in the court of Rome, or elsewhere, any bulls or processes, or other things which might touch the king in his crown and dignity royal, and such as should bring them into the realm, and such as should receive them, publish them, or execute them, they, their notaries, proctors, maintainers and counsellors, should be all out of the king's protection, their lands and goods forfeited to the king, their bodies attached if they might be found, or else process of *praemunire facias* to be awarded against them. Upon these motives, and with this affection and zeal of the people, was the statute of 16 Rich. 2. made, whereupon we have framed our indictment.

Now let us look higher and see, whether the former laws made by king Edw. 1. and king Edw. 3. against the usurpation of the bishop of Rome, were not grounded upon the like cause and reason. The statute of 38 Edw. 3. cap. 1. expressing the mischiefs that did arise by Breves of Citation, which drew the bodies of the people, and by Bulls of provision and reservation of ecclesiastical benefices, which drew the wealth of the realm, to the court of Rome, doth declare, that by these means the ancient laws, customs and franchises of the realm were confounded, the crown of our sovereign lord the king diminished, and his person falsely defamed, the treasure and riches of the laud carried away, the subjects of the realm molested and impoverished, the benefices of holy church wasted and destroyed, divine service, hospitality, alms-deeds and other works of charity neglected.

Again, 27 Edw. 3. cap. 1. upon the grievous and clamorous complaint (for that phrase is there used) of the great men and commons

touching citations and provisions, it is enacted, that the offenders shall forfeit their lands, goods and chattels, and their bodies be imprisoned and ransomed at the king's will.

But in the stat. of 25 Edw. 3. wherein the first law against provisors made 25 Edw. 1. is recited, there is a larger declaration of these inconveniences than in the two last acts before mentioned. For there all the commons of the realm do grievously complain, that whereas the holy church of England was first founded in estate of prelacy by the kings and nobility of that realm, and by them endowed with great possessions and revenues in lands, rents and advowsons, to the end the people might be informed in religion, hospitality might be kept, and other works of charity might be exercised within the realm; and whereas the king and other founders of the said prelacies were the rightful patrons and advowees thereof, and upon avoidance of such ecclesiastical promotions had power to advance thereunto their kinsmen, friends, and other learned men of the birth of that realm, which being so advanced became able and worthy persons to serve the king in counsel, and other places in the commonweal; the bishop of Rome, usurping the seignory of such possessions and benefices, did give and grant the same to aliens, which did never dwell in England, and to cardinals, which might not dwell there, as if he were rightful patron of those benefices; whereas by the law of England he never had right to the patronage thereof; whereby in short time all the spiritual promotions in the realm would be engrossed into the hands of strangers, canonical elections of prelates would be abolished, works of charity would cease, the founders and true patrons of churches would be disinherited, the king's council would be weakened, the whole kingdom impoverished, and the laws and rights of the realm destroyed. Upon this complaint it was resolved in parliament, that these oppressions and grievances should not be suffered in any manner: and therefore it was enacted, that the king and his subjects should thenceforth enjoy the rights of patronage; that free elections of archbishops, bishops, and other prelates elective, should be made according to the ancient grants of the king's progenitors and their founders; that no bulls of provision should be put in execution, but that the provisors should be attached, fined and ransomed at the king's will, and withal imprisoned, till they had renounced the benefits of their bulls, satisfied the party grieved, and given securities not to commit the like offence again.

Now, Mr. Lalor, what think you of these things? Did you believe that such laws as these had been made against the pope 200, 250, 300 years since? Was king Hen. 8. the first prince that opposed the pope's usurped authority? Were our protestants the first subjects that ever complained of the court of Rome? Of what religion, think you, were the propounders and enactors of these laws? Were they good catholics, or good subjects, or what

were they? You will not say they were protestants, for you will not admit the reformed religion to be so ancient as those times: neither can you say they were unfaithful, for they strove to uphold their liege lord's sovereignty. Doubtless the people in those days did generally embrace the vulgar errors and superstitions of the Romish church, and in that respect were papists as well as you. But they had not learned the new doctrine of the pope's supremacy, and transcendent authority over kings; they did not believe he had power to depose princes, and discharge subjects of their allegiance, to abrogate the fundamental laws of kingdoms, and to impose his canons as binding laws upon all nations, without their consents; they thought it a good point of religion to be good subjects, to honour their king, to love their country, and to maintain the laws and liberties thereof, howsoever in other points they did err and were misled with the church of Rome.

So as now (Mr. Lalor) you have no excuse, no evasion, but your conscience must condemn you as well as the law; since the law-makers in all ages, and all religious papists and protestants, do condemn you: unless you think yourself wiser than all the bishops that were then in England, or all the judges, who in those days were learned in the civil and canon laws as well as in the common laws of England.

But you, being an Irishman, will say, perhaps, these laws were made in England, and that the Irish nation gave no particular consent thereunto, only there was an implicit consent wrapt and folded up in general terms given in the statute of 10 Hen. 7. cap. 22. whereby all statutes made in England are established and made of force in Ireland. Assuredly, though the first parliament held in Ireland was after the first law against provisors made in England, yet have there been as many particular laws made in Ireland against provisions, citations, bulls and brefs of the court of Rome, as are to be found in all the parliament-rolls in England. What will you say if in the self-same parliament of 10 Hen. 7. cap. 5. a special law were made, enacting, authorizing and confirming in this realm all the statutes of England made against provisors; if before this the like law were made 32 Hen. 6. cap. 4. and again 28 Hen. 6. cap. 30. the like; and before that, the like law were made 40 Edw. 3. cap. 19. in the famous parliament of Kilkenny; if a statute of the same nature were made 7 Edw. 4. cap. 2. and a severer law than all these, 16 Edw. 4. cap. 4. that such as purchase any bulls of provision in the court of Rome, as soon as they have published or executed the same to the hurt of any incumbent, should be adjudged traitors; which act, if it be not repealed by the statute of queen Mary, may terrify Mr. Lalor more than all the acts which are before remembered?

But let us ascend yet higher, to see when the pope's usurpation, which caused all these complaints, began in England, with what success it was continued, and by what degrees it

rose to that height, that it well nigh overtopped the crown; whereby it will appear whether he had gained a circle by prescription, by a long and quiet possession, before the making of these laws.

The first encroachment of the bishop of Rome upon the liberties of the crown of England, was made in the time of king William the conqueror. For before that time the pope's writ did not run in England, his bulls of excommunication and provision came not thither; no citation, no appeals were made from thence to the court of Rome; our archbishops did not purchase their palls there, neither had the pope the investiture of any of our bishopricks. For it is to be observed, that as under the temporal monarchy of Rome, Britany was one of the last provinces that was won, and one of the first that was lost again: so under the spiritual monarchy of the pope of Rome, England was one of the last countries of Christendom that received his yoke, and was again one of the first that did reject and cast it off. And truly, as in this, so in divers other points, the course of this spiritual monarchy of the pope may be aptly compared with the course of the temporal monarchies of the world. For as the temporal monarchies were first raised by intrusion upon other princes and commonweals; so did this spiritual prince (as they now stile him) grow to his greatness by usurping upon other states and churches. As the temporal monarchies, following the course of the sun, did rise in the east, and settle in the west; so did the hierarchy or government of the church. Of the four temporal monarchies, the first two were in Asia, the latter two in Europe; but the Roman monarchy did surpass and suppress them all. So were there four great patriarchs, or ecclesiastical hierarchies, two in the east, and two in the west; but the Roman patriarch exalted himself, and usurped a supremacy above them all. And as the rising of the Roman empire was most opposed of Carthage in Africa, (*emula Roma Carthago*;) so the council of Carthage and the African bishops did first forbid appeals to Rome, and opposed the supremacy of the pope. And doth not Daniel's image, whose head was of gold, and legs and feet of iron and clay, represent this spiritual monarchy as well as the temporal; whereas the first bishops of Rome were golden priests, though they had but wooden chabices, and that the popes of later times have been for the most part worldly and earthly minded? And as the northern nations first revolted from the Roman monarchy, and at last brake it in pieces; have not the north and north-west nations first fallen away from the papacy; and are they not like in the end to bring it to ruin?

But to return to our purpose. The bishop of Rome before the first Norman conquest had no jurisdiction in the realm of England, neither in the time of the Britains, nor in the time of the Saxons. Eleutherius, the pope, within less than 200 years after Christ, writes to Lucius, the British king, and calls

him God's vicar within his kingdom: which title he would not have given to that king, if himself, under pretence of being God's vicar-general on earth, had claimed jurisdiction over all Christian kingdoms.—Pelagius the monk of Bangor, about the year 400, being cited to Rome, refused to appear upon the pope's citation, affirming that Britain was neither within his diocese nor his province.—After that, about the year 600, Augustine the monk was sent by Gregory the great into England, to convert the Saxons to the Christian religion. The British bishops then remaining in Wales regarded not his commission nor his doctrine, as not owing any duty, nor having any dependency on the court of Rome; but still retained their ceremonies and traditions which they received from the east church, upon the first plantation of the faith in that island, being divers and contrary to those of the church of Rome, which Augustine did endeavour to impose upon them.—The like doth Beda write of the Irish priests and bishops. For in the year 660, he reporteth, that a convocation of the clergy being called by king Oswif, there rose a disputation between Colman, one of our Irish saints, then present in that synod, and Wilfrid a Saxon priest, touching the observation of Easter, wherein the British and Irish churches did then differ from the church of Rome. Colman, for the celebration of Easter used in Ireland, affirmed it was the same, 'quod beatus evangelista Johannes, discipulus specialiter à Domino dilectus, in omnibus quibus præerat ecclesiis celebrasse legitur.' On the other part Wilfrid alledged, that all the churches of Christendom did then celebrate Easter after the Roman manner, except the churches of the Britains and Picts, 'qui contra totum orbem (saith he) stulto labore pugnant.' Whereunto Colman replied, 'miror quare stultum laborem appellas, in quo tanti apostoli, qui super pectus Domini recumbere digni fuit, exempla sectantur. Numquid reverendissimum patrem nostrum Columbam et ejus successores, viros à Deo dilectos, divinis paginis contraria sapuisse aut egisse credendum est?' In this disputation or dialogue two things may be observed: first, that at this time the authority of the bishop of Rome was of no estimation in these islands, next, that the primitive churches of Britany and Ireland were instituted according to the form and discipline of the east churches, and not of the west, and planted by the disciples of John, and not of Peter. Thus much for the time of the Britains. For the Saxons, though king Ina gave the Peter-pence to the pope, partly as alms, and partly in recompence of a house erected in Rome for entertainment of English pilgrims; yet it is certain, that Alfred and Athelstane, Edgar and Edmund, Canutus and Edward the Confessor, and divers other kings of the Saxon race, did give all the bishopricks in England *per annulum et baculum*, without any other ceremony, as the emperor and French king and other Christian princes were wont to do. They made also several laws for



the government of the church. Among others, St. Edward begins his laws with this protestation, that it is his princely charge, 'ut populum domini, et super omnia sanctam ecclesiam, regat et gubernet.' And king Edgar, in his oration to his English clergy, 'ego,' saith he, 'Constantini, vos Petri gladium habetis: jungamus dextras, et gladium gladio copulemus, ut ejiciantur extra castra leprosi, et purgetur sanctuarium Domini.' So as the kings of England with their own clergy did govern the church, and therein sought no aid of the court of Rome. And the truth is, that though the pope had then long hands, yet he did not extend them so far as England; because they were full of business nearer home in drawing the emperor and the French king under his yoke. But upon the conquest made by the Norman, he apprehended the first occasion to usurp upon the liberties of the crown of England. For the Conqueror came in with the pope's banner, and under it won the battle which got him the garland; and therefore the pope presumed he might boldly pluck some flowers from it, being partly gained by his countenance and blessing. Hereupon he sent two legates into England, which were admitted and received by the Conqueror. With them he called a synod of the clergy, and deposed old Stigand, archbishop of Canterbury, because he had not purchased his pall in the court of Rome. He displaced many bishops and abbots, to place his Normans in their rooms. And amongst the rest it is to be noted, that the king having earnestly moved Wolstan bishop of Worcester, being then very aged, to give up his staff; his answer was, that he would give up his staff only to him of whom he first received the same. And so the old man went to St. Edward's tomb, and there offered up his staff and ring, with these words: 'Of thee, O holy Edward, I received my staff and my ring, and to thee I do now surrender the same again.' Which proves, that before the Norman conquest the king did invest his bishops *per annulum et baculum*, as I said before.

Thus we see, by the admission of the pope's legates, the first step or entry made into his usurped jurisdiction in England. Albeit, the king still retained the absolute power of investing bishops, and seemed only to use the advice and assistance of the legates in ecclesiastical matters; for that no decree passed or was put in execution without his royal assent thereunto. Besides, how far forth he submitted himself to the pope, it appeareth by a short epistle he wrote to Gregory 7, in this form. 'Excellentissimo sanctæ ecclesiæ pastori, Gregorio, gratiâ Dei Anglorum rex et dux Normannorum Willielmus salutem cum amicitia. Hubertus legatus tuus, religiose pater, ad me veniens ex tua parte, me admonuit, ut tibi et successoribus tuis fidelitatem facerem, et de pecunia, quam antecessores mei ad Romanam ecclesiam mittere solebant, melius cogitarem. Unum admisi, alterum non admisi. Fidelitatem facere nolui, nec volo; quia nec ego promisi, nec antecessores meos antecessoribus

'tuis id fecisse comperio. Pecunia, tribus fere annis, in Gallis me agente, negligenter collecta est. Nunc vero divinâ misericordiâ me in regnum meum reverso, quod collectum est per præfatum legatum mittetur; et quod reliquum est, per legatos Lanfranci archiepiscopi fidelis nostri, cum opportunum fuerit, transmittetur, &c.'

But in the time of his next successor, king William Rufus, they attempted to pass one degree farther, that is, to draw appeals to the court of Rome. For Anselme being made archbishop of Canterbury, and being at some difference with the king, besought his leave to go to Rome, under pretence of fetching his pall. The king, knowing he would appeal to the pope, denied him leave to go, and withal told him that none of his bishops ought to be subject to the pope, but the pope himself ought to be subject to the emperor; and that the king of England had the same absolute liberties in his dominions as the emperor had in the empire; and that it was an ancient custom and law in England, used time out of mind before the Conquest, that none might appeal to the pope without the king's leave; and that he that breaketh this law or custom doth violate the crown and dignity royal, and he that violates my crown, saith he, is mine enemy, and a traitor. 'How answer you this?' quoth the king. 'Christ himself answers you,' saith the archbishop, 'tu es Petrus, et super hanc petram, &c.' wherewith the king was nothing satisfied. And thereupon Anselme departing out of the realm without licence, the king seized his temporalities, and became so exasperate and implacable towards the bishop, as he kept him in perpetual exile during his reign; albeit great intercession were made for his return, as well by the pope as the king of France.

In the time of the next king, Hen. 1, though he were a learned and a prudent prince, yet they sought to gain a farther point upon him, and to pluck a flower from his crown of greater value, namely, the patronage and donation of bishopricks and all other benefices ecclesiastical. For Anselme being revoked and re-established in the see of Canterbury, the bishopricks of Salisbury and Hereford fell void, which the king bestowed on two of his chaplains. But Anselme their metropolitan did refuse to consecrate them, so as the archbishop of York was fain to perform that office, who with the chief of the English clergy stood with the king, and withstood Anselme. Hereupon the king requires him to do his homage; the bishop denies it. The king demands of him whether the patronage and investiture of all bishopricks were not his rightful inheritance. The bishop said it was not his right; because pope Urban had lately made a decree, that no lay person should give any ecclesiastical benefice. [Histor. Journalensis M. S. in Archiv. Rob. Cotton, Eq. Aur.] This was the first question, that ever was made, touching the king of England's right of patronage and donation of bishopricks within his dominions. This

new question caused many messages and embassages to Rome. At last the king writes plainly to the pope, 'notum habeat sanctitas vestra, quod me vivente, Deo auxiliante, dignitates et usus regni nostri non minuentur; et si ego, quod absit, in tanta me directione ponerem, magnates mei, imo totius Angliæ populus, id nullo modo pateretur.' Besides, William de Warrenast, the king's procurator in the court of Rome, told the pope, that the king would rather lose his kingdom than he would lose the donation of bishopricks. The pope answered, 'Know you precisely, sir, I speak it before God, that for the redemption of my head I would not suffer him to enjoy it.'

After this Anselme being received into the king's favour, in a synod of the English clergy holden at London in the year 1107, a decree was made, 'cui annuit rex Henricus,' saith Matth. Paris, 'that from thenceforth, 'nunquam per donationem baculi pastoralis vel annuli quisquam de episcopatu vel abbatia per regem, vel quamlibet laicam manum, investiretur in Angliam.' In recompence whereof the pope yielded this favour to the king, that thenceforth no legate should be sent from the pope's side into England, unless the king required it; and that the archbishop of Canterbury for the time being should be ever *legatus natus*; and Anselme, for the honour of his see, obtained, that the archbishop of Canterbury should in all general councils sit at the pope's foot, 'tanquam alterius orbis papa.' Notwithstanding, as the succeeding popes kept not their promise touching the sending of legates, so this self-same king, after the death of Anselme, broke the decree touching the investiture of the bishops. For he gave the archbishoprick of Canterbury to Rodolph bishop of London, saith Matth. Paris, 'et illum per annulum et pastorem baculum investivit;' as before he had invested Willielmum Gifford in the bishoprick of Winchester, 'contra novi concilii statuta,' as the same author reporteth.

The times of the next succeeding king, Stephen were full of civil dissensions, which made the land well-nigh waste, so as St. Peter's successor could not take any fish in such troubled waters. Yet during this king's reign they won that point of jurisdiction, which they attempted to get, but failed thereof, in the time of king William Rufus; namely, that appeals might be made to the court of Rome. For in a synod at London summoned by Henry bishop of Winchester, the pope's legate, it was decreed that appeals should be made from provincial councils to the pope. Before that time 'appellationes in usu non erant,' saith a monk of that time, 'donec Henricus Winton. episcopus malo suo, dum legatus esset, crudeliter intravit.' Thus did the pope usurp three main points of jurisdiction upon three several kings after the Conquest, for of William Rufus he could win nothing, namely, upon the Conqueror, the sending of legates or commissioners to hear and determine ecclesiastical causes; upon Hen. 1. the donation and investitures of

bishopricks and other benefices; upon king Stephen, the appeals to the court of Rome.

Now are we come to king Henry 2, in whose time they made a farther encroachment upon the crown, whereby they endeavoured to make him but half a king, and to take away half his subjects, by exempting all clerks from secular power. Hereupon rose that long and great contention between Henry 2, and Thomas Becket, which on Becket's behalf may be rightly termed rebellion and treason; the just cause and ground whereof was the same that made the late difference between the pope and the Venetians. For a priest had committed a foul murder; and being thereof indicted and convicted, prayed the benefit of his clergy; which being allowed unto him, he was delivered to the bishop of Salisbury, being his ordinary, to make his purgation; which the murderer failing to do should by the law have been degraded, and delivered back to the secular power. But the bishop, contemning the law of the land, to enlarge the liberties of the church, sent his prisoner to Thomas Becket then archbishop of Canterbury, who shifted him into an abbey, and so rescued him from the capital punishment he had justly deserved.

This gap of impunity being once opened, the clergy grew so outrageous, as the king was informed of a hundred murders committed by clerks, and yet not one of them executed for the same; for that the archbishop had protected them all after the same manner. For this the king was justly incensed against the archbishop, who justified his doing herein. Whereupon a common council as well of the bishops as of the nobility was called, wherein they did revive and re-establish the ancient laws and customs of the kingdom for the government of the clergy, and ordering of causes ecclesiastical, whereof these were the principal heads or articles:

#### *The Constitutions of Claringdon.*

1. That no bishop nor clerk should depart the realm without the king's licence; and that such as obtained licence should give securities, that they should procure no hurt or damage to the king or realm during their absence in foreign parts.—2. That all bishopricks and abbeys being void should remain in the king's hands as his own demesnes, until he had chosen and appointed a prelate thereunto; and that every such prelate should do his homage to the king before he were admitted into the place.—3. That appeals should be made in causes ecclesiastical in this manner; from the archdeacon to the ordinary, from the ordinary to the metropolitan, from the metropolitan to the king, and no farther.—4. That Peter-pence should be paid no more to the pope, but to the king.—5. That if any clerk should commit felony, he should be hanged; if treason, he should be drawn and quartered.—6. That it should be adjudged high-treason to bring in bulls of excommunication, whereby the realm should be cursed.—7. That no decree should

be brought from the pope to be executed in England, upon pain of imprisonment and confiscation of goods.

To these and other Constitutions of the like nature made at Claringdon, all the rest of the bishops and great men did subscribe, and bound themselves by oath to observe the same absolutely. Only the archbishop would not subscribe, and swear, but with a saving, 'salvo suo ordine et honore sanctæ ecclesiæ.' Yet at last he was content to make the like absolute subscription and oath as the rest had done; but presently he repented, and to shew his repentance suspended himself from celebrating mass, till he had received absolution from the pope. Then he began to maintain and justify the exemption of clerks again; whereas the king's displeasure was kindled anew; and then the archbishop once again promised absolute obedience to the king's laws. (See the fickleness and mutability of your constant martyr.) The king, to bind fast this slippery Proteus, called a parliament of the bishops and barons; and sending for the roll of those laws, required all the bishops to set their seals thereunto. They all assented but the archbishop, who protested he would not set his seal, nor give allowance to those laws. The king, being highly offended with his rebellious demeanour, required the barons in parliament to give judgment of him, who being his subject, would not be ruled by his laws; 'cito facite mihi justitiam de illo, qui homo meus ligens est, et stare juri in curia mea recusati.' Whereupon the barons proceeded against him, and being ready to condemn him; 'I prohibit you,' quoth the archbishop, 'in the name of Almighty God to proceed against me; for I have appealed to the pope: and so departed in contempt of that high court, 'omnibus clamantibus,' saith Hoveden, 'quo progredieris proditor? expecta et audi judicium tuum.' After this he lurked secretly near the sea-shore; and changing his apparel and name (like a jesuit of these times,) he took shipping with a purpose to fly to Rome. But his passage being hindered by contrary winds, he was summoned to a parliament at Northampton, where he made default wilfully; for which contempt, his temporalities were seized, and his body being attached, he was charged with so great an account to the king, as that he was found in arrear 30,000 marks, and committed to prison; whence he found means to escape shortly after, and to pass out of the realm to Rome. He was no sooner gone, but the king sends writs to all the sheriffs in England to attach the bodies of all such as made any appeals to the court of Rome. Hereupon many messages and letters passing to and fro, all the suffragans of Canterbury join in a letter to the pope, wherein they condemn the fugitive archbishop, and justify the king's proceedings. Upon this the pope sends two legates to the king, being then in Normandy, to mediate for the archbishop. They, with the mediation of the French king, prevailed so far with king Henry, as that he was pleased to ac-

cept his submission once again, and promised the king of France, that if he would be obedient to his laws, he should enjoy as ample liberties as any archbishop of Canterbury ever had; and so sent him into England with recommendation unto the young king his son, then lately crowned; who, hearing of his coming, commanded him to forbear to come to his presence, until he had absolved the archbishop of York and others, whom he had excommunicated for performing their duties at his coronation. The archbishop returned answer, that they had done him wrong in usurping his office; yet if they would take a solemn oath to become obedient to the pope's commandment in all things concerning the church, he would absolve them. The bishops, understanding this, protested they would never take that oath, unless the king willed them so to do. King Henry the father, being hereof advertised into France, did rise into great passion and choler, and in the hearing of his servants uttered words to this effect; 'Will no man revenge me of mine enemies?' Whereupon the four gentlemen named in the stories of that time passed into England, and first moving the archbishop to absolve the bishops whom he had excommunicated for performing their duties at the young king's coronation, and receiving a peremptory answer of denial from the archbishop, they laid violent hands upon him, and slew him; for which the king was fain not only to suffer corporal penance, but in token of his humiliation to kiss the knee of the pope's legate. And this is the abridgment of Becket's troubles, or rather treasons, for which he was celebrated for so famous a martyr.—And thus you see by what degrees the court of Rome did within the space of 100 and odd years usurp upon the crown of England four points of jurisdiction, viz. First, sending out of legates into England. Secondly, drawing of appeals to the court of Rome. Thirdly, donation of bishopricks and other ecclesiastical benefices. And fourthly, exemption of clerks from the secular power. And you see withal how our kings and parliaments have from time to time opposed and withstood this unjust usurpation.

Now then the bishop of Rome having claimed and well nigh recovered full and sole jurisdiction in all causes ecclesiastical, and over all persons ecclesiastical, with power to dispose of all ecclesiastical benefices in England, whereby he had upon the matter made an absolute conquest of more than half the kingdom, (for every one that could read the psalm of *Miserere* was a clerk, and the clergy possessed the moiety of all temporal possessions) there remained now nothing to make him owner and proprietor of all, but to get a surrender of the crown, and to make the king his farmer, and the people his villains, which he fully accomplished and brought to pass in the times of king John and of Henry 3.

The quarrel between the pope and king John, which wrested the sceptre out of his hand, and in the end brake his heart, began about the

election of the archbishop of Canterbury. I call it election, and not donation or investiture; for the manner of investing of bishops by the staff and ring after the time of king Hen. 1. was not any more used, but by the king's licence they were canonically elected, and being elected, the king gave his royal assent to their election, and by restitution of their temporalities did fully invest them. And though this course of election began to be in use in the time of Rich. 1. and Hen. 2. yet I find it not confirmed by any constitution or charter before the time of king John, who by his charter dated the 15th of January, in the 16th year of his reign, granted this privilege to the church of England in these words, viz. 'Quod qualiscunque consuetudo temporibus prædecessorum nostrorum hactenus in ecclesia Anglicana fuerit observata, et quicquid juris nobis hactenus vindicaverimus, de cætero in universis et singulis ecclesiis et monasteriis, cathedralibus et conventualibus, totius regni Angliæ, liberæ sint in perpetuum electiones quorumcunque prælatorum, majorum et minorum: salvâ nobis et hæredibus nostris custodiâ ecclesiarum et monasteriorum vacantium quæ ad nos pertinent. Promittimus etiam, quod nec impediemus nec impediri permittemus per ministros nostros, nec procurabimus, quin in universis et singulis monasteriis et ecclesiis, postquam vacuerint prælaturæ, quemcunque voluerint libere sibi præficiant electores pastorum, petiti tamen à nobis prius et hæredibus nostris licentiâ eligendi, quam non denegabimus nec differemus. Et similiter, post celebratam electionem, noster requiratur assensus, quem non denegabimus, nisi adversus eandem rationale proposuerimus, et legitime probaverimus propter quod non debemus consentire, &c.'

But to return to the cause of his great quarrel with the pope. The see of Canterbury being void, the monks of Canterbury suddenly and secretly without the king's license elected one Reignold their sub-prior to be archbishop, who immediately posted away to be confirmed by the pope. But when he came there, the pope rejected him, because he came not recommended from the king. Hereupon the monks made suit to the king to nominate some fit person to whose election they might proceed. The king commends John Gray bishop of Norwich, his principal counsellor, who was afterwards lord justice of this kingdom, who with a full consent was elected by them, and afterwards admitted and fully invested by the king. These two elections bred such a controversy as none might determine but the pope, who gave a short rule in the case; for he pronounced both elections void, and caused some of the monks of Canterbury, who were then present in the court of Rome, to proceed to the election of Stephen Langton, lately made cardinal at the motion and suit of the French king: who being so elected was forthwith confirmed and consecrated by the pope, and recommended to the king of England with a flat-

tering letter, and a present of four rings set with precious stones, which were of great value and estimation in those days. Howbeit, the king more esteeming this jewel of the crown, namely, the patronage of bishopricks, returned a round and kingly Answer to the pope, that inconsiderately and rashly he had cussed and made void the election of the bishop of Norwich, and had caused one Langton, a man to him unknown, and bred up and nourished amongst his mortal enemies, to be consecrated archbishop, without any due form of election, and without his royal assent, which was most of all requisite by the antient laws and customs of his realm. That he marvelled much, that the pope himself and the whole court of Rome did not consider what a precious account they ought to make of the king of England's friendship, in regard that his one kingdom did yield them more profit and revenue than all the other countries on this side the Alps. To conclude, he would maintain the liberties of his crown to the death, he would restrain all his subjects from going to Rome. And since the archbishops, bishops and other prelates within his dominions, were as learned and religious as any other in Christendom, his subjects should be judged by them in ecclesiastical matters, and should not need to run out of their own country to beg justice at the hands of strangers.

But what followed upon this? The pope, after a sharp reply, sendeth forth a bull of malediction against the king, and of interdiction against the realm, whereby all the churches in England were shut up, the priests and religious persons were forbidden to use any liturgies or divine service, to marry, to bury, or to perform any Christian duty among the people. This put the king into such a rage, that he on the other part seized the temporalities of all bishops and abbots, and confiscated the goods of all the clergy. Then doth the pope by a solemn sentence at Rome depose the king, and by a bull sent into England dischargeth his subjects of their allegiance, and by a legate sent to the king of France gave the kingdom of England to him and his successors for ever.

These things brought such confusion and misery to all estates and degrees of people in England, as the king became odious to all his subjects, as well to the laity as to the clergy. For as the bishops and religious people cursed him abroad; so the barons took arms against him at home, till with much bloodshed they forced him, by granting the Great Charter, to restore king Edward's laws, containing the ancient liberties of the subjects of England. The pope being a spectator of this tragedy, and seeing the king in so weak and desperate estate, sent a legate to comfort him, and to make a reasonable motion unto him; to wit, that he should surrender and give up his crown and kingdom to the pope, which should be re-granted unto him again to hold in fee-farm and vassalage of the church of Rome: and that thereupon the pope would bless him and his

realm again, and curse his rebels and enemies in such sort, as he should be better established in his kingdom then he was before. In a word, this motion was presently embraced by that miserable king, so as with his own hands he gave up the crown to the pope's legate, and by an instrument or charter sealed with a bull or seal of gold, he granted to God and the church of Rome, the apostles Peter and Paul, and to pope Innocent the third and his successors, the whole kingdom of England, and the whole kingdom of Ireland; and took back an estate thereof by an instrument sealed with lead, yielding yearly to the church of Rome over and above the Peter-pence 1,000 marks sterling, viz. 700 marks for England, and 300 marks for Ireland, with a flattering saving of all his liberties and royalties. The pope had no sooner gotten this conveyance, though it were void in law, but he excommunicateth the barons, and repeals the Great Charter, affirming that it contained liberties too great for his subjects; calls the king his vassal, and these kingdoms St. Peter's patrimony; grants a general bull of provision for the bestowing of all ecclesiastical benefices, and takes upon him to be absolute and immediate lord of all. And thus, under colour of exercising jurisdiction within these kingdoms, the pope, by degrees, got the very kingdoms themselves. And so would he do at this day, if the king would give way to his jurisdiction.

But what use did the pope make of this grant and surrender of the crown unto him? What did he gain by it, if our kings retained the profits of their kingdoms to their own use? Indeed we do not find, that the fee-farm of a thousand marks was ever paid, but that it is all run in arrear till this present day. For the truth is, the court of Rome did scorn to accept so poor a revenue as a thousand marks per annum out of two kingdoms. But after the death of king John, during all the reign of Hen. 3, his son, the pope did not claim a seigniory or a rent out of England and Ireland, but did endeavour to convert all the profits of both lands to his own use, as if he had been seized of all in demesne. For who-soever will read Matt. Paris his story of the time of king Hen. 3, will say these things spoken of before were but the beginnings of evils. For the exactions and oppressions of the court of Rome were so continual and intolerable, as that poor monk, who lived in those times, though otherwise he adored the pope, doth call England Balaam's ass laden, beaten, and enforced to speak; doth call the court of Rome Clarybdis and Barathrum avaritiae, the pope's collectors harpys, and the pope himself a stepfather, and the church of Rome a stepmother. He sheweth, that two third parts of the land being then in the hands of church-men, the entire profits thereof were exported to enrich the pope and the court of Rome: which was done for the most part by these two ways and means. First, by conferring the best ecclesiastical benefices upon Italians, and other

strangers resident in that court, whose farmers and factors in England took the profits, turned them into money, and returned the money to Rome. Secondly, by imposing continual taxes and tallages, worse then Irish cuttings, being sometimes the tenth, sometimes the fifteenth, sometimes the third, sometimes the moiety of all the goods both of the clergy and laity, under colour of maintaining the pope's holy wars against the emperor and the Greek church, who were then said to be in rebellion against their lady and mistress the church of Rome. Besides, for the speedy levying and safe return of these moneys, the pope had his Lombards and other Italian bankers and usurers resident in London and other parts of the realm, who offered to lend and disburse the moneys taxed, and return the same by exchange to Rome, taking such penal bonds, the form whereof is set down by Matt. Paris, and such excessive usury, as the poor religious houses were fain to sell their chalices and copes, and the rest of the clergy and laity had their backs bowed and their estates broken under the burthen. Besides, the pope took for perquisites and casualties the goods of all clerks that died intestate, the goods of all usurers, and all goods given to charitable uses. Moreover he had a swarm of friars, the first corrupters of religion in England, who perswaded the nobility and gentry to put on the sign of the cross, and to vow themselves to the holy wars; which they had no sooner done, but they were again perswaded to receive dispensations of their vows, and to give money for the same to the church of Rome. I omit divers other policies then used by the pope's collectors to exhaust the wealth of the realm, which they affirmed they might take with as good a conscience as the Hebrews took the jewels of the Egyptians. Briefly, whereas the king had scarce means to maintain his royal family, they received out of England 70,000*l.* sterling at least yearly, which amounteth to 210,000*l.* sterling of the monies current at this day. Besides, they exported 6,000 marks out of Ireland at one time, which the emperor Frederick intercepted. Lastly, the king himself was so much dejected, as at a royal feast he placed the pope's legate in his own chair of estate, himself sitting on his right hand, and the bishop of York on his left, 'non sine multorum obliquantibus oculis,' saith Matt. Paris.

Thus we see the effect of the pope's pretended jurisdiction within the dominions of the king of England. We see to what calamity and servitude it then reduced both the prince and people. Was it not therefore high time to meet and oppose those inconveniences? Assuredly if king Edward 1, who was the son and heir of Hen. 3, had inherited the weakness of his father, and had not resisted this usurpation and insolency of the court of Rome, the pope had been proprietor of both these islands, and there had been no king of England at this day.

But king Edward 1, may well be stiled 'vin-

'*dex Anglicæ libertatis*,' the Moses that delivered his people from slavery and oppression: and as he was a brave and victorious prince, so was he the best *pater patriæ* that ever reigned in England since the Norman Conquest, till the coronation of our gracious sovereign. At the time of the death of his father he was absent in the war of the holy land, being a principal commander of the Christian army there, so as he returned not before the second year of his reign. But he was no sooner returned and crowned, but the first work he did was to shake off the yoke of the bishop of Rome. For the pope having then summoned a general council, before he would license his bishops to repair to it, he took of them a solemn oath, that they should not receive the pope's blessing. Again, the pope forbids the king to war against Scotland; the king regards not his prohibition: He demands the first-fruits of ecclesiastical livings; the king forbids the payment thereof unto him. The pope sendeth forth a general bull prohibiting the clergy to pay subsidies or tributes to temporal princes: a tenth was granted to the king in parliament, the clergy refused to pay it: the king seizeth their temporalities for their contempt, and got payment notwithstanding the pope's bull. After this he made the statute of Mortmain, whereby he brake the pope's chief net, which within an age or two more would have drawn to the church all the temporal possessions of the kingdom, &c. Again, one of the king's subjects brought a bull of excommunication against another: the king commandeth he should be executed as a traitor, according to the ancient law. But because that law had not of long time been put in execution, the chancellor and treasurer kneeled before the king and obtained grace for him, so as he was onely banished out of the realm. And as he judged it treason to bring in bulls of excommunication; so he held it a high contempt against the crown to bring in bulls of provision or briefs of citation; and accordingly the law was so declared in parliament 25 Ed. 1, which was the first statute made against Provisors: the execution of which law, during the life of king Ed. 1, did well-nigh abolish the usurped jurisdiction of the court of Rome, and did revive and restore again the ancient and absolute sovereignty of the king and crown of England.

His successor, king Edward 2, being but a weak prince, the pope attempted to usurp upon him again: but the peers and people withstood his usurpation. And when that unhappy king was to be deposed, amongst many articles framed against him by his enemies, this was one of the most heinous, that he had given allowance to the pope's bulls.

Again, during the minority of king Ed. 3. and after that in the heat of the wars in France, the pope sent many briefs and bulls into England; and at last presumed so far, as that he gave an Italian the title of a cardinal in England, and withal by his bull gave him power to bestow all ecclesiastical promotions as they should fall

void from time to time. This moved the king and the nobility to write to the pope to this effect. 'We and our ancestors have richly endowed the church of England, and have founded abbeys and other religious houses for the jurisdiction of our people, for maintenance of hospitality, and for the advancement of our countrymen and kinsmen. Now you provide and place strangers in our benefices, that come not to keep residence thereupon; and if they come, understand not our language; and some of them are subjects to our mortal enemies; by reason whereof our people are not instructed, hospitality is not kept, our scholars are unpreferred, and the treasure of the realm is exported.' The pope returneth answer, that the emperor had lately submitted himself to the church of Rome in all points, and was become the pope's great friend; and in menacing manner advised the king of England to do the like. The king replies, that if the emperor and French king both should take his part, he was ready to give battle to both in defence of the liberties of his crown. Hereupon the several statutes against Provisors before recited were put in execution so severely, as the king and his subjects enjoyed their right of patronage clearly: and their exemption of clerks took no place at all; for that the abbot of Waltham and bishop of Winchester were both attained of high contempts, and the bishop of Ely of a capital offence, as appeareth in the records of this king's reign. Yet during the nonage of Rich. 2. they began once again to encroach upon the crown, by sending legates and bulls and briefs into England, whereof the people were so sensible and impatient, as that at their special prayer, this law of 16 Rich. 2. (whereupon our indictment is framed) was enacted, being more sharp and penal than all the former statutes against provisors. And yet against this king, as against Ed. 2. it was objected at the time of his deprivation, that he had allowed the pope's bulls, to the entralling of the crown.

After this in the weak time of king Hen. 6. they made one attempt more to revive their usurped jurisdiction by this policy. The commons had denied the king a subsidy when he stood in great want of moneys. The archbishop of Canterbury and the rest of the bishops offered the king a large supply of his wants, if he would consent that all the laws against provisors, and especially this law of 16 Rich. 2. might be repealed. But Humphry duke of Gloucester, who had lately before cast the pope's bull into the fire, did likewise cause this motion to be rejected. So as by special providence these laws have stood in force even till this day in both these kingdoms.

#### *The EVIDENCE against LALOR.*

Then the Attorney General descended to the Evidence, whereby he proved fully all the parts of the Indictment. First, it was proved by Lalor's own confession, upon several examinations taken before the lord deputy and lord chancellor, and others, that he had accepted the

office and title of vicar general in the dioceses of Dublin, Kildare, and Fernes, by virtue of the pope's bull. Secondly, it appeared by the copies of sundry letters found among his papers at his apprehension, that he stiled himself the pope's vicar, in this form, 'Robertus Dublinien. et Kildaren. et Fernen. diocæs. vicarius apostolicus.' Thirdly, there were produced the copies of divers acts and instruments, written for the most part with Lalor's own hand, some of institutions of popish priests to benefices, others of dispensations with marriage within the degrees, others of divorces, others of dispensations for non-payment of tithes. Whereby it was manifestly proved that he did execute the pope's bull, in usurping and exercising episcopal jurisdiction, as vicar general of the see apostolick, within the dioceses before named.

To this evidence he made a three-fold answer. First, that he was no suitor for the office of vicar general, but it was imposed on him, and he accepted *virtute obedientie*, only to obey his superiors. Next, that he did exercise the office of vicar general *in foro conscientie tantum*, and not *in foro judicii*. And lastly, that those copies of institutions, dispensations and divorces, were many of them written with his man's hand, as precedents of such acts and instruments, without his privity or direction. Hereupon sir James Ley, chief justice, told him, that he could not well say, that he accepted that unlawful office *virtute obedientie*, for there was no virtue in that obedience; that he owed an obedience to the law and to the king, who is the true superior and sovereign over all his subjects, and hath no peer within his dominions; and that the superiors whom he meant and intended were but usurpers upon the king's jurisdiction, and therefore this excuse did aggravate his contempt, in that it appeared he had vowed obedience to those who were apparent enemies to the king and his crown. And though it were manifest that he exercised jurisdiction *in foro judicii*, (for every institution is a judgment, and so is every sentence of divorce) yet were his offence nothing diminished if he had executed his office of vicar general *in foro conscientie tantum*; for the court of man's conscience is the highest tribunal, and wherein the power of the keys is exercised in the highest degree.

Hereunto the Attorney General took occasion to add thus much, that Lalor had committed these high offences, not only against the law, but against his own conscience, and that he was already condemned *in foro conscientie*. For that he upon his second examination had voluntarily acknowledged himself not to be a lawful vicar general, and that he thought in his conscience he could not lawfully take upon him the said office. He hath also acknowledged our sovereign lord king James to be his lawful chief and supreme governor, in all causes, as well ecclesiasticall as civil; and that he is in conscience bound to obey him in all the said causes, &c. as it is contained in his Acknowledgment or Confession before set down; which being shewed forth by the Attorney General,

the court caused it to be publickly read; and thereupon demanded of Lalor, if that were not his free and voluntary Confession signed with his own hand, and confirmed by his oath before the lord deputy and council. He was not a little abashed at the publishing of this acknowledgment and confession in the hearing of so many principal gentlemen, to whom he had preached a contrary doctrine; therefore, said he, the shewing forth of this confession is altogether impertinent and besides the matter. Howsoever, he could not deny but that he made it, and signed it, and swore it, as it was testified by the lord deputy and the rest.

Then was it demanded of him, whether since the making of this confession he had not protested to divers of his friends, that he had not acknowledged the king's supremacy in ecclesiastical causes. His answer was, that indeed he had said to some of his friends who visited him in the castle of Dublin, that he had not confessed or acknowledged that the king was his supreme governor in spiritual causes, for that the truth is, in the confession there is no mention made of spiritual causes, but of ecclesiastical.

This is a subtile evasion indeed, said the attorney-general; I pray you what difference do you make between ecclesiastical causes and spiritual causes? This question, said Lalor, is sudden and unexpected at this time, and therefore you shall do well to take another day to dispute this point. Nay, said the attorney-general, we can never speak of it in a better time or fitter place; and therefore, though you, that bear so reverend a title, and hold the reputation of so great a clerk, require a farther time, yet shall you hear that we laymen that serve his majesty, and by the duty of our places are to maintain the jurisdiction of the crown, are never so unprovided, but that we can say somewhat touching the nature and difference of these causes.

First then, let us see when this distinction of ecclesiastical or spiritual causes from civil and temporal causes did first begin in point of jurisdiction. Assuredly, for the space of three hundred years after Christ, this distinction was not known or heard of in the Christian world. For the causes of testaments, of matrimony, of bastardy and adultery, and the rest which are called ecclesiastical or spiritual causes, were merely civil, and determined by the rules of the civil law, and subject onely to the jurisdiction of the civil magistrates, as all civilians will testify with me.

But after that the emperors had received the Christian faith out of a zeal and desire they had to grace and honour the learned and godly bishops of that time, they were pleased to single out certain special causes wherein they granted jurisdiction unto the bishops; namely, in causes of tithes, because they were paid to men of the church; in causes of matrimony, because marriages were for the most part solemnized in the church; in causes testamentary, because testaments were many times made in

*extremis*, when church-men were present, giving spiritual comfort to the testator, and therefore they were thought the fittest persons to take the probates of such testaments. Howbeit these bishops did not proceed in these causes according to the canons and decrees of the church, (for the canon law was not then hatched or dreamed of) but according to the rules of the imperial law, as the civil magistrate did proceed in other causes; neither did the emperors, in giving this jurisdiction unto them, give away their own supreme and absolute power, to correct and punish these judges as well as others, if they performed not their several duties. This then is most certain, that the primitive jurisdiction in all these causes was in the civil magistrate, and so in right it remains at this day; and though it be derived from him, it remaineth in him as in the fountain. For every Christian monarch (as well as the godly kings of Juda) is *custos utriusque tabulae*; and consequently hath power to punish not only treason, murder, theft, and all manner of force and fraud, but incest, adultery, usury, perjury, simony, sorcery, idolatry, blasphemy. Neither are these causes in respect of their own quality and nature to be distinguished one from another by the names of spiritual or temporal: for why is adultery a spiritual cause, rather than murder, when they are both offences alike against the second table; or idolatry rather than perjury, being both offences likewise against the first table? And indeed if we consider the natures of these causes, it will seem somewhat absurd, that they are distinguished by the name of spiritual and temporal; for, to speak properly, that which is opposed to spiritual should be termed carnal; and that which is opposed to temporal should be called eternal. And therefore if things were called by their proper names, adultery should not be called a spiritual offence, but a carnal. But shall I express plainly and briefly why these causes were first denominated; some spiritual or ecclesiastical, and others temporal and civil?

Truly, they were so called, not from the nature of the causes, as I said before, but from the quality of the persons whom the prince had made judges in those causes. The clergy did study spiritual things, and did profess to live *secundum spiritum*, and were called spiritual men; and therefore they called the causes wherein princes had given them jurisdiction, spiritual causes, after their own name and quality. But because the lay-magistrates were said to intend the things of this world, which are temporal and transitory, the clergy called them secular or temporal men, and the causes wherein they were judges temporal causes. This distinction began first in the court of Rome, where the clergy having by this jurisdiction gotten great wealth, their wealth begot pride, their pride begot ingratitude towards princes, who first gave them their jurisdiction; and then, according to the nature of all ungrateful persons, they went about to extinguish the memory of the benefit. For whereas their juris-

diction was first derived from Cæsar, in the execution whereof they were Cæsar's judges, so as both their courts and causes ought still to have born Cæsar's image and superscription, as belonging unto Cæsar; they blotted Cæsar's name out of the stile of their courts, and called them courts Christian, as if the courts holden by other magistrates had been in comparison but courts of Ethnicks; and the causes which in their nature were merely civil, they called spiritual and ecclesiastical. So as if the emperor should challenge his courts and causes again, and say, 'reddite Cæsari quæ sunt Cæsaris,' they would all cry out on the contrary part, and say, 'date Deo quæ sunt Dei,' our courts bear the name and title of Christ, the superscription of Cæsar is quite worn out, and not to be found upon them. And this point of their policy is worth the observing, that when they found their jurisdiction in matrimonial causes to be the most sweet and gainful of all other, (for of matrimony they made matter of money indeed) to the end that Cæsar might never resume so rich a perquisite of their spiritual jurisdiction, they reduced matrimony into the number of the seven sacraments: after which time it had been sacrilege, if the civil magistrate had intermeddled with the least matter that had relation to matrimony, or any dependency thereupon. So then it appeareth, that all causes, whereof ecclesiastical or spiritual persons have cognizance or jurisdiction by the grants or permission of princes, are called ecclesiastical or spiritual causes. And as all their courts are called spiritual courts, so all causes determinable in those courts are called spiritual causes. And therefore where M. Lalor hath acknowledged the king's majesty to be supreme goverour in all ecclesiastical causes, he hath therein acknowledged the king's supremacy in all spiritual causes; wherein he hath but rendered to Cæsar that which is Cæsar's, and hath given unto his majesty no more than all the bishops of England have yielded to his predecessors, not only in this latter age, but also in former times both before and since the conquest, as hath been before at large expressed.

Here the day being far spent, the court demanded of the prisoner if he had any more to say for himself. His answer was, that he did willingly renounce his office of vicar-general, and did humbly crave his majesty's grace and pardon. And to that end, he desired the court to move the lord-deputy to be favourable unto him. Then the jury departed from the bar, and returning within half an hour, found the prisoner Guilty of the contempts whereof he was indicted. Whereupon the solicitor-general moved the court to proceed to judgment. And sir Dominick Sarsfield, knight, one of the justices of his majesty's chief place, gave judgment according to the form of the statute whereupon the indictment was framed.

[“ The encroachments of the church of Rome, on the king's ecclesiastical jurisdiction, are the



subject of other cases besides the preceding one of *Præmunire*. In particular they are historically discussed in lord Coke's Case of the king's Ecclesiastical Law, in the 5th Report. The publication of this latter case, with the active zeal of lord Coke as attorney-general, in the prosecution of the conspirators in the Gunpowder-plot, gave occasion to a volume of animadversions by the famous Jesuit father Parsons, which was published in 1606, by the title of an Answer to lord Coke's 5th Report, by a Catholick divine. But the asperity with which lord Coke was treated, did not provoke a reply. All that it drew from him was a short notice of the work in the preface to his 6th report, in which he represents the author as a calumniator, and as such disdained to answer him. But the controversy was afterwards continued by Mr. Prynne, who asserted the cause of the crown against the see of Rome, in a work of prodigious extent in the plan, for though the part published consists of three large volumes, of more than 1000 pages each, yet it reaches only to the end of the

reign of Edward the first. The work we allude to, is Mr. Prynne's Chronological Vindication of the King's Supreme Ecclesiastical Jurisdiction, the publication of which commenced four or five years after the Restoration. The first volume extends to the Conquest. The second, which was published first, concludes with the reign of Henry the third. The third, being in part a supplement to the second, is occupied with the reigns of Henry the third, John, and our first Edward. When the author had advanced thus far, death interposed, and prevented the completion of the undertaking. What he lived to publish is become so extremely scarce, that 20 guineas are the common price of a compleat copy. The cause is the small remnant of copies of the first volume, most of them having been burnt in the great fire of London.—Such as are curious to see an account of the Jesuit Parsons, may consult Cambden's Annals of Elizabeth. See the translated edition in 2. Kenn. Compl. Hist. 2d ed. p. 477, 576." Hargrave.]

### 85. The Case of the *POSTNATI*, or of the *UNION* of the Realm of Scotland with England; *Triu. 6 JAMES I. A. D. 1608.\**

[" From the meeting of the crowns of England and Scotland in the person of the first James, grew one of the most important questions of state, which ever engaged the attention of either country. It was, whether the *POSTNATI*, or those born in Scotland after the accession of James to the crown of England, were in the latter country to be deemed aliens or natives. As to the *Auto-nati*, all seem to have agreed, that they remained aliens. But there was a great difference of opinion about the condition of the *Postnati*. The king, anxious for every thing which tended to consolidate the island into one kingdom, was eager to have it declared as law, that the Union of the crowns effected a mutual naturalization of the *Postnati* in the two countries. His wishes were soon made known by the Proclamation, in which he as-

sumed the stile of King of Great Britain, with an exception however in favor of legal process, instruments, and assurances; and words were introduced, importing, that his succession to the crown of England had made a great change in the law of Naturalization. *Rym. Fœd. v. 16. p. 603. 2 Bac. last 4to. ed. 144.* The Commissioners, appointed by the respective Parliaments of the two countries to treat for an Union of government and laws, followed the king in this language; for they resolved to propound to both parliaments a declaration of the law to that effect. But when the proposition was made, the English house of commons were found averse to it, notwithstanding the countenance given by the lords, and an opinion delivered to them by ten out of eleven judges. It was therefore determined to settle the point out of parliament in the regular way, by resorting to the English courts of justice. For this purpose, two suits were instituted in the name of Robert Calvin, a *Postnatus* of Scotland and an infant; one in the King's-bench for the freehold of some land; and the other in Chancery for detainer of writings concerning the title to the freehold of the same estate: and in both it was pleaded by the defendants in abatement, that the plaintiff was an alien born in Scotland at a time which by the pleading appeared to be since the king's accession to the crown of England. A demurrer to this plea necessarily brought forward the intended question about the *Postnati*; for if Calvin was an alien, he could not maintain either suit,

\* Some of the law laid down in the following case was discussed in the case of *Hall v. Campbell*, *infra*, A. D. 1774. It was much relied on by lord Mansfield in his argument (on a point on which the judgment of the court did not turn) in that case, and is very perspicuously stated and carefully considered by Mr. Baron Maerces in his most learned and elaborate analysis and examination of the whole of lord Mansfield's argument on that occasion. See "The Canadian Freeholder," *Dialogue 2d.* As to the topics of Allegiance agitated in the case of the *Postnati*, see more in the duke of Hamilton's case, *infra*, A. D. 1648. See also East's *Pl. Cr. ch. ii. § 3, 41.* and the cases and other authorities there cited.

aliens being incapable to sue for the freehold of land. These Causes were adjourned into the Exchequer-Chamber, in order to have the solemn opinion of all the judges; and there the business ended with a Resolution in favour of the Postnati, in which the lord-chancellor and 12 Judges out of 14 concurred. However, very eminent lawyers appear to have entertained a different opinion of the point: In parliament, Dodridge, Hyde, Brock, Crew, Moore, and Hedley, all spoke against the Postnati. What the names of the two dissenting judges were, is not mentioned; except that lord Ellesmere alludes to both having the Christian name of Thomas, the only judges of which name at the time were lord chief justice Fleming, Mr. justice Walmesley, and Mr. justice Foster. It is suspected too, that the known inclinations and wishes of the king had no little influence in the decision. But be this as it may, we are not apprized that the main point of the case has been ever disturbed by any subsequent judicial opinion.

The only regular Report we have of this case is by lord Coke. But there is a great deal of matter relative to it in other books. Lord-chancellor Ellesmere published his Argument separately. Mr. serjeant Moore gives the history of the previous passages in parliament on the great point of law, for deciding which the case was afterwards made. In lord Bacon's Works, there are both his Speeches

in Parliament on the subject, and his Argument before the Judges in the Exchequer-chamber, with some other pieces. 152. 159. 170. 2 Bac. 4to. ed. 173. 185. 514. Nathaniel Bacon, in his Book on Government, examines and controverts the principles, on which lord Coke reports the case to have been decided. Bac. on Gov. part. 2. page 76. The Parliamentary History relates the proceedings in the English parliament in the 2 and 4 Jam. on the proposal for an Union between England and Scotland, and gives a short view of some arguments in the commons on the point of Naturalization.\* Archbishop Spotswood's History of the Church and State of Scotland also contains many particulars of the proceedings towards an Union. Spotsw. 479. See further Arthur Wilson's History of James the 1st, 27. 34. Sanderson's Life of the same king, 318. 338. 2 Winwood's Memorials of State, 20. 32 to 38.

We shall now lay before the reader, 1. Mr. serjeant Moore's account of the Proceedings in Parliament about the Postnati. 2. Lord Bacon's Speech as counsel for Calvin, in the Exchequer-Chamber. 3. Lord Coke's Report of Calvin's Case. 4. Lord-chancellor Ellesmere's Speech in the Exchequer-Chamber, as published by himself.

\* See 1 Cobb. Parl. Hist. 1018, 1027, 1069, 1071.

#### CASE OF THE UNION OF THE REALM OF SCOTLAND WITH ENGLAND.

[From Moore's Reports, p. 790.]

BY act of parliament in the first session anno primo Jacobi regis, certain commissioners of England were appointed to meet with commissioners of Scotland, and to treat for the weale of both kingdoms, and to put their doings in schedules tripartite, to be delivered, one to the king, the other to the parliament of England, and the third to the parliament of Scotland. The commissioners of both nations met in the Painted Chamber at Westminster, anno 2. Jac. regis, and treated long, and in the end made schedules, and delivered them according to the act. The schedule for the parliament of England was presented by the lord Ellesmere lord chancellor of England, to whom the commissioners had delivered the same for that purpose, himself being one of the commissioners, the first day of the session of parliament holden anno 3 Jac. R. the king himself, the lords spiritual and temporal and the commons, being all assembled in the upper house of parliament. But the consideration of that schedule was by another act made in that sessions of an. 3 Jac. R. deferred untill the then next session.

The next session being this instant of an' 4 Jacobi regis, the schedule was considered of dividedly by the lords and commons: the material parts consisting upon 3 heads. The first the commissioners did propose, that all hostile

lawes of either nation one against the other might be abrogated, and did enumerate the same lawes. The second, they proposed a course for commerce and merchandizing by merchants of both nations between themselves and with forreiners. Thirdly, they proposed that the common law of both nations should be declared to be, that all born in either nation sithence his majesty was king of both, were mutually naturalized in both. And further, that an act might be made to naturalize all born before, with certain cautions and restrictions for bearing principall offices of the crown, offices of judicature, or having voice in parliament, and with a saving of the kings prerogative.

Upon the two first articles, the lords and commons had sundry conferences in the Painted Chamber, and in effect agreed to give way to the substance of them. But upon the third, the commons could not assent to declare the law as was proposed, and thereupon after long debate amongst themselves, they appointed committees to confer with the lords committees, who mett the 25 of February 1606, in the Painted Chamber. At which conference sir Francis Bacon, appointed by the house to introduce the rest, began in this manner.

That this conference and the subject thereof

was *non in deliberativo*, but *in judiciali*, not *de bono* but *de vero*, not to consult of a law to be made, but to declare the law already planned, whereto the commons were drawn, by insatisfaction of their judgments, not indisposition of their minds to the happy union intended, to oppose the proposition of the commissioners. And whereas his majesty had by a proclamation expressed the law to be as the commissioners had proposed, the commons did not take them selves prejudicated by the proclamation; first, for that that matter came but *obiter* in the proclamation, and was not the principal part or purpose thereof; then, for that the proclamation mentioneth the king to be so informed by divers sages of the law, which is not to be understood judges of the law, but some learned in the lawes, whose opinion may the better be opposed: yet the proclamation hath so tempered the tongues of the speakers, as it hath kept down all flashes of heat, which otherwise might have happened in the argument. Howbeit the danger of a declaratory statute, being like *Janus Bifrons* striking both wayes, raiseth in the commons too much fear to assent to the proposition, leaving the proclamation neverthlesse to its own effect. *Pur inducmentur par les auteurs apres cest induction*, he shewed that it was a singular commendation to the lawes of England, that it was not in sociable, but contented to hear and be advised by other sciences in matters of dependencie upon them; as in cases of exposition of words, by grammarians; in matters of matrimony, deprivation, bastardy, by civilians; in minerals, by natural philosophers; in uses, by moral philosophers. Upon which consideration the commons had selected out of themselves divers gentlemen, some for inducement, some for argument in the point of law. Those for inducement were to shew the law of nations, and of reason, and the stories of other countries, and the civil law elsewhere put in use upon unions; those for argument were gentlemen of the profession of the common laws of this realm: all which being here ready, he left them to discharge their own proper duties.

Sir *Edwyn Sandes* shewed that this case was proper to be consulted with the law of nations, which is called '*jus gentium*;' for there being no president for it in the law, '*lex deficit*,' and '*deficiente lege recurritur ad consuetudinem*,' and '*deficiente consuetudine recurritur ad rationem naturalem*,' which '*ratio naturalis*' is the law of nations called '*jus gentium*.' The question of difference is thus, whether subjection to one king make all the people born within the places of that subjection to be naturalized over all places of that kings subjection, which as he thought, if it were to be measured by the law of reason and nations, did not. And therefore shewed 7 reasons for his opinion.—1. That although *ab antiquo*, when people were together in one heap irregularly, having one head, their subjection gave to every one equal priviledge in all places of their subjection, yet since the world is grown to distribution of

people into places, and to discipline in their government, though their subjection still remain in the general to one head; yet the manner of it is locally circumscribed to the places where they are brought forth, and those of one place do not, nor should partake of the discipline, privileges, and birthright of the other places, but every one left to his own, as acquired for patrimony by their antecessors of that place, upon reasons peradventure now not extant nor to be exactly understood.—2. This is in use in other nations, who obtain their naturalization by Charters, and for such time, and with such cautions, as may be granted unto them, and take it not by the general law of that nation whereto they were united.—3. In the time of the old civil Romans, who united unto them divers provinces, they had degrees in naturalizing; for first, the party had '*jus domicili*,' then '*jus civitatis*,' next '*jus tribus*,' and lastly '*jus honoris*;' whereas if the law of England should be, that subjection brought all this together, it were a law overliberal, and more bountiful, then the laws of this civil state grounded upon reason and policy.—4. That Scotland being governed by the civil law, alloweth not English by bare subjection to their king to be naturalized within them; and therefore the law of England should be very unequal, if it should allow it to Scots here.—5. This case may give a dangerous example for mutual naturalizing of all nations that hereafter may fall into the subjection of the king, although they be very remote, in that their mutual communality of privileges may disorder the settled government of every of the particulars; and how many of them may happen, is uncertaine; for we see, that where there were 100 kings, they came after to 11, and are now brought to 6 only within Christendome.—6. The Scots shall be in better case by this law of naturalizing then the English, in the English nation; for the English pay all impositions and taxes for services of the crown, which the Scots do not within England.—7. All the reasons given for naturalizing extend as well to them before born, as since the king came to the crown of England; for the subjection is now all one. Therefore, the law that should make a difference is not reasonable; and because the law is confessed to be, that those before born be not naturalized, therefore the law must also be, if it retain the same reason, that those born after are not naturalized.

Nevertheless he concluded, that he held it in reason, that in respect of one subjection, the Scots should not be accounted nor deal withall by our lawes, as aliens, although not enabled to the full rights of Englishmen born amongst us.

Sir *Roger Owen* for stories, 1. shewed, that in all the presidents of the Romans, and in all their varieties of aristocracy or monarchy, there was no naturalizing *ipso jure*, but by charters of grace or constitutions special, and that by *Nannius* begun and introduced. 2. The president of Spain and Castile is not to this point; for *Alaricus* the emperor first lord of all Spain

gave out Castile, and the coming of Castile again is rather a reuniting or a remiter, then a new union, and therefore reasonable they be one naturalized in the other as they were at the first. 3. The president fresh of France and Scotland by marriage of the kings mother with Francis the second king of France, because the subjection made no naturalization *ipso jure*, therefore the Scots in France and the French in Scotland were naturalized by acts of parliament and with cautions.

Sir John Bennet doctor of the civil law, he shewed that the civil law had no resolution of this point 'in terminis terminantibus;' but of other unions lesser then kingdoms, there were rules, which he divided into these heads; one a maxime, the other a distribution; the maxime, 'cum duo jura concurrunt in una persona æquum est ac si essent in diversis,' as one parson of two churches, one dean of two deaneries: the customes of every place remain still distinct and divided. And he cited an example, that the earldome of Flanders and Artois were holden of the king of France as soveraign by the duke of Brabant and Holland, who within Brabant and Holland was a free state: the question was whether this duke having both the dukedome and the earldome, and owing subjection to France only for the earldome, might make a league with the English for his dukedome, without breaking allegiance with France: and this being debated in the parliament of Paris, it was adjudged he might, because he held the dukedome and the earldome as distinct in his person, and owed no subjection to France for his dukedome. The distribution he made was this, upon the difference of *unum* and *unitum*: there was a union subordinate, that is, when an inferiour is united to the superiour, as Ireland to England, in this case 'privilegia communicantur.' There is an union by incorporation, that is, when two be made *unum*, and not *unitum*, and then 'privilegia communicantur,' as Wales and England. The third is when disjunct kingdomes are united, and that 'unicum' is 'secundum quid,' and 'non simpliciter;' in which case 'privilegia non communicantur;' and so he concluded that Scottish men were not naturalized in England; and yet he affirmed that it was in the power of the king by the civil law to naturalize them, and give them the privileges.

The earl of Salisbury here interposed, and said, that he was desirous to understand whether the arguments made were upon the point in question; for as he conceived the question now in debate was a legal question of the law of England, and therefore time was to be spent upon argument and discussion of the law of England, and so 'sapiens contentio aut prodest aut non obest.'

The Lord Chancellor then spake and said, that the first man that spake by introduction and inducement of the rest brought the question to the quick, that is, that it was not a question *de bono* but *de vero*, not what was fit

to be done, but what the law already is, which is what the law of England is; in which question, if it shall be doubtful, it is more then indifferent to declare it as the commissioners have proposed, for three causes. 1. The kings proclamation having divulged it so, it is for his honor to declare it so, if it be not clear otherwise. 2. The opinion of the commissioners whom both houses trusted. 3. The act of recognition, whereby we have acknowledged the king of both, and that we both live under one imperial crown.

The earl of Northampton said, that it appeared by the civilians, that in the civil law there was no president 'in terminis terminantibus;' and therefore from them we could take no rule for this case; nor no stories or examples of forraign states, which are appliable and framed to their own particular policies. Nor as this case is, can we be measured or guided by inconveniences that may be forecast; because we are confined to a point of law already received and planted, and are to reason and discuss what that law is. Nevertheless he desired leave to use a comparison to them, to be commended to their consideration, between the union in a body politick and in a body natural. The head in a body natural hath his influence into all the members by spirits of life and sense. So hath the head of the body politick, to whom all the members be children in obedience, and brothers one to the other. The sinews in a body natural are ligaments that binde together the joynts and flesh. So are lawes in the body politick that tye people in a band of subjection and civil life. The blood, that passeth in the veins of the body natural by continual motion, doth maintain and refresh the spirits of life. So traffick, commerce, and contracts in a body politick, do support, maintaine and refresh the common-wealth. But of all these there is a superior spirit sent by God, which is the soul to the body of man, by which all our blessedness is infused. So may we well say, that the kings majestie is like the soul, a blessedness sent from God to dwell in both these nations as a continual spirit of union amongst them, to pacifie and temper all bitterness, even as the soul by instinct of reason quieteth the natural passions of the natural bodies. Wherefore let us consider how unfit it is to have two spirits or souls in one body; what their opposition may work for distemper and dissolution; what the sweet harmony of one good vertuous and religious soul in every part of the body may do, for consolidating, strengthening, and continuing in the whole body that prosperous estate of life and health that is to be wished: and therefore in the case whatsoever may tend to the happy and firm uniting of these two kingdomes in resemblance of lives and fortunes is to be inclined to, and recommended to your grave consideration.

Dodridge the king's solicitor, Laurence Hyde, Brook, Crewe, & Hedley, professors of the common law, now begin. And for the common law they urged nine reasons or argu-

ments, that those born since his majesty came to the crown of England within Scotland should not be naturalized in England. Which question sprang out of two positions granted, as a third doubtful between, and this third is 'oculus questionis.' The first of these two positions is, that in the kings person there is an union of sovereignty over both nations. The second is, that notwithstanding this union, yet the fundamental lawes of either nation do remaine distinct. The third, which is the doubt between both these, whether naturalization proceed from the king or the lawes. Out of this one head all the reasons were derived as followeth.

1 That 'lex et ligeancia' came out of one root, and as it is called 'lex a ligundo,' so it is called 'legeance, a ligatione;' which proveth allegiance to be tied to laws; and consequently the lawes of these two nations being severall, notwithstanding the union of sovereignty in the kings person, the allegiance of the subjects remaineth still severall; and therefore naturalization being measured by allegiance must still remain severall and distinct in either nations, as allegiance and laws do, and cannot be united and made one in both nations. To enforce this they cited the statute of 25 Ed. 3. statute 2. De Natis Ultra Mare. In many places where it mentioneth ligeance, is added 'out of the 'legeance of England, or within the same legeance of England;' which doth infer, that ligeance is tyed to the kingdome, and not to the person of the king.

2 Reason, that Postnati in Scotland are not subject to the laws of England, and therefore should not have benefit of the laws of England.

3 Reason, that every nation hath a precinct wherein the laws have operation; and naturalization is an act or operation of law; therefore it cannot extend to places out of the precinct for the laws. Which being granted, it followeth, that as English laws extend not into Scotland, so to be naturalized by the laws of England, extends not into Scotland nor to those born in Scotland.

The 4 and 5 reason, that the great seal of England, which is the organ by which the law is conveyed, is not powerful nor binding in Scotland; therefore those born in Scotland not inheritable to the laws of England, nor to be born subjects of England, when they cannot be commanded by the great seal of England.

6 Reason, that in subordinate kingdomes, dukedomes, or seignories, as Ireland, Gascoigne, Aquitane, Angois, the great seal of England is passable, and the parliament of England hath power; as is proved by that a writ of error may be brought in the Kings-bench of a judgment in Ireland, and the parliament of England may make a statute to bind in Ireland, if Ireland be specially named, but without special naming it doth not bind. So 27 R. 3. cap. 7. a statute was made to authorise the steward of Gascoigne to arrest the bodies of such as bargain for wines elsewhere, then in the portes of Bur-

deaux and Bayon, and to send them to the Tower of London. An Habeas Corpus hath been directed under the great seal of England into Gascoigne, as appeareth by records of the Kings-bench. And the islanders do send petitions and make proctors to the parliament of England, as is still put in use to this day. By which it appeareth, that the case is not like between England and these kingdomes and dukedomes subordinate to England, as it is between England and Scotland; Scotland being a distinct kingdom not subordinate, and as ancient as England itself. And therefore whereas some have conceived, that when Gascoigne was by marriage united to England, those of Gascoigne were not aliens to England, and enforce this exposition out of the prior Shels case, 27 E. 3. pla. 48. in the book of assizes, in that the prior having his lands seized in time of war, for that he was born in Gascoigne under the kings allegiance, and thereupon the matter being found true, he had restitution; to that, it may be confessed; and yet it matcheth not our case for Scotland, a distinct kingdome, and the reason of that restitution may be the ceasing of the wars as well as being born in Gascoigne; for those of Gascoigne were in those times accounted aliens in England, as may appeare by the statute of 38 E. 3. cap. 11. where it is enacted, that the Gascoignes and other aliens should come into England with their wines; which proveth, that those of Gascoigne could not bring their wines into England, and they were then aliens to England, by the words of Gascoignes and other aliens.

7 Reason, that *regnum* and *rex* were relatives, and therefore distinct kingdoms, distinct kings as to the kingdoms; and the person of the king possessing both kingdoms possesseth the people and the laws of them distinct, as the kingdoms are themselves. Therefore the subjection of every people is distinguished to the severall kingdoms, and one not subject to the other, nor naturalized within the other. And this is proved by the statute of 14 E. 3. whereby it is declared, that notwithstanding the king of England were king of France, yet the people of England were not subject unto him as king of France, but only as king of England.

8 Reason, that no man can be born a subject of two allegiances, nor by birth natural of two distinct kingdoms, therefore Scots born in Scotland cannot be naturalized in England.

9 Inconveniencie would ensue in honors, privileges, and things of value, which would be confounded without order, if this commixtion should be planted in both nations without discipline or rules.

The time being thus spent the 25 day of February, the next day was appointed to proceed with the conference, at which time the lords committees desired the judges there attending to deliver their advice and opinions concerning the point of law: for which the lord chief justice Popham had the night before prayed respite until this time. Whereupon the said lord chief justice, and sir Edward Cook

chief justice of the Common Pleas, and sir Thomas Flemming chief baron, did openly deliver their opinions and their reasons, the said lord chief justice Popham making these three inducements in commendation of the laws of England. 1 That they had continued as a rock without alteration in all the varieties of people that had possessed this land, namely the Romans, Brittons, Danes, Saxons, Normans, and English, which he imputed to the integrity and justice of these laws, every people taking a liking to them, and desirous to continue them and live by them, for which he cited Fortescues book of the laws of England.

2 Commendation, the price that those laws did cost, which was no lesse then blood; not laws of blood or bloody laws, but laws bought and purchased by the blood of our antecessors, as appeareth by Magna Charta, planted in king H. 3's time, after long and bloody wars between the kings and barons of this realm, the stories whereof do yet live fresh in every chronicle.

3 Commendation is the proceedings of the law, which he divided into 3 parts. 1 Judgments. 2 Trials. 3 Testimonies. The judgments so even and so impartial, as they give way to no mans affection, nor impute blame to any man; but to say the law requireth such judgment, is an excuse satisfactory to all men, for the king, and the judges. And therefore the said lord chief justice cited a resolution in parliament when himself served as Speaker: that whereas it was proposed to have a law made, that the judges might use their discretion in appointing trials in forraine counties, in respect the meaner sort of people were overweighed with the power of great men in some shires that were parties to the suites; it was upon grave advice and consultation denied, with this answer, that it were better to live under a certain known law, though hard sometimes in a few cases, then to be subject to the alterable discretion of any judges. The trials of the law for the most part so equal by the oaths of 12, as he protested that he never knew of the multitude that had passed before himself, scarce two of a hundred passe otherwise then himself should have passed, if he had been in their case. For the testimonies being *viva voce* before the judges in open face of the world, he said was much to be preferred before written depositions by private examiners or commissioners. First, for that the judge and jurors discern often by the countenance of a witness whether he come prepared, and by his readiness and slackness, whether he be ill affected or well affected, and by short questions may draw out circumstances to approve or discredit his testimony, and one witness may contest with another where they are *viva voce*. All which are taken away by written depositions in a corner.

For argument the said judges answered with one assent, to the first reason of the commons, that allegiance and laws were not of equiparation for six causes. 1. Allegiance was before laws. 2. Allegiance is after laws. 3. Alle-

giance is where the laws are not. 4. Between sovereignty and allegiance laws are begotten. 5. Allegiance extends as far as defence, which is beyond the circuit of laws. 6. Allegiance followeth the natural person, not the politick. To prove this, it was said, if a heap of people meet together so near, that they appoint a king, there allegiance is before they have laws proclaimed or prescribed: wherefore allegiance is before laws. If the king be expelled by force and another usurps, yet the allegiance is not taken away, though the law be taken away. If the king go out of England with a company of his servants, allegiance remaineth amongst his subjects and servants, although he be out of his own realm, whereto his laws are confined, as is proved by a case in Fleta, who wrote in Ed. 2 time, which is thus. King Ed. 1. went in person into France, to a marriage; one of his servants in France stole 2 silver dishes, for which he was apprehended by the French: the king required to have him redelivered, being his subject and of his traine; and upon dispute in the parliament of Paris, he was sent to the king of England to do his own justice upon him, whereupon he was tried before the steward and marshal of the kings house, and executed in France in a meadow called St. Jermina meadow. Which proveth that the kings law followeth his allegiance out of the local limit of the laws of England. And even so it is, where the king of England sendeth a lieutenant or general with an army royal out of the realm, the army is to be guided by the martial law of England, as the lord Cook affirmed, who also cited the case of Fleta. If there were not a sovereign to prescribe laws, and people of allegiance to obey them, there could be no laws made nor executed. By which it appeareth, that between sovereignty and allegiance laws are begotten; and therefore in nations conquered there are no laws, yet is there present allegiance; and after allegiance gotten, it is secondary for the king to deliver laws to the people of his allegiance. And to prove the allegiance to be tyed to the body natural of the king, not to the body politick, the lord Cook cited the phrases of divers statutes mentioning the king our natural liege sovereign, and these words 'natural subjects' in acts of recognition usual and familiar. And to prove that allegiance extended further then the laws national, they showed, that every king of divers kingdoms or dukedomes is to command every people to defend any of his kingdoms without respect of that nation where he is born; as if the king of Spain be invaded in Portugal, he may levy for defence of Portugal armies out of Spain, Naples, Castile, Millan, Flanders, and the like, as a thing incident to the allegiance of all his subjects to joyn together in defence of any one of his territories, without respect of extent of the laws of that nation where he was born: whereby it manifestly appeareth, that allegiance followeth the natural person of the king, and is not tyed to the body politick respectively in every kingdom. And

therefore, whereas the rule for aliens is this, that those born within the kings allegiance are subjects, and those born out of his allegiance are aliens, it is manifest, that Scots born in Scotland, since the king of England was king of England and Scotland both, are not born out of the kings allegiance; and so not aliens, but subjects, and so to be accounted in England. For further proof of this, the lord Cook shewed statutes, book-cases and pleadings.

For statutes *prerogativa regis* cap. 12. which was made in the 17 year of king Edward the second, and is a declaration of the prerogative before, wherein it is declared, that the king was to have the escheats of the lands of the Normands, and all others born in parts beyond seas, whose antecessors were of the faith or loyalty of the king of France, and not of the king of England; as it happened of the barony of Monumeta, after the death of John D. Monumeta, whose heirs were of Brittain and elsewhere. By which declaration the judges did infer, that out of the allegiance, and within the allegiance of the king (*fides* being to be understood allegiance) maketh the oddes between an alien and a denizen, and not the place of birth in England, or without England; for it is declared, that the king should have the escheats of such as were born in parts beyond seas, and whose parents were of the allegiance of the king of France, and not of the allegiance of the king of England. So that although his birth were out of the bounds of the kingdome of England and out of the reach and extent of the laws of England, yet if it were within the allegiance of the kings of England, the king was not to have his escheat as an alien, as at this time divers places that were within the limits of France were in subjection to the kings of England. And for the instance of the barony of Monumeta, they shewed that king H. 2 had four sons, Henry, Richard, Jeffrey, and John, that Jeffrey was married to the heire of Brittain, and was murdered by John, in which time the case of Monumeta happened, Brittain being not within the allegiance of the king of England, by that marriage of the king's third son. They shewed that it was not material, whether a kingdome or dukedome came to the allegiance of the king of England, nor whether by marriage or conquest; for many dukedoms were sometimes kingdoms, and kingdoms were but dukedoms, as Castile at the first but an earldom, now a kingdom; little Brittain once a kingdom, then after and now a dukedom; Ireland a dukedom, now a kingdom. But the matter of difference is, whether they be free and divided states in their laws and government, and so were both these dukedoms of Aquitane, Gascoigne, Guyen, &c. which have been so much insisted upon, and so is Scotland, and yet all under one allegiance and faith to one king: which unity and allegiance to one king, taketh away the rule of alien born from them all, howsoever they were united, be it by marriage or conquest. And yet for Gascoigne and Aquitane, it came by marriage and descent, as Scotland. The next statute is the statute of

42 E. 3. cap. 10, that the commons desired in parliament that children born beyond seas, within the seigniories of Calice and elsewhere within the lands and seigniories that pertain to the king beyond seas, might inherite in England. Whereunto the answer is, it is accorded, that the common law and the statute upon the same point another time may be holden. The judges, examining what statute that was, found it was the statute of 25 E. 3. stat. 2. *de natis ultra mare*. Which statute contains a preamble, and 3 ordinances. The preamble is a recital of a doubt, whether children should inherite in England, that were born beyond seas out of the legiance of England. The 1 ordinance is a declaration of the law, that the kings children where-soever born are inheritable in England. The 2 is a constitution particular for some named, and which the king shall name, which were born beyond seas, out of the legiance of England, to inherit in England. The 3 is a new law, that children from henceforth born out of the legiance of the king, whose fathers and mothers at the time of their birth be and shall be at the faith and of the allegiance of the king of England, shall inherite in England, &c. Out of this they did infer, that the third ordinance only did touch the point now in question; which ordinance nevertheless came not to the question proposed; for the ordinance is for persons born beyond seas, and out of the kings legiance, whose parents are English; whereas our question is for persons born in Scotland, which is within the faith and allegiance of the king, and so much the odds is, as the words import, viz. out of the allegiance and within the allegiance. So as that statute directs not this controversy; and therefore it must be the common law that doth it, whereto the statute of 42 E. 3. doth referr concerning those born at Callis, and other seigniories beyond seas, that pertain to the king: which persons having been ever expounded to inherite in England, it must needs be taken, that they inherite by the common law, and not by statute. 28 H. 6, cap. 5, against extortions used by searchers amongst merchants, the merchants of Gascoigne, Guyen, Ireland and the Isles, are called the kings liege people.

The books and judgments cited by the judges, were first 27 E. 3. in the book of assizes the 48 plea, the case of the prior of Shels, who being a prior alien, and his temporalities being seised in time of war, shewed that he was not an alien, for that he was born in Gascoigne, within the legiance of the king; which plea was found true by verdict, and thereupon his temporalities were restored. And then the same case came again in question in the Common Place in a *quare impedit*, because in his restitution he had no special words of advowsons, whether the king might not present to the advowsons of the priory notwithstanding the restitution, for that also the restitution was, that the king of his grace did restore, &c. So it was of grace, not of right. But the book is, that the king should not present; and the reason alledged, because the seasure was by wrong, the

prior being no alien, and so a restitution in that case, by which the king doth not give but do right, needs not contain special mention of ad-vowsons; neither the recital of the kings grace could escape the justice of the court examining the cause, to say it was not of right. For concurrence with this book, they cited the case of 11 H. 4. fo. 26, that two husbands and their wives parceners brought an assize, and then were summoned and severed: the tenant pleaded to her that was severed, that her husband was an alien, and born out of the realm, and all the legiance, and not made denizen: but in the end in respect of the severance, and that the plea was in disablement of him that was severed, the writ was awarded good. Yet the note special of the case is the manner of the plea, viz. alien born out of the realm, and all the allegiance: whereof it is inferred that allegiance is further then the realm, and not confined to the circuit of the laws of the realm. 14 H. 4. fo. 19. b. one challenged a juror for that he was an alien, and the manner of his challenge is, that he was not a liege to the king, because he was born out of his legiance, and shewed that he was a Flemming; and the triers found that he was born in Flanders, but had lived of a child in England, and was sworn to the king in a leet: nevertheless the court would not allow him to be sworn. But the note of the case is, the manner of the challenge, viz. not a liege to the king, because he was born out of his legiance. So Littleton in his chapter of villenage sheweth him to be an alien that is born out of the kings allegiance. And this distinction of allegiance *quatenus* king of England, and *quatenus* king of Scotland, or *quatenus* duke of Ireland, Aquitane, Gascoigne, &c. is never heard of in the books of our law.

For pleadings they shewed the president in the book of entries, to be, that he that disableth an alien must alledge affirmatively, that he is an alien; and yet that sufficeth not, but he must alledge further that he was born *extra obedientiam domini regis*; and not that alone, but also he must assigne a place where he was born *infra obedientiam* of some other king. As in 9 E. 4. fo. 7, in the assize by Bagot of the office of clerk of the crown in the Chancery, the tenant pleaded, that Bagot was an alien in this manner, *dicat quod idem Johannes Bagot est alienigena genitus extra ligeanciam domini regis Angliæ, viz. apud Pontoyis infra regnum Franciæ sub obedientia Caroli nuucupantis se regem Franciæ, adversarii et magni inimici domini regis Angliæ.* Which course of pleading cannot be held with those of Scotland; for that Scotland is not out of the kings allegiance, neither is the king of Scots enemy to the king of England, but he is also king of England, whereof both nations do and must take notice.

And whereas it hath been urged that the trial of an alien must be within England, so that he which will destroy the plea of an alien against himself must assigne a place in England of his birth, and cannot assigne a place in Scotland; this is easily answered, and proveth nothing on

the other part; for so if a deed be made in Ireland or in Gascoigne, or in the isles, you must assigne the making of it in some county of England, to the end a trial may be had by jury, which is not but in England; nevertheless you may give in evidence the making of it in Ireland or the Isles. So is the case of 13 H. 4. pla. 10. [Fitz. Trial pla. 92.] for an obligation made in Gascoigne. And so is 32 H. 6. fo. 26. in debt upon a bond made in the bishoprick of Durham being a county palatine; and there the reason of this case debated, and Brown citeth it to be adjudged, that if the defendant alledge that the plaintiff is a Scot born at St. Johns town in Scotland, out of the legiance, this is a trial where the writ is brought; but if the plaintiff will reply, that he was born at London within the allegiance, the defendant must rejoyn, that the plaintiff was born at St. Johns town in Scotland, without that, that he was born in London, and the issue shall be tried in London. So are affirmative issues allowed for necessity of trial; but evidence of his birth in any place within the kings dominions is sufficient to maintain the issue, although for form of pleading it be laid to be at London. In which case of 13 H. 4. it was put by Ireby, that a liegman of England was killed by another liegman of England in Scotland, and his wife brought her appeal in England in the court of the lord constable of England.

Then the judges examined what should be given to the Scots, if they should be naturalized. First, they being not enemies, if they be aliens, are to be protected in their bodies and goods, and may bring personal actions. But if they buy land, the king, if he will, may seize it. But for dignities of honor, or voices in parliament as barons, Scotchmen cannot have in England, so long as the laws stand distinct. And therefore they cited the case of 11 E. 3. *titulu brieve* 473. where the writ was brought against the earl of Richmond, who alledged, that he was duke of Brittain, and not so named in the writ, and prayed that the writ might abate; but the judges allowed not his plea, because the dukedom of Brittain is a forraigne dignity, of which we take no notice in England. Yet Edmond Baliol assigning the same cause in abatement of a writ, for that he was not named king of Scots, the exception was held good; for that a king is in notice of all countries, and so is a knight, but not barons, earldoms, dukedoms and the like. Nevertheless 39 E. 3. fo. 35. *en tulle de brieve* 517. a writ was abated for not naming the defendant earle of Angus, although it be a dignity in Scotland: but the reason is shewed to be, for that he had alway a writ to attend at the parliament of England. And by this, the judges said, that the 9th objection being matter of inconvenience in places of honour was answered with this addition, that no naturalizing could make them barons of parliament of England for their dignities in Scotland, neither did naturalizing give any man a place in parliament, except he were chosen, or gave him any lands or goods except he could purchase them.



For the matter of the great seal the judges shewed, that the seal was alterable by the king at his pleasure, and he might make one seal for both kingdoms, for seals, coyn, and leagues are of absolute prerogative to the king without parliament, not restrained to any assent of the people. But for further resolution of this point, how far the great seal doth command out of England, they made this distinction, that the great seal was current for remedials which groweth upon complaint of the subjects, and thereupon writs are addressed under the great seal of England, which are limited their precinct to be within the places of the jurisdiction of the courts that must give the redresse of the wrong. And therefore writs are not to go into Ireland, nor the Isles, nor Wales, nor the counties palatine; because the kings courts here have not power to hold plea of lands or things there. But the great seal hath a power preceptory to the person, which power extendeth to any place where the person may be found. And for this the lord Cook cited Nicholas Ludlowes case in 4 E. 3, in the Tower record *rotulo clausa numero 21*; that Ludlow being at Rome, a commandment under the great seal was sent to him to return. So Berties case in queen Maries time, and sir Franc. Inglefields in queen Elizabeths time, the privy seal went to command them to return into the realm, and for not coming their lands were seized, as appeareth by my lord Diers report of both those cases. So the case before of 39 E. 3, fol. 35, a parliament writ was current into Scotland, to the earle of Angus; and 14 H. 8, a Habeas Corpus into the Isle of Man; which Habeas Corpus is a preceptory writ to have the body of his subject, and may be directed into Scotland, or any place where the king hath ministers, otherwise how shall the king come by the person of his subject whom he would command. So as where remedial writs run not, yet preceptories under the great seal do; and therefore the position of the great seal not to be current in Scotland holdeth for remedials, not for preceptories: and this doth answer the objec-

tion, that the great seal is current in subordinate kingdoms, or dukedoms, and not in all places of the king's dominions in distinct kingdoms.

And as to the rule taken by the civilians, 'cum duo jura concurrunt in una persona, æquum est ac si essent in diversis,' that holdeth not in things personal but real: and therefore a marquisse, that is a baron and an earle, can by the statute of 21 H. 8, have no more chaplains then his best dignity alloweth, and not for every dignity.—And as to the objection that none can be born a natural subject of two kingdoms, they denied that absolutely; for although locally he can be born but in one, yet effectually the allegiance of the king extending to both, his birthright shall extend to both.—And as to the objection that *rex et regnum* be relatives, and therefore the allegiance of a king can extend but to that kingdom; they answered, that *rex* and *regna* were relatives, but *rex et regnum* be not so relatives, as a king can be king but of one kingdom, for that were *proprium quarto modo. viz. omni, soli et semper*, which clearly holdeth not, but that his kingly power extending to divers nations and kingdoms, all owe him equal subjection, and are equally born to the benefit of his protection. And although he is to govern them by their distinct laws, yet any one of the people coming into the other is to have the benefit of the laws wheresoever he cometh, and is to bear the burthens and taxes of the place where he cometh; but living in one, or for his livelihood in one, he is not to be taxed in the other, because laws ordain taxes, impositions, and charges, as a discipline of subjection particularized to every particular nation.

And so these three judges delivered their Opinions openly, and the rest were ready and did affirme the same to be all their Opinions, but only justice Walmesly who differed in the main point, the rest were Warburton and Daniel, of the Common Place, Fenner, Williams, and Tanfield, of the Kings Bench, Snigg and Altham, barons of the Exchequer.

SPEECH OF Lord BACON, as Counsel for Calvin, in the Exchequer Chamber.

[From the last 4to edition of his Works, vol. ii. p. 514.

MAY it please your lordships; This case your lordships do well perceive to be of exceeding great consequence. For whether you do measure that by place, that reacheth not only to the realm of England, but to the whole island of Great Britain; or whether you measure that by time, that extendeth not only to the present time, but much more to future generations,

'Et nati natorum, et qui nascentur ab illis.' And therefore as that is to receive at the bar a full and free debate, so I doubt not but that shall receive from your lordships a sound and just resolution according to law, and according to truth. For, my lords, though he were thought to have said well, that said that for his word, *rex fortissi-*

*mus*; yet he was thought to have said better, even in the opinion of a king himself, that said, *veritus fortissimo, et prævalet*; and I do much rejoice to observe such a concurrence in the whole carriage of this cause to this end, that truth may prevail.—The case no feigned or framed case; but a true case between true parties.—The title handled formerly in some of the king's courts, and free-hold upon it; used indeed by his majesty in his high wisdom to give an end to this great question, but not raised; *occurio*, as the schoolmen say, *arrepta, non porrecta*.—The case argued in the King's bench by Mr. Walter with great liberty, and yet with good approbation of the court; the persons assigned to be of counsel on that side,

inferior to none of their quality and degree in learning; and some of them most conversant and exercised in the question. The judges in the King's bench have adjourned it to this place for conference with the rest of their brethren. Your lordship, my lord chancellor, though you be absolute judge in the court where you sit, and might have called to you such assistance of judges as to you had seemed good; yet would not forerun or lead in this case by any opinion there to be given; but have chosen rather to come yourself to this assembly; all tending as I said, to this end, whereunto I for my part do heartily subscribe, *ut vincat veritas*, that truth may first appear, and then prevail. And I do firmly hold, and doubt not but I shall well maintain, that this is the truth, that Calvin the plaintiff is *ipso jure* by the law of England a natural born subject, to purchase free-hold, and to bring real actions within England. In this case I must so consider the time, as I must much more consider the matter. And therefore though it may draw my speech into farther length; yet I dare not handle a case of this nature confusedly, but purpose to observe the ancient and exact form of pleadings; which is, First, to explain or induce: Then, to confute, or answer objections: And lastly, to prove, or confirm.

And first for Explanation. The outward question in this case is no more, but whether a child, born in Scotland since his majesty's happy coming to the crown of England, be naturalized in England, or no. But the inward question or state of the question evermore beginneth, where that which is confessed on both sides doth leave.—It is confessed, that if these two realms of England and Scotland were united under one law and one parliament, and thereby incorporated and made as one kingdom, that the Post-natus of such an union should be naturalized.—It is confessed, that both realms are united in the person of our sovereign: or, because I will gain nothing by surreption, in the putting of the question, that one and the same natural person is king of both realms.—It is confessed, that the laws and parliaments are several. So then, whether this privilege and benefit of naturalization be an accessory or dependency upon that which is one and joint, or upon that which is several, hath been, and must be the depth of this question. And therefore your lordships do see the state of this question doth evidently lead me by way of inducement to speak of three things: the king, the law, and the privilege of naturalization. For if you well understand the nature of the two principals, and again the nature of the accessory; then shall you discern to whether principal the accessory doth properly refer, as a shadow to a body, or iron to an adamant.

And therefore your lordships will give me leave in a case of this quality, first to visit and open the foundations and fountains of reason, and not begin with the positions and eruditions of a municipal law; for so was that done in the great case of *Mines*; and so ought that to be

VOL. II.

done in all cases of like nature. And this doth not at all detract from the sufficiency of our laws, as incompetent to decide their own cases, but rather addeth a dignity unto them, when their reason appearing as well as their authority doth shew them to be as fine moneys, which are current not only by the stamp, because they are so received, but by the natural metal that is the reason and wisdom of them.

And master Littleton himself in his whole book doth commend but two things to the professors of the law by the name of his sons; the one, the inquiring and searching out the reasons of the law; and the other, the observing of the forms of pleadings. And never was there any case that came in judgment that required more, than Littleton's advice should be followed in those two points, than doth the present case in question.—And first of the king.

It is evident that all other commonwealths, monarchies only excepted, do subsist by a law precedent. For where authority is divided amongst many officers, and they not perpetual, but annual or temporary, and not to receive their authority, but by election and certain persons to have voice only to that election, and the like; these are busy and curious frames, which of necessity do pre-suppose a law precedent, written or unwritten, to guide and direct them. But in monarchies, especially hereditary; that is, when several families or lineages of people do submit themselves to one line, imperial or royal, the submission is more natural and simple, which afterwards by laws subsequent is perfected and made more formal; but that is grounded upon nature. That this is so, it appeareth notably in two things; the one the platforms and patterns which are found in nature of monarchies; the original submissions, and their motives and occasions. The platforms are three:

The first is that of a father, or chief of a family; who governing over his wife by prerogative of sex, over his children by prerogative of age, and because he is author unto them of being, and over his servants by prerogative of virtue and providence (for he that is able of body, and improvident of mind, is *natura servus*) that is a very model of a king. So is the opinion of Aristotle, lib. iii. Pol. cap. 14. where he saith, 'verum autem regnum est, cum penes unum est rerum summa potestas: quod regnum procuracionem familiæ imitatur.' And therefore Lycurgus, when one counselled him to dissolve the kingdom, and to establish another form of estate, answered, 'Sir, begin to do that which you advise first at home in your own house:' noting, that the chief of a family is as a king; and that those, that can least endure kings abroad, can be content to be kings at home. And this is the first platform, which we see is merely natural.

The second is that of a shepherd and his flock, which Xenophon saith, Cyrus had ever in his mouth. For shepherds are not owners of the sheep; but their office is to feed and govern. No more are kings proprietaries or

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owners of the people; for God is sole owner of people. 'The nations,' as the scripture saith, 'are his inheritance:' but the office of kings is to govern, maintain, and protect people. And that is not without a mystery, that the first king that was instituted by God, David, for Saul was but an untimely fruit, was translated from a shepherd, as you have it in Psalm 78. 'Et elegit David servum suum, de gregibus ovium sustulit eum,—pascere Jacob servum suum, et Israel hereditatem suam.' This is the second platform; a work likewise of nature.

The third platform is the government of God himself over the world, whereof lawful monarchs are a shadow. And therefore both amongst the Heathen, and amongst the Christians, the word, 'sacred,' hath been attributed unto kings, because of the conformity of a monarchy with a divine majesty; never to a senate or people. And so you find it twice in the lord Coke's Reports; once in the second book, the bishop of Winchester's case; and his fifth book, Cawdrie's case. And more anciently in the 10 of II. 7. fol. 18. 'rex est persona mixta cum sacerdote;' an attribute, which the senate of Venice, or a canton of Swisses, can never challenge. So, we see, there be precedents or platforms of monarchies, both in nature, and above nature; even from the monarch of heaven and earth to the king, if you will, in an hive of bees. And therefore other states are the creatures of law; and this state only subsisteth by nature.

For the original submissions, they are four in number. I will briefly touch them.

The first is paternity or patriarchy, which was when a family growing so great as it could not contain itself within one habitation, some branches of the descendants were forced to plant themselves into new families; which second families could not by a natural instinct and inclination but bear a reverence, and yield an obeisance, to the eldest line of the ancient family from which they were derived.

The second is the admiration of virtue, or gratitude towards merit, which is likewise naturally infused into all men. Of this Aristotle putteth the case well, when it was the fortune of some one man, either to invent some arts of excellent use towards man's life, or to congregate people that dwelt scattered into one place where they might cohabit with more comfort, or to guide them from a more barren land to a more fruitful, or the like: upon these deserts, and the admiration and recompence of them, people submitted themselves.

The third, which was the most usual of all, was conduct in war, which even in nature induceth as great an obligation as paternity. For as men owe their life and being to their parents in regard of generation, so they owe that also to saviours in the wars in regard of preservation. And therefore we find in chap. 18 of the book of Judges, ver. 23. 'Dixerant omnes viri ad Gideon, dominare nostri, tu et filii tui, quoniam servasti nos de manu Ma-

'dian.' And so we read when it was brought to the ears of Saul, that the people sung in the streets, 'Saul hath killed his thousand, and David his ten thousand' of enemies, he said straightways: 'quid ei superest nisi ipsum requam?' For whosoever hath the military dependence, wants little of being king.

The fourth is an enforced submission, which is conquest, whereof it seemed Nimrod was the first precedent, of whom it is said; 'ipse cepit potens esse in terra, et erat robustus venator coram Domino.' And this likewise is upon the same root, which is the saving or gift as it were of life and being; for the conqueror hath power of life and death over his captives; and therefore where he giveth them themselves, he may reserve upon such a gift what service and subjection he will.—All these four submissions are evident to be natural and more ancient than law.

To speak therefore of Law, which is the second part of that which is to be spoken of by way of inducement. Law no doubt is the great organ by which the sovereign power doth move, and may be truly compared to the sinews in a natural body, as the sovereignty may be compared to the spirits: for if the sinews be without the spirits, they are dead and without motion; if the spirits move in weak sinews, it causeth trembling: so the laws, without the king's power, are dead; the king's power, except the laws be corroborated, will never move constantly, but be full of staggering and trepidation. But towards the king himself the law doth a double office or operation. The first is to intitle the king, or design him; and in that sense Bracton saith well, lib. 1. fol. 5. and lib. 3. fol. 107. 'Lex facit quod ipse sit rex;' that is, it defines his title; as in our law, that the kingdom shall go to the issue female; that it shall not be departable amongst daughters; that the half-blood shall be respected, and other points differing from the rules of common inheritance. The second is, that whereof we need not fear to speak in good and happy times, such as these are, to make the ordinary power of the king more definite or regular; for it was well said by a father, 'plenitudo potestatis est plenitudo tempestatis.' And although the king, in his person, be *solutus legibus*, yet his acts and grants are limited by law, and we argue them every day.

But I demand, do these offices or operations of law evacuate or frustrate the original submission, which was natural; or shall it be said that all allegiance is by law? No more than it can be said, that *potestas patris*, the power of the father over the child, is by law: and yet no doubt laws do diversely define of that also; the law of some nations having given fathers power to put their children to death; others, to sell them thrice; others, to disinherit them by testament at pleasure, and the like. Yet no man will affirm, that the obedience of the child is by law, though laws in some points do make it more positive: and even so it is of allegiance of subjects to hereditary monarchs,

which is corroborated and confirmed by law, but is the work of the law of nature. And therefore you shall find the observation true, and almost general in all states, that their lawgivers were long after their first kings, who governed for a time by natural equity without law. So was Theseus long before Solon in Athens: so was Eurytion and Sous long before Lycurgus in Sparta: so was Romulus long before the Decemviri. And even amongst ourselves there were more ancient kings of the Saxons; and yet the laws ran under the name of Edgar's laws. And in the refounding of the kingdom in the person of William the Conqueror, when the laws were in some confusion for a time, a man may truly say, that king Edward 1 was the first lawgiver, who enacting some laws, and collecting others, brought the law to some perfection. And therefore I will conclude this point with the stile, which divers acts of parliaments do give unto the king; which term him very effectually and truly, 'our natural sovereign liege lord.' And as it was said by a principal judge here present when he served in another place, and question was moved by some occasion of the title of Bullein's lands, that he would never allow, that queen Elizabeth (I remember it for the efficacy of the phrase) should be a statute queen, but a common-law queen: so surely I shall hardly consent, that the king shall be esteemed or called only our rightful sovereign, or our lawful sovereign, but our natural liege sovereign; as acts of parliament speak: for as the common law is more worthy than the statute law; so the law of nature is more worthy than them both.

Having spoken now of the king and the law, it remaineth to speak of the privilege and benefit of Naturalization itself; and that according to the rules of the law of England.—Naturalization is best discerned in the degrees whereby the law doth mount and ascend thereunto. For it seemeth admirable unto me, to consider, with what a measured hand, and with how true proportions, our law doth impart and confer the several degrees of this benefit. The degrees are four.

The first degree of persons, as to this purpose, that the law takes knowledge of, is an alien enemy; that is, such a one as is born under the obeisance of a prince or state that is in hostility with the king of England. To this person the law giveth no benefit or protection at all; but if he come into the realm after war proclaimed, or war in fact, he comes at his own peril, he may be used as an enemy: for the law accounts of him but, as the scripture saith, as of a spy that cometh to see the weakness of the land. And so it is in 2 Rich. 3, fol. 2. Nevertheless, this admitteth a distinction. For if he come with safe-conduct otherwise it is: for then he may not be violated, either in person or goods. But yet he must fetch his justice at the fountain-head, for none of the conduit pipes are open to him: he can have no remedy in any of the king's courts;

but he must complain himself before the king's privy counsel: there he shall have a proceeding summary from hour to hour, the cause shall be determined by natural equity, and not by rules of law; and the decrees of the counsel shall be executed by aid of the Chancery, as in 13 Ed. 4. And this is the first degree.

The second person is an alien friend, that is, such a one as is born under the obeisance of such a king or state as is confederate with the king of England, or at least not in war with him. To this person the law alloteth this benefit, that as the law accounts, that the hold it hath over him, is but a transitory hold, for he may be an enemy; so the law doth indue him but with a transitory benefit, that is, of moveable goods and personal actions. But for free-hold, or lease, or actions real or mixt, he is not enabled, except it be in *autre droit*. And so it is 9 Ed. 4. fol. 7. 19 Ed. 4. fol. 6. 5 Mar. and divers other books.

The third person is a denizen, using the word properly, for sometimes it is confounded with a natural born subject. This is one that is but *subditus infitivus*, or *adoptivus*, and is never by birth, but only by the king's charter, and by no other mean, come he never so young into the realm, or stay he never so long. Mansion or habitation will not indelize him, no, nor swearing obedience to the king in a leet, which doth in law the subject; but only, as I said, the king's grace and gift. To this person the law giveth an ability and capacity abridged, not in matter, but in time. And as there was a time when he was not subject, so the law doth not acknowledge him before that time. For if he purchase free-hold after his denization, he may take it; but if he have purchased any before, he shall not hold it: so if he have children after, they shall inherit; but if he have any before, they shall not inherit. So as he is but privileged *à parte post*, as the schoolmen say, and not *à parte ante*.

The fourth and last degree is a natural born subject, which is evermore by birth, or by act of parliament; and he is complete and entire. For in the law of England there is *nil ultra*, there is no more subdivision or more subtle division beyond these. And therein it seemeth to me, that the wisdom of the law, as I said, is to be admired both ways, both because it distinguisheth so far, and because it doth not distinguish farther. For I know that other laws do admit more curious distinction of this privilege: for the Romans had besides *jus civitatis*, which answereth to naturalization, *jus suffragii*. For although a man were naturalized to take lands and inheritance, yet he was not enabled to have a voice at passing of laws, or at election of officers. And yet farther they have *jus petitionis*, or *jus honorum*. For though a man had voice, yet he was not capable of honour and office. But these be the devices commonly of popular or free estates, which are jealous whom they take into their number, and are unfit for monarchies. But by the law of England the subject, that is

natural born, hath a capacity or ability to all benefits whatsoever; I say capacity or ability: but to reduce *potentiam in actum*, is another case. For an earl of Ireland, though he be naturalized in England, yet hath no voice in the parliament of England, except he have either a call by writ, or creation by patent; but he is capable of either.

But upon this quadripartite division of the ability of persons, I do observe to your lordships three things, being all effectually pertinent to the question in hand.

The first is, that if any man conceive that the reasons for the Post-nati, might serve as well for the Ante-nati, he may by the distribution which we have made, plainly perceive his error. For the law looketh not back; and therefore cannot, by any matter *ex post facto*, after birth, alter the state of the birth; wherein no doubt the law hath a grave and profound reason; which is this, in few words, *nemo subito fingitur; aliud est nasci, aliud fieri*. We indeed more respect and affect those worthy gentlemen of Scotland, whose merits and conversation we know; but the law, that proceeds upon general reason, and looks upon no mens faces, affecteth and privilegeth those which drew their first-breath under the obeisance of the king of England.

The second point is, that by the former distribution it appeareth that there be but two conditions by birth, either alien, or natural born; *nam tertium penitus ignoramus*. It is manifest then, that if the Post-nati of Scotland be not natural born, they are alien born, and in no better degree at all than Flemings, French, Italians, Spanish, Germans, and others, which are all at this time alien friends, by reason his majesty is in peace with all the world!

The third point seemeth to me very worthy the consideration, which is, that in all the distributions of persons, and the degrees of abilities or capacities, the king's act is all in all, without any manner of respect to law or parliament. For it is the king that makes an alien enemy, by proclaiming a war, wherewith the law or parliament intermeddles not. So the king only grants safe-conducts, wherewith law and parliament intermeddle not. It is the king likewise that maketh an alien friend, by concluding a peace, wherewith law and parliament intermeddle not. It is the king that makes a denizen by his charter, absolutely of his prerogative and power, wherewith law and parliament intermeddle not. And therefore it is strongly to be inferred, that as all these degrees depend wholly upon the king's act, and no ways upon law or parliament; so the fourth although it comes not by the king's patent, but by operation of law, yet that the law, in that operation, respecteth only the king's person, without respect of subjection to law or parliament. And thus much by way of explanation and inducement; which being all matter in effect confessed, is the strongest ground-work to that which is contradicted or controverted.

There followeth the confutation of the argu-

ments on the contrary side. That which hath been materially objected, may be reduced to four heads.

The first is, that the privilege of naturalization followeth allegiance, and that allegiance followeth the kingdom.

The second is drawn from that common ground, '*cum duo jura concurrunt in una persona, æquam est ac si essent in duobus*;' a rule, the words whereof are taken from the civil law; but the matter of it is received in all laws; being a very line or rule of reason, to avoid confusion.

The third consisteth of certain inconveniences conceived to ensue of this general naturalization, *ipso jure*.

The fourth is not properly an objection, but a pre-occupation of an objection or proof on our part, by a distinction devised between countries devolute by descent, and acquired by conquest.

For the first, it is not amiss to observe that those who maintain this new opinion, whereof there is *altum silentium* in our books of law, are not well agreed in what form to utter and express that: for some said that allegiance hath respect to the law, some to the crown, some to the kingdom, some to the body politic of the king: so there is confusion of tongues amongst them, as it commonly cometh to pass in opinions that have their foundations in subtilty and imagination of man's wit, and not in the ground of nature. But to leave their words, and to come to their proofs: they endeavour to prove this conceit by three manner of proofs: first, by reason; then, by certain inferences out of statutes; and lastly, by certain book-cases, mentioning and reciting the forms of pleadings.

The reason they bring is this: that naturalization is an operation of the law of England; and so indeed it is, that may be the true genus of it.

Then they add, that granted, that the law of England is of force only within the kingdom and dominions of England, and cannot operate but where it is in force. But the law is not in force in Scotland, therefore that cannot endure this benefit of naturalization by a birth in Scotland.

This reason is plausible and sensible, but extremely erroneous. For the law of England, for matters of benefit or forfeitures in England, operateth over the world. And because it is truly said that '*respublica continetur pœna et præmio*,' I will put a case or two of either.

It is plain that if a subject of England had conspired the death of the king in foreign parts, it was by the common law of England treason. How prove I that? By the statute of 35 H. 8, cap. 2; wherein you shall find no words at all of making any new case of treason which was not treason before, but only of ordaining a form of trial; *ergo*, it was treason before: and if so, then the law of England works in foreign parts. So of contempts, if the king send his privy seal to any subject beyond the seas, commaunding

him to return, and he disobey, no man will doubt but there is a contempt, and yet the fact enduring the contempt was committed in foreign parts.

Therefore the law of England doth extend to acts or matters done in foreign parts. So of reward, privilege or benefit, we need seek no other instance than the instance in question; for I will put you a case that no man shall deny, where the law of England doth work and confer the benefit of naturalization upon a birth neither within the dominions of the kingdom, nor king of England. By the statute of 25 Ed. 3, which, if you will believe Hussey, is but a declaration of the common law, all children born in any parts of the world, if they be of English parents continuing at that time as liege subjects to the king, and having done no act to forfeit the benefit of their allegiance, are *ipso facto* naturalized. Nay, if a man look narrowly into the law in this point, he shall find a consequence that may seem at the first strange, but yet cannot be well avoided; which is, that if divers families of English men and women plant themselves at Middleborough, or at Roan, or at Lisbon, and have issue, and their descendants do intermarry amongst themselves, without any intermixture of foreign blood; such descendants are naturalized to all generations: for every generation is still of liege parents, and therefore naturalized: so as you may have whole tribes and lineages of English in foreign countries.

And therefore it is utterly untrue that the law of England cannot operate or confer naturalization, but only within the bounds of the dominions of England.

To come now to their inferences upon statutes.

The first is out of this statute which I last recited. In which statute it is said, that in four several places there are, these words, 'born within the allegiance of England;' or again, 'born without the allegiance of England;' which, say they, applies the allegiance to the kingdom, and not to the person of the king. To this the answer is easy; for there is no trope of speech more familiar than to use the place of addition for the person. So we say commonly, the line of York, or the line of Lancaster, for the lines of the duke of York, or the duke of Lancaster. So we say the possessions of Somerset or Warwick, intending the possessions of the dukes of Somerset or earls of Warwick. So we see earls sign, Salisbury, Northampton, for the earls of Salisbury or Northampton. And in the very same manner the statute speaks, allegiance of England, for allegiance of the king of England. Nay more, if there had been no variety in the penning of that statute, this collection had had a little more force; for those words might have been thought to have been used of purpose and in propriety; but you may find in three other several places of the statute, allegiance and obedience of the king of England, and especially in the material and concluding place, that is to say, children whose parents were at the time of

their birth at the faith and obeisance of the king of England. So that it is manifest by this indifferent and promiscuous use of both phrases, the one proper, the other improper, that no man can ground any inference upon these words, without danger of cavillation.

The second statute, out of which they infer, is a statute made in 32 Hen. 8, touching the policy of strangers tradesmen within this realm. For the parliament finding that they did eat the Englishmen out of trade, and that they entertained no apprentices but of their own nation, did prohibit that they should receive any apprentices but the king's subjects. In which statute is said, that in nine several places there is to be found this context of words, 'aliens born out of the king's obedience;' which is pregnant, say they, and doth imply that there be aliens born within the king's obedience. Touching this inference, I have heard it said, 'qui hæret in litera, hæret in cortice;' but this is not worthy the name of *cortex*, it is but *muscus corticis*, the moss of the bark. For it is evident that the statute meant to speak clearly and without equivocation, and to a common understanding. Now then there are aliens in common reputation, and aliens in precise construction of law; the statute then meaning not to comprehend Irishmen, or Jersey men, or Calaisien, for explanation sake, lest the word alien might be extended to them in a vulgar acceptance, added those further words, 'born out of the king's obedience.' Nay, what if we should say, that those words, according to the received laws of speech, are no words of difference or limitation, but of declaration or description of an alien, as if it had been said with a *videlicet*, aliens; that is, such as are born out of the king's obedience? They cannot put us from that construction. But sure I am, if the bark make for them, the pith makes for us; for the privilege of liberty which the statute means to deny to aliens of entertaining apprentices, is denied to none born within the king's obedience, call them aliens or what you will. And therefore by their reason, a Post-natus of Scotland shall by that statute keep what stranger apprentices he will, and so is put in the degree of an English.

The third statute, out of which inference is made, is the statute of 14 E. 3. cap. solo, which hath been said to be our very case; and I am of that opinion too, but directly the other way. Therefore to open the scope and purpose of that statute: after that the title to the crown of France was devolute to king E. 3. and that he had changed his stile, changed his arms, changed his seal, as his majesty hath done, the subjects of England, saith the statute, conceived a fear that the realm of England might become subject to the realm of France, or to the king as king of France. And I will give you the reasons of the double fear, that it should become subject to the realm of France. They had this reason of fear. Normandy had conquered England; Normandy was feudal of France. Therefore because the superior seig-

niory of France was now united in right with the tenancy of Normandy, and that England, in regard of the conquest, might be taken as a perquisite to Normandy, they had probable reason to fear, that the kingdom of England might be drawn to be subject to the realm of France. The other fear that England might become subject to the king as king of France, grew no doubt of this foresight, that the kings of England might be like to make their mansion and seat of their estate in France, in regard of the climate, wealth, and glory of that kingdom; and thereby the kingdom of England might be governed by the king's mandates and precepts issuing as from the king of France. But they will say, whatsoever the occasion was, here you have the difference authorised of subjection to a king generally, and subjection to a king as king of a certain kingdom. But to this I give an answer three-fold.

First, it presseth not the question; for doth any man say that a Postnatus of Scotland is naturalized in England, because he is a subject of the king as king of England? No, but generally because he is the king's subject.

Secondly, the scope of this law is to make a distinction between crown and crown; but the scope of their argument is to make a difference between crown and person.

Lastly, this statute, as I said, is our very case retorted against them; for this is a direct statute of separation, which presupposeth, that the common law had made an union of the crowns in some degree, by virtue of the union in the king's person, if this statute had not been made to stop and cross the course of the common law in that point; as if Scotland now should be suitors to the king, that an act might pass to like effect, and upon like fear. And therefore if you will make good your distinction in this present case, shew us a statute for that. But I hope you can shew no statute of separation between England and Scotland. And if any man say that this was a statute declaratory of the common law, he doth not mark how that is penned: for after a kind of historical declaration in the preamble, that England was never subject to France, the body of the act is penned thus: "the king doth grant and establish;" which are words merely introductive *nove legis*, as if the king gave a charter of franchise, and did invest, by a donative, the subjects of England with a new privilege or exemption, which by the common law they had not.

To come now to the book-cases which they put; which I will couple together, because they receive one joint answer.

The first is 4 E. 3. fol. where the book saith, exception was taken, that the plaintiff was born in Scotland at Ross out of the allegiance of England.

The next is 22 H. 4. fol. 38. Adrian's case; where it pleaded, that a woman was born at Bruges out of the allegiance of England.

The third is 13 Eliz. Dyer, fol. 300. where the case begins thus: 'Dr. Story qui astorie

'dignoscitur esse subditus regni Angliæ.' In all these three, say they, that is pleaded, that the party is subject of the kingdom of England, and not of the king of England.

To these books I give this answer, that they be not the pleas at large, but the words of the reporter, who speaks compendiously and narratively, and not according to the solemn words of the pleading. If you find a case put, that it is pleaded a man was seised in fee-simple, you will not infer upon that, that the words of the pleading were in *feodo simplici*, but *tibi et hæreditibus tuis*. But shew me some precedent of a pleading at large of *natus sub ligeantia regni Angliæ*; for whereas Mr. Walter said that pleadings are variable in this point, he would fain bring it to that; but there is no such matter; for the pleadings are constant and uniform in this point. They may vary in the word *fides* or *ligeantia*, or *obediencia*, and some other circumstances. But in the form of *regni* and *regis* they vary not: neither can there, as I am persuaded, be any one instance shewed forth to the contrary. See 9 Eliz. 4 Baggot's Assize, fol. 7. where the pleading at large is entered in the book. There you have *alienigena natus extra ligeantiam domini regis Angliæ*. See the precedents in the book of Entries, pl. 7 and two other places; for there be no more: and there you shall find still *sub ligeantia domini regis*, or *extra ligeantiam domini regis*. And therefore the forms of pleading, which are things so reverend, and are indeed towards the reasons of the law, as *palmæ* and *pugnis*, containing the reason of the law, opened or unfolded, or displayed, they make all for us. And for the very words of reporters in books, you must acknowledge and say, *ilicet obruimur numero*. For you have 22 Ass. pl. 25. 27 Ass. the prior of Shells case, pl. 48. 14 H. 4. fol. 19. 5 H. 6. fol. 35. 6 H. 8 in my lord Dyer, fol. 2. In all these books, the very words of the reporters have 'the allegiance of the king,' and not, the allegiance of England. And the book in the 24 Edw. 3. which is your best book, although while it is tossed at the bar, you have sometimes the words 'allegiance of England,' yet when it comes to Thorp, chief justice, to give the rule, he saith, 'we will be certified by the roll, whether Scotland be within 'the allegiance of the king.' Nay, that farther form of pleading beateth down your opinion, that it sufficeth not to say that he is born out of the allegiance of the king, and stay there, but he must shew in the affirmative, under the allegiance of what king or state he was born. The reason whereof cannot be, because it may appear whether he be a friend or an enemy, for that in a real action is all one. Nor it cannot be because issue shall be taken thereupon; for the issue must arise on the other side upon *indigena* pleaded and traversed. And therefore it can have no other reason, but to apprise the court more certainly, that the country of the birth is none of those that are subject to the king.

As for the trial, that it should be impossible

to be tried, I hold it not worth the answering; for the *venire factus* shall go either where the natural birth is laid, although it be but by fiction, or if it be laid according to the truth, it shall be tried where the action is brought, otherwise, you fall upon a main rock, that breaketh your argument in pieces; for how should the birth of an Irishman be tried, or of a Jerseyman? Nay, how should the birth of a subject be tried, that is born of English parents in Spain or Florence, or any part of the world? For to all these the like objection of trial may be made because they are within no counties: and this receives no answer. And therefore I will now pass on to the second main argument.

It is a rule of the civil law, say they, *cum duo jura, &c.* when two rights do meet in one person, there is no confusion of them, but they remain still in the eye of law distinct, as if they were in several persons: and they bring examples of one man, bishop of two sees, or one parson that is rector of two churches. They say this unity in the bishop or the rector doth not create any privity between the parishioners or dioceseners, more than if there were several bishops, or several parsons. This rule I allow, as was said, to be a rule not of the civil law only but of common reason, but receiveth no forced or coined but a true and sound distinction or limitation; which is, that it evermore faileth and deceiveth in cases where there is any vigour or operation of the natural person; for generally in corporations the natural body is but *suffulcimentum corporis corporati*, it is but as a stock to uphold and bear out the corporate body; but otherwise it is in the case of the crown, as shall be manifestly proved in due place. But to shew that this rule receiveth this distinction, I will put but two cases. The statute of 21 Hen. 8. ordaineth that a marquis may retain six chaplains qualified, a lord treasurer of England four, a privy-councillor three. The lord treasurer Paulet was marquis of Winchester, lord treasurer of England, and privy-councillor, all at once. The question was, whether he should qualify thirteen chaplains? Now by the rule *cum duo jura* he should; but adjudged, he should not. And the reason was because the attendance of chaplains concerned and respected his natural person; he had but one soul, though he had three offices. The other case which I will put is the case of homage. A man doth homage to his lord for a tenancy held of the manor of Dale: there descendeth unto him afterwards a tenancy held of the manor of Sale, which manor of Sale is likewise in the hands of the same lord. Now by the rule *cum duo jura*, he should do homage again; two tenancies and two seigniories, though but one tenant and one lord, *aguum est ac si esset in duobus*. But ruled that he should not do homage again. Nay in the case of the king he should not pay a second respect of homage, as upon grave and deliberate consideration it was resolved, 24 H. 8. and *usus scaccarii*, as there is said, accordingly. And the reason is

no other, but because when a man is sworn to his lord, he cannot be sworn over again: he hath but one conscience, and the obligation of this oath trencheth between the natural person of the tenant and the natural person of the lord. And certainly the case of homage and tenure, and of homage liege, which is one case, are things of a near nature, save that the one is much inferior to the other: but it is good to behold these great matters of state in cases of lower element, as the eclipse of the sun is used to be in a pail of water.

The third main argument containeth certain supposed inconveniences, which may ensue of a general naturalization *ipso jure*, of which kind three have been specially remembered.—The first is the loss of profit to the king upon letters of denization and purchases of aliens.—The second is the concourse of Scotsmen into this kingdom, to the infeebling of that realm of Scotland in people, and the impoverishing of this realm of England in wealth.—The third is, that the reason of this case stayeth not within the compass of the present case; for although it were some reason that Scotsmen were naturalized, being people of the same island and language, yet the reason which we urge, which is, that they are subject to the same king, may be applied to persons every way more estranged from us than they are? as if in future time in the king's descendants, there should be a match with Spain, and the dominions of Spain should be united with the crown of England, by one reason, say they, all the West-Indies should be naturalized; which are people not only *alterius soli* but *alterius celi*.

To these conceits of inconvenience, how easy it is to give answer, and how weak they are in themselves, I think no man that doth attentively ponder them can doubt. For how small revenue can arise of such denizations; and how honourable were it for the king to take escheats of his subjects, as if they were foreigners, for seizure of aliens lands are in regard the king hath no hold or command of their persons and services: every one may perceive. And for the confluence of Scotsmen, I think, we all conceive the spring-tide is past at the king's first coming in. And yet we see very few families of them throughout the cities and boroughs of England. And for the naturalizing of the Indies, we can readily help that, when the case comes; for we can make an act of parliament of separation, if we like not their consort. But these being reasons politic, and not legal, and we are not now in parliament, but before a judgment-seat, I will not meddle with them, especially since I have one answer which avoids and confounds all their objections in law; which is that the very self-same objections do hold in countries purchased by conquest. For in subjects obtained by conquest, it were more profit to indenizate by the poll; in subjects obtained by conquest, they may come in too fast. And if king Henry 7 had accepted the offer of Christopher Columbus, whereby the crown of England had obtained



the Indies by conquest or occupation, all the Indies had been naturalized by the confession of the adverse part. And therefore since it is confessed, that subjects obtained by conquest are naturalized, and that all these objections are common and indifferent, as well to case of conquest as case of descent, these objections are in themselves destroyed.

And therefore, to proceed now to overthrow that distinction of descent and conquest. Plato saith well, the strongest of all authorities is, if a man can alledge the authority of his adversary against himself. We do urge the confession of the other side, that they confessed the Irish are naturalized: that they confess the subjects of the isles of Jersey and Guernsey, and Berwick, to be naturalized; and the subjects of Calais and Tournay, when they were English, were naturalized; as you may find in the 5 Eliz. in Dyer, upon the question put to the judges by sir Nicholas Bacon, lord keeper.

To avoid this, they fly to a difference, which is new-coined, and is—I speak not to the disadvantage of the persons that use it, for they are driven to it *tanquam ad ultimum refugium*, but the difference itself—it is, I say, full of ignorance and error. And therefore, to take a view of the supports of this difference, they alledge four reasons.

The first is, that countries of conquest are made parcel of England, because they are acquired by the arms and treasure of England. To this I answer, that it were a very strange argument, that if I wax rich upon the manor of Dale, and upon the revenue thereof purchase a close by it, that it should make that parcel of the manor of Dale. But I will set this new learning on ground with a question or case put. For I oppose them that hold this opinion with this question, if the king should conquer any foreign country by an army compounded of Englishmen and Scotsmen, as it is like whensoever wars are so it will be, I demand, whether this country conquered shall be naturalized both in England and Scotland, because it was purchased by the joint arms of both? And, if yea, whether any man will think it reasonable, that such subjects be naturalized in both kingdoms: the one kingdom not being naturalized towards the other? These are the intricate consequences of conceits.

A second reason they alledge is, that countries won by conquest become subject to the laws of England, which countries patrimonial are not; and that the law doth draw the allegiance, and allegiance naturalization.

But to the major proposition of that argument, touching the dependency of allegiance upon law, somewhat hath been already spoken, and full answer shall be given when we come to it. But in this place it shall suffice to say, that the minor proposition is false: that is, that the laws of England are not superinduced upon any country by conquest; but that the old laws remain until the king by his proclamation or letters patent declare other laws; and then if he will he may declare laws which be ut-

terly repugnant, and differing from the laws of England. And hereof many ancient precedents and records may be shewed, that the reason why Ireland is subject to the laws of England is not *ipso jure* upon conquest, but grew by a charter of king John; and that extended but to so much as was then in the kings possession; for there are records in the time of king E. 1, and 2, of divers particular grants to sundry subjects of Ireland and their heirs, that they might use and observe the laws of England.

The third reason is, that there is a politic necessity of intermixture of people in case of subjection by conquest, to remove alienations of mind, and to secure the state; which holdeth not in case of descent. Here I perceive Mr. Walter hath read somewhat in matter of state: and so have I likewise; though we may both quickly lose ourselves in causes of this nature. I find by the best opinions, that there be two means to assure and retain in obedience countries conquered, both very differing, almost in extremes, the one towards the other.

The one is by colonies, and intermixture of people, and transplantation of families, which Mr. Walter spoke of; and it was indeed the Roman manner; but this is like an old relic, much revered and almost never used. But the other, which is the modern manner, and almost wholly in practice and use, is by garrisons and citadels, and lists or companies of men of war, and other like matters of terror and bridle.

To the first of these, which is little used, it is true that naturalization doth conduce; but to the latter it is utterly opposite, as putting too great pride and means to do hurt in those that are meant to be kept short and low. And yet in the very first case, of the Roman proceeding, naturalization did never follow by conquest, during all the growth of the Roman empire; but was ever conferred by charters, or donations, sometimes to cities and towns, sometimes to particular persons, and sometimes to nations, until the time of Adrian the emperor, and the law *in orbe Romano*;\* and that law or constitution is not referred to title of conquest and arms only, but to all other titles; as by the donation and testament of kings, by submission and dedition of states, or the like; so as this difference was as strange to them as to us. And certainly I suppose it will sound strangely in the hearing of foreign nations, that

\* "The law here alluded to by lord Bacon is one, by which the emperor Antoninus Caracalla communicated the rights of a Roman citizen to the whole Roman empire. It is noticed in Justinian's Digest, lib. 1. tit. 5. l. 17, and in Novell. 79. c. 5. Antoninus Pius and other emperors have been named as authors of the law. But Heineccius, who is very full and satisfactory on the point, is clear in opinion, that this extension was first made by Caracalla. Heinecc. Syntagn. Append. lib. 1. s. 15." Hargrave.

the law of England should *ipso facto*, naturalize subjects of conquests, and should not naturalize subjects which grow unto the king by descent; that is, that it should confer the benefit and privilege of naturalization upon such as cannot at the first but bear hatred and rancour to the state of England, and have had their hands in the blood of the subjects of England, and should deny the like benefit to those that are conjoined with them by a more amiable mean; and that the law of England should confer naturalization upon slaves and vassals, for people conquered are no better in the beginning, and should deny it to freemen: I say, it will be marvelled at abroad, of what complexion the laws of England be made, that breedeth such differences. But there is little danger of such scandals; for this is a difference that the law of England never knew.

The fourth reason of this difference is, that in case of conquest the territory united can never be separated again. But in case of descent, there is a possibility. If his majesty's line should fail, the kingdoms may sever again to their respective heirs; as in the case of 8 H. 6, where it is said, that if land descend to a man from the ancestor on the part of his father, and a rent issuing out of it from an ancestor on the part of the mother; if the party die without issue, the rent is revived. As to this reason, I know well the continuance of the king's line is no less dear to those that alledge the reason, than to us that confute it. So as I do not blame the pressing of the reason. But it is answered with no great difficulty. For first, the law doth never respect remote and foreign possibilities, as notably appeared in the great case between sir Hugh Cholmley and Houlford in the Exchequer, where one in the remainder, to the end to bridle tenant in tail from suffering a common recovery, granted his remainder to the king; and because he would be sure to have it out again without charge or trouble when his turn was served, he limited it to the king during the life of tenant in tail. Question grew, whether this grant of remainder were good, yea or no. And it was said to be frivolous and void, because it could never by any possibility execute, for tenant in tail cannot surrender; and if he died, the remainder likewise ceased. To which it was answered, that there was a possibility that it might execute, which was thus: put case, the tenant in tail should enter into religion, having no issue; then the remainder should execute, and the king should hold the land during the natural life of tenant in tail, notwithstanding his civil death. But the court *una voce* exploded this reason, and said, that monasteries were down, and entries into religion gone, and they must be up again ere this could be; and that the law did not respect such remote and foreign possibilities. And so we may hold this for the like: for I think we all hope, that neither of those days shall ever come, either for monasteries to be restored, or for the king's line to fail. But the true answer is, that the possibility subse-

quent, remote or not remote, doth not alter the operation of law for the present. For that should be, as if in case of the rent which you put, you should say, that in regard that the rent may be severed, it should be said to be *in esse* in the mean time, and should be grantable; which is clearly otherwise. And so in the principal case, if that should be, which God of his goodness forbid, 'cessante causa cessat effectus,' the benefit of naturalization for the time to come is dissolved. But that altereth not the operation of the law; 'rebus sic stantibus.' And therefore I conclude, that this difference is but a device full of weakness and ignorance; and that there is one and the same reason of naturalizing subjects by descent, and subjects by conquest: and that is the union in the person of the king; and therefore that the case of Scotland is as clear as that of Ireland, and they that grant the one cannot deny the other. And so I conclude the second part, touching confutation.

To proceed therefore to the proofs of our part, your lordships cannot but know many of them must be already spent in the answer which we have made to the objections. For 'corruptio unius, generatio alterius,' holds as well in arguments, as in nature: the destruction of an objection begets a proof. But nevertheless I will avoid all iteration, lest I should seem either to distract your memories, or to abuse your patience; but will hold myself only to these proofs which stand substantially of themselves, and are not intermixed with matter of confutation. I will therefore prove unto your lordships, that the Post-natus of Scotland is by the law of England natural, and ought so to be adjudged, by three courses of proof.—First, upon point of favour of law. Secondly, upon reasons and authorities of law. And lastly, upon former precedents and examples.

1. Favour of law. What mean I by that? The law is equal, and favoureth not. It is true, not persons; but things or matters it doth favour. Is it not a common principle, that the law favoureth three things, life, liberty, and dower! And what is the reason of this favour? This, because our law is grounded upon the law of nature. And these three things do flow from the law of nature, preservation of life natural; liberty, which every beast or bird seeketh and affecteth naturally; the society of man and wife, whereof dower is the reward natural. It is well, doth the law favour liberty so highly, as a man shall enfranchise his bondman when he thinketh not of it, by granting to him lands or goods; and is the reason of it 'quia natura omnes homines erant liberi;' and that servitude or villenage doth cross and abridge the law of nature? And doth not the self-same reason hold in the present case? For, my lords, by the law of nature all men in the world are naturalized one towards another; they were all made of one lump of earth, of one breath of God; they had the same common parents: nay, at the first they were, as the scripture sheweth, 'unus labii,' of one language, until the curse; which

ence, thanks be to God, our present case is exempted from. It was civil and national laws that brought in these words and differences of 'civilis' and 'externis,' alien and native. And therefore because they tend to abridge the law of nature, the law favoureth not them, but takes them strictly; even as our law hath an excellent rule, that customs of towns and boroughs shall be taken and construed strictly and precisely, because they do abridge and derogate from the law of the land. So by the same reason all national laws whatsoever are to be taken strictly and hardly in any point wherein they abridge and derogate from the law of nature. Whereupon I conclude, that your lordships cannot judge the law for the other side, except the case be *lucrararius*. And if it appear to you but doubtful, as I think no man in his right senses but will yield it to be at least doubtful, then ought your lordships, under your correction be it spoken, to pronounce for us because of the favour of the law. Furthermore, as the law of England must favour naturalization as a branch of the law of nature, so it appears manifestly, that it doth favour it accordingly. For is it not such to make a subject naturalized? By the law of England, it should suffice, either place or parents. If he be born in England, it is no matter though his parents be Spaniards, or what you will. On the other side, if he be born of English parents, it skilth not though he be born in Spain, or in any other place of the world. In such sort doth the law of England open her lap, to receive in people to be naturalized: which indeed sheweth the wisdom and excellent composition of our law, and that it is the law of a warlike and magnanimous nation fit for empire. For look, and you shall find that such kind of estates have been ever liberal in point of naturalization: whereas merchant-like and envious estates have been otherwise.

For the reasons of law joined with authorities, I do first observe to your lordships, that our assertion or affirmation is simple and plain: that it sufficeth to naturalization, that there be one king, and that the party be 'natus ad fidem regis,' agreeable to the definition of Litteton, which is: alien is he which is born out of the allegiance of our lord the king. They of the other side speak of respects, and *quando* and *quatenus*, and such subtilities and distinctions. To maintain therefore our assertion, I will use three kinds of proofs. The first is, that allegiance cannot be applied to the law or kingdom, but to the person of the king; because the allegiance of the subject is more large and spacious, and hath a greater latitude and comprehension than the law or the kingdom. And therefore it cannot be a dependency of that without the which it may of itself subsist. The second proof which I will use is, that the natural body of the king hath an operation and influence into his body politic, as well as his body politic hath upon his body natural: and therefore, that although his body politic of king of England, and his body politic of king of Scot-

land, be several and distinct, yet nevertheless his natural person, which is one, hath an operation upon both, and createth a privity between them.—And the third proof is the binding text of five several statutes.

For the first of these, I shall make it manifest, that the allegiance is of a greater extent and dimension than laws or kingdom, and cannot consist by the laws merely; because it began before laws, it continueth after laws, and it is in vigour where laws are suspended and have not their force.

That it is more ancient than law, appeareth by that which was spoken in the beginning by way of inducement, where I did endeavour to demonstrate, that the original age of kingdoms was governed by natural equity, that kings were more ancient than lawgivers, that the first submissions were simple, and upon confidence to the person of kings, and that the allegiance of subjects to hereditary monarchies can no more be said to consist by laws, than the obedience of children to parents.

That allegiance continueth after laws, I will only put the case, which was remembered by two great judges in a great assembly, the one of them now with God: which was; that if a king of England should be expelled his kingdom, and some particular subjects should follow him in flight or exile in foreign parts, and any of them there should conceive his death; upon his recovery of his kingdom, such a subject might by the law of England be proceeded with for treason committed and perpetrated at what time he had no kingdom, and in place where the law did not bind.

That allegiance is in vigour and force where the power of law hath a cessation, appeareth notably in time of wars; for 'silent leges inter arma.' And yet the sovereignty and imperial power of the king is so far from being then extinguished or suspended, as contrariwise it is raised and made more absolute: for then he may proceed by his supreme authority and martial law, without observing formalities of the laws of his kingdom. And therefore whatsoever speaketh of laws, and the king's power by laws, and the subjects obedience or allegiance to laws, speak but of one half of the crown. For Bracton, out of Justinian, doth truly define the crown to consist of laws and arms, power civil and martial, with the latter whereof the law doth not intermeddle: so as where it is much spoken, that the subjects of England are under one law, and the subjects of Scotland are under another law, it is true at Edinburgh or Sterling, or again in London or York; but if Englishmen and Scot-men meet in an army royal before Calais, I hope, then they are under one law. So likewise not only in time of war, but in time of peregrination. If a king of England travel or pass through foreign territories, yet the allegiance of his subjects followeth him; as appeareth in that notable case which is reported in Fleta, where one of the train of king Edward I, as he passed through France from the Holy Land, imbez-

zeled some silver plate at Paris, and jurisdiction was demanded of this crime by the French king's counsel at law, 'ratione soli,' and demanded likewise by the officers of king Edward, 'ratione personæ:' and after much solemnity, contestation, and interpleading, it was ruled and determined for king Edward, and the party tried and judged before the knight marshal of the king's house, and hanged after the English law, and executed in St. Germain's meadows. And so much for the first proof.

For my second main proof, that is drawn from the true and legal distinction of the king's several capacities; for they that maintain the contrary opinion do in effect destroy the whole force of the king's natural capacity, as if it were drowned and swallowed up by his politic. And therefore I will first prove to your lordships, that his two capacities are in no sort confounded. And secondly, that as his capacity politic worketh so upon his natural person, as it makes it differ from all other the natural persons of his subjects; so *e converso*, his natural body worketh so upon his politic, as the corporation of the crown utterly differeth from all other corporations within the realm.

For the first, I will vouch you the very words which I find in that notable case of the Duchy, where the question was, whether the grants of king Edward 6th for duchy lands should be avoided in points of nonage. The case, as your lordships know well, is reported by Mr. Plowden as the general resolution of all the judges of England, and the king's learned counsel, Rouswell the solicitor only, excepted. There I find the said words, Comment. fol. 215. 'There is in the king not a body natural alone, nor a body politic alone, but a body natural and politic together: corpus corporatum in corpore naturali, et corpus naturale in corpore corporato.' The like I find in the great case of the lord Berkley set down by the same reporter, Comment. fol. 231. 'Though there be in the king two bodies, and that those two bodies are conjoined, yet are they by no means confounded the one by the other.'

Now then to see the mutual and reciprocal intercourse, as I may term it, or influence or communication of qualities, that these bodies have the one upon the other. The body politic of the crown induceth the natural person of the king with these perfections: that the king in law shall never be said to be within age; that his blood shall never be corrupted; and that if he were attainted before, the very assumption of the crown purgeth it; that the king shall not take but by matter of record, although he take in his natural capacity as upon a gift in tail; that his body in law shall be said to be as if it were immortal; for there is no death of the king in law, but a demise, as it is termed: with many other the like privileges and differences from other natural persons, too long to rehearse, the rather because the question laboureth not in that part. But on the contrary part let us see what operations

the king's natural person hath upon his crown and body politic. Of which the chiefest and greatest is, that it causeth the crown to go by descent, which is a thing strange, and contrary to the course of all corporations, which evermore take in succession, and not by descent; for no man can show me in all the corporations of England, of what nature soever, whether they consist of one person, or of many, or whether they be temporal or ecclesiastical, any one takes to him, and his heirs, but all to him and his successors. And therefore here you may see what a weak course that is, to put cases of bishops and parsons, and the like, and to apply them to the crown. For the king takes to him and his heirs in the manner of a natural body, and the word, successors, is but superfluous; and where that is used, that is ever duly placed after the word, heirs, 'the king, his heirs, and successors.'

Again, no man can deny but 'uxor et filius sunt nomina naturæ.' A corporation can have no wife, nor a corporation can have no son. How is it then, that it is treason to compass the death of the queen or of the prince? There is no part of the body politic of the crown in either of them, but it is merely in the king. So likewise we find in the case of the lord Berkley, the question was, whether the statute of 25 H. 8. for that part which concerned queen Catherine Par's jointure, were a public act or no, of which the judges ought to take notice, not being pleaded; and judged a public act. So the like question came before your lordship, my lord chancellor, in serjeant Heule's case; whether the statute of 11 Edward 3. concerning the intailing of the dukedom of Cornwall to the prince, were a public act or no; and ruled likewise a public act. Why? No man can affirm but these be operations of law, proceeding from the dignity of the natural person of the king; for you shall never find, that another corporation whatsoever of a bishop, or master of a college, or mayor of London, worketh any thing in law upon the wife or son of the bishop or the mayor. And to conclude this point, and withal to come near to the case in question, I will shew you where the natural person of the king hath not only an operation in the case of his wife and children, but likewise in the case of his subject, which is the very question in hand. As for example, I put this case. Can a Scotsman, who is a subject to the natural person of the king, and not to the crown of England; can a Scotsman, I say, be an enemy by the law to the subjects of England? Or must he not of necessity, if he should invade England, be a rebel and no enemy, not only as to the king, but as to the subject? Or can any letters of mart or reprisal be granted against a Scotsman that shall spoil an Englishman's goods at sea? And certainly this case doth press exceeding near the principal case; for it proveth plainly, that the natural person of the king hath such a communication of qualities with his body politic, as it makes the subjects of either kingdom stand in another degree of

privity one towards the other, than they did before. And so much for the second proof.

For the five acts of parliament which I spoke of, which are concluding to this question.—The first of them is that concerning the banishment of Hugh Spencer in the time of king E. 2; in which act there is contained the charge and accusation whereupon his exile proceeded. One article of which charge is set down in these words: 'Homage and oath of the subject is more by reason of the crown than by reason of the person of the king. So that if the king doth not guide himself by reason in right of the crown, his lieges are bound by their oath to the crown to remove the king.' By which act doth plainly appear the perilous consequence of this distinction concerning the person of the king and the crown. And yet I do acknowledge justly and ingeniously a great difference between that assertion and this, which is now maintained: for it is one thing to make things distinct, another thing to make them separable, 'aliud est distinctio, aliud separatio;' and therefore I assure myself, that those that now use and urge that distinction, do as firmly hold, that the subjection to the king's person and to the crown are inseparable, though distinct, as I do. And it is true that the poison of the opinion and assertion of Spencer is like the poison of a scorpion, more in the tail than in the body: for it is the inference that they make, which is, that the king may be deposed or removed, that is the treason and disloyalty of that opinion. But by your leave, the body is never a whit the more wholesome meat for having such a tail belonging to it. Therefore we see that is 'locus lubricus,' an opinion from which a man may easily slide into an absurdity. But upon this act of parliament I will only note one circumstance more, and so leave it, which may add authority unto it in the opinion of the wisest; and that is, that these Spencers were not ancient nobles or great patriots that were charged and prosecuted by upstarts and favourites: for then it might be said, that it was but the action of some flatterers, who use to extol the power of monarchs to be infinite. But it was contrary; a prosecution of those persons being favourites by the nobility; so as the nobility themselves, which seldom do subscribe to the opinion of an infinite power of monarchs, yet even they could not endure, but their blood did rise to hear that opinion, that subjection is owing to the crown rather than to the person of the king.

The second act of parliament, which determined this case, is the Act of Recognition in the first year of his majesty, wherein you shall find, that in two several places, the one in the preamble, the other in the body of the act, the parliament doth recognise, that these two realms of England and Scotland are under one imperial crown. The parliament doth not say under one monarchy or king which might refer to the person, but under one imperial crown, which cannot be applied but to the sovereign power of regiment comprehending

both kingdoms. And the third act of parliament is the act made in the fourth year of his majesty's reign, for the abolition of hostile laws; wherein your lordships shall find likewise in two places, that the parliament doth acknowledge, that there is an union of these two kingdoms already begun in his majesty's person: so as by the declaration of that act, they have not only one king, but there is an union in inception in the kingdoms themselves.

These two are judgments in parliament by way of declaration of law, against which no man can speak. And certainly these are righteous and true judgments to be relied upon; not only for the authority of them, but for the verity of them; for to any that shall well and deeply weigh the effects of law upon this conjunction, it cannot but appear, that although *partes integrals* of the kingdom, as the philosophers speak, such as the laws, the officers, the parliament, are not yet commixed; yet nevertheless there is but one and the self-same fountain of sovereign power depending upon the ancient submission, whereof I spake in the beginning; and in that sense the crowns and the kingdoms are truly said to be united.

And the force of this truth is such, that a grave and learned gentleman, that defended the contrary opinion, did confess thus far: that in ancient times, when monarchies, as he said, were but heaps of people without any exact form of policy; that then naturalization and communication of privileges did follow the person of the monarch; but otherwise since states were reduced to a more exact form: so as thus far we did consent; but still I differ from him in this, that these more exact forms, wrought by time and custom and laws, are nevertheless still upon the first foundation, and do serve only to perfect and corroborate the force and bond of the first submission, and in no sort to disannul or destroy it.

And therefore with these two acts do I likewise couple the act of 14 Ed. 3, which hath been alledged of the other side. For by collating of that act with this former two, the truth of that we affirm will the more evidently appear, according unto the rule of reason: 'opposita juxta se posita magis elucescunt.' That act of 14 is an act of separation. These two acts formerly recited are acts tending to union. This act is an act that maketh a new law; it is by the words of grant and establish. These two acts declare the common law as it is, being by words of recognition and confession.—And therefore upon the difference of these laws you may substantially ground this position: that the common law of England, upon the adjunction of any kingdom unto the king of England, doth make some degree of union in the crowns and kingdoms themselves; except by a special act of parliament they be dissevered.

Lastly, the fifth act of parliament which I promised, is the act made in the 42 of E. 3, cap. 10. which is an express decision of the point in question. The words are, 'Item, (upon the petition put into parliament by the commons)

‘ that infants born beyond the seas in the seigniories of Calais, and elsewhere within the lands and seigniories that pertain to our sovereign lord the king beyond the seas, be as able and inheritable of their heritage in England, as other infants born within the realm of England, it is accorded that the common law and the statute formerly made be holden.’

Upon this act I inter thus much; first, that such as the petition mentioneth were naturalized, the practice shews; then if so, it must be either by common law or statute, for so the words report: not by statute, for there is no other statute but 23 E. 3, and that extends to the case of birth out of the king's obedience, where the parents are English; ergo it was by the common law, for that only remains. And so by the declaration of this statute at the common law, ‘ all infants, born within the lands and seigniories (for I give you the very words again) that pertain to our sovereign lord the king, (it is not said, as are the dominions of England) are as able and inheritable of their heritage in England, as other infants born within the realm of England.’ What can be more plain? and so I leave statutes and go to precedents; for though the one do bind more, yet the other sometimes doth satisfy more.

For precedents, in the producing and using of that kind of proof, of all others it behoveth them to be faithfully vouched; for the suppressing or keeping back of a circumstance, may change the case: and therefore I am determined to urge only such precedents, as are without all colour or scruple of exception or objection, even of those objections which I have, to my thinking, fully answered and confuted. This is now, by the providence of God, the fourth time that the line and kings of England have had dominions and seigniories united unto them as patrimonies, and by descent of blood; four unions, I say, there have been, inclusive with this last. The first was of Normandy, in the person of William, commonly called the Conqueror. The second was of Gascoigne, and Guienne, and Anjou, in the person of H. 2; in his person, I say, though by several titles. The third was of the crown of France, in the person of E. 3. And the fourth of the kingdom of Scotland, in his majesty. Of these I will set aside such as by any cavillation can be excepted unto. First, I will set aside Normandy; because it will be said, that the difference of countries accruing by conquest, from countries annexed by descent, in matter of communication of privileges, holdeth both ways, as well of the part of the conquering kingdom, as the conquered; and therefore that although Normandy was not a conquest of England; yet England was a conquest of Normandy, and so a communication of privileges between them. Again, set aside France; for that it will be said that although the king had a title in blood and by descent, yet that title was executed and recovered by arms, so as it is a mixt title of conquest and descent, and therefore the precedent not so clear.

There remains then Gascoigne and Anjou, and that precedent likewise I will reduce and abridge to a time, to avoid all question. For it will be said of them also, that after they were lost and recovered in *ore gladii*, that the ancient title of blood was extinct; and that the king was in upon his new title by conquest. And Mr. Walter hath found a book-case in 13 H. 6. abridged by Mr. Fitz-Herbert, in title of Protection, *placito* 56, where a protection was cast, ‘ quia profecturus in Gasconiam’ with the earl of Huntingdon, and challenged because it was not a voyage royal; and the justices thereupon required the sight of the commission, which was brought before them, and purported power to pardon felonies and treason, power to coin money, and power to conquer them that resist: whereby Mr. Walter, finding the word *conquest*, collected that the king's title at that time was reputed to be by conquest. Wherein I may not omit to give *obiter* that answer which law and truth provide, namely, that when any king obtaineth by war a country whereunto he hath right by birth, that he is ever in upon his ancient right, not upon his purchase by conquest; and the reason is, that there is as well a judgment and recovery by war and arms, as by law and course of justice. For war is a tribunal-seat, wherein God giveth the judgment, and the trial is by battle or duel, as in the case of trial of private right: and then it follows, that whosoever cometh in by eviction, comes in his Remitter: so as there will be no difference in countries whereof the right cometh by descent, whether the possession be obtained peaceably or by war. But yet nevertheless, because I will utterly take away all manner of evasion and subterfuge, I will yet set apart that part of time, in and during the which the subjects of Gascoigne and Guienne might be thought to be subdued by a re-conquest. And therefore I will not meddle with the prior of Shelley's case, though it be an excellent case; because it was in the time of 27 E. 3; neither will I meddle with any cases, records, or precedents, in the time of king H. 5, or king H. 6, for the same reason; but will hold myself to a portion of time from the first uniting of these provinces in the time of king H. 2, until the time of king John, at what time those provinces were lost; and from that time again unto the seventeenth year of the reign of E. 2, at what time the statute of *Prærogativa Regis* was made, which altered the law in the point in hand.—That both in these times the subjects of Gascoigne, and Guienne, and Anjou, were naturalized for inheritance in England by the laws of England, I shall manifestly prove; and the proof proceeds, as to the former time, which is our case, in a very high degree *à minore ad majus*, and as we say, *à multo fortiori*. For if this privilege of naturalization remained unto them when the countries were lost, and became subjects in possession to another king, much more did they enjoy it as long as they continued under the king's subjection.

Therefore to open the state of this point. After these provinces were, through the perturbations of the state in the unfortunate time of king John, lost and severed, the principal persons which did adhere unto the French, were attainted of treason, and their escheats here in England taken and seized. But the people, that could not resist the tempest when their heads and leaders were revolved, continued inheritable to their possessions in England; and reciprocally the people of England inherited and succeeded to their possessions in Gascoigne, and were both accounted 'ad fidem utriusque regis,' until the statute of Prærogativa Regis; wherein the wisdom and justice of the law of England is highly to be commended. For of this law there are two grounds of reason, the one of equity, the other of policy. That of equity was, because the common people were in no fault, but, as the scripture saith in a like case, 'qui fecerunt oves istas?' It was the cowardise and disloyalty of their governors that deserved punishment, but 'what had these shep done?' And therefore to have punished them, and deprived them of their lands and fortunes, had been unjust. That of policy was, because if the law had forthwith, upon the loss of the countries by an accident of time, pronounced the people for aliens, it had been a kind of accession of their right, and a disclaimer in them, and so a greater difficulty to recover them. And therefore we see the statute, which altered the law in this point, was made in the time of a weak king, that, as it seemed, despaired ever to recover his right, and therefore thought better to have a little present profit by escheats, than the continuance of his claim, and the countenance of his right, by the admitting of them to enjoy their inheritance as they did before.

The state therefore of this point being thus opened, it resteth to prove our assertion, that they were naturalized; for the clearing whereof I shall need but to read the authorities, they be so direct and pregnant. The first is the very text of the statute of Prærogativa Regis. 'Rex habebit escheatas de terris Normannorum, cujuscuque feodi fuerint, salvo servitio, quod pertinet ad capitales dominos feodi illius: et hoc similiter intelligendum est, si aliqua hereditas descendat alicui nato in partibus transmarinis, et cujus antecessores fuerint ad fidem regis Francie, ut tempore regis Johannis, et non ad fidem regis Angliæ, sicut contigit de baronia Montmetæ, &c.'—By which statute it appears plainly, that before the time of king John there was no colour of any escheat, because they were the king's subjects in possession, as Scotland now is; but only it determines the law from that time forward.—This statute, if it had in it any obscurity, it is taken away by two lights; the one placed before it, and the other placed after it; both authors of great credit, the one for ancient, the other for late times.—The former is Bracton, in his cap. de Exceptionibus, lib. 5. fol. 437. and his words are these: 'Est etiam et alia exceptio, quæ tenenti

'competit ex persona petentis, propter defectum nationis, quæ dilatoria est, et non perimit actionem; ut si quis alienigena, qui fuerit ad fidem regis Franciæ, et actionem instituat versus aliquem, qui fuerit ad fidem regis Angliæ, tali non respondeatur, saltem donec terræ fuerint communes.' By these words it appeareth, that after the loss of the provinces beyond the seas, the naturalization of the subjects of those provinces was in no sort extinguished, but only was in suspense during the time of war, and no longer; for he saith plainly, that the exception, which we call plea, to the person of an alien, was not peremptory, but only dilatory; that is to say, during the time of war, and until there were peace concluded, which he terms by the same words, 'donec terræ fuerint communes;' which, though the phrase seem somewhat obscure, is expounded by Bracton himself in his fourth book, fol. 237, to be of peace made and concluded, whereby the inhabitants of England and those provinces might enjoy the profits and fruits of their lands in either place 'communitery,' that is, respectively, or as well the one as the other. So as it is clear they were no aliens in right, but only interrupted and debarr'd of suits in the king's courts in time of war.

The authority after the statute is that of Mr. Stamford, the best expositor of a statute that hath been in our law; a man of reverend judgment and excellent order in his writings. His words are in his exposition upon the branch of the statute which we read before. 'By this branch it should appear, that at this time men of Normandy, Gascoigne, Guienne, Anjou, and Britain, were inheritable within this realm, as well as Englishmen; because that they were sometimes subjects to the kings of England, and under their dominion, until king John's time, as is afore-said: and yet after his time, those men, saving such whose lands were taken away for treason, were still inheritable within this realm till the making of this statute; and in the time of peace between the two kings of England and France, they were answerable within this realm, if they had brought any action for their lands and tenements.'

So as by these three authorities, every one so plainly pursuing the other, we conclude that the subjects of Gascoigne, Guienne, Anjou, and the rest, from their first union by descent, until the making of the statute of Prærogativa Regis, were inheritable in England, and to be answered in the king's courts in all actions, except it were in time of war. Nay more, which is *de abundantia*, that when the provinces were lost, and disannexed, and that the king was but king *de jure* over them, and not *de facto*, yet nevertheless the privilege of naturalization continued.

There resteth yet one objection, rather plausible to a popular understanding than any way forcible in law or learning, which is a difference taken between the kingdom of Scotland and these duchies; for that the one is a kingdom,

and the other was not so; and therefore that those provinces, being of an inferior nature, did acknowledge our laws, and seals, and parliament, which the kingdom of Scotland doth not.—This difference was well given over by Mr. Walter; for it is plain that a kingdom and absolute dukedom, or any other sovereign estate, do differ *honore*, and not *potestate*: for divers duchies and countries, that are now, were sometimes kingdoms; and divers kingdoms, that are now, were sometimes duchies, or of other inferior stile: wherein we need not travel abroad, since we have in our own state so notorious an instance of the country of Ireland, whereof king H. 8, of late time was the first that writ himself king, the former stile being lord of Ireland, and no more; and yet kings had the same authority before, that they have had since, and the same nation the same marks of a sovereign state; as their parliaments, their arms, their coins, as they now have: so as this is too superficial an allegation to labour upon.—And if any do conceive that Gascoigne and Guienne were governed by the laws of England; first, that cannot be in reason; for it is a true ground, that wheresoever any prince's title unto any country is by law, he can never change the laws, for that they create his title: and therefore no doubt those duchies retained their own laws; which if they did, then they could not be subject to the laws of England. And next, again, the fact or practice was otherwise, as appeareth by all consent of story and record: for those duchies continued governed by the civil law, their trials by witnesses, and not by jury, their lands testamentary, and the like.

Now for the colours that some have endeavoured to give, that they should have been subordinate to the government of England; they were partly weak, and partly such as make strongly against them: for as to that, that writs of Habeas Corpus under the great seal of England have gone to Gascoigne, it is no manner of proof; for that the king's writs, which are mandatory, and not writs of ordinary justice, may go to his subjects into any foreign parts whatsoever, and under what seal it pleaseth him to use. And as to that, that some acts of parliament have been cited, wherein the parliaments of England have taken upon them to order matters of Gascoigne; if those statutes be well looked into, nothing doth more plainly convince the contrary; for they intermeddle

with nothing but that that concerneth either the English subjects personally, or the territories of England locally, and never the subjects of Gascoigne. For look upon the statute of 27 E. 3. cap. 5. there it is said, that there shall be no forestalling of wines. But by whom? Only by English merchants; not a word of the subjects of Gascoigne; and yet no doubt they might be offenders in the same kind. So in the sixth chapter it is said, that all merchants Gascoignes may safely bring wines into what part it shall please them. Here now are the persons of Gascoignes. But then the place whither? Into the realm of England. And in the seventh chapter, that erects the ports of Bourdeaux and Bayonne for the staple towns of wine; the statute ordains, 'that if any,' but who? 'English merchant, or his servants, shall buy or bargain other where, his body shall be arrested by the steward of Gascoigne, or the constable of Bourdeaux.' True, for the officers of England could not catch him in Gascoigne. But what shall become of him, shall he be proceeded with within Gascoigne? No, but he shall be sent over into England into the Tower of London.—And this doth notably disclose the reason of that custom which some have sought to wrest the other way: that custom, I say, whereof a form doth yet remain, that in every parliament the king doth appoint certain committees in the upper-house to receive the petitions of Normandy, Guienne, and the rest; which, as by the former statute doth appear, could not be for the ordering of the governments there, but for the liberties and good usage of the subjects of those parts when they came hither; or *vice versa*, for the restraining of the abuses and misdemeanors of our subjects when they went thither.

Wherefore I am now at an end. For us to speak of the mischiefs, I hold it not fit for this place, lest we should seem to bend the laws to policy, and not to take them in their true and natural sense. It is enough that every man knows, that it is true of these two kingdoms, which a good father said of the churches of Christ: 'si inseparabiles insuperabiles.' Some things I may have forgot, and some things perhaps I may forget willingly; for I will not press any opinion or declaration of late time which may prejudice the liberty of this debate; but 'ex dictis, et ex non-dictis,' upon the whole matter I pray judgment for the plaintiff.



Lord Coke's Report of Calvin's CASE.\* From the 7th part of his Reports.

[The following Report is printed from Serjeant Wilson's edition of lord Coke's Reports. All the References included in brackets are by Mr. Chilton and the editors of the editions since the one by him. The Case is dated by lord Coke, Trin. 6 Jan. 1.]

*The WRIT of ASSISE.*

JAMES, by the grace of God, of England, Scotland, France, and Ireland, king, defender of the faith, &c. to the sheriff of Middlesex, greeting: Robert Calvin, gent. hath complained to us, that Richard Smith, and Nicholas Smith, unjustly, and without judgment, have disseised him of his freehold in Haggard, otherwise Haggerston, otherwise Aggerston, in the parish of St. Leonard, in Shoreditch, within 30 years now last past; and therefore we command you, that if the said Robert shall secure you to prosecute his claim, then that you cause the said tenement to be resealed with the chatelets, which within it were taken, and the said tenement with the chatelets, to be in peace until Thursday next after 15 days of St. Martin next coming; and in the mean time, cause 12 free and lawful men of that neighbourhood to view the said tenement, and the names of them to be inbreviated; and summon them by good summoners, that they be then before us wherever we shall then be in England, ready thereof to make recognition; and put by sureties, and safe pledges, the aforesaid Richard and Nicholas or their bailiffs (if they cannot be found,) that they be then there, to bear the recognition; and have there the summoners, the names of the pledges, and this writ. Witness ourself at Westminster, the 3d day of Nov. in the 5th year of our reign of England, France, and Ireland, and of Scotland the one and fortieth.—For 40s. paid in the Hanper, KINGSLEY.

Middlesex, ss.; The assise cometh to recognize, if Rich. Smith, and Nich. Smith unjustly, and without judgment, did disseise Rob. Calvin, gent. of his freehold in Haggard, otherwise Haggerston, otherwise Aggerston, in the parish of St. Leonard in Shoreditch, within 30 years now last past: and whereupon, the said Robert, who is within the age of 21 years, by John Parkinson and William Parkinson, his guardians, by the court of the said king here to this being jointly and severally specially admitted, complaineth; that they disseised him of one messuage with the appurtenances, &c. And the said Richard and Nicholas, by William Edwards, their attorney, come and say, that the said Robert ought not to be answered to his writ aforesaid, because they say, that the said Robert is an alien, born on the 5th day of Nov. in the 3d year of the reign of the king that now is, of England, France, and Ireland, and of

Scotland the 39th, at Edinburgh, within his kingdom of Scotland, aforesaid, and within the allegiance of the said lord the king of the said kingdom of Scotland, and out of the allegiance of the said lord the king of his kingdom of England; and at the time of the birth of the said Robert Calvin, and long before, and continually afterwards, the aforesaid kingdom of Scotland, by the proper rights, laws, and statutes of the same kingdom, and not by the rights, laws, or statutes of this kingdom of England, was and yet is ruled and governed. And this he is ready to verify, and thereupon prayeth judgment, if the said Robert, to his said writ aforesaid, ought to be answered, &c. And the aforesaid Robert Calvin saith, that the aforesaid plea, by the aforesaid Richard and Nicholas above pleaded, is insufficient in law, to bar him the said Robert from having an answer to his writ aforesaid; and that the said Robert, to the said plea in manner and form aforesaid pleaded, needeth not, nor by the law of the land is bound to answer; and this he is ready to verify, and bereof prayeth judgment; and that the said Richard and Nicholas, to the aforesaid writ of the said Robert, may answer. And the said Richard and Nicholas, forasmuch as they have above alledged sufficient matter in law to bar him the said Robert from having an answer, to his said writ, which they are ready to verify, which matter the aforesaid Robert doth not gainsay, nor to the same doth in any ways answer, but the said avnement altogether refuseth to admit as before; pray judgment, if the aforesaid Robert ought to be answered to his said writ, &c. And because the court of the lord the king, here, are not yet advised of giving their judgment of and upon the premises, day thereof is given to the parties aforesaid; before the lord the king at Westminster, until Monday next after 8 days of St. Hilary, to hear their judgment thereof, because the court of the lord the king here thereof are not yet, &c. And the assise aforesaid remains to be taken before the said lord the king, until the same Monday there, &c. And the sheriff to distrain the recognitors of the assise aforesaid; and in the interim to cause a view, &c. At which day, before the lord the king at Westminster, come as well the aforesaid R. Calvin, by his guardians aforesaid, as the aforesaid Rich. Smith and Nic. Smith, by their attorney aforesaid; and because the court of the lord the king here of giving their judgment of and upon the premises is not yet advised, day thereof is given to the parties aforesaid before the lord the king at Westminster, until Monday next after the morrow of the Ascension of our Lord, to hear their judgment; because the court of the lord

\* Vid. Dy. fo. 304. 2. Jo. 10. Vaugh. 286. 279. 301. 1. Lev. 59. Plowden's case of the Dutchy, Ellesmere's Postnati, Bacon on Governm. 2. pt. 76. Atwood's Superiority, 304. Salk. 411, 412. Skinn. 134, 172, 198, 335, 442.

the king here are not yet, &c. And the assise aforesaid remains further to be taken until the same Monday there, &c. and the sheriffs as before to distrain the recognitors of the assise aforesaid, and in the interim to cause a view, &c. At which day, before the lord the king at Westminster, come as well the aforesaid Robert Calvin by his guardians aforesaid, as the aforesaid Richard Smith and Nicholas Smith, by their attorney aforesaid, &c. and because the court of the lord the king here, &c.

#### The Question.

The question of this case as to matter in law was, whether Robert Calvin the plaintiff, being born in Scotland since the crown of England descended to his majesty, be an alien born, and consequently disabled to bring any real or personal (a) action for any lands within the realm of England. After this case had been argued in the court of King's Bench, at the bar, by the counsel learned of either party, the judges of that court, upon conference and consideration of the weight and importance thereof, adjourned the same, according to the ancient and ordinary course and order of the law, into the (b) Exchequer-Chamber, to be argued openly there; first by the counsel learned of either party, and then by all the judges of England; where afterwards the case was argued by Bacon Solicitor General, on the part of the plaintiff, and by Laur. Hide, for the defendant; and afterward by Hohart Attorney General, for the plaintiff, and by Serjeant Hutton, for the defendant; and in Easter term last, the case was argued by Heron, puisne baron of the Exchequer, and Foster puisne judge of the court of Common Pleas; and on the second day appointed for this case, by Crook, puisne judge of the King's Bench, and Altham, baron of the Exchequer; the third day by Snigge, baron of the Exchequer, and Williams, one of the judges of the King's Bench; the fourth day by Daniel, one of the judges of the court of Common Pleas, and by Yelverton, one of the judges of the King's Bench: and in Trinity term following, by Warburton, one of the judges of the Common Pleas, and Fenner, one of the judges of the king's Bench; and after by Walmesley, one of the judges of the Common Pleas, and Tanfield, chief baron; and at two several days in the same term, Coke, chief justice of the Common Pleas, Fleming, chief justice of the King's Bench, and sir Thomas Egerton, lord Ellesmere, lord chancellor of England, argued the case, the like plea in disability of Robert Calvin's person being pleaded *mutatis mutandis* in the Chancery in a suit there for evidence concerning lands of inheritance, and by the lord chancellor adjourned also into the Exchequer-Chamber, to the end that one rule might over-rule both the said cases.

(a) 1 Bulst. 134. Yelv. 198. Owen 45. Co. Lit. 129. b. 1 and 25. Moor 431. 1 Keb. 266. Cr. Fl. 142, 683. Cro. Car. 9. 4 Inat. 159.

(b) 2 Bulst. 146.

VOL. II.

And first, for that I intend to make as summary a report as I can, I will at the first set down such arguments and objections as were made and drawn out of this short record against the plaintiff, by those that argued for the defendants. It was observed, that in this plea there were four nouns *quatuor nomina*, which were called, *nomina operativa*; because from them all the said arguments and objections on the part of the defendants were drawn; that is to say, 1. Ligeantia (which is twice repeated in the plea, for it is said, 'infra ligeantiam domini regis regni sui Scot', et extra ligeantiam domini regis regni sui Angl.') 2. Regnum (which also appeareth to be twice mentioned, viz. 'regnum Angl.' and 'regnum Scot.') 3. Leges (which are twice alledged, viz. 'leges Angl.' and 'leges Scot.' two several and distinct laws.) 4. Alienigenia (which is the conclusion of all, viz. that Robert Calvin is 'alienigena.')

1. Ligeantia. By the first it appeareth, that the defendants do make two ligeances, one of England, and another of Scotland, and from these several ligeances two arguments were framed, which briefly may be concluded thus.

1. Whosoever is born 'infra ligeantiam,' within the ligeance of king James of his kingdom of Scotland, is 'alienigena,' an alien born, as to the kingdom of England; but Robert Calvin was born at Edinburgh, within the ligeance of the king of his kingdom of Scotland; therefore Robert Calvin is 'alienigena,' an alien born, as to the kingdom of England. 2. Whosoever is born 'extra ligeantiam,' out of the ligeance of king James of his kingdom of England, is an alien as to the kingdom of England; but the plaintiff was born out of the ligeance of the king of his kingdom of England; therefore the plaintiff is an alien, &c. Both these arguments are drawn from the very words of the plea, viz. 'quod præd Robertus est alienigena, natus 5 Nov. anno regni domini regis nunc Angl' &c. tertio apud Edinburgh infra regnum Scot', ac infra ligeantiam dicti domini regis dicti regni sui Scot', ac extra ligeantiam dicti domini regis regni sui Angl'.

2. Regna. From the several kingdoms, viz. 'regnum Angl' and 'regnum Scot', three arguments were drawn. 1. 'Quando (a) duo jura (imo dua regna) concurrunt in una persona, æquum est ac si essent in diversis; but in the king's person there concur two distinct and several kingdoms; therefore it is all one as if they were in divers persons, and consequently the plaintiff is an alien, as all the Antenati are, for that they were born under the ligeance of another king. 2. Whatsoever is due to the king's several politic capacities of the several kingdoms is several and divided; but ligeance of each nation is due to the king's several politic capacities of the several kingdoms; *ergo*, the ligeance of each nation is several and divided, and consequently the plaintiff is an alien, for that they that are born

(a) Ellesmere's Postnati 88. postea . 4 Co. 118. a. Cawly 209. Moor 793, 804.

under several ligeances are aliens one to another. 3. Where the king hath several kingdoms by several titles and descents, there also are the ligeances several; but the king hath these two kingdoms by several titles and descents; therefore the ligeances are several. These three arguments are collected also from the words of the plea before remembered.

3. *Leges.* From the several and distinct laws of either kingdom, they did reason thus.

1. Every subject, that is born out of the extent and reach of the laws of England, cannot by judgment of those laws be a natural subject to the king, in respect of his kingdom of England, but the plaintiff was born at Edinburgh, out of the extent and reach of the laws of England; therefore the plaintiff, by the judgment of the laws of England, cannot be a natural subject to the king, as of his kingdom of England. 2. That subject, that is not at the time and in the place of his birth inheritable to the laws of England; cannot be inheritable or partaker of the benefits and privileges given by the laws of England? but the plaintiff at the time, and in the place of his birth, was not inheritable to the laws of England, but only to the laws of Scotland; therefore he is not inheritable or to be partaker of the benefits or privileges of the laws of England. 3. Whatsoever appeareth to be out of the jurisdiction of the laws of England, cannot be tried by the same laws; but the plaintiff's birth at Edinburgh is out of the jurisdiction of the laws of England; therefore the same cannot be tried by the laws of England. Which three arguments were drawn from these words of the plea, viz. 'quodque tempore natiuitatis præd' Roberti Calvin, ac 'diu antea, et continuo postea, præd' regnum 'Scot' per jura, leges et statuta ejusdem regni 'propria, et non per jura, leges, seu statuta 'hujus regni Angl' regulat' et gubernat' fuit, et 'ad hoc est.'

4. *Alienigena.* From this word 'alienigena' they argued thus, every subject that is 'alien' gentis (i. e.) alien' ligeant', est alienigena; but such a one is the plaintiff; therefore, &c.

And to these nine arguments all that was spoken learnedly and at large by those that argued against the plaintiff may be reduced.

But it was resolved by the Lord Chancellor and twelve Judges, viz. the two Chief Justices, the Chief Baron, Justice Fenner, Warburton, Yelverton, Daniel, Williams, Baron Snigge, Baron Altham, Justice Croke, and Baron Heron, that the plaintiff was no alien, and consequently that he ought to be answered in this assize by the defendants.

This case was as elaborately, substantially, and judicially argued by the lord chancellor, and by my brethren the judges, as I ever read or heard of any; and so in mine opinion the weight and consequence of the cause, both 'in 'præsenti et perpetuis futuris temporibus' justly deserved; for though it was one of the shortest and least that ever we argued in this court, yet was it the longest and weightiest that ever was argued in any court, the shortest in syllables,

and the longest in substance; the least for the value (and yet not tending to the right of that least) but the weightiest for the consequence, both for the present, and for all posterity. And therefore it was said, that those that had written *de fossilibus* did observe, that gold, hidden in the bowels of the earth, was in respect of the mass of the whole earth, *paruum in magna*; but of this short plea it might be truly said (which is more strange) that here was *maximum in parvo*.

And in the Arguments of those that argued for the plaintiff I specially noted, that albeit they spake according to their own heart, yet they spake not out of their own head and invention: wherein they followed the counsel given in God's Book, [Job. viii. 8.] 'interroga 'pristinam generationem' (for out of the old fields must come the new corn) 'et diligenter 'investiga patrum memoriam, and diligently search out the judgments of our forefathers, and that for divers reasons. First, on our own part, 'hesterni enim sumus et ignoramus, et 'vita nostra sicut umbra super terram;' for we are but of yesterday, (and therefore had need of the wisdom of those that were before us) and had been ignorant, if we had not received light and knowledge from our forefathers and our days upon the earth are but as a shadow, in respect of the old ancient days and times past, wherein the laws have been by the wisdom of the most excellent men, in many successions of ages, by long and continual experience, the trial of right and truth, fined and refined, which no one man, being of so short a time, albeit he had in his head the wisdom of all the men in the world, in any one age could ever have effected or attained unto. And therefore it is 'optima regula, qua nulla est 'verior aut firmior in jure, neminem oportet 'esse sapientiore[m] legibus;' [Co. Lit. 97. b.] no man ought to take upon him to be wiser than the laws. Secondly, in respect of our forefathers. 'Ipsi,' saith the text, 'docebunt 'te, et loquentur tibi, et ex corde suo proferent 'eloquia,' they shall teach thee, and tell thee, and shall utter the words of their heart, without all equivocation or mental reservation; they I say, that cannot be daunted with fear of any power above them, nor be dazzled with the applause of the popular about them, nor fretted with any discontentment, the matter of opposition and contradiction, within them, but shall speak the words of their heart, without all affection or infection whatsoever.

Also in their arguments of this cause concerning an alien, they told no strange histories, cited no foreign laws, produced no alien precedents; and that for two causes: the one, for that the laws of England are so copious in this point, as, God willing, by the report of this case shall appear; the other, lest their arguments, concerning an alien born, should become foreign, strange, and an alien to the state of the question, which, being *questio juris* concerning freehold and inheritance in England, is only to be decided by the laws of this realm.

And albeit I concurred with those that adjudged the plaintiff to be no alien, yet do I find a mere stranger in this case, such a one as the eye of the law, our books and book-cases, never saw, as the ears of the law (our reporters) never heard of, nor the mouth of the law, for 'judex est lex loquens,' the judges our forefathers of the law, never tasted: I say, such a one, as the stomach of the law, our exquisite and perfect records of pleadings, entries, and judgments, that make equal and true distribution of all cases in question, never digested. In a word, this little plea is a great stranger to the laws of England, as shall manifestly appear by the resolution of this case.

And now that I have taken upon me to make a report of their arguments, I ought to do the same as truly, fully, and sincerely as possibly I can; howbeit, seeing that almost every judge had in the course of his argument a peculiar method, and I must only hold myself to one, I shall give no just offence to any, if I challenge that which of right is due to every reporter, that is, to reduce the sum and effect of all to such a method, as, upon consideration had of all the arguments, the reporter himself thinketh to be fittest and clearest for the right understanding of the true reasons and causes of the judgment and resolution of the case in question.

In this case five things did fall into consideration. 1. *Ligeantia*. 2. *Leyes*. 3. *Regna*. 4. *Alienigena*. 5. What legal inconveniences would ensue on either side.

1. Concerning *ligeance*: 1. It was resolved what *ligeance* was. 2. How many kinds of *ligeances* there were. 3. Where *ligeance* was due. 4. To whom it was due. And last, how it was due.

2. For the laws: 1. That *ligeance* or obedience of the subject to the sovereign is due by the law of nature. 2. That this law of nature is part of the laws of England. 3. That the law of nature was before any judicial or municipal law in the world. 4. That the law of nature is immutable, and cannot be changed.

3. As touching the kingdoms: how far forth by the act of law the union is already made, and wherein the kingdoms do yet remain separate and divided.

4. Of *Alienigena*, an alien born: 1. What an alien born is in law. 2. The division and diversity of aliens. 3. Incidents to every alien. 4. Authorities in law. 5. Demonstrative conclusions upon the premises, that the plaintiff can be no alien.

5. Upon due consideration had of the consequent of this case: what inconveniences legal should follow on either party.

And these several parts I will in this report pursue in such order as they have been propounded; and first *de ligeantia*.

1. (*b*) *Ligeance* is a true and faithful obedience of the subject due to his sovereign. This

(*b*) Bacon's Discourse of Laws and Government, 2d. part fo. 46, 47, &c. Co. Lit. 129. a. Grotius, lib. 2. fol. 160.

*ligeance* and obedience is an incident inseparable to every subject: for as soon as he is born, he oweth by birth-right *ligeance* and obedience to his sovereign. '*Ligeantia est vinculum fidei*;' and '*ligeantia est quasi legis essentia*. *Ligeantia est ligamentum, quasi ligatio mentium; quia sicut ligamentum est connexio articularum et juncturarum, &c.*'

As the ligatures or strings do knit together the joints of all the parts of the body, so doth *ligeance* join together the sovereign and all his subjects, *quasi uno ligamine*. Glanville, who wrote in the reign of H. 2. lib. 9. cap. 4. speaking of the connexion which ought to be between the lord and tenant that holdeth by homage, saith, that '*mutua debet esse domini et fidelitatis connexio, ita quod quantum debet domino ex homagio, tantum illi debet dominus ex dominio, præter solam reverentiam*,' and the lord, saith he, ought to defend his tenant. But between the sovereign and the subject there is without comparison a higher and greater connexion; for as the subject oweth to the king his true and faithful *ligeance* and obedience, so the sovereign is to govern and protect his subjects, '*regere et protegere subditos suos*;' so as between the sovereign and subject there is '*duplex et reciprocum ligamen; quia sicut subditus regi tenetur ad obedientiam, ita rex subdito tenetur ad protectionem; merito igitur ligeantia dicitur a ligando, quia continet in se duplex ligamen*.' And therefore it is holden in 20 H. 7. 8. a. that there is a liege or *ligeance* between the king and the subject. And Fortescue, cap. 13, '*rex (c) ad tutelam legis corporum et bonorum subditorum erectus est*.' And in the acts of parliament of 10 R. 2, cap. 5. and 11 R. 2, cap. 1; 14 H. 3, cap. 3, &c. subjects are called liege people; and in the acts of parliament in 34 H. 8, cap. 1, and 35 H. 8, cap. 3, &c. the king is called the liege lord of his subjects. And with this agreeth M. Skeene in his book *De Expositione Verborum*, (which book was cited by one of the judges which argued against the plaintiff) *ligeance* is the mutual bond and obligation between the king and his subjects, whereby subjects are called his liege subjects, because they are bound to obey and serve him; and he is called their liege lord, because he should maintain and defend them. Whereby it appeareth, that in this point the law of England and of Scotland is all one. Therefore it is truly said, that '*protectio trahit subjectionem, et subjectio protectionem*.' And hereby it plainly appeareth, that *ligeance* doth not begin by the oath in the leet; for many men owe true *ligeance* that never were sworn in a leet, and the swearing in a leet maketh no (*d*) denization, as the book is adjudged in 14 H. 4, fol. 19, b. This word *ligeance* is well expressed by divers several names or *synonyma* which we find in our books. Sometimes it is called the obedience or obeysauce of the subject to the

(c) Cro. Arg. 64.

(d) Br. Deniz. 11. postea .

king, 'obediencia regi,' 9 E. 4, 7. b. 9 E. 4. 6. (e) 2 R. 3, 2. a. in the book of Entries, 'ejectione firm' 7. 14 H. 8, cap. 2; 22 H. 8, cap. 8, &c. Sometimes he is called a natural liege man that is born under the power of the king, 'sub potestate regis,' 4 H. 3, (f) tit. Dower. Vide the stat. of 11 E. 3, c. 2. Sometimes ligeance is called faith, 'fides, ad fidem regis, &c.' Bracton, who wrote in the reign of H. 3, lib. 5, 'Tractat' de Exception' cap. 24, fol. 427. 'Est etiam alia exceptio quæ competit ex personâ querentis, propter defectum nationis, ut si quis alienigena qui fuit ad fidem regis Francie, &c.' And Fleta (which book was made in the reign of E. 1.) agreeth therewith; for l. 6, c. 47. De Except' ex Omissione Participis, it is said, 'vel dicere potuit, quod nihil juris clauare poterit tanquam participis, eo quod est ad fidem regis Francie; quia alienigenæ repelli debent in Angl' ab agendo, donec fuerint ad fidem reg' Angl'.' Vide 25 E. 3, De Natis Ultra Mare, faith and ligeance of the king of England; and Litt. lib. 2. cap. Homage, (a) 'saving the faith that I owe to our sovereign lord the king;' and Glanv. l. 9. c. 1, 'salva fide debita dom' regi et hæredibus suis.' Sometimes ligeance is called ligealty, 22 Ass. pl. 25. By all which it evidently appeareth, that they that are born under the obedience, power, faith, ligealty, or ligeance of the king, are natural subjects, and no aliens. So, as seeing now it doth appear what ligeance is, it followeth in order, that we speak of the several kinds of ligeance. But herein we need to be very wary, for this caveat the law giveth, 'ubi lex non distinguit, nec nos distinguere debemus;' and certainly 'lex non distinguit,' but where 'omnia membra dividuntur' are to be found out and proved by the law itself.

2. There is found in the law four kinds of ligeances; the first is, 'ligeantia naturalis, absoluta, pura et indefinita;' and this originally is due by nature and birth-right, and is called 'alta ligeantia,' and he that oweth this is called 'subditus natus.' The second is called 'ligeantia acquisita,' not by nature but by acquisition or denization, being called a denizen, or rather donuizon, because he is 'subditus datus.' Co. Lit. 129. a. The third is 'ligeantia localis,' wrought by the law, and that is when an alien that is in amity cometh into England, because as long as he is within England, he is within the king's protection; therefore so long as he is here, he oweth unto the king a local obedience or ligeance, for that the one (as it hath been said) draweth the other. The fourth is a legal obedience, or ligeance which is called legal, because the municipal laws of this realm have prescribed the order and form of it; and this to be done upon oath at the torn or leet.

(e) Br. Deniz. 8.

(f) 4 Hen. 3. Fitz. Dow. 179. Ellesmere's Postnati 13, 14. Jenk. Cent. 3.

(a) Lit. sect. 85. Co. Lit. 64. b.

The first, that is, Ligeance Natural, &c. appeareth by the said acts of parliament, wherein the king is called natural liege lord, and his people natural liege subjects. [Co. Litt. 129 a.] This also doth appear in the indictments of treason (which of all other things are the most curiously and certainly indicted and penned) for in the indictment of the lord Dacre, in 26 H. 8, it is said, 'præd' dominus Dacre debitum fidei et ligeant' suæ, quod præfato domino regi naturaliter et de jure impensaere debuit, minime curans, &c.' And Reginald Pool was indicted in 30 H. 8, for committing treason 'contra dom' regem supremum et naturalem dominum suum.' And to this end were cited the indictment of Edward duke of Somerset in 5 E. 6, and many others both of ancient and later times. But in the indictment of treason of John Dethick in 2 and 3 Philip and Mary it is said, 'quod præd' Johannes machinans, &c. prædict' dominum Philippum et dominam Mariam supremos dominos suos,' and omitted 'naturales' because king Philip was not his natural liege lord. And of this point more shall be said when we speak of Local Obedience. The second is Ligeant' Acquisita, or denization; and this in the books and records of the law appeareth to be three-fold. [Co. Lit. 122, 2.] 1. Absolute, as the common denization be, to them and their heirs, without any limitation or restraint. 2. Limited, as when the king doth grant letters of denization to an alien, and to the heirs (b) males of his body, as it appeareth in 9 E. 4. fol. 7, 8, in Raggot's case; or to an alien for term of his life, as was granted to J. Revnel, 11 H. 6. 3. It may be granted upon (c) condition, for (d) 'cujus est dare, ejus est disponere,' whereof I have seen divers precedents. And this denization of an alien may be effected three manner of ways; by parliament, as it was in 3 H. 6. 55, in Dower; by letters patent, as the usual manner is; and by conquest, as if the king and his subjects should conquer another kingdom or dominion, as well Autenati as Postnati, as well they which fought in the field, as they which remained at home, for defence of their country, or employed elsewhere, are all denizens of the kingdom or dominion conquered. Of which point more shall be said hereafter.

3. Concerning the Local Obedience it is observable, that as there is a local protection on the king's part, so there is a (e) local ligeance of the subjects part. And this appeareth in 4 Mar. Br. 32. (f) and 3 and 4 Phil. and Mar. Dyer, 114. Sherley a Frenchman, being in amity with the king, came into England, and joined with divers subjects of this realm in treason against the king and queen, and the indict-

(b) 9 E. 4. 8. (c) Co. Lit. 129. a. 274. b.

(d) 2 Co. 7. b. 4 Inst. 192. 2 Siderf. 73. Hard. 412. Lit. Rep. 128. 1 And. 115. Salk. 411, 412. 4 Mod. 215, 222. Vaugh. 405. Dav. 36.

(e) Co. Lit. 129. a. (f) B. N. C. 487.

ment concluded (g) 'contra ligeant' suæ debi-  
'tum;' for he owed to the king a Local Obedi-  
ence, that is, so long as he was within the  
king's protection; which Local Obedience be-  
ing but momentary and uncertain, is yet strong  
enough to make a natural subject, for if he  
hath issue here, that issue is (h) a natural born  
subject; *à fortiori*, he that is born under the  
natural and absolute ligeance of the king,  
which, as it hath been said, is 'alta ligeantia,'  
as the plaintiff in the case in question was,  
ought to be a natural born subject; for 'loca-  
'lis ligeantia est ligeantia infima et minima, et  
'maxime incerta.' And it is to be observed,  
that it is 'nec caelum, nec solum,' neither the  
climate nor the soil, but 'ligeantia' and 'obe-  
dientia' that make the subject born; for if  
enemies should come into the realm, and pos-  
sess a town or fort, and have issue there, that  
issue is no subject to the king of England,  
though he be born upon his soil, and under his  
meridian, for that he was not born under the  
ligeance of a subject, nor under the protection  
of the king. And concerning this local obedi-  
ence, a precedent was cited in Hilar. 36 Eliz.  
when Stephano Ferrara de Gama, and Enua-  
nel Lewis Tinoco, two Portuguese born, com-  
ing into England under queen Elizabeth's safe  
conduct, and living here under her protection,  
joined with doctor Lopez in treason within  
this realm against her majesty; and in this  
case two points were resolved by the judges.  
First, that their indictment ought to begin, that  
they intended treason 'contra dominum regi-  
'nam, &c.' omitting these words 'naturalem  
'domin' suam' and ought to conclude 'contra  
'(i) ligeant' suæ debitum.' But if an (k)  
alien enemy come to invade this realm, and be  
taken in war, he cannot be indicted of treason;  
for the indictment cannot conclude 'contra li-  
geant' suæ debitum,' for he never was in the  
protection of the king, nor ever owed any man-  
ner of ligeance unto him, but malice and eni-  
mity, and therefore he shall be put to death by  
martial law. And so it was in anno 15 H. 7,  
(l) in Perkin Warbeck's case, who, being an  
alien born in Flanders, feigned himself to be  
one of the sons of Edward the 4th, and invaded  
this realm with great power, with an intent to  
take upon him the dignity royal; but being  
taken in the war, it was resolved by the jus-  
tices, that he could not be punished by the  
common law, but before the constable and  
marshal (who had special commission under the  
great seal to hear and determine the same ac-  
cording to martial law) he had sentence to be  
drawn, hanged, and quartered, which was exe-  
cuted accordingly. And this appeareth in the  
book of Griffith attorney general, by an extract

out of the book of Hobart, attorney-general to  
king H. 7.

4. Now are we to speak of Legal Ligeance,  
which in our books, viz. 7 E. 2, tit. Avowry,  
211. 4 E. 3, fol. 42. 13 E. 3, tit. Avowry, 120,  
&c. is called Suit Royal, because that the lige-  
ance of the subject is only due unto the king.  
This oath of ligeance appeareth in Britton, who  
wrote in anno 5 E. 1, cap. 29. (and is yet com-  
monly in use to this day in every leet) and in  
our books; [Co. Lit. 68. b.] the effect whereof  
is: 'You shall swear, that from this day for-  
'ward, you shall be true and faithful to our so-  
'vereign lord king James, and his heirs, and  
'truth and faith shall bear of life and member,  
'and terreno honour, and you shall neither  
'know nor hear of any ill or damage intended  
'unto him, that you shall not defend. So help  
'you Almighty God.' The substance and ef-  
fect hereof is as hath been said due by the law  
of nature, 'ex institutione naturæ,' as hereafter  
shall appear. The form and addition of the  
oath is, 'ex provisione hominis' In this oath  
of ligeance five things were observed. 1. That  
for the time it is indefinite, and without limit,  
'from this day forward.' 2. Two excellent  
qualities are required, that is, to be 'true and  
'faithful.' 3. To whom, 'to our sovereign lord  
'the king, and his heirs.' [Co. Lit. 68. b.] and  
albeit Britton doth say, to the king of England,  
that is spoken 'propter excellentiam,' to design  
the person, and not to confine the ligeance; for  
a subject doth not swear his ligeance to the  
king, only as king of England, and not to him  
as king of Scotland, or of Ireland, &c. but ge-  
nerally to the king. 4. In what manner; 'and  
'faith and troth shall bear, &c. of life and mem-  
'ber,' that is, until the letting out of the last  
drop of our dearest heart's blood. 5. Where  
and in what places ought these things to be  
done, in all places whatsoever; for, 'you shall  
'neither know nor hear of any ill or damage,  
'&c.' that you shall not defend, &c. so as na-  
tural ligeance is not circumscribed within any  
place. It is holden 12 H. 7, 18. b. that he,  
that is sworn in the leet, is sworn to the king  
for his ligeance, that is, to be true and faithful  
to the king; and if he be once sworn for his  
ligeance, he shall not be sworn again during his  
life. And all letters patent of denization be,  
that the patentee shall behave himself 'tanquam  
'verus et fidelis ligeus domini regis.' And this  
oath of ligeance at the torn and leet was first  
instituted by king Arthur; for so I read, inter  
leges sancti Edwardi regis ante Conquestum, 3  
cap. 35, [Co. Lit. 68. b.] 'Et quod omnes prin-  
'cipes et comites, procures, milites et liberi  
'homines debent jurare, &c. in Folkemote, et  
'similiter omnes procures regni, et milites et  
'liberi homines universi totius regni Britannæ  
'facere debent in pleno Folkemote fidelitatem  
'domino regi, &c. Hanc legem invenit Ar-  
'tharus, qui quondam fuit inclytissimus rex Bri-  
'tonum, &c. Hujus legis autoritate expulit  
'Arthurus rex Saracenos et inimicos a regno,  
'&c. et hujus legis autoritate Etheldredus rex  
'uno et eodem die per universum regnum Da-

(g) Hob. 271. Co. Lit. 129. a. Dyer 145.  
pl. 62. Cawly 184. 3 Inst. 11.

(h) Co. Lit. 8. a. 5 Eliz. Dyer 224. a. b.

(i) 3 Inst. 11. Dy. 145. pl. 62. Cawly 185.  
Hob. 271. Co. Lit. 129. a.

(k) 3 Inst. 5, 11.

(l) Bacon's Hist. H. 7. fo. 11.

'nos occidit.' Vide Lambert inter leges regis Edwardi,\* &c. fol. 135 and 136. [Co. Lit. 68. b. 179. b.] By this it appeareth, when and from whom this legal ligeance had his first institution within this realm. Ligeantia in the case in question is meant and intended of the first kind of ligeance, that is, of ligeance natural, absolute, &c. due by nature and birth-right. But if the plaintiff's father be made a denizen, and purchase lands in England to him and his heirs, and die seised, this land shall never descend to the plaintiff; [Co. Lit. 8. a. 129. a.] for that the king by his letters patent may make a denizen, but cannot naturalize him to all purposes, as an act of parliament may do; neither can letters patent make any inheritable in this case, that by the common law cannot inherit. And herewith agreeth 36 H. 6, tit. Denizen, Br. 9.

Homage in our book is two-fold, that is to say, 'homagium ligeum,' and that is as much as ligeance, of which Bracton speaketh, l. 2. c. 35. f. 79. 'Soli regi debet sive dominio seu seruitio,' and there is 'homagium feudale,' which hath his original by tenure. [Co. Lit. 68. b. Vaug. 279.] In Fit. Nat. Brev. 269, there is a writ for respiting of this later homage, which is due 'ratione feodi sive tenuræ: sciatis quod respectuamus homagium nobis de terr' et tenementis quæ tenenter de nobis in capite debet.' But 'homagium ligeum, i. ligeantia,' is inherent and inseparable, and cannot be respited.

3. Now are we come to (and almost past) the consideration of this circumstance, where natural ligeance should be due: for by that which hath been said, it appeareth that ligeance, and faith and truth, which are her members and parts, are qualities of the mind and soul of man, and cannot be circumscribed within the predicament of *ubi*; for that were to confound predicaments, and to go about to drive (an absurd and impossible thing) the predicament of quality into the predicament of *ubi*. 'Non respondetur ad hanc questionem, ubi est?' To say, 'verus et fidelis subditus est; sed ad hanc questionem, qualis est? Recte et apte respondetur, verus et fidelis ligeus, &c. est.' But yet for the greater illustration of the matter, the point was handled by itself, and that ligeance of the subject was of as great an extent and latitude, as the royal power and protection of the king, 'et è converso.' It appeareth by the stat. of 11 H. 7, cap. 1. and 2 E. 6, cap. 2. that the subjects of England are bound by their ligeance to go with the king, &c. in his wars, as well within the realm, &c. as without. And therefore we daily see that when either Ireland, or any other of his majesty's dominions, be infested with invasion or insurrection, the king of England sendeth his subjects out of England, and his subjects out of Scotland also into Ireland, for the withstanding or suppressing of the same, to the end his rebels may feel the swords of either nation. And so may his subjects of Guernsey, Jersey, Isle of Man, &c. be com-

manded to make their swords good against either rebel or enemy, as occasion shall be offered. Whereas if natural ligeance of the subjects of England should be local, that is, confined within the realm of England or Scotland, &c. then were not they bound to go out of the continent of the realm of England or Scotland, &c. [2 Inst. 47, 48, 528.] And the opinion of Thirninge in 7 H. 4. tit. Protect' 100, is thus to be understood, that an English subject is not compellable to go out of the realm without wages, according to the statutes of 1 E. 3, c. 7. 18 E. 3, c. 8. 18 H. 6, c. 19, &c. 7 H. 7, c. 1. 3 H. 8, c. 5. &c. [2 Inst. 528.] In ann. 25 E. 1, Bigot earl of Norfolk and Suffolk, and earl marshal of England, and Bohun earl of Hereford and high constable of England, did exhibit a petition to the king in French (which I have seen anciently recorded) [Maynard's E. 2. fo.] on the behalf of the commons of England, concerning how and in what sort they were to be employed in his majesty's wars out of the realm of England; [2 Inst. 528.] and the record saith, that, 'post multas et varias altercationes,' it was resolved, they ought to go but in such manner and form as after was declared by the said statutes, which seem to be but declarative of the common law. And this doth plentifully and manifestly appear in our books, being truly and rightly understood. In 3 H. 6, tit. Protection 2, one had the benefit of a protection, for that he was sent into the king's wars 'in comitiva' of the protector; [Co. Lit. 130. b.] and it appeareth by the record, and by the chronicles also, that this employment was into France; [Co. Lit. 130. b.] the greatest part thereof then being under the king's actual obedience, so as the subjects of England were employed into France for the defence and safety thereof: in which case it was observed, that seeing the protector, who was Prorex, went, the same was adjudged a voyage royal, 8 H. 6. fol. 16. b. the lord Talbot went with a company of Englishmen into France, then also being for the greatest part under the actual obedience of the king, who had the benefit of their protections allowed unto them. [Fitz. protect. 5. Br. protect. 48.] And here were observed the words of the writ in the Register, fol. 88. where it appeareth that men were employed in the king's wars out of the realm 'per præceptum nostrum,' and the usual words of the writ of protection be 'in obsequio nostro,' [Fitz. protect. 13.] 32 H. 6. fol. 4. a. it appeareth, that Englishmen were pressed into Guyenne, [Fitz. protect. 35. Br. protect. 24.] 44 E. 3. 12. a. into Gascoyne with the duke of Lancaster, 17 H. 6. tit. Protection, into [Fitz. protect. 56.] Gascoyne with the earl of Huntingdon, steward of Guienne, 11 and 12 H. 4. 7. a. into (a) Ireland, and out of this realm with the duke of Gloucester and the lord Knolles: vide (b) 19

(a) Fitz. Protect. 24. Co. Lit. 130. b. Br. Protect. 34.

(b) Fitz. Protect. 8. Br. Protect. 49.

\* See L. L. Saxon per Wilkins p. 304.

H. 6. 35. b. And it appeareth in 19 Ed. 2. tit. Avowry 224. 26 Ass. 66. 7 H. 4. 19, &c. that there was 'forinsecum servitium,' foreign service, which Bracton, fol. 36. calleth 'regale 'servitium;' and in Fitz. N. B. 28. that the king may send men to serve him in his wars beyond the sea. But thus much (if it be not in so plain a case too much) shall suffice for this point for the king's power, to command the service of his subjects in his wars out of the realm, whereupon it was concluded, that the ligeance of a natural-born subject was not local, and confined only to England. Now let us see what the law saith in time of peace, concerning the king's protection and power of command, as well without the realm, as within, that his subjects in all places may be protected from violence, and that justice may equally be administered to all his subjects.

In the Register, fol. 25 b. 'Rex universis et singulis admirall', castellan', custodibus castrorum, villar', et aliorum fortaliorum prepositis, vicecom' majoribus, custumariis, custodib' portuum, et alior' locor' maritimor' ballivis, ministr', et aliis fidel' suis, tam in transmarinis quam in cisumarinis partib' ad quos, &c. salutem. Sciatis, quod susceptimus in protectionem et defensionem nostram, necnon ad salvam et securam gardiam nostram W. veniendo in regnum nostram Angl', et potestatem nostram, tam per terram quam per mare cum uno valetto suo, ac res ac bona sua quæcunque ad tractand' cum dilecto nostro et fideli L. pro redemptione prisonarii ipsius L. infra regnum et potestatem nostram præd' per sex menses morando et exinde ad propria redeundo. Et ideo, &c. quod ipsum W. cum valetto, rebus et bonis suis præd' veniendo in regn' et potestat' nostram præd' tam per terr' quam per mare ibid' ut predict' est ex causâ antedicta morando, et exinde ad propria redeundo, manuteneatis, protégatis, et defendatis; non inferentes eis, &c. seu gravamen. Et si quid eis forisfactum, &c. reformari faciat. In cujus, &c. per sex menses duratur'. T. &c.' In which writ three things are to be observed. 1. That the king hath 'fidei' et fideles in partib' transmarinis.' 2. That he hath 'protection' in partib' transmarinis.' 3. That he hath 'potestatem in partibus transmarinis.' In the Register, fol. 26. 'Rex universis et singulis admirallis, castellanis, custodibus castrorum, villarum, et aliorum fortaliorum prepositis, vicecom' majoribus, custumariis, custodib' portuum, et alior' locor' maritimorum ballivis, ministris, et aliis fidelibus suis, tam in transmarinis quam in cisumarinis partibus ad quos, &c. salutem. Sciatis quod suscepimus in protectionem et defensionem nostram, necnon in salvam et securum conductum nostr' I. valetum P. et. L. Burgensium de Lyons obsidum nostrorum, qui de licentiâ nostrâ ad partes transmarinas profecturus est, pro finantia magistrorum suorum prædict' obtinenda vel deferenda, eundo ad partes prædictas ibidem morando, et exinde in Angl' redeundo. Et ideo vobis mandamus,

quod eidem I. eundo ad partes præd' ibidem morando, et exinde in Angl' redeundo, ut præd' est, in personâ, bonis, aut rebus suis, non inferatis, seu quantum in vobis est ab aliis inferri permittatis injuriam, molestiam, &c. aut gravamen. Sed eum potius salvum et securum conductum, cum per loca passus, seu districtus vestros transierit, et super hoc requisiti fueritis, suis sumptibus habere faciat. Et si quid eis forisfactum fuerit, &c. reformari faciat. In cujus, &c. per tres ann' durat' T. &c.' And certainly this was, when Lyons in France (bordering upon Burgundy, an ancient friend to England) was under the actual obedience of H. 6. For the king commanded *fidelib' suis*, his faithful magistrates there, that if any injury were there done, it should be by them reformed and redressed, and that they should protect the party in his person and goods in peace. In the Register, fol. 26, two other writs. 'Rex omnibus seneschallis, majoribus, juratis, paribus prepositis, ballivis et fidelibus suis in ducatu Aquitanie ad quos, &c. salutem. Quia dilecti nobis T. et A. cives civitat' Burdegal' coram nobis in cancell' nost' Angl' et Aquitan' jura sua prosequentes, et metuentes ex verisimilibus conjecturis per quosdam sibi comminantes tam in corpore quam in rebus suis, sibi posse grave damnum inferri, supplicaverunt nobis sibi de protectione regia providere: nos volentes dictos T. et A. ab oppressionibus indebitis præservare, suscepimus ipsos T. et A. res ac justas possessiones et bona sua quæcunque in protectionem et salvam gardiam nostram specialem. Et vobis et cuilibet vestrum injungimus et mandamus, quod ipsos T. et A. familias, res ac bona sua quæcunque a violentiis et gravaminibus indebitis defendatis, et ipsos in justis possessionibus suis manuteneatis. Et si quid in præjudicium hujus protectionis et salvæ gardiæ nostr' attentatum inveneritis, ad statum debitum reducat. Et ne quis se possit per ignorantiam excusare, præsentem protectionem et salvam gardiam nostram faciatis in locis de quibus requisiti fueritis infra district' vestrum publice intimari, inhibentes omnibus et singulis sub penis gravibus, ne dictis A. et T. seu famulis suis in personis seu rebus suis, injuriam, molestiam, damnum ali- quod inferant seu gravamen; et penocellas nostras in locis et bonis ipsorum T. et A. in signum protectionis et sal' gard' memorat', cum super hoc requisiti fueritis, apponatis. In cujus, &c. dat' in palatio nostro Westm' sub magni sigilli testimonio, sexto die Augusti anno 44 E. 3.—Rex universis et singulis seneschallis, constabular', castellanis, preposit', minist', et omnib' ballivis et fidelibus suis in dominio nostro Aquitan' constitutis ad quos, &c. salut'. Volentes G. et R. uxor ejus favore prosequi gratiose, ipsos G. et R. homines et familias suas ac justas possessiones, et bona sua quæcunque, suscepimus in protectionem et defensionem nostram, necnon in salvam gardiam nostram specialem. Et ideo vobis et cuilibet vestrum injungimus et mandamus,



‘quod ipsos G. et R. eorum homines, familias suas, ac justas possessiones et bona sua quacunq; manuteneatis, protegetis, et defendatis: non inferentes eis, seu quantum in vobis est ab aliis inferri permittentes, injuriam, molestiam, damnum, violentiam, impedimentum aliquod seu gravamen. Et si quid eis forisfact’ injuriam vel contra eos indebite attentatum fuerit, id eis sine dilacione corrigi, et ad statum debitum reduci faciatis, prout ad vos et quemlibet vestrum noveritis pertinere: penocellas super domibus suis in signum presentia, salve gardie nostrae (prout moris erit) facientes. In cujus, &c. per unum annum duratur’. T. &c.’ By all which it is manifest, that the protection and government of the king is general over all his dominions and kingdoms, as well in time of peace by justice, as in time of war by the sword, and that all be at his command, and under his obedience. Now seeing power and protection draweth ligenance, it followeth, that seeing the king’s power command and protection extendeth out of England, that ligenance cannot be local, or confined within the bounds thereof. He that is abjured the realm, ‘qui abjurat regnum amittit regnum, sed non regem, amittit patriam, sed non patriam.’ [Cawly 139.] for notwithstanding the abjuration, he oweth the king his ligenance, and he remaineth within the king’s protection; for the king may pardon and restore him to his country again. So seeing that ligenance is a quality of the mind, and not confined within any place; it followeth, that the plea, that doth confine the ligenance of the plaintiff to the kingdom of Scotland, ‘infra ligenantiam regis regni sui Scocie, et extra ligenantiam regis regni sui Anglie,’ whereby the defendants do make one local ligenance for the natural subjects of England, and another local ligenance for the natural subjects of Scotland, is utterly insufficient, and against the nature and quality of natural ligenance, as often it hath been said. And Coke, chief justice of the court of Common Pleas, cited a ruled case [Cobledike’s case, temp. E. 1. reported by Hingham.] out of Hingham’s Reports, temp. E. 1. which in his argument he shewed in court written in parchment, in an ancient band of that time. Constance de N. brought a writ of *aveil* against Roger de Cobledike, and others, named in the writ, and counted that from the seisin of Roger her grandfather it descended to Gilbert his son, and from Gilbert to Constance, as daughter and heir. [Ellesmere’s Postnati 91, 92.] ‘Sutton dit, sir, el ne doit este respondre, pur ceo que el est Francois et nient de la ligenance ne la foy Denglitterre, et demand judgement si el doit action aver:’ that is, ‘she is not to be answered, for that she is a French woman, and not of the ligenance, nor of the faith of England, and demanded judgement, if she this action ought to have.’ Beresford, then chief justice of the court of Common Pleas, by the rule of the court disalloweth the plea, for that it was too short, in that it referred ligenance and faith to England, and not to the

king. And thereupon Sutton saith as followeth; ‘Sir, nous voulons averre, que el ne est my de la ligenance Denglitterre, ne a la foy le roy, et demand judgement, et si vous agardes que el doit este responde, nous dirromus assets:’ that is, ‘Sir, we will aver, that she is not of the ligenance of England, nor of the faith of the king, and demand judgment, &c.’ Which latter words of the plea, nor of the faith of the king, referred faith to the king indefinitely and generally, and restrained not the same to England, and thereupon the plea was allowed for good, according to the rule of the court: for the book saith, that afterward the plaintiff desired leave to depart from her writ. The rule of that case of Cobledike, did, as Coke chief justice said, ever-rule this case of Calvin, in the very point now in question; for that the plea in this case doth not refer faith or ligenance to the king indefinitely and generally, but limiteth and restraineth faith and ligenance to the kingdom, ‘extra ligenantiam regis regni sui Anglie,’ out of the ligenance of the king of his kingdom of England: which afterwards the lord chancellor and the chief justice of the King’s-bench, having copies of the said ancient report, affirmed in their arguments. So as this point was thus concluded, ‘quod ligenantia naturalis nullis eluustris coeretur, nullis metis refrænatur, nullis finibus prematur.’

4 & 5. By that which hath been said it appeareth that this ligenance is due only to the king; so as therein the question is not now, ‘cui, sed quomodo debetur.’ It is true, that the king hath two capacities in him: one a natural body, being descended of the blood royal of the realm; and this body is of the creation of Almighty God, and is subject to death, infirmity and such like: the other is a politick body or capacity, [1 Inst. 15. b. 16.] so called, because it is framed by the policy of man (and in 21 E. 4, 39. b. is called a mystical body;) and in this capacity the king is esteemed to be immortal, invisible, not subject to death, infirmity, infancy, (a) nonage, &c. Pl. Com. in the case of the lord Barkley 238. and in the case of the Duchy 213. 6 E. 3, 291. and 26 Ass. pl. 54. Now seeing the king hath but one person, and several capacities, and one politick capacity for the realm of England, and another for the realm of Scotland, it is necessary to be considered, to which capacity ligenance is due. And it was resolved, that it was due to the natural person of the king, which is ever accompanied with the politick capacity, and the politick capacity, as it were appropriated to the natural capacity, and it is not due to the politick capacity only, that is, to his crown or kingdom distinct from his natural capacity, and that for divers reasons. First, every subject, as it hath been affirmed by those that argued against the plaintiff, is presumed by law to be sworn to the king, which is to his na-

(a) Postea . Co. Lit. 43. a. 5 Co. 27. a. Plowd. 213. a. 221. a. 364. b. 26 Ass. 54. Fitz. Infant 15. Br. Age 34.

tural person, and likewise the king is sworn to his subjects, (as it appeareth in Bracton lib. 3. De Actionibus, cap. 9. fol. 107.) which oath he taketh in his natural person: for the politick capacity is invisible and immortal; nay, the politick body hath no soul, for it is framed by the policy of man. 2. In all indictments of treason, when any do intend or compass 'mortem et destructionem domini regis,' which must needs be understood of his natural body, for his politick body is immortal, and not subject to death, the indictment concludeth, 'contra (b) ligeantiam suam debitam;' ergo, the ligeance is due to the natural body. Vide Fitz. Justice of Peace 53. and Pl. Com. 384. in the earl of Leicester's case. 3. It is true, that the king in genere dieth not, but, no question, in individuo he dieth: as for example, H. 8, E. 6, &c. and queen Eliz. died, otherwise you should have many kings at once. In 2 and 3 Pl. and Mar. Dyer 128. (c) one Constable dispersed divers bills in the streets in the night, in which it was written, that king E. 6 was alive and in France, &c. and in Coleman-street, in London, he pointed to a young man, and said that he was king Edward 6. And this being spoken *de individuo*, and accompanied with other circumstances, was resolved to be high treason; for the which Constable was attainted and executed. 4. A (d) body politick, being invisible, can as a body politick neither make or take homage: Vide 33 H. 8, tit. Fealty, Brook 15. 5. *In fide*, in faith or ligeance, nothing ought to be feigned, but ought to be *ex fide non ficta*. 6. The king holdeth the kingdom of England by birth-right inherent, by descent from the blood royal, whereupon succession doth attend; and therefore it is usually said 'to the king, his heirs, and successors,' wherein heirs is first named, and successors is attendant upon heirs. And yet in our ancient books succession and successor are taken for hereditance and heirs. Bract. lib. 2. De Acquirendo Rerum Dominio, c. 29. 'Et sciend' est, quod hereditas est successio in univ'ersum jus quod defunctus antecessor habuit, ex causa quacunque acquisitionis vel successiois, et alibi affinitatis jure nulla successio permittitur.' But the title is by descent. By queen Elizabeth's death the crown and kingdom of England descended to his majesty, and he was fully and absolutely thereby king, without any essential ceremony or act to be done *ex post facto*: for coronation is but a royal ornament and solemnization of the royal descent, but no part of the title. In the first year of his majesty's reign, before his majesty's coronation, Watson (e) and Clerke, seminary priests, and others, were of opinion,

that his majesty was no complete and absolute king before his coronation, but that coronation did add a confirmation and perfection to the descent; and therefore, observe their damnable and damned consequent, that they by strength and power might before his coronation take him and his royal issue into their possession, keep him prisoner in the Tower, remove such counsellors and great officers as pleased them, and constitute others in their places, &c. and that these and other acts of like nature could not be treason against his majesty, before he were a crowned king. But it was clearly resolved by all the judges of England, that presently by the descent his majesty was completely and absolutely king, without any essential ceremony or act to be done *ex post facto*; and that (f) coronation was but a royal ornament, and outward solemnization of the descent. And this appeareth evidently by infinite precedents and book-cases; as taking one example in a case so clear for all, Henry 6 was not crowned until the 8th year of his reign, and yet divers men before his coronation were attainted of treason, of felony, &c. and he was as absolute and complete a king, both for matters of judicature, as for grants, &c. before his coronation, as he was after, as it appeareth in the reports of the 1st, 2d, 3d, 4th, 5th, 6th, and 7th years of the same king. And the like might be produced for many other kings of this realm, which for brevity in a case so clear I omit. By which it manifestly appeareth, that by the laws of England there can be no interregnum\* within the same. If the king be seised of land by a defeasible title, and dieth seised, this descent shall toll the entry of him that right hath, as it appeareth by 9 (g) E. 4. 51. But if the next king had it by succession, that should take away no entry, as it appeareth by Littleton, fol. 97. If a disseisor of an infant convey the land to the king who dieth seised, this descent taketh away the entry of the infant, as it is said in 34 H. 6. fol. 34. (h) 45. lib. Ass. pl. 6. Plow. Com. 234. where the case was; king H. 3 gave a manor to his brother the earl of Cornwall in tail, at what time the same was a fee-simple conditional, king H. 3 died, the earl before the statute of Donis Conditional', having no issue, by deed exchanged the manor with warranty for other lands in fee, and died without issue, and the warranty and assets descended upon his nephew king Ed. 1. and it was adjudged, that this warranty and assets, which descended upon the natural person of the king, barred him of the possibility of reverter. In the reign of Edward 2, the Spencers, the father

(f) 3 Inst. 7.

\* Q. If not so between king J. 2d's Abdication and king W. 3's succession? Post.

(g) 4 Co. 58. b.

(h) 10 Co. 96. b. Co. Lit. 19 b. 370. b. Plowd. 234. a. 553. b. Fitz. Garranty 68. Br. Assets per Discent 31. Br. Tail. 34. Br. Prærog. 52 Br. 'Serch pur le Roy' 5. Br. Garranty 52, 9 Co 132. b.

(b) Autea 3 Inst. 11. Hob. 271. Dy. 143. pl. 69. Cawly 185. Co. Lit. 149. a.

(c) This case is not in the book at large, but is in the Abridgment of Dy. fo. 32. Stow's Abridgm. p. 1062. 1064. Speed's Chron. p. 1127. col. 2. num. 100.

(d) 10 Co. 32. b. Co. Lit. 66. b. 4 Co. 11. a.

(e) 3 Inst. 7.

and the son, to cover the treason hatched in their hearts, invented this damnable and damned opinion, that homage and oath of ligeance was more by reason of the king's crown (that is, of his politic capacity) than by reason of the person of the king, upon which opinion they inferred execrable and detestable consequences. 1. If the king do not demean himself by reason in the right of his crown, his lieges be bound by oath to remove the king. 2. Seeing that the king could not be reformed by suit of law, that ought to be done by the sword.\* 3. That his lieges be bound to govern in aid of him, and in default of him. All which were condemned by two parliaments; one in the reign of Edw. 2, called Exilium Hugonis le Senecr, and the other in ann. 1. Edw. 3. c. 1. Bracton, lib. 2. De Acquirendo Rerum Dominio, c. 24. f. 55, saith thus, 'est enim corona regis facere justitiam et julic', et tenere pacem, et sine quibus corona consistere non potest nec tene e. Huja-modi autem jura sive jurisdictionis ad personas vel tenementa transferri non poterunt, nec a privatâ personâ possideri, nec usus nec executio juris, nisi hoc datum fuit ei desuper, sicut jurisdictio delegata delegari non poterit quum ordinaria remaneat cum ipso rege.' Et lib. 3. De Actionibus, cap. 9. fol. 107. 'separare autem debet rex, cum sit Dei vicarius in terra, jus ab injuria, æquum ab iniquo, et omnes sibi subjecti honeste vivant, et quod nullus alium ledat, et quod unicuique quod suum fuerit rectâ contributione reddatur.' In respect whereof one saith, that 'corona est quasi cor ornans, cujus ornamenta sunt misericordia et justitia.' And therefore a king's crown is an hieroglyphic of the laws, where justice, &c. is administered; for so saith P. Val. l. 41. p. 400. 'coronam dicimus legis judicium esse, propterea quod certis est vinculis complicata, quibus vita nostra veluti reigata coeretur.' Therefore if you take that which is signified by the crown, that is, to do justice and judgment, to maintain the peace of the land, &c. to separate right from wrong, and the good from the ill; that is to be understood of that capacity of the king, that 'in rei veritate' hath capacity, and is adorned and endued with endowments as well of the soul, as of the body, and thereby able to do justice and judgment according to right and equity, and to maintain the peace, &c. and to find out and discern the truth, and not of the invisible and immortal capacity that hath no such endowments; for of itself it hath neither soul nor body. And where divers books and acts of parliament speak of the ligeance of England, as 31 Edw. 3. tit. Cosinage 5. 42 Ed. 3. 2. 13 Edw. 3. tit. Brief 677. 25 Edw. 3. stat. De Natis Ultra Mare; all these and other speaking briefly in a vulgar manner, for (i) 'loquendum ut vulgus' and not pleading, for

\* Pryn's Sovereign Power of Parliament, 2 Part, p. 43. Cro. Arg. 61.

(i) 3 Keb. 20. Cart. 120. 2 Roll. Rep. 239. Hel. 101. 4 Co. 46. b.

'sentiendum ut docti,' are to be understood of the ligeance due by the people of England to the king; for no man will affirm, that England itself, taking it for the continent thereof, doth owe any ligeance or faith, or that any faith or ligeance should be due to it; but it manifestly appeareth, that the ligeance or faith of the subject is *proprium quarto modo* to the king, *omni, soli, et semper*. And oftentimes in the reports of our Look-cases, and in acts of parliament also, the crown or kingdom is taken for the king himself, as in Fitz. Natur. Brev. fol. 5. Tenure *in capite* is a tenure of the crown, and is a seigniorie in gross, that is of the person of the king; and so is 30 Hen. 8. Dyer fol. 44, 45, a tenure in chief, as of the crown, is merely a tenure of the person of the king, and therewith agreeth 28 Hen. 8. tit. Tenure, Br. 65. The statute of 4 Hen. 5. cap. ultimo, gave priors aliens, which were conventual to the king and his heirs, by which gift saith 34 Hen. 6. 34. the same were annexed to the crown. And in the said act of 25 Edw. 3. whereas it is said in the beginning, within the ligeance of England, it is twice afterward said in the same act, within the ligeance of the king, and yet all one ligeance due to the king. So in 42 Edw. 3. fol. 2. where it is first said, the ligeance of England, it is afterwards in the same case called, the ligeance of the king; wherein though they used several manner and phrases of speech, yet they intended one and the same ligeance. So in our usual commission of Assise, of Gaol-Delivery, of Oyer and Terminer, of the peace, &c. power is given to execute justice, 'secundum legem et consuetudinem regni nostri Angliæ'; and yet Littleton, lib. 2. in his chapter of Villenage, fol. 43. in disabbling of a man that is attaind in a Precognire, saith, that the same is the king's law; and so doth the Register in the writ of *ad jura regia* style the same.

The reasons and causes, wherefore by the policy of the law the king is a body politic, are three, viz. 1. Causa Majestatis, 2. Causa Necessitatis, and 3. Causa Utilitatis. First, Causa Majestatis, the king cannot give or take but by matter of record for the dignity of his person. Secondly, Causa Necessitatis, as to avoid the (k) strander of him that hath right to the crown, as it appeareth in 1 Hen. 7. 4. lest in the interim there should be an (l) interregnum, which the law will not suffer. Also by force of this politic capacity, though the (m) king be within age, yet may he make leases and other grants, and the same shall bind him; otherwise his revenue should decay, and the king should not be able to reward service, &c. Lastly,

(k) Co. Lit. 16. a. Bacon's H. 7. fo. 3. 9. Fitz. Parl. 2. br. Parl. 37. 105. Plowd. 228. b. (l) 1 W. & M. cap. 4. sect. 10. Co. Lit. 43. a.

(m) 5 Co. 27. a. 1. Roll. 723. Plowd. 213. a. 233. 221. a. 364. b. 76. Ass. 54. Fitz. Infant 15. Br. Age 14.

*Causa Utilitatis*, as when lands and possessions descend from his collateral ancestors, being subjects, as from the earl of March, &c. to the king, now is the king seized of the same *in jure coronæ*, in his politic capacity; for which cause the same shall go with the crown; [Co. Lit. 15. b. See Treby's argument in the Quo Warranto.] and therefore, albeit queen Elizabeth was of the half-blood to queen Mary, yet she in her body politic enjoyed all those fee-simple lands, as by the law she ought, and no collateral cousin of the whole blood to queen Mary ought to have the same. And these are the causes wherefore by the policy of the law the king is made a body politic: so as for these special purposes the law makes him a body politic, immortal and invisible, whereunto our ligeance cannot appertain. But to conclude this point, our ligeance is to our natural liege sovereign, descended of the blood royal of the kings of this realm. And thus much of the first general part *de ligeantia*.

Now followeth the second part, *de l-gibus*, wherein these parts were considered: first, that the ligeance or faith of the subject is due unto the king by the law of nature: secondly, that the law of nature is part of the law of England: thirdly, that the law of nature was before any judicial or municipal law: fourthly, that the law of nature is immutable.

The law of nature is that which God at the time of creation of the nature of man infused into his heart, for his preservation and direction; and this is *lex æterna*, the moral law, called also the law of nature. [Wing's Max. 1. Co. Lit. 11. b. post. 14. b.] And by this law, written with the finger of God in the heart of man, were the people of God a long time governed, before the law was written by Moses, who was the first reporter or writer of law in the world. The apostle in Romans c. ii. saith, 'cum enim gentes, quæ legem non habent, naturaliter ea quæ legis sunt faciunt.' And this is within that command of the moral law, 'honorare patrem,' which doubtless doth extend to him that is 'pater patriæ.' And the apostle saith, 'omnis anima potestatibus sublimioribus subdita sit.' And these be the words of the great divine, 'hoc Deus in sacris scripturis jubet, hoc lex naturæ dicat, ut quilibet subditus obediat superiori.' And Aristotle, nature's secretary, lib. 5. *Æthic.* saith, that 'jus naturale est, quod apud omnes homines eandem habet potentiam.' And herewith doth agree Bracton, lib. 1. cap. 5. and Fortescue, cap. 8, 12, 13, and 16, Doctor and Student, cap. 2, and 4. [Justinian Inst. lib. 1. cap. 2.] And the reason hereof is, for that God and nature is one to all, and therefore the law of God and nature is one to all. By this law of nature is the faith, ligeance, and obedience of the subject due to his sovereign or superior. And Aristotle 1 *Politicorum* proveth, that to command and to obey is of nature, and that magistracy is of nature: for whatsoever is necessary and profitable for the preservation of the society of man is due by the law of nature; but magistracy and

government are necessary and profitable for the preservation of the society of man; therefore magistracy and government are of nature. And herewith accordeth Tully, lib. 3. *de Legibus*, 'sine imperio nec domus ulla, nec civitas, nec gens, nec hominum universum genus stare, nec ipse denique mundus potest.' This law of nature, which indeed is the eternal law of the Creator, infused into the heart of the creature at the time of his creation, was 2,000 years before any laws written, and before any judicial or municipal laws. And certain it is, that before judicial or municipal laws were made, kings did decide causes according to natural equity, and were not tied to any rule or formality of law, but did 'dare jura.' And this appeareth by Forte-cue, cap. 12 and 13, and by Virgil that philosophical poet, 7 *Æneid*.

'Hoc Priami gest'imen erat, cum jura vocatis  
'More daret populus.'

and 5th *Æneid*.

—Gaudet regno Trojanius Acestes  
'Indicit pte forum et patribus dat jura vocatis.'

And Pomponius, lib. 2. cap. *de Origine Juris*, affirmeth, that in Tarquinius Superbus's time there was no civil law written, and that Papirius reduced certain observations into writing, which was called *Jus Civile Papirianum*. Now the reason wherefore laws were made and published, appeareth in Fortescue, cap. 13, and in Tully, lib. 2. *Officiorum*: 'at cum jus æquabile ab uno viro homines non consequerentur, inventi sunt leges.' Now it appeareth by demonstrative reason, that ligeance, faith, and obedience of the subject to the sovereign, was before any municipal or judicial laws. 1. For that government and subjection were long before any municipal or judicial laws. 2. For that it had been in vain to have prescribed laws to any, but to such as owed obedience, faith, and ligeance before, in respect whereof they were bound to obey and observe them: 'frustra enim ferantur leges nisi subditis et obedientibus.' Seeing then that faith, obedience, and ligeance, are due by the law of nature, it followeth that the same cannot be changed or taken away; for albeit judicial or municipal laws have inflicted and imposed in several places, or at several times, divers and several punishments and penalties, for breach or not observance of the law of nature, (for that law only consisteth in commanding or prohibiting, without any certain punishment or penalty) yet the very law of nature itself, never was nor could be (a) altered or changed. And therefore it is certainly true, that (b) 'jura naturalia sunt immutabilia.' And herewith agreeth Bracton, lib. 1. cap. 5, and Doctor and Student, cap. 5 and 6. And this appeareth plainly and plentifully in our books.

If a man hath a ward by reason of a superiority, and is outlawed, he forfeiteth the ward.

(a) Dr. & Stud. 4. a. autq 12. b.

(b) Cart. 130.

ship to the king: but if a man hath the wardship of his own son or daughter, which is his heir apparent, and is outlawed, he doth not (c) forfeit this wardship; for nature hath annexed it to the person of the father, as it appeareth in 33 H. 6, 55. b. 'Et bonus rex nihil a bono patre differt; et patria dicitur a patre, quia habet communem patrem, qui est pater patriæ.' In the same manner, 'maris et feminae conjunctio est de jure naturæ,' as Bracton in the same book and chapter, and St. Germin in his book of the Doctor and Student, cap. 5, do hold. Now if he, that is attainted of treason or felony, be slain by one that hath no authority, or executed by him that hath authority, but pursueth not his warrant, in this case his eldest son can have no appeal, for he must bring his appeal as heir, which being *ex provisione hominis*, he loseth it by the attainer of his father; [Q.] but his (d) wife, if any he have, shall have an appeal, because she is to have her appeal as wife, which she remaineth notwithstanding the attainer, because 'maris et feminae conjunctio' is 'de jure naturæ,' and therefore (it being to be intended of true and right matrimony) is indissoluble; and this is proved by the book in 33 H. 6, 57. So if there be mother and daughter, and the daughter is attainted of felony, now cannot she be heir to her mother for the cause aforesaid; yet after her attainer, if she kill her mother, this is parricide and petit treason; for yet she remaineth her daughter, for that is of nature; and herewith agreeth 21 E. 3, 17. b. If a man be attainted of felony or treason, he hath lost the king's legal protection, for he is thereby utterly disabled to sue any action real or personal (which is a greater disability than an alien in league hath) and yet such a person so attainted hath not lost that protection which by the law of nature is given to the king, for that is 'indelebilis et immutabilis,' and therefore the king may protect and pardon him, and if any man kill him without warrant, he shall be punished by the law as a manslayer, and thereunto accordeth 4 Ed. 4, [Cawly 17. 3 Inst. 126.] and 55 H. 6, 57. 2 Ass. pl. 3. By the statute of 25 Ed. 3, cap. 22, a man attainted in a Præmunire, is by express words out of the king's protection generally; and yet this extendeth only to legal protection, as it appeareth by Littleton, fol. 43, for the parliament could not take away that protection which the law of nature giveth unto him; [Q.] and therefore notwithstanding that statute, the king may protect and pardon him. And though by that statute it was farther enacted, that it should be done with him as with an enemy, by which words any man might have slain such a person (as it is holden in 24 H. 8. tit. Coron. Br. 197.) until the statute

(c) 3 Co. 39. a. 7 Co. 12. b. Co. Lit. 84. b. Br. Gard. 6. Br. Forfeit 70. Plowd. 294. a. Englefield's Case, 2 Inst. 234.

(d) Stamf. cor. 59. c. 35 H. 6. 58. a. Br. Appeal 5. 131. Fitz. Cor. 21. 2. Inst. 215.

made anno 5 Eliz. cap. 1, yet the king might protect and pardon him. [B. N. C. 53. Co. Lit. 130. a. 2. Bulstr. 299. Cawly 40, 47. Co. Lit. 128. b.] A man outlawed is out of the benefit of the municipal law; for so saith Fitz. N. B. 161. a. 'utlegatus est quasi extra legem positus;' and Bract. l. 3. Tract. 2. c. 11, saith, that 'caput gerit lupinum;' yet is he not out either of his natural ligeance, or of the king's natural protection; for neither of them is tied to municipal laws, but is due by the law of nature, which, as hath been said, was long before any judicial or municipal laws. And therefore if a man were outlawed for felony, yet was he within the king's natural protection, for no man but the sheriff could execute him, as it is adjudged in 2 lib. Ass. pl. 3. [Br. Corone 67.] Every subject is by his natural ligeance bound to obey and serve his sovereign, &c. It is enacted by the parliament of 23 H. 6, c. 8, that no man shall serve the king as sheriff of any county above one year, and that, notwithstanding any clause of *non obstante* to the contrary, that is to say, notwithstanding that the king should expressly dispense with the said statute. [Plowd. 502. b. 2 H. 7. 6. b. Br. patents 109. 12 Co. 18.] Howbeit it is agreed in 2 H. 7, that against the express purview of that act, the king may by a special *non obstante* dispense with that act, for that the act could not bar the king of the service of his subject, which the law of nature did give unto him. By these and many other cases that might be cited out of our books, it appeareth, how plentiful the authorities of our laws be in this matter (dd). Wherefore to conclude this point (and to exclude all that hath been or could be objected against it) if the obedience and ligeance of the subject to his sovereign be due by the law of nature, if that law be parcel of the laws, as well of England as of all other nations, and is immutable, and that Postnati [i. e. of Scotland,] and we of England are united by birth-right in obedience and ligeance, which is the true cause of natural subjection, by the law of nature [Q.]; it followeth, that Calvin the plaintiff being born under one ligeance to one king, cannot be an alien born. And there is great reason, that the law of nature should direct this case, wherein five natural operations are remarkable: 1. the king hath the crown of England by birth-right, being naturally procreated of the blood royal of this realm: 2. Calvin the plaintiff naturalized by procreation and birth-right, since the descent of the crown of England; 3. ligeance and obedience of the subject to the sovereign, due by the law of nature: 4. protection and government due by the law of nature: 5. this case, in the opinion of divers, was more doubtful in the beginning, but the further it proceeded, the clearer and stron-

(dd) In one of the notes to the new edition of Coke upon Littleton, we have had occasion to observe on this extravagant doctrine about the Dispensing Power. Co. Lit. 13th ed. fol. 130. a. notes 3 and 4. EDITOR.

ger it grew; and therefore the doubt grew from some violent passion, and not from any reason grounded upon the law of nature, 'quia quanto magis violentus motus, qui fit contra naturam, appropinquat ad suum finem, tanto debiliores et tardiores sunt ejus motus; sed naturalis motus, quanto magis appropinquat ad suum finem, tanto fortiores et velociores sunt ejus motus.' Hereby it appeareth how weak the objection grounded upon the rule of (e) 'quando duo jura concurrunt in unâ personâ, &c.' is: for that rule holdeth not in personal things, that is when two persons are necessarily and inevitably required by law, as in the case of an alien born there is; and therefore no man will say, that now the king of England can make war or league with the king of Scotland, 'et sic de cæteris': and so in case of an alien born, you must of necessity have two several ligeances to two several persons. And to conclude this point concerning laws, 'non adversatur diversitas regnor' sed regnant'; non patriarum, sed patrum patriar'; non coronarum, sed coronatorum; non legum municipalium, sed regnum majestatum.' And therefore thus were directly and clearly answered as well the objections drawn from the severalty of the kingdoms, seeing there is but one head of both, and the Postnati and us joined in ligeance to that one head, which is 'copula et tanquam oculus' of this case; as also the distinction of the laws, seeing that ligeance of the subjects of both kingdoms, is due to their sovereign by one law, and that is the law of nature.

For the third, it is first to be understood, that as the law hath wrought four unions, so the law doth still make four separations. The first union is of both kingdoms under one natural liege sovereign king, and so acknowledged by the act of parliament of recognition. The 2nd is an union of ligeance and obedience of the subjects of both kingdoms, due by the law of nature to their sovereign: and this union doth suffice to rule and over-rule the case in question; and this in substance is but a uniting of the hearts of the subjects of both kingdoms one to another, under one head and sovereign. The 3rd union is an union of protection of both kingdoms, equally belonging to the subjects of either of them: and therefore the two first arguments or objections drawn from two supposed several ligeances were fallacious, for they did *disjungere conjungenda*. The 4th union and conjunction is of the three lions of England and that one of Scotland united and quartered in one escutcheon.

Concerning the separations yet remaining:

1. England and Scotland remain several and distinct kingdoms. 2. They are governed by several judicial or municipal laws. 3. They have several distinct and separate parliaments. 4. Each kingdom hath several nobilities: for albeit a Postnatus in Scotland, or any of his posterity, be the heir of a nobleman of Scot-

(e) Ellesmere's Postnat. c. 88. 4 Co. 118. a. Cawly 209. Antea Moor 798, 834.

land, and by his birth is legitimated in England, yet he is none of the (a) peers or nobility of England; for his natural ligeance and obedience, due by the law of nature, maketh him a subject and no alien within England: but that subjection maketh him not noble within England, for that nobility had his original by the king's creation, and not of nature. And this is manifested by express authorities, grounded upon excellent reasons in our books. If a baron, viscount, earl, marquis, or duke of England, bring any action real or personal, and the defendant pleadeth in abatement of the writ, that he is no baron, viscount, earl, &c. and thereupon the demandant or plaintiff taketh issue; this issue shall not be tried by jury, but by the (b) record of parliament, whether he or his ancestor, whose heir he is, were called to serve there as a peer, and one of the nobility of the realm. And so are our books adjudged in 22 Ass. 24. 48 Edw. 3. 30. 35 H. 6. 40. 20 Eliz. Dyer 360. Vide in the sixth part of my Reports, in the countess of Rutland's case. So as the man, that is not *de jure* a peer, or one of the nobility, to serve in the upper house of the parliament of England, is not in the legal proceedings of law accounted noble within England. And therefore if a countess of France or Spain or any other foreign kingdom, should come into England, he should not here sue, or be sued by the name of countess, &c. for that he is none of the nobles that are members of the upper house of the parliament of England; and herewith agree the book-cases of (c) 30 Ed. 4. 6. a. b. and 11 Ed. 3. tit. Bre. 473, like law it is, and for the same reason, of an earl or baron of Ireland, he is not any peer, or of the nobility of this realm; and herewith agreeth the book in 8 R. 2. tit. (d) Proces. pl. ultim. where in an action of debt process of outlawry was awarded against the earl of Ormond in Ireland; which ought not to have been, if he had been noble here. Vide Dyer (e) 20 Eliz. 360.

But yet there is a diversity in our books worthy of observation, for the highest and lowest dignities are universal; for if a king of a foreign nation come into England, by the leave of the king of this realm, as it ought to be, in this case he shall sue and be sued by the name of a king; and herewith agreeth 11 E. 3. tit. Br. (f) 473, where the case was, that Alice, which was the wife of R. de O. brought a writ of dower against John earl of Richmond, and the writ was 'præcip. Johann. comiti Richmondis cus-todi terr' et hæredis' of William the son of R. de O. the tenant pleaded that he is duke of

(a) Dyer 360. pl. 6. 9. Co. 117. a. b. 8 Inst. 48.

(b) Co. Lit. 16. b. 6 Co. 53. a. 9 Co. 31. a. 49. a. 12 Co. 70, 94. 95. 2 Inst. 50. 2 Roll. 375. Moor 767.

(c) 9 Co. 117. b. Br. Noame de Dignity 49.

(d) 9 Co. 117. b. Fitz. Proc. 224.

(e) Dy. 360. pl. 6. Co. Lit. 261. b.

(f) Moor 803. 9 Co. 117. b. postea .

Britain, not named duke, judgment of the writ? But it is ruled, that the writ was good, for that the dukedom of Britain was not within the realm of England. But there it is said, that if a man bring a writ against Edward (*g*) Baliol, and name him not king of Scotland, the writ shall abate for the cause aforesaid. And hereof there is a notable precedent in Fleta, lib. 2. cap. 3. § 9. where treating of the jurisdiction of the king's court of Marshalsea, it is said, 'et hæc omnia ex officio suo licite facere poterit (ss. seneschal' aul' hospitii regis) non obstante alicujus libertate, etiam in alieno regno, dum tamen reus in hospitio regis poterit inveniri; secundum quod contigit Paris. anno 14 Ed. 1. de Engelramo de Nogent capto in hospitio regis Angl', ipso rege tunc apud Parisiam existente, cum discis argenti furatis recenser super facto, rege Franc' tunc presente; et unde licet curia regis Franc' de præd' latone per castellanum Paris. petita fuerit, habitis et inde tractatibus in consilio regis Franc', tandem consideratum fuit, quod rex Angl' illa regia prærogativa, et hospitii sui privilegio uteretur, et gauderet; qui, coram Roberto Fitz-John milite tunc hospitii regis Angl' seneschallo de latrocinio convictus, per considerationem ejus cor' fuit (*h*) suspensus in patibulo sancti Germani de pratis.' Which proveth that though the king be in a foreign kingdom, yet he is judged in law a king there. The other part of the said diversity is proved by the book-case in 20 (*i*) E. 4, fol. 6. a. b. where in a writ of debt brought by sir J. Douglas, knight, against Elizabeth Molford, the defendant demanded judgment of the writ, for that the plaintiff was an earl of Scotland, but not of England; and that our sovereign lord the king had granted unto him safe conduct, not named by his name of dignity, judgment of the writ, &c. And there justice Littleton giveth the rule. The plaintiff, saith he, is an earl in Scotland, but not in England; and if our sovereign lord the king grant to a duke of France a safe conduct to merchandize, and enter into his realm, if the duke cometh and bringeth merchandize into this land, and is to sue an action here, he ought not to name himself duke, for he is not a duke in this land, but only in France. And these be the very words of that book-case; out of which I collect three things. First, that the plaintiff was named by the name of a knight, wheresoever he received that degree of dignity. Vide (*k*) 7 H. 6, 14 b. accord. 2. That an earl of another kingdom or nation is no earl, to be so named in legal proceedings, within this realm: and herewith agreeth the book of (*l*) 11 Ed. 3, the earl of Richmond's case before recited. 3. That albeit the king by his letters patent of safe conduct do name him duke, yet that appellation mak-

eth him no duke, to sue or to be sued by that name within England: so as the law in these points, apparent in our books, being observed, and rightly understood, it appeareth how causeless their fear was, that the adjudging of the plaintiff to be no alien should make a confusion of the nobilities of either kingdom.

Now are we in order come to the fourth noun (which is the fourth general part) Alienigena; wherein six things did fall into consideration. 1. Who was Alienigena, an alien born by the laws of England. 2. How many kinds of aliens born there were. 3. What incidents belonged to an alien born. 4. The reason why an alien is not capable of inheritance or freehold within England. 5. Examples, resolutions, and judgments reported in our books in all successions of ages, proving the plaintiff to be no alien. 6. Demonstrative conclusions upon the premises, approving the same.

1. An alien is a subject that is born out of the ligeance of the king, and under the ligeance of another, and can have no real or personal action for or concerning land; but in every such action the tenant or defendant may plead, that he was born in such a country which is not within the ligeance of the king, and demand judgment if he shall be answered. And this is in effect the description which Lit. himself maketh, lib. 2. cap. 14. [Co. Lit. 128. b. 129, a. 4. Inst. 152. Lit. sect. 198.] Villeu. fol. 43. 'Alienigena est aliena: gentis seu aliena: lineage, qui etiam dicitur peregrinus, alienus, exoticus, extraneus, &c. Extraneus est subditus, qui extra terram, i. e. potestatem regis, natus est.' And the usual and right pleading of an alien born doth lively and truly describe and express what he is. And therein two things are to be observed. First, that the most usual and best pleading in this case is both exclusive and inclusive, viz. 'extra ligeantiam domini regis, &c. et infra ligeantiam alterius regis,' as it appeareth in (*m*) 9 Ed. 4, 7. b. Book of Entries, fol. 244, &c. which cannot possibly be pleaded in this case for two causes. 1. For that one king is sovereign of both kingdoms. 2. One ligeance is due by both to one sovereign, and in case of an alien there must of necessity be several kings and several ligeances. Secondly, no pleading was ever 'extra regnum,' or 'extra legem,' which are circumscribed to place; but 'extraligeantiam,' which (as it hath been said) is not local or tied to any place.

It appeareth by Bracton, lib. 3. tract. 2 c. 15. fol. 134, that (*n*) Canutus the Danish king, having settled himself in this kingdom in peace, kept notwithstanding (for the better continuance thereof) great armies within this realm. The peers and nobles of England distasting this government by arms and armies, 'odimus accipitrem quia semper vivit in armis,' wisely and politely persuaded the king, that they would provide for the safety of him and his people, and yet his armies carrying with them

(*g*) Moor 803. (*h*) Moor 798, 799.

(*i*) 9 Co. 117. b. Br. Nosme de Dignity, 49.

(*k*) Br. Brief 159. Fitz. Brief 35.

(*l*) 11 E. 3. Fitz. Brief 473. Antea 15. b. Moor 803. 9 Co. 117. b.

(*m*) Antea 5. a. (*n*) Stanf. cor. 17. f.

many inconveniences should be withdrawn; and therefore offered, that they would consent to a law, that whosoever should kill an alien, and be apprehended, and could not acquit himself, he should be subject to justice: but if the manslayer fled, and could not be taken, then the town where the man was slain should forfeit 66 marks unto the king; and if the town were not able to pay it, then the hundred should forfeit and pay the same unto the king's treasure; whereunto the king assented. [Full. Ch. Hist. l. 1. 12.] This law was penned 'quicumque occiderit Francigenam, &c.' not excluding other aliens, but putting Francigena a Frenchman for example, that others must be like unto him, in owing several ligeance to a several sovereign, that is, to be 'extra ligeantiam regis Angl.' and 'infra ligeantiam alterius regis.' And it appears before out of Bracton and Fleta, that both of them use the same example (in describing of an alien) 'ad fidem regis Francie.' And it was holden, that except it could be proved, that the party slain was an Englishman, that he should be taken for an alien; and this was called Englesheric, Englesherm, that is, a proof that the party slain was an Englishman. (Hereupon Canutus presently withdrew his armies, and within a while after lost his crown, and the same was restored to his right owner.) The said law of Englesheric continued until 14 Ed. 3, cap. 4, and then the same was by act of parliament ousted and abolished. So amongst the laws of William the first, (published by master Lambert, fol. 125.) 'omnis Francigena' (there put, for example as before is said, to express what manner of person Alienigena should be) 'qui tempore Edwardi pro-pinqui nostri fuit particeps legum et consuetudinum Anglorum' (that is made denizen) 'quod dicunt ad scot et lot persolvat secundum legem Anglorum.'

Every man is either *alienigena*, an alien born, or *subditus*, a subject born. Every alien is either a friend that is in league, &c. or an enemy that is in open war, &c. Every alien enemy is either *pro tempore*, temporary for a time, or *perpetuus*, perpetual, or *specialiter permissus*, permitted especially. Every subject is either, *natus*, born, or *datus*, given or made: and of these briefly in their order. An alien friend, as at this time, a German, a Frenchman, a Spaniard, &c. (all the kings and princes in Christendom being now in league with our sovereign; but a Scot being a subject, cannot be said to be a friend, nor Scotland to be *solum amici*) may by the common law have, acquire, and get within this realm, by gift, trade, or other lawful means, any treasure, or *(a)* goods personal whatsoever, as well as an Englishman, and may maintain any *(p)* action for the same:

(a) Co. Lit. 2. b.

(p) 1 Bulst. 134. Yel. 198. Owen. 45. Co. Lit. 129. b. 1. And. 25. Moor 431. 1 Keb. 266. Cr. El. 142. 683. Cr. Car. 9. 4 Inst. 152. Dy. 2. pl. 8. O Benl. 10. B. N. C. 375. Br. Non-ability 62.

but *(q)* lands within this realm, or houses, but for their necessary habitation only, alien friends cannot acquire, or get, nor maintain any action real or personal, for any land or house, unless the house be for their necessary habitation. For if they should be disabled to acquire and maintain these things, it were in effect to deny unto them trade and traffick, which is the life of every island. But if this alien become an enemy, as all alien friends may, then is he utterly disabled to maintain any action, or get any thing within this realm. And this is to be understood of a temporary alien, that being an enemy, may be a friend, or being a friend may be an enemy. But a perpetual enemy, though there be no wars by fire and sword between them, cannot maintain any action, or get any thing within this realm. All infidels are in law *perpetui (r) inimici*, perpetual enemies, for the law presumes not that they will be converted, that being *remota potentia*, a remote possibility, for between them, as with the devils, whose subjects they be, and the Christian; there is perpetual hostility, and can be no *(s)* peace; for as the apostle saith, 2 Cor. vi. 15. 'quæ autem conventio Christi ad Belial, aut quæ pars fidei cum infideli?' And the law saith, 'Judæo Christianum nullum serviat mancipium' 'nefas enim est quem Christus redemit blasphemum Christi in servitutis vinculis detinere.' Register 287. 'Infidelis sunt Christi et Christianorum inimici.' And herewith agreeth the book in 12 H. 8. fol. 4. where it is holden that a pagan cannot have or maintain any action at all. [Quære.]

And upon this ground there is a diversity between a conquest of a kingdom of a Christian king, and the conquest of a kingdom of an infidel; for if a king come to a Christian kingdom by conquest, seeing that he hath 'vitæ et necis potestatem,' he may at his pleasure alter and change the laws of that kingdom, but until he doth make an alteration of those laws, the ancient laws of that kingdom remain. [Dav. 30. b. 3. Keb. 409. Salk. 411. 412. 666. Comb. 55.] But if a Christian king should conquer a kingdom of an infidel, and bring them under his subjection, there *ipso facto* the laws of the infidel are abrogated; for that they be not only against Christianity, but against the law of God and of nature, contained in the Decalogue: and in that case, until certain laws be established amongst them, the king by himself, and such judges as he shall appoint, shall judge them and their causes according to natural equity, in such sort as kings in ancient time did with their kingdoms, before any certain municipal laws were given, as before hath been said. But if a king hath a kingdom by title of descent, there seeing by the laws of that kingdom he doth inherit the kingdom, he cannot change those laws of himself, without consent of parliament. Also if a king hath a

(q) Poph. 36. Co. Lit. 2. b. Dy. 2. pl. 2.

(r) Wing. Max. 10. Skin. 166.

(s) 4 Inst. 155.



Christian kingdom by conquest, as Henry 2, had Ireland, after John had given unto them, being under his obedience and subjection, the laws of England for the government of that country, no succeeding king could alter the same without parliament. And in that case while the realm of England and that of Ireland were governed by several laws, any that was born in Ireland was no alien to the realm of England. In which precedent of Ireland three things are to be observed. 1. That then there had been two descents, one from Henry 2 to Richard 1, and from Richard to John, before the alteration of the laws. 2. That albeit Ireland was a distinct dominion, yet, the title thereof being by conquest, the same by judgment of law might by express words be bound by act of the parliament of England. 3. That albeit no reservation were in king John's Charter, yet by judgment of law a writ of error did lie in the King's Bench in England of an erroneous judgment in the King's Bench of Ireland. [Kelw. 202. pl. 19. 4 Inst. 71. F. N. B. 22. d. Vaugh. 200. 291.] Furthermore, in the case of a conquest of a Christian kingdom, as well those that served in wars at the conquest, as those that remained at home for the safety and peace of their country, and other the king's subjects, as well Antenati as Postnati, are capable of lands in the kingdom or country conquered, and may maintain any real action, and have the like privileges and benefits there, as they may have in England.

The third kind of enemy is, *inimicus permissus*, an enemy that cometh into the realm by the king's safe-conduct, of which you may read in the Register, fol. 25. Book of Entries, 'ejectione firmæ,' 7, 32 II. 6. 2. b. &c. Now what a subject born is, appeareth at large by that which hath been said *de ligeantia*: [Co. Lit. 129. a.] and so likewise *de subdito dato*, of a Donatour: for that is the right name, so called, because his legitimation is given unto him; for if you derive denizen from *deins nec*, one born within the obedience or ligeance of the king, then such a one should be all one with a natural-born subject. And it appeareth before out of the laws of king W. 1. of what antiquity the making of denizens by the king of England hath been.

3. There be regularly (unless it be in special cases) three incidents to a subject born. [Lit. Rep. 27.] 1. That the parents be under the actual obedience of the king. 2. That the place of his birth be within the king's dominion. And 3. The time of his birth is chiefly to be considered; for he cannot be a subject born of one kingdom that was born under the ligeance of a king of another kingdom, albeit afterwards one kingdom descend to the king of the other. 1. For the first, it is termed actual obedience, because though the king of England hath absolute right to other kingdoms or dominions, as France, Aquitain, Normandy, &c. yet seeing the king is not in actual possession thereof, none born there since the crown of England was out of actual possession thereof, are subjects to the

king of England. 2. The place is observable, but so as many times ligeance or obedience, without any place within the king's dominions, may make a subject born; but any place within the king's dominions without obedience can never produce a natural subject. And therefore if any of the king's ambassadors in foreign nations have children there of their wives, being English women, by the common laws of England they are natural-born subjects, and yet they are born out of the king's dominions. [Cr. Car. 601. 602. March 91. Jenk. Cent. 3.] But if enemies should come into any of the king's dominions, and surprise any castle or fort, and possess the same by hostility, and have issue there, that issue is no subject to the king, though he be born within his dominions; for that he was not born under the king's ligeance or obedience. But 3, the time of his (a) birth is of the essence of a subject born; for he cannot be a subject to the king of England, unless at the time of his birth he was under the ligeance and obedience of the king. And that is the reason that Antenati in Scotland (for that at the time of their birth they were under the ligeance and obedience of another king) are *alicuius* born, in respect of the time of their birth.

4. It followeth next in course to set down the Reasons, wherefore an alien born is not capable of inheritance within England; and that he is not for three reasons. 1. The secrets of the realm might thereby be discovered. 2. The revenues of the realm (the sinews of war, and ornament of peace) should be taken and enjoyed by strangers born. 3. It should tend to the destruction of the realm. Which three reasons do appear in the statute of 2 II. 5. cap. and 4 II. 5. cap. ultimo. [See 2 II. 4. c. 7. & c. 9.] But it may be demanded, wherein doth that destruction consist. Whereunto it is answered: first, it tends to destruction *tempore belli*; for then strangers might fortify themselves in the heart of the realm, and be ready to set fire on the common-wealth, as was excellently shadowed by the Trojan horse in Virgil's second book of his *Aeneid*, where a very few men in the heart of the city did more mischief in a few hours, than ten thousand men without the walls in ten years. Secondly *tempore pacis*, for so might many aliens born get a great part of the inheritance and freehold of the realm, whereof there should follow a failure of justice (the supporter of the commonwealth), for that aliens born cannot be returned of juries (b) for the trial of issues between the king and the subject, or between subject and subject. And for this purpose, and many other, see a Charter (worthy of observation) of king Ed. 3. written to pope Clement, 'datum apud Westm. 26. die Sept. ann. regni nostri Franciæ 4. regni vero Angliæ 17.'

5. Now are we come to the examples, resolutions, and judgments of former times: wherein two things are to be observed, First, how

(a) 2 Vent. 6, Vaugh. 286.

(b) 10 Co. 101. a. Co. Lit. 156. b. Poph. 36.

many cases in our books do over-rule this case in question, 'for ubi (c) eadem ratio ibi idem jus, at de similibus idem est iudicium.' 2. That for want of an express text of law 'in terminis terminantibus,' and of examples and precedents in like cases (as was objected by some), we are driven to determine the question by natural reason: for it was said, 'si cecidit lex scripta, id custodiri oportet, quod moribus et consuetudine inductum est; et si qua in re hoc defecerit, recurrendum est ad rationem.' But that receiveth a threefold answer. First, that there is no such rule in the common or civil law: but the true rule of the civil law is, 'lex scripta si ceciderit, id custodiri oportet quod moribus et consuetudine inductum est; et si qua in re hoc defecerit, tunc id quod proximum et consequens ei est; et si id non apparet, tunc jus, quo, urbs Romana utitur, servari oportet.' Secondly, if the said imaginative rule be rightly and legally understood, it may stand for truth: for if you intend ratio for the legal and profound reason of such, as by diligent study and long experience and observation are so learned in the laws of this realm, as out of the reason of the same they can rule the case in question, in that sense the said rule is true: but if it be intended of the reason of the wisest man that professeth not the laws of England, then (I say) the rule is absurd and dangerous; for (d) 'cuilibet in sua arte perito est credendum, et quod quisque (e) norit in hoc se exerceat. Et omnes prudentes illa admittere solent, quæ probantur iis, qui in sua arte bene versati sunt.' Arist. 1. Topico- rum, cap. 6. Thirdly, there be multitudes of examples, precedents, judgments, and resolutions in the laws of England, the true and unstrained reason whereof doth decide this question. For example,

The dukedom of Aquitain, whereof Gascoin was parcel, and the earldom of Poitiers came to Henry 2, by the marriage of Eleanor, daughter and heir of William duke of Aquitain, and earl of Poitiers, which descended to Rich. 1, Hen. 3, Ed. 1, Ed. 2, Ed. 3, &c. In 27 lib. (f) Ass. pl. 48. in one case there appear two judgments and one resolution to be given by the judges of both benches in this case following. The possessions of the prior of Chelsey in the time of war were seised into the king's hands, for that the prior was an alien born. The prior by petition of right sued to the king; and the effect of his petition was, that before he became prior of Chelsey, he was prior of Andover: and whilst he was prior there, his possessions of that priory were likewise seised for the same cause, supposing that he was an alien born; whereupon he sued a former petition, and alleged that he was born in Gascoin

(c) Co. Lit. 10. a. 191. a. 232. a.

(d) 4 Co. 29. a. 5 Co. 7. a. Caudry's Case. Cawly 31. Co. Lit. 125. a.

(e) 11 Co. 10. b. 12 Co. 66. 13 Co. 12. Co. Lit. 125. a. 8. Co. 130. a.

(f) Moor 796, 801.

VOL. II.

within the ligeance of the king: which point being put in issue, and found by jury to be true, it was adjudged that he should have restitution of his possessions generally without mentioning of advowsons. After which restitution, one of the said advowsons became void, the prior presented, against whom the king brought a *quare impedit* wherein the king was barred; and all this was contained in the latter petition. And the book saith, that the earl of Arundel, and sir Guy of B. came into the court of Common Pleas, and demanded the opinion of the judges of that court concerning the said case, who resolved, that upon the matter aforesaid the king had no right to seize. In which case amongst many notable points, this one appeareth to be adjudged and resolved, that a man born in Gascoin under the king's lineage, was no alien born, as to lands and possessions within the realm of England, and yet England and Gascoin were, 1. Several and distinct countries. 2. Inherited by several and distinct titles. 3. Governed by several and distinct municipal laws, as it appeareth amongst the records in the Tower, Rot. Vasc. 10. Ed. 1, num. 7. 4. Out of the extent of the great seal of England, and the jurisdiction of the chancery of England. 5. The like objection might be made for default of trial, as hath been made against the plaintiff. And where it was said that Gascoin was no kingdom, and therefore it was not to be matched to the case in hand, it was answered, that this difference was without a diversity, as to the case in question? for if the plea in the case at the bar be good, then without question the prior had been an alien; for it might have been said (as it is in the case at the bar) that he was born 'extra ligeantiam regis regni sul Angliæ, et infra ligeantiam domini sui Vasconie,' and that they were several dominions, and governed by several laws: but then such a conceit was not hatched, that a king having several dominions should have several ligeances of his subjects. Secondly, it was answered, that Gascoin was sometime a kingdom,\* and likewise Millan, Burgundy, Bavaria, Bretagne, and others, were, and now are become dukedoms. Castile, Arragon, Portugal, Barcelona, &c. were sometime earldoms, afterwards dukedoms, and now kingdoms. Bohemia and Poland were sometimes dukedoms, and now kingdoms; and (omitting many other, and coming nearer home) Ireland was before 32 H. 8, a lordship, and now is a kingdom, and yet the king of England was as absolute a prince and sovereign when he was lord of Ireland, as now, when he is styled king of the same [Co. Lit. 7. b.] 10 Ed. 3, 41. an exchange was made between an Englishman and a Gascoin, of lands in England and in Gascoin; ergo the Gascoin was no alien, for then had he not been capable of lands in England. 1 H. 4. 1, the king brought

\* Vasconia appellata fuit tempore Caroli magni regnum de Vasconia, Mo. 800. Vaugh. 300.

a writ of right of ward against one Sybil, whose husband was exiled into Gascoin; *ergo*, Gascoin is no parcel or member of England, for 'exilium est patriæ privatio, natalis soli 'mutatio, legum nativarum amissio.' 4 E. 3, 10. b. the king directed his writ out of Chancery under the great seal of England, to the mayor of (p) Burdeaux (a city in Gascoin), then being under the king's obedience, to certify, whether one that was outlawed here in England, was at that time in the king's service under him in *obsequio regis*: whereby it appeareth, that the king's writ did run into Gascoin, for it is the trial that the common law hath appointed in that case. But as to other cases, it is to be understood, that there be two kinds of writs, *brevia mandatoria et remedialia*, et *brevia mandatoria et non remedialia*. [Vaugh. 401. 2 Inst. 486. Moor 804.] *Brevia mandatoria et remedialia*, as writs of right, of forfeiture, &c. of debt, trespass, &c. and shortly, all writs real and personal, whereby the party wronged is to recover somewhat, and to be remedied for that wrong was offered unto him, are returnable or determinable in some court of justice within England, and to be served and executed by the sheriffs, or other ministers of justice within England; and these cannot by any means extend into any other kingdom, country, or nation, though that it be under the king's actual ligeance and obedience. But the other kind of writs, that are mandatory, and not remedial, are not tied to any place [3 Inst. 179.] but do follow subjection and ligeance, in what country or nation soever the subject is, as the king's writ to command any of his subjects, residing in any foreign country, to return into any of the king's own dominions, 'sub fide et ligeantia quibus nobis tenemini.' And so are the aforesaid mandatory writs cited out of the Register of protection for safety of body and goods, and requiring, that if any injury be offered, that the same be redressed according to the laws and customs of that place. Vide le Reg. fol. 26. Stamford, Prærog. cap. 12. fol. 39, saith, that men born in Gascoin are inheritable to lands in England. This doth also appear by divers acts of parliament: for by the whole parliament, 39 E. 3, cap. 16. it is agreed, that the Gascoins are of the ligeance and subjection of the king. Vide 42 Ed. 3, cap. 2. et 28 H. 6. cap. 5. &c.

Guienne was another part of Aquitain, and came by the same title: and those of Guienne were by act of parliament in 13 Hen. 4, [nn. 22. Cotton's Abr. 480.] not imprinted, *ex nra. parliament. eodem anno*, adjudged and declared to be no aliens, but able to possess and purchase, &c. lands within this realm. And so doth Stamford take the law. Prærog. c. 12. f. 39.

And thus much of the dukedom of Aquitain, which (together with the earldom of Poitiers) came to Hen. 2, (as hath been said) by mar-

(g) Vaugh. 299. 9 Co. 31. b. 2 Roll. 583. Co. Lit. 74. a. Br. Trial. 126.

riage, and continued in the actual possession of the kings of England by ten descents, viz. from the first of Henry 2, unto the 32nd of Henry 6, which was upon the very point of 300 years, within which duchy there were (as some write) 4 archbishopricks, 24 bishopricks, 15 earldoms, 202 baronies, and above 1000 captainships and bailliwicks: and in all this long time neither book-case nor record can be found wherein any plea was offered to disable any of them that were born there, by foreign birth, but the contrary hereof directly appeareth by the said book-case of (a) 27 lib. Ass. 48.

The kings of England had sometimes Normandy under actual ligeance and obedience. The question is then, whether men born in Normandy, after one king had them both, were inheritable to lands in England; and it is evident by our books that they were: for so it appeareth by the declaratory act of 17 Edw. 2, de Prærog. Reg. c. 12. that they were inheritable to, and capable of lands in England: for the purview of that statute is, 'quod rex habebit eadem caetas de terris Normannorum, &c.' *Ergo*, Normans might have lands in England: 'et hoc similiter intelligendum est, si aliqua hæreditas descendat alicui nato in partibus transmarinis, &c.' [Stauf. Prærog. 38, 39, &c.] Whereby it appeareth, that they were capable of lands within England by descent. And that this act of 17 Edw. 2, was but a declaration of the common law, it appeareth both by Bracton, who (as it hath been said) wrote in the reign of Henry 3, lib. 3. tract. 2. c. 1. f. 116. and by Britton who wrote in 5 Edw. 1, c. 18. that all such lands as any Norman had either by descent or purchase, escheated to the king for their treason, in revolting from their natural liege lord and sovereign. And therefore Stamford Prærog. cap. 12. fol. 39. expounding the said statute of 17 Edw. 2, cap. 12. concludeth, that by that chapter it should appear (as if he had said, it is apparent without question) that all men born in Normandy, Gascoin, Guienne, Anjou, and Britain, (whilst they were under actual obedience) were inheritable within this realm as well as Englishmen. And the reason thereof was, for that they were under one ligeance due to one sovereign. And so much (omitting many other authorities) for Normandy: [Kel. 202. pl. 19. 4 Inst. 286. Co. Lit. 11. b. Scld. Mare Clau. lib. 2. cap. 19. Guernsey and Jersey.] saving I cannot let pass the isles of Guernsey and Jersey, parts and parcels of the dukedom of Normandy, yet remaining under the actual ligeance and obedience of the king. I think no man will doubt, but those that are born in Guernsey and Jersey (though those isles are no parcel of the realm of England, but several dominions enjoyed by several titles, governed by several laws) are inheritable and capable of any lands within the realm of England, 1 Edw. 3, fol. 7. [Co. Lit. 11. b.] Commission to determine the title of lands within the said isles,

(a) Dav. 19. a. Moor 796, 801.

according to the laws of the isles; [4 Inst. 286.] and Mich. 41 Ed. 3, in the treasury, 'quia negotium præd' nec aliqua alia negotia 'de insula præd' emergentia non debent terminari, nisi secundum legem insulæ præd', &c.' And the Register, fol. 22. 'rex fidelibus suis 'Guernsey et Jersey.' King William the first brought this dukedom of Normandy with him, which by five descents continued under the actual obedience of the kings of England; and in or about the 6th of king John, the crown of England lost the actual possession thereof, until Hen. 5 recovered it again, and left it to Hen. 6, who lost it in the 28th of his reign; wherein were (as some write) one archbishopric and six bishopricks, and 100 strong towms and fortresses, besides those that were wasted in war.

Maud the empress, the only daughter and heir of Henry 1, took to her second husband Jeffrey Plantagenet, earl of Anjou, Tourain, and Mayne, who had issue Hen. 2, to whom the said earldom by just title descended, who, and the kings that succeeded him, styled themselves by the name of Comes Andegav', &c. until Edw. 3, became king of all France; and such as were born within that earldom, so long as it was under the actual obedience of the king of England, were no aliens, but natural-born subjects, and never any offer made, that we can find, to disable them for foreign birth. [Co. Lit. 7. a.]

But leave we Normandy and Anjou, and speak we of the little, but yet ancient and absolute kingdom of the Isle of Man, as it appeareth by divers ancient and authentic records; as taking one for many. [4 Inst. 283, 284. Co. Lit. 11 b. Kelw. 202. pl. 19. 2 And. 155, 156.] Artold king of Man sued to Hen. 3, to come into England to confer with him, and to perform certain things which were due to Hen. 3, thereupon Hen. 3, 21 Decemb. ann. regni sui 34, at Winchester, by his letters patent gave licence to Artold king of Man as followeth: 'Rex omnibus salutem. Sciatis, 'quod licentiam dedimus, &c. Artoldo regi 'de Man veniendo ad nos in Angl' ad loquend' 'nobisc' et ad faciend' nobis quod facere debet; et ideo vobis mandamus, quod ei regi in 'veniend' ad nos in Angl', vel ibi morand', 'vel inde redeund', nullum faciat' aut fieri permittatis damnun, injur', molestiam, aut gravamen, vel etiam hominib' suis quos secum ducet; et si aliquid eis forisfact' fuerit, id eis 'sine dilat' faciat' emendari. In cujus, &c. 'duratur' usque ad fest' S. Mich.' Wherein two things are to be observed; 1. That seeing that Artold king of Man sued for a licence in this case to the king, it proveth him an absolute king, for that a monarch or an absolute prince cannot come into England without licence of the king; but any subject being in league, may come into this realm without licence. 2. That the king in his licence doth style him by the name of a king. It was resolved in 11 H. 8. that where an office was found after the decease of Thomas earl of Derby, and that he died seised, &c. of the Isle of Man, that the

said office was utterly void; for that the Isle of Man, Normandy, Gascoin, &c. were out of the power of the Chancery, and governed by several laws; and yet none will doubt, but those that are born within that isle, are capable and inheritable of lands within the realm of England.

Wales was sometime a kingdom, as it appeareth by 19 H. 6, fol. 6, and by the act of parliament of 2 H. 5, c. 6, but whilst it was a kingdom, the same was holden, and within the fee, of the king of England; and this appeareth by our books, Fleta, lib. 1. cap. 16. 1. E. 3, 59. 13 E. 3, tit. Jurisdic. 10 H. 4, 6 Plow. 14. 8 E. 3, Com. 368. [3 Keb. 402. 4 Inst. 239, 240, &c. Plow. 126. b. 129. Vaugh. 281.] And in this respect, in divers ancient charters, kings of old time stiled themselves in several manners, as king Edgar, Britannie *Barbarus*; Etheldredus, 'totius Albion' Dei providentia imperator; 'Edredus Magn' Britann' monarcha; which among many other of like nature I have seen. But by the statute of 12 E. 1, Wales was united and incorporated into England, and made parcel of England in possession; and therefore it is ruled in 7 H. 4. f. 13. a, that no protection doth lie 'quia moratur in Wallia,' because Wales is within the realm of England. [Co. Lit. 130. b. Fitz. protect. 23. Br. protect. 33. 3 Keb. 405. Vaugh. 414.] And where it is recited in the act of 27 H. 8, that Wales was ever parcel of the realm of England, it is true in this sense, viz. that before 12 E. 1, it was parcel in tenure, and since it is parcel of the body of the realm. And whosoever is born within the fee of the king of England, though it be in another kingdom, is a natural-born subject, and capable and inheritable of lands in England, as it appeareth in Plow. Com. 126. And therefore those that were born in Wales before 12 E. 1, whilst it was only holden of England, were capable and inheritable of lands in England.

Now come we to France and the members thereof, as Callice, Guynes, Tournay, &c. which descended to Edw. 3 as son and heir to Isabel, daughter and heir to Philip le Beau, king of France. Certain it is, whilst Henry 6 had both England, and the heart and greatest part of France under his actual ligeance and obedience, for he was crowned king of France in Paris, that they that then were born in those parts of France that were under actual ligeance and obedience, were no aliens, but capable of, and inheritable to lands in England. And that is proved by the writs in the Register, fol. 26, cited before. But the inrollment of letters patent of denization in the Exchequer int' originalia, ann. 11 H. 6, with the lord treasurer's remembrancer, was strongly urged and objected; for, it was said, thereby it appeareth, that 11. 6, in anno 11 of his reign, did make denizen one Reyuel born in France. Whereunto it was answered, that it is proved by the said letters patent, that he was born in France, before Henry 6 had the actual possession of the crown of France, so as he was Antennatus; and this appeareth by the said letters patent, whereby

the king granteth, that 'magister Johannes Reynel serviens noster, &c. infra regnum nostrum Franc' oriundus pro termino vite sue sit ligeus noster, et eodem modo teneatur sicut verus et fidelis noster infra regnum Angl' oriundus, ac quod ipse terras infra regnum nostrum Angl' seu alia dominia nostra perquirere possit et valeat.' Now if that Reynel had been born since Henry 6 had the quiet possession of France (the king being crowned king of France about one year before) of necessity he must be an infant of very tender age, and then the king would never have called him his servant, nor made the patent (as thereby may be collected) for his service, nor have called him by the name of *magister Johannes Reynel*: but without question he was Anteanatus, born before the king had the actual and real possession of that crown.

Calais is a part of the kingdom of France, and never was parcel of the kingdom of England, and the kings of England enjoyed Calais in and from the reign of king Edw. 3rd, until the loss thereof in queen Mary's time, by the same title that they had to France. [Kelw. 202. pl. 19. 2. And. 116. Br. trial, 58, 133 Br. erro. 101. Br. cinque ports 10. Vaugh. 401, 4 Inst. 283.] And it is evident by our books, that those, that were born in Calais, were capable and inheritable to lands in England, 42 E. 3. c. 10. Vide 21 H. 7, 33. b. 19 H. 6, 2 E. 4, 1. a. b. 39 H. 6, 39. a. 21 E. 4, 18. a. 28 H. 6, 3. b. By all which it is manifest, that Calais being parcel of France was under the actual obedience and commandment of the king; and by consequent those that were born there were natural born subjects, and no aliens. Calais, from the reign of Edw. 3, until the 5th year of queen Mary, remained under the actual obedience of the king of England.

Guines also, another part of France, was under the like obedience to Henry 6, as appeareth by 31 H. 6, fol. 4. And Tournay was under the obedience of Henry 8, as it appeareth by 5 El. Dyer, fol. 224, for there it is resolved, that a bastard born at Tournay, whilst it was under the obedience of Henry 8, was a natural subject, as an issue born within this realm by aliens. [Fitz Protect. 13. Guynes. Tournay. Dy. 224, pl. 29 Vaugh. 233. Co Lit. 8. a.] If then those that were born at Tournay, Calais, &c. whilst they were under the obedience of the king, were natural subjects, and no aliens, it followeth, that when the kingdom of France (whereof those were parcels) was under the king's obedience, that those that were then born there, were natural subjects, and no aliens.

Next followeth Ireland, which originally came to the kings of England by conquest; but who was the first conqueror thereof, hath been a question. [12 Co. 108, 109, &c. 4 Inst. 349, 350, &c. Dav. 60. Præf. 4. Rep. 32, 33.] I have seen a Charter made by king Edgar in these words: 'Ego Edgarus Anglorum *Basilius*, & omniumque insularum oceanii, quæ Britanniam

'circunjacent, imperator et dominus, gratias ago ipsi Deo omnipotenti regi meo, qui meum imperium sic ampliavit et exaltavit super regnum patrum meorum, &c. Mihi concessi, propitia divinitas, cum Anglorum imperio omnia regna insularum oceanii, &c. cum susi ferocissimis regibus usque Norvegiam, maximamque partem Hibern', cum sua nobilissima civitate de Dublinâ, Anglorum regno subjungere, quapropter et ego Christi gloriam et laudem in regno meo exaltare, et ejus servitium amplificare devotus disposui, &c.' Yet for that it was wholly conquered in the reign of Henry 2, the honour of the conquest of Ireland is attributed to him; [Co. Lit. 7. a.] and his style was, 'rex Angl', dominus Hibern', 'dux Normann', dux Aquitan', et comes 'Audegav', king of England, lord of Ireland, duke of Normandy, duke of Aquitain, and earl of Anjou. That Ireland is a dominion separate and divided from England, it is evident from our books, 20 H. 6, 8. sir John Pilkington's case. 32 H. 6, 25. 20 Eliz. Dyer 360. Plow. Com. 360. [12 Co. 111. 4 Inst. 351. 1 And. 263. 2 And. 116. Dav. 37. a. Jenk. Cent. 164. Br. parliam. 98.] And 2 R. 3, 12 a. 'Hibernia habet parliamentum, et faciunt leges, et nostra statuta non ligant eos, quia non mittunt milites ad parliamentum' (which is to be understood, unless they be especially named) 'sed personæ eorum sunt subjecti regis, sicut inhabitantes in Alesia, Gasconia, et Guyan.' Wherein it is to be observed, that the Irishman (as to his subjection) is compared to men born in Calais, Gascon, and Guienne. Concerning their laws, ex rotulis patentium de anno 11 regis H. 3, [Co. Lit. 141. a.] there is a Charter which that king made, beginning in these words: 'Rex, &c. baronibus, militibus, et omnibus libere tenentibus L. salutem. Satis ut credimus vestra audivit discretio, quod, quando honor memorie (a) Johannes quondam rex Angl' pater noster venit in Hiberniam, ipse duxit secum viros discretos et legis peritos, quorum communi consilio et ad instantiam Hibernensium statuit et præcepit leges Anglicanas in Hibern' ita quod leges easdem in scripturas redactas reliquit sub sigillo suo ad Scaccarium Dublin'.' So as now the laws of England became the proper laws of Ireland; and therefore, because they have parliaments holden there, whereat they have made divers particular laws concerning that dominion, as it appeareth in 20 H. 6, 8. and 20 El. (b) Dyer 360, and for that they retain unto this day divers of their ancient customs, the book in 20 H. 6, 8. holdeth, that Ireland is governed by laws and customs separate and diverse from the laws of England. A voyage royal may be made into Ireland. Vide (c) 11 H. 4, 7. a. and 7 (d) E. 4, 27. a. which proveth it a distinct dominion.

(a) Co. Lit. 141. b. 2 Vent. 4.

(b) 9 Co. 117. b. Cart. 186.

(c) Fitz. Protect. 24. Br. Protect. 34.

(d) Fitz. Protect. 16. Br. Protect. 72. 3

And in anno 33 reg. El. it was resolved by all the judges of England in the case of (e) Orurke an Irishman, who had committed high treason in Ireland, that he by the statute of 23 H. 8. c. 33. might be indicted, arraigned, and tried for the same in England, according to the purview of that statute; the words of which statute be, 'that all treasons, &c. committed by any (f) person out of the realm of England shall be from henceforth enquired of, &c.' and they all resolved (as afterward they did also in sir John Perrot's case) that Ireland was out of the realm of England, and that treasons committed there were to be tried within England by that statute. In the statute of 4 H. 7. cap. 24. of (g) fines, provision is made for them that be out of this land, and it is holden in Plow. Com. in Stowel's case 375, that he that is in Ireland is out of this land, and consequently within that proviso. Might not then the like plea be devised as well against any person born in Ireland, as (this is against Calvin that is a Postnatus) in Scotland? for the Irishman is born 'extra ligeantiam regis regni sui Angli, &c.' which be *verba operativa* in the plea: but all men know, that they are natural born subjects, and capable of and inheritable to laws in England.

Lastly, to conclude this part with (h) Scotland itself. In ancient time part of (i) Scotland (besides Berwick) was within the power and ligeance of the king of England, as appeareth by our books (k) 42 E. 3. 2. b. the lord Beaumont's case, 11 E. 3. c. 2, &c. and by precedents hereafter mentioned; and that part (though it were under the king of England's ligeance and obedience) yet was it governed by the laws of Scotland. Ex rotulis Scottiæ, anno 11 Ed. 3, amongst the records in the Tower of London. 'Rex, &c. Constituimus Rich. Talebot justiciarium nostrum villæ Berwici super Twedam, ac omnium aliarum terrarum nostrarum in partibus Scot', ad faciend' omnia et singula quæ ad officium justiciarii pertinent, secundum legem et consuetudinem regni Scot'. And after anno 26 E. 3, ex eodem rot. 'Rex Henrico de Percey, Ricardo de Nevil, &c. Volumus et vobis et alteri vestrum tenore presentium committimus et mandamus, quod homines nostri de Scot' ad pacem et obedientiam nostram existentes, legibus, libertatibus, et liberis consuetudinibus, quibus ipsi et antecessores sui tempore celebris memorie Alexandri quondam regis Scot' rationabiliter usi fuerunt, uti et gaudere deberent, prout in quibusdam indenturis, &c. plenius dicitur contineri.' And there is a writ in the Register 295. a. 'Dedimus potestatem recipiendi ad fidem et pacem nostram homines de Galloway.' Now the case in (l) 42 Ed. 3, 2, b. (which was within 16

years of the said grant, concerning the laws in 26 E. 3,) ruleth it, that so many as were born in that part of Scotland, that was under the ligeance of the king, were no aliens, but inheritable to lands in England; yet was that part of Scotland in another kingdom governed by several laws, &c. And if they were natural subjects in that case, when the king of England had but part of Scotland, what reason should there be, why those that are born there, when the king hath all Scotland, should not be natural subjects, and no aliens? So likewise (m) Berwick is no part of England, nor governed by the laws of England, and yet they that have been born there, since they were under the obedience of one king, are natural born subjects, and no aliens, as it appeareth in 15 R. 2, cap. 7, &c. Vide (n) 19 H. 6, 35. b. and 39 H. 6, 59. a. And yet in all these cases and examples, if this new devised plea had been sufficient, they should have been all aliens against so many judgments, resolutions, authorities, and judicial precedents in all successions of ages. There were sometimes in England, whilst the heptarchy lasted, seven several crowned kings of seven several and distinct kingdoms, but in the end the West Saxons got the monarchy, and all the other kings melted, as it were, the crowns to make one imperial diadem, for the king of the West Saxons over all. Now when the whole was under the actual and real ligeance and obedience of one king, were any, that were born in any of those several and distinct kingdoms, aliens one to another? Certainly they, being born under the obedience of one king and sovereign, were all natural born subjects, and capable of and inheritable unto any lands in any of the said kingdoms.

In the holy history reported by St. Luke, *ex dictamine Spiritus Sancti*, cap. 21 et 22 Act. Apostolorum, it is certain, that St. Paul was a Jew, born in Tarsus, a famous city of Cilicia; for it appeareth in the said 21st chap. v. 39, by his own words, 'ego homo sum quidem Judæus a Tarsos Ciliciæ, non ignote civitatis muni-ceps.' And in c. xii. v. 3, 'ego sum vir Judæus natus Tarsos Ciliciæ, &c.' and them made that excellent sermon there recorded; which when the Jews heard, the text saith, v. 29, 'levaverunt vocem suam, dicentes, tolle de terra hejusmodi, non enim fas est eum vivere; vociferantibus autem eis et projicientibus vestimenta sua, et pulverum jactantibus in aerem.' Claudius Lysias the popular tribune, to please this turbulent and profane multitude (though it were utterly against justice and common reason) the text saith, 'jussit tribunus, 1. induci eum in castra, 2. flagellis cædi, and 3. torqueri eum (quid ita?) ut sciret propter quam causam sic acclamarent;' and when they had bound Paul with cords, ready to execute the tribune's unjust commandment, the blessed apostle (to avoid unlawful and sharp punishment) took hold of the law of a heathen emperor, and said to the centurion

Inst. 11, 18, 24. Co. Lit. 261. b. 1. And. 262, 269. 2 Vent. 4. Cart. 190. Cawly 93.

(f) 35 H. 8. c. 2.

(g) Cawly 93. Co. Lit. 261. b. 3 Inst. 11.

(h) 3 Inst. 18. Plowd. 368. b.

(i) Heylin's Cosmog. lib. 4. p. 305, 306.

(k) Fitz. Brief 551.

(l) Fitz. Brief 551. Ant. 23. a.

(m) 1 Sid. 381, 382. 2 Burro. 858.

(n) Fitz. Protect. 8. Br. Protect. 49.

standing by him, 'si hominem Romanum et indomatum licet vobis flagellare? Which when the centurion heard, he went to the tribune and said, 'quid acturus es? Hic enim homo civis Romanus est.' Then came the tribune to Paul, and said unto him; 'dic mihi si tu Romanus es?' 'At ille dixit, etiam.' And the tribune answered, 'ego multa summa civitatem hanc consequutus sum.' But Paul, not meaning to conceal the dignity of his birth-right said, 'ego autem et natus sum:' as if he should have said to the tribune, you have your freedom by purchase of money, and I (by a more noble means) by birth-right and inheritance. 'Protinus ergo,' saith the text, 'decesserunt ab illo qui illam torturi erant: tribunos quoque tinnit postquam rescivit, quia civis Romanus esset, et quia alligasset eum.' So as hereby it is manifest, that Paul was a Jew, born at Tarsus in Cilicia in Asia Minor; and yet being born under the obedience of the Roman emperor, he was by birth a citizen of Rome in Italy in Europe, that is, capable of and inheritable to all privileges and immunities of that city. But such a plea as is now imagined against Calvin might have made St. Paul an alien to Rome. For if the emperor of Rome had several ligeances for every several kingdom and country under his obedience, then might it have been said against St. Paul, that he was 'extra ligeantiam imperatoris regni sui Italice, et infra ligeantiam imperatoris regni sui Cilicie, &c.' But as St. Paul was 'Judæus patriæ et Romanus privilegio, Judæus natione et Romanus jure nationum;' so may Calvin say, that he is 'Scotus patriæ et Anglus privilegio, Scotus natione et Anglus jure nationum.'

Samaria in Syria was the chief city of the ten tribes; but it being usurped by the king of Syria, and the Jews taken prisoners, and carried away in captivity, was after inhabited by the Panymys. Now albeit Samaria of right belonged to Jewry, yet because the people of Samaria were not under actual obedience, by the judgment of the chief justice of the whole world they were adjudged *alienigenæ*, aliens: for in the Evangelist St. Luke, c. 17, when Christ had cleansed the ten lepers, 'unus autem ex illis,' saith the text, 'ut vidit quia mandatus esset, regressus est cum magnâ voce magnificans Deum et cecidit in faciem ante pedes ejus gratias agens, et hic erat Samaritanus. Et Jesus respondens dixit, nonne decem mundati sunt, et novem ubi sunt? Non est inventus, qui rediret et daret gloriam Deo, nisi hic alienigena.' So as by his judgment this Samaritan was *alienigena*, a stranger born, because he had the place, but wanted obedience. 'Et si deat obedientia non adjuvat locus,' And this agreeth with the divine, who saith, 'si locus salvare potuisset, Satan de celo pro sua inobedientia non cecidisset. Adam in Paradiso non cecidisset. Lot in monte non cecidisset, sed potius in Sodom.'

6. Now resteth the sixth part of this division, that is to say, six demonstrative illations

or conclusions, drawn plainly and expressly from the premises.

1. Every one that is an alien by birth, may be, or might have been an enemy by accident; but Calvin could never at any time be an enemy by any accident; *ergo*, he cannot be an alien by birth. Vide 33 H. 6, f. 1, a. b. the difference between an alien enemy, and a subject traitor. 'Hostes sunt, qui nobis, vel quibus nos bellum decernimus; cæteri proditores, prædones, &c.' The *major* is apparent, and is proved by that which hath been said. Et vide Magna Charta, cap. 30, 19 E. 4, 6, 9 E. 3, c. 1, 27 E. 3, c. 2, 4 H. 5, c. 7, 14 E. 3, stat. 2, c. 2, &c.

2. Whosoever are born under one natural ligeance and obedience, due by the law of nature to one sovereign, are natural-born subjects: but Calvin was born under one natural ligeance and obedience due by the law of nature to one sovereign; *ergo* he is a natural-born subject.

3. Whosoever is born within the king's power or protection, is no alien: but Calvin was born under the king's power and protection: *ergo* he is no alien.

4. Every stranger born must at his birth be either *amicus* or *inimicus*: but Calvin at his birth could neither be *amicus* nor *inimicus*; *ergo* he is no stranger born. *Inimicus* he cannot be, because he is *subditus*; for that cause also he cannot be *amicus*; neither now can Scotia be said to be *solum amici*, as hath been said.

5. Whatsoever is due by the law or constitution of man, may be altered; but natural ligeance or obedience of the subject to the sovereign cannot be altered; *ergo* natural ligeance or obedience to the sovereign is not due by the law or constitution of man. [Sawyer's Argument in Quo Warranto, 25.] Again, whatsoever is due by the law of nature, cannot be altered; but ligeance and obedience of the subject to the sovereign is due by the law of nature; *ergo* it cannot be altered. It hath been proved before, that ligeance or obedience of the inferior to the superior, of the subject to the sovereign, was due by the law of nature many thousand years before any law of man was made; which ligeance or obedience (being the only mark to distinguish a subject from an alien) could not be altered; therefore it remaineth still due by the law of nature. For 'leges nature perfectissimæ sunt et immutabiles, humani vero juris conditio semper in infinitum decurrit, et nihil est in eo quod perpetuo stare possit. Leges humanæ nascuntur, vivunt, et moriuntur.'

Lastly, whosoever at his birth cannot be an alien to the king of England, cannot be an alien to any of his subjects of England; but the plaintiff at his birth could be no alien to the king of England; *ergo* the plaintiff cannot be an alien to any of the subjects of England. The *major* and *minor* both be 'propositiones perspicue veræ.' For as to the *major* it is to be observed, that whosoever is an alien born, is

so accounted in law in respect of the king. And that appeareth, 1, by the pleading so often before remembered, that he must be 'extra ligeantiam regis,' without any mention making of the subject. [Co. Lit. 2, b.] 2. When an alien born purchaseth any lands, the king only shall have them, though they be holden of a subject, in which case the subject loseth his seigniory. And as it is said in our books, an alien may purchase 'ad proficuum regis;' but the act of law giveth the alien nothing; and therefore if a woman alien marrieth a subject, she shall not be endowed, neither shall an alien be tenant by the curtesy. Vide 3 H. 6, 55, a. 4 H. 3, 179, 3. [Br. denizen 1 Fitz. dower 179.] The subject shall plead, that the defendant is an alien born, for the benefit of the king, that he upon office found may seize; and that the tenant may yield to the king the land, and not to the alien, because the king hath best right thereunto. 4. Leagues between our sovereign and others are the only means to make aliens friends; 'et fœdera percütere,' to make leagues, only and wholly pertaineth to the king. 5. Wars do make aliens enemies, and 'bellum indicere' belongeth only and wholly to the king, and not to the subject, as appeareth in 19 Ed. 4, fol. 6, b. 6. The king only without the subject may make, not only letters of safe-conduct, but letters patent of denization, to whom, and how many he will, and enable them at his pleasure to sue any of his subjects in any action whatsoever, real or personal, which the king could not do without the subject, if the subject had any interest given unto him by the law in any thing concerning an alien born. Nay, the law is more precise herein than in a number of other cases, of higher nature: for the king cannot grant to any other to make of strangers born, denizens; it is by the law itself so inseparably and individually annexed to his royal person (as the book is in 20 H. 7, fol. 8). [Br. patents 111.] For the law esteemeth it a point of high prerogative, 'jus majestatis, et inter insignia summa' 'potestati,' to make aliens born subjects of the realm, and capable of the lands and inheritances of England in such sort as any natural-born subject is. And therefore by the statute of 27 H. 8, c. 21, many of the most ancient prerogatives and royal flowers of the crown, as authority to pardon treason, murder, manslaughter, and felony, power to make justices in eyre, justices of assise, justices of peace and gaol-delivery, and such like, having been severed and divided from the crown, were again reunited to the same: but authority to make letters of denization, was never mentioned therein to be resumed, for that never any claimed the same by any pretext whatsoever, being a matter of so high a point of prerogative. So as the pleading against an alien, the purchase by any alien, leagues, and wars between aliens, denizations, and safe-conducts of aliens, have respect only and wholly unto the king. It followeth therefore, that no man can be alien to the subject that is not alien to the king. 'Non

'potest esse alienigena corpori, qui non est capiti, non gregi qui non est regi.'

The authorities of law cited in this case for maintenance of the judgment: 4 H. 3, tit. Dower. Bracton, lib. 5, fol. 427. Fleta, lib. 6, cap. 47. In temp. E. 1, Hingham's Report. 17 Edw. 2, cap. 12, 11 Edw. 3, cap. 2. 14 Ed. 3, Statut. de Francia. 42 Ed. 3, fol. 2, 41 Ed. 3, cap. 10. 24 Lib. Ass. 25. 13 Rich. 2, cap. 2. 15 Rich. 2, cap. 7. 11 Hen. 4, fol. 26. 14 Hen. 4, fol. 19. 13 H. 4, Statutum de Guyan. 29 Hen. 6, tit. Estoppel 48. 23 Hen. 6, cap. 5. 32 Hen. 6, fol. 23. 23 Hen. 6, fol. 26. Littl. temp. Ed. 4, lib. 2, cap. Villenage. 15 Ed. 4, fol. 15. 19 Ed. 4, 6, 22 Ed. 4, cap. 8. 2 Rich. 3, 2. & 12. 6 Hen. 8, fol. 2. Dyer 14. Hen. 8, cap. 2. No manner of stranger born out of the king's obeysance, 22 H. 8, cap. 8. Every person born out of the realm of England, out of the king's obeysance, 32 Hen. 8, cap. 16. 25 Hen. 8, cap. 15, &c. 4 Ed. 6, Plowd. Comment. fol. 2. Fogassa's case. 2 & 3 Ph. & Mar. Dyer 145. Shirley's case. 5 EL Dyer 224. 13. El. cap. 7, de Bankrupts. All commissions ancient and late, for the finding of offices, to entitle the king to the lands of aliens born: also all letters patent of denization of ancient and latter times do prove, that he is no alien that is born under the king's obedience.

Now we are come to consider of legal inconveniences: and first of such as have been objected against the plaintiff, and secondly of such as should follow, if it had been adjudged against the plaintiff.

Of such inconveniences as were objected against the plaintiff, there remain only four to be answered: for all the rest are clearly and fully satisfied before: 1. That if Postnati should be inheritable to our laws and inheritances, it were reason they should be bound by our laws; but Postnati are not bound by our statute or common laws; for they having, as it was objected, never so much freehold or inheritance, cannot be returned of juries, nor subject to scot or lot, nor chargeable to subsidies or quin-zimes, nor bound by any act of parliament made in England. 2. Whether one be born within the kingdom of Scotland or no, is not triable in England; for that it is a thing done out of this realm, and no jury can be returned for the trial of any such issue: and what inconvenience should thereof follow, if such pleas that wanted trial should be allowed, for then all aliens might imagine the like plea, they, that objected it, left it to the consideration of others. 3. It was objected, that this innovation was so dangerous, that the certain event thereof no man could foresee; and therefore, some thought it fit, that things should stand and continue as they had been in former time, for fear of the worst. 4. If Postnati were by law legitimated in England, it was objected what inconvenience and confusion should follow, if for the punishment of us all, the king's royal issue should fail, &c. whereby those kingdoms might again be divided. All the other arguments and objections, that have been made, have been all



answered before, and need not to be repeated again.

1. To the first it was resolved, that the cause of this doubt was the mistaking of the law: for if a Postnatus do purchase any lands in England, he shall be subject in respect thereof, not only to the laws of this realm, but also to all services and contributions, and to the payment of subsidies, taxes, and public charges, as any denizen or Englishman shall be; nay, if he dwell in England, the king may command him, by a writ of *ne erant regnum*, that he depart not out of England. But if Postnatus dwell in Scotland, and have lands in England, he shall be chargeable for the same to all intents and purposes, as if an Englishman were owner thereof, and dwell in Scotland, Ireland, in the isles of Man, Guernsey, or Jersey, or elsewhere. The same law is of an Irishman that dwells in Ireland, and hath land in England. But if Postnati, or Irishmen, men of the isles of Man, Guernsey, Jersey, &c. have lands within England, and dwell here, they shall be subject to all services and public charges within this realm, as any Englishman shall be. So as to service and charges, the Postnati and Englishmen born are all in one predicament.

2. Concerning the trial, a threefold answer was thereunto made and resolved: 1. That the like objection might be made against Irishmen, Gascoins, Normans, men of the isles of Man, Guernsey, and Jersey, of Berwick, &c. all which appear by the rule of our books to be natural-born subjects; and yet no jury can come out of any of those countries and places, for trial of their births there. 2. If the demandant or plaintiff in any action concerning lands be born in Ireland, Guernsey, Jersey, &c. out of the realm of England, if the tenant or defendant plead, that he was born out of the ligeance of the king, &c. the demandant or plaintiff may reply, that he was born under the ligeance of the king at such place within England: [Co. Lit. 291. a. b. 6 Co. 47. a.] and upon the evidence the place shall not be material, but only the issue shall be, whether the demandant or plaintiff were born under the ligeance of the king in any of his kingdoms or dominions whatsoever: and in that case the jury, if they will, may find the special matter, viz. the place where he was born, and leave it to the judgment of the court: and that jurors may take knowledge of things done out of the realm in this and like cases, vide 7 H. 7. 8. b. 20 Ed. 3, Averment 34. 5 Ric. 2, tit. Trial 54. 15 Ed. 4. 15. 31 H. 6, 25. Fitz. Nat. Br. 196. Vide Dowdale's case, in the sixth part of my Reports, fol. 47, and there divers other judgments be vouched. 3. Brown, in anno 32 H. 6, reporteth a judgment then lately given, that where the defendant pleaded, that the plaintiff was a Scot, born at St. John's town in Scotland, out of the ligeance of the king; whereupon they were at issue, and that issue was tried where the writ was brought, and that appeareth also by 27 Ass. pl. 24. that the jury did find the prior to be born in Gascoins, (for

so much is necessarily proved by the words *trove fuit*.) And 20 Ed. 3, tit. Averment 34. in a *juris utrum*, the death of one of the vouchees was alledged at such a castle in Britain, and this was enquired of by the jury. And it is holden in 3 Ric. 2, tit. Trial 54. that if a man be adhering to the enemies of the king in France, his land is forfeitable, and his adherency shall be tried where the land is, as oftentimes hath been done, as there it is said by Belknap: and Fitz. Nat. Br. 196, in a *mortdunc*, if the ancestor died 'in itinere peregrinationis sue' vers. 'Terram Sanctam,' the jury shall enquire of it. But in the case at bar, seeing the defendant hath pleaded the truth of the case, and the plaintiff hath not denied it, but demurred upon the same, and thereby confessed all matters of fact, the court now ought to judge upon the special matter, even as if a jury upon an issue joined in England, as it is aforesaid, had found the special matter, and left it to the court.

3. To the third it was answered and resolved that this judgment was rather a renovation of the judgments and censures of the reverend judges and sages of the law in so many ages past, than any innovation, as appeareth by the book and book-cases before recited; neither have judges power to judge according to that which they think to be fit, but that which out of the laws they know to be right and consonant to law. 'Judex bonus nihil ex arbitrio suo faciat, nec proposito domesticæ voluntatis, sed juxta leges et jures pronuntiet. And as for 'timores,' fears grounded upon no just cause, 'qui non cadunt in constantem virum, vani timores astinandi sunt.'

4. And as to the fourth, it is less than a dream of a shadow, or a shadow of a dream: [2 Ventrix 6.] for it hath been often said, natural legitimation respecteth actual obedience to the sovereign at the time of the birth; for as the Antenati remain aliens as to the crown of England, because they were born when there were several kings of the several kingdoms, and the uniting of the kingdoms, by descent subsequent, cannot make him a subject to that crown to which he was alien at the time of his birth; so albeit the kingdoms (which Almighty God of his infinite goodness and mercy divert) should by descent be divided, and governed by several kings;\* yet it was resolved, that all those, that were born under one natural obedience, while the realms were united under one sovereign, should remain natural born subjects, and no aliens; for that naturalization due and vested by birth-right, cannot by any separation of the crowns afterward be taken away; nor he, that was by judgment of law a natural subject at the time of his birth, become an alien by such a matter *ex post facto*. And in that case, upon such an accident, our Postnatus may be 'ad fidem utriusque regis,' as Bracton saith in the afore-remembered

\* Note on the Abdication of k. J. 2, they were divided: but are now consolidated by the Union Act.

place, fol. 427. 'Sicut Anglicus non auditur in placitando aliquem de terris et tenement' in Francia, ita nec debet Francigena et alienigena, qui fuerit ad fidem regis Franciæ, audiri placitando in Angliâ: sed tamen sunt aliqui Francigenæ in Francia, qui sunt ad fidem utriusque, et semper fuerunt ante Normanniam perditam et post, et qui placitant hic et ibi, eâ ratione, quia sunt ad fidem utriusque, sicut fuit Willielmus comes mareschallus et manens in Angliâ, et M. de Gynes manens in Francia, et alii plures.' Concerning the reason drawn from the (a) etymologies, it made against them, for that by their own derivation, *aliene gentis* and *aliene ligentia* is all one: but arguments drawn from etymologies are too weak and too light for judges to build their judgments upon: 'sæpenumero ubi proprietatis (b) verborum attenditur, sensus veritatis amittitur: and yet when they agree with the judgment of law, judges may use them for ornaments.

But on the other side, some inconveniences should follow, if the plea against the plaintiff should be allowed. For, first it maketh ligeance local; videlicet, 'ligeantia regis regni sui Scotiae,' and 'ligeantia regis regni sui Angliæ:' wherupon should follow, first, that faith or ligeance, which is universal, should be confined within local limits and bounds: secondly, that the subjects should not be bound to serve the king in peace or in war out of those limits; thirdly, it should illegitimate many, and some of noble blood, which were born in Gascoign, Guienne, Normandy, Calais, Tournay, France, and divers other of his majesty's dominions, whilst the same were in actual obedience, and in Berwick, Ireland, Guernsey, and Jersey, if this plea should have been admitted for good. And secondly, this strange and new-devised plea inclineth too much to countenance that dangerous and desperate error of the Spencers, touched before, to receive any allowance within Westminster-hall.

In the proceeding of this case, these things were observed, and so did the chief justice of the Common Pleas publicly deliver in the end of his argument in the Exchequer-chamber. First, that no commandment or message by word or writing was sent or delivered from any whatsoever to any of the judges to cause them to incline to any opinion in this case; which I remember, for that it is honourable for the state, and consonant to the laws and statutes of this realm. Secondly, there was observed, what a concurrence of judgments, resolutions,

(a) Co. Lit. 68. b. (b) 9 Co. 110. b.

and rules, there be in our books in all ages concerning this case, as if they had been prepared for the deciding of the question of this point; and that (which never fell out in any doubtful case) no one opinion in all our books is against this judgment. Thirdly, that the five judges of the King's-bench, who adjourned this case into the Exchequer-chamber, rather adjourned it for weight than difficulty, for all they in their arguments *and voce* concurred with the judgment. Fourthly, that never any case was adjudged in the Exchequer-chamber with greater concordance and less variety of opinions, the lord-chancellor and twelve of the judges concurring in one opinion. Fifthly, that there was not in any remembrance so honourable, great, and intelligent an auditory at the hearing of the arguments of any Exchequer-chamber case, as was at this case now adjudged. Sixthly, it appeareth, that 'jurisprudentia legis communis Angliæ est scientia socialis et copiosa:' sociable, in that it agreeth with the principles and rules of other excellent sciences, divine and human: copious, for that 'quamvis ad (d) ea quæ frequentius accidunt jura adaptantur,' yet in a case so rare, and of such a quality, that loss is the assured end of the practice of it (for no alien can purchase lands, but he loseth them, and *ipso facto* the king is entitled thereunto, in respect wherof a man would think few men would attempt it) there should be such a multitude and farrago of authorities in all successions of ages, in our books and book-cases, for the deciding of a point of so rare an accident. 'Et sic determinata et terminata est ista questio.'

*The Judgment in the said Case, as entered on record, &c.*

Whereupon all and singular the premises being seen, and by the court of the lord the now king here diligently inspected and examined, and mature deliberation being had thereof; for that it appears to the court of the lord the now king here, that the aforesaid plea of the said Richard Smith and Nicholas Smith, above pleaded, is not sufficient in law to bar the said Robert Calvin from having an answer to his aforesaid writ: therefore it is considered by the court of the lord the now king here, that the aforesaid Richard Smith and Nicholas Smith to the writ of the said Robert do further answer.

See now the statutes for the Union of both kingdoms.

(d) 5 Co. 127. b. Co. Lit. 218. a. 2 Inst. 137. Cart. 13. 6 Co. 87. a.

Lord Chancellor ELLESMERE's Speech in the Exchequer Chamber, in the Case of the POSTNATI (c).

MY lords: Mine age, mine infirmitie, and indisposition of health, my decarie and weaknesse of memorie, and *desuetudo*, and long discontinuance from this manner of legall exercise (aboue foureteene yceres) haue bereaued mee of the meanes and helpes that should inhable me to speake in so great a case.

I feare therefore, that it will be deemed presumption (if not worse) that I aduenture to speake heerein at all; specially after so many

(c) This Argument was printed in 1609, with the following title:—The Speech of the Lord Chancellor of England, in the Exchequer-Chamber, touching the Post-nati. Before the Speech there was the following Address to the reader:

“To the louing readers; Before I presumed to speake in the Exchequer-Chamber in R. C. case (which is now commonly called the Case of Post-nati,) I considered mine age and infirmities, and how long I had discontinued from such legall exercises. I might hereupon haue iustly challenged the priuiledge of silence. But greater and weightier reasons ouer-ruled mee, and enforced mee to waiue the benefit of that priuiledge: for, looking into the nature of the question then in hand, and examining the circumstances, I found the case to bee rare, and the matter of great import and consequence, as being a special and principall part of the blessed and happy Vnion of Great Britaine.—I heard many learned and iudicious arguments, made by the reuerend Judges: and finding that they did not all concurre in opinion (though the number was ineede so few, of them that differed, that in Greeke it woulde not make a plurall number) and that some things were by them omitted, which seemed to mee to bee both pertinent to the matter, and necessary to bee knowne, and more proper and fit to bee spoken by me respecting the place I hold, than by them, that did wholly binde themselues to the forme and rule of legall argument and discourse: I thought that I coulde not, in dutie, sit as a dumme and idle hearer onlie; the cause being iudicially depending in the high court of Chancerie, where I was to iudge of it according to lawe, following the rule of mine owne conscience, and the measure of mine owne vnderstanding, and not to bee swayed with the weight of other mens opinions.—I considered also, that although *silentij tutum premium* is often true in humane policie, yet sometime there is *crimen reticentiae*; and therefore the prophet said, ‘*væ mihi quia tacui.*’ And Chrysostome obserueth, that, ‘*tribus modis in veritatem peccatur: 1. veritatem præ timore tacendo: 2. veritatem in mendacium commutando: 3. veritatem non defendendo.*’ Remembring this, my conscience told me, that howsoeuer silence might in this case haue excused mee of the

learned and iudicious arguments of so many grate, learned, and reuerend iudges.

To say the same that hath bene saied, must needes be vnpleasaunt, wearsome, and loathsome to the hearers; and not to say the same is to speake little to the purpose: for, what more can bee saied than hath bene?

Yet, for that the case is depending in Chancerie, and adiourned hither for difficultie in law, and there I must giue iudgement accord-

second, yet I coulde not haue escaped by silence, from offending in the first and last. And if Festus thought it not reason, to send a prisoner, without shewing the causes which were layed against him, I might haue bene worthily and iustly censured, if vpon other mens arguments, and as it were *fade implicito*, I should haue pronounced my iudgement and sentence in so great a cause, without declaring the grounds and reasons whereupon I stood. Thus, ductie and necessitie (for, *ratio sapienti necessitas*) were the causes that induced mee to speake in this rare and weightie cause, and the force of truth moued mee to speake that which I did speake, without respect of pleasing or displeasing any. And so, hauing the warrant of a sincere conscience, which is truly said to be, ‘*veluti comes, et testis, et iudex actionum.*’ I haue in the Chancerie iudged and decreed the case for R. C. And the like iudgement is also giuen by the iudges of the King's Bench, in the assise depending in that court. The decree and iudgement being thus passed, diuerse vnperfect reports, and severall patches and pieces of my speech haue bin put in writing, and dispersed into many hands, and some offred to the presse. The king's maiestie, hauing knowledge thereof, mislied it; and thereupon commanded me to deliuer to him in writing, the whole discourse of that which I said in that cause.—Thus I was put to an vnexpected new labour, to reuiue my scribled and broken papers. Out of which (according to the charge imposed vpon me) I gathered all which I had before spoken, and so set it downe faithfully and plainly, and (as neare as I coulde) in the same words I vttered it. It pleased his sacred maiestie to take some view of it; and taking occasion thereby, to remember the diligence of the Lord Chief Iustice of the Common-Place, for the summary Report he had published of the Iudges arguments; he gaue mee in charge to cause this to be likewise put in print, to preuent the printing of such mistaken and vnperfect reports of it, as were already scattered abroad.—Whatsoeuer it is, it was first conceived and spoken out of conscience and duty; and is now published in humble obedience to my most gracious soueraine. And so I offer and comment it to your good acceptance and favourable interpretation.

T. ELLESMERE, Cancr.

ing to the law, whether the complainant bee inhabited, by lawe, to maintaine his suit in that court or not; I holde it more fitting to deliuer the reasons of my iudgement heere, where others haue bene heard, than there, before a few, which haue not heard that, which hath bene so learnedly argued and largely debated heere.

And therefore the case standing thus, I will speake what I thinke. And I must say as one of the graue iudges saied, I can tell no newes; but some old things which I haue read and obserued, I will remember; but I cannot diuine, or prophesie *de futuris*, I leaue that as iustice Yelverton did.

I am free and at libertie, 'nullius addictus in verba magistri,' and therefore I will speake ingenuously and freely.—In the arguing of this case, some things, which are of great weight with wee, haue, (in mine opinion) bene passed ouer too lightly: and some other things, which seeme to me but light, haue bene ouerweighed, as I thinke.—Halse an howers time longer or shorter I meane not to strife for; and therefore I will presume on your patience, and assume to myselfe such conuenient time as others haue done; and yet I will husband time as well as I can.—I will not be abashed to strengthen my weake memory with helpe of some scribled papers, as others haue done: for I account it a point of wisdome to followe wise mens examples. Other exordium, insinuation, protestation, or preface for the matter itselle either to prepare attentiu and beneuolent auditors, or to stirre offence or mislike against either partie, I meane not to vse. It is fit for orators; I neuer professed the art; I had neuer skill in it: and it is not decorum for iudges that ought to respect the matter, and not the humours of the hearers.—The exordium the ciuilians vse in their sentences I like well; 'in Dei nomine amen, et Deo prinitus inuocato.' Other exordium I care not for.

The case now depending in Chauncerie, which is adourned hither, is thus.

Robert Caluine, sonne and heire apparant of James lord Caluine of Colcrose in the realme of Scotland, an infant of three yeares of age, borne in the saied realme of Scotland, maketh title by his bill to a messuage and garden with th' appurtenances in the parish of St. Burtolph without Bishops-gate in the citie of London; and complaineth against Iohn Bingley, and Richard Griffin, for detaining the euidences concerning the same messuage and lands, and taking the profits thereof.—The defendants pleade, that the plaintife is an Alien; and that in the third yeere of his maiesties raigne of England, and in the 39th yeere of his maiesties raigne of Scotland, hee was borne in the realme of Scotland, within the ligeance of his said maiestie, of his realme of Scotland, and out of the ligeance of our soueraigne lord the king of his realme of England.—And the defendants say further, that at the time of the birth of the complainant, and long before, and ever sithence, the saied kingdome of Scotland was, and still is, ruled and governed by the proper lawes and

statutes of the said kingdome of Scotland, and not by the lawes and statutes of this realme of England; and therefore the defendants demaund iudgement, whether the complainant ought to bee answered to his said bill, or shall be receiued to prosecute the said suite against the defendants, being for, and concerning the title of inheritance, and euidence touching the same.—Heereupon the complainant hath demurred in law.

This is the speciall case now depending in the Chancerie; in which, and touching all like cases in general, mine opinion is, and since the question was first mooued hath bene, that these Post-nati are not Aliens to the king, nor to his kingdome of England, but by their birth-right are liege subjects to the king, and capable of estates of inheritance and freehold of landes in England; and may haue and maintaine as wel real as personall actions for the same: and that therefore the now complainant Robert Caluine ought to bee answered.

This opinion I did first conceiue vpon those rules and reasons in lawe (as well the common law of England, as the Ciuile law) which heereafter in the course of my speech I will remember. And in this opinion I haue bene since confirmed by many great and weighty reasons.

First, in the statute made in the first yeare of his maiesties raigne of England, [16. Mart. 1603.] authorizing the Treatie betwene the commissioners for both the kingdomes, it is said (as iustice Warburton noted well) that both the famous and ancient realmes of England and Scotland are now vnted in allegiance and loyall subiection in his royall person, to his maiestie, and his posteritic for euer.

Heere wee haue the iudgement of the parliament, that there is a vnitie in allegiance to one royall person; and therefore I see not how wee may out of imaginarie conceits, and by subtile distinctions straine our wittes to frame severall allegiances to one and the same royall person, contrary to so plaine a declaration made by parliament.

Next followeth his maiesties Proclamation 20 Octobris 1604, by which hee assumed to himselfe the name and stile of king of Great Britaine: in which Proclamation, among many other weighty reasons, this is added for one, 'we haue receiued from those that be skilful in the lawes of the land, that immediately vpon our succession, diuerse of our aunient lawes of this realme are *ipso facto* expired; as namely, that of escuage, and of the naturalization of the subjects.' This was not done sodainely, nor lightly; but vpon graue and serious deliberation, and aduise: and therefore seemeth to mee to be a matter of great importance, and not to be lightly regarded.

The same 20th of October, these commissioners beganne their Treatie. Of the graue and iudicious course which they held, in debating of the matter then propounded, I will forbear to speake: but for this point of Naturalization now in question, their Resolution in the end was thus:—That it shall be pro-

pounded to both the parliaments at the next sessions, that an Act be made containing a Declaration, as followeth: that all the subjects of both the realmes, borne since the decease of Elizabeth the late queen of England of happie memory, and all, that shal be-born hereafter vnder the obedience of his maiestie and his royall progeny, are by the common lawes of both the realmes, and shall be for ever, inhabled to obtaine, succede, inherite, and possesse all lands, goods, and chuttels, &c. as fully and amply as the subjects of either realme respectiue might haue done, or may doe in any sort within the kingdome where they were borne.—This, after long debating, and graue and deliberate consideration, was, in the end, the Resolution of the greater part of the commissioners, not one openly gamesaying it. And diuerse of the principall iudges of the realme were present at all times when the point was debated. And herein I note the wise and iudicious forme of that resolution, which was not to propound to the parliament the making of a new lawe, but a declaration of the common lawes of both the realmes in this question.—Now, if wee consider who these commissioners were, what lords of the higher house, and what persons of the common house, selected of all degrees, most eminent for their learning and iudgement, as well in ciuile and common law, as in knowledge, and experience other waies, being assisted by the graue iudges of the realme: if this, I say, be well considered, then this resolution must be accepted and esteemed as a matter of great and weighty importance, and much to be regarded in the deciding of this question.

According to this act of the commissioners, the case was propounded in the next session of parliament. In the higher house, the iudges were required to deliuer their opinions. There were then eleven iudges present; whereof tenne did with one ynfirme consent affirme the law to be, that the Postnati were not aliens, but natural subjects (one onely dissenting.) After this, the question was debated in a solempne conference between both the houses of parliament at severall times, and at great length, and with much libertie; nothing was omitted that wit or art could inuent to obiekt against this opinion; and that was done by men of great learning, and singular iudgment in the common lawe, and ciuile lawe, and by some other gentlemen of the common house, of rare gifts for their learning, knowl-dge, elocution and experience.—At this conference the iudges were present; who, after they had heard all that was, or could be said, did confirme their former opinions, which they had before deliuered in the higher house: three of the chiefe of them declaring their reasons, and all the rest (sauing one alone) concurring in the same. So, here was now a generall Resolution by all the iudges of the realme (one excepted) and that deliuered, not privately, but in parliament; which without more adoe had bene sufficient to haue decided and determined this question.

Touching the proclamation, it was discreetly and modestly said by a learned gentleman of the lower house, that it was of great respect, and much to be regarded; but yet it was not binding, nor concluding: for, proclamations can neither make, nor declare lawes; and besides, that this proclamation was not grounded vpon any resolution of the reuerend iudges; but vpon the opinion of some skilfull in the lawes of this land.—Of the strength of proclamations, being made by the king, by the aduise of his counsell and iudges, I will not discourse; yet I will admonish those that be learned and studious in the lawes, and by their profession are to giue counsell, and to direct themselves, and others, to take heede that they doe not contemne, or lightly regard such proclamations.—And to induce them thereunto, I desire them to looke vpon, and consider aduisedly these few proclamations, prouisions, or ordinaunces, which I will point out vnto them; and of what valifitie and force they haue bene holden to be in construction of lawe, albeit they be neither statutes, nor acts of parliament.

M. 4 H. 3. in Dower, the defendant pleaded, 'quod petens est de potestate regis Francie, et residens in Franciis; et prouisum est a consilio regis, quod nullus de potestate regis Francie respondeatur in Anglia, antequam Angli respondeantur de iure suo in Francia.' [Fitzh. dower. 179.] This the plaintifes attorney could not denie; and thereupon the iudgement was, *ideo sine die*.—Anno 26 Hen. 3, Certaine prouisions and ordinaunces were made which were called Prouisions Merton, where the king assembled his archbishops, bishops, earles, and barons for the coronation of the king, and his wife queene Elenor; and the words be, 'prouisum est in curia dom. regis apud Merton coram Willikeimo Cantuariensi archiepiscopo, et coepiscopis, suffraganeis suis; et coram maiori parte conium et baronum Anglie ibidem existentium pro coronatione ipsius domini regis et Elionore regine, pro qua omnes vocati fuerunt, cum tractatum esset de communi utilitate regni super articulis subscriptis, ita prouisum fuit et concessum, tam a predictis archiepiscopis, episcopis, comitibus, et baronibus, et alijs. De viduis primò, &c.'

Fitzherbert [Nat. Br. 32.] citeth a prouision made anno 19 H. 3. in these words, 'et prouisum fuit coram domino rege, archiepiscopis, episcopis, comitibus, et baronibus, quod nulla assisa vltima, presentationis de cetero capiatur de ecclesijs, prebendis nec de prebendis.'

This prouision was allowed and continued for lawe, vntill W. 2. anno 13 Edw. 1, cap. 5. which prouides the contrary by expresse words.

Anno 6 Ed. 1, the king and his iudges made certaine explanations of the statute of Gloucester, which are called Explanaciones Statuti Glocestria: and these be the words, 'Postmodum per dominum regem et iudiciarios suos facta sunt quedam explanaciones quorundam articulorum superius postorum.' Which explanations haue ever since bene received as a law.

There is a proclamation by king Ed. 3, bearing teste at Westminster anno 15 Ed. 3. And iudge Thorpes opinion pa. 39 Ed. 3, 7. both which I will now forbear to report, and wish the students to reade the same in the printed bookes, where they shall see both the effect, and the reason, and the cause thereof; they are worth their reading, and may informe and direct them what iudgement to make of proclamations.

Touching the opinion of the iudges, some haue objected (yet modestly, and I suppose, according to their conscience and vnderstanding) that there is not like regarde to be had of iudges opinions giuen in parliament, as ought to bee of their iudgements in their proper courts and seates of iustice: for, in those places their oath bindeth them; but not so in the other.—1. To this I answer: the reuerence, and worthinesse of the men is such, as is not to bee quarrelled and doubted of, if there were no oathe at all: for, if men of so great and eminent places feare not God and his iudgments, euen out of a religious conscience, which is, 'frænum ante peccatum, et flagrum post peccatum,' it may be doubted that the externall ceremonie of adding a booke will little auale.—2. Their oath doth bind them as much in the court of parliament, as in their proper courts: for, that is the supreme court of all: and they are called thither by the kings writ, not to sit as tell-clocks, or idle hearers; but, 'quod personaliter intersitis nobiscum, ac cum cæteris de consilio nostro super dictis negotiis tractaturi, vestrumque consilium impensuri:' and those 'negotia' be 'ardua et vrgentia negotia regni, &c.' And their oath, amongst other things, is, that they shall counsell the king truly in his businesse.—3. This exception may serue aguinste the iudges, as well in cases when they sit and giue iudgement, as iustices of Assises, Nisi Prius, Oyer and Terminer, and Gaole Deliuerie, as in this case of parliament: for, there they haue none other oath but their generall oath.—4. It becomes vs to esteeme of iudges now, as our forefathers esteemed them in times past; for, as they succede them in time and place (I thanke God, and the king, I haue neither cause to feare any for displeasure, nor to flatter any for fauour: wherefore I will neither be afraid, nor abashed to speake what I thinke :) I say therefore, that as our iudges now succede the former iudges, in time and place; so they succede them, and are not inferior to them in wisdome, learning, integritie, and all other iudicious and religious vertues.

Then let vs see what the wisdome of parliaments in times past attributed to the iudges opinions declared in parliament; of which there be many examples; but I will trouble you but with two or three.

I will not remember Richard the 2d's time (of which some of our chroniclers doe talke idely, and vnderstand little) where power and might of some potent persons oppressed iustice, and faithful iudges, for expounding the law soundly, and truly.—1. The first, that I

will remember, is this, in the parliament 28 H. 6, 16 Ianuarij, the commons made suite, that W. de la Poole duke of Suffolke should bee committed to prison for many treasons and other hainous crimes committed by him. The lordes in parliament were in doubt what answer to giue; they demaunded the opinion of the iudges. Their opinion was, that hee ought not to bee committed; and their reason was, for that the commons did not charge him with anie particular offence, but with generall slaunders and reports: and therefore because the specialties were not shewed, hee was not to bee committed. This opinion was allowed; and therupon 28 Ianuarij, the commons exhibited certaine speciall articles against him, viz. that he conspired with the French king to inuade the realme, &c. And thereupon hee was committed to the Tower.—2. In the parliament anno 31 H. 6, in the vacation (the parliament being continued by prorogation) Thomas Thorpe the Speaker was condemned in a thousand pounds damages in an action of trespassse, brought against him by the duke of Yorke, and was committed to prison in execution for the same. After, when the parliament was re-assembled, the commons made suite to the king and the lordes, to haue Thorpe the Speaker deliuered, for the good exploits of the parliament; whereupon the duke of Yorke counsell declared the whole case at large. The lordes demaunded the opinion of the iudges, whether, in that case, Thorpe ought to bee deliuered out of prison by priuiledge of parliament. The iudges made this answer, that they ought not to determine the priuiledge of that high court of parliament; but for the declaration of proceeding in lower courts, in cases where writtes of *supersedeas* for the priuiledge of the parliament be brought vnto them, they answered, that if any person that is a member of the parliament bee arrested in such cases as be not for treason or felonie, or for suretie of peace, or condemnation had before the parliament, it is vsed that such persons be released, and may make attorney, so as they may haue their freedome and libertie, freely to intend the parliament. Hereopou it was concluded, that Thorpe should still remaine in prison according to the lawe, notwithstanding the priuiledge of parliament, and that hee was the Speaker. Which resolution was declared to the commons by Walter Moyle, one of the king's serieants at lawe. And then the commons were commaunded in the kings name, by the bishop of Lincolne (in the absence of the abp. of Canterbury, then chauncellor) to chuse another Speaker.—3. In the parliament an. 7 H. 8, a question was moued, whether spirituall persons might bee conuented before temporall iudges for criminall causes. There sir Iohn Fineux and the other iudges deliuered their opinion, that they might and ought to bee so. And their opinion was allowed, and maintained by the king and the lordes: and D. Standish, who before had holden the same opinion, was deliuered from the bishops. And it is worth

the noting, what wordes passed in that case betweene the archbishop of Canterbury and that worthy iudge Fineux.—t. If a writ of error bee brought in parliament vpon a iudgement given in the King's Bench, the lords of the higher house alone (without the commons) are to examine the errors; but that is by the aduise and counsell of the iudges, who are to informe them what the lawe is, and so to direct them in their iudgement. And if the iudgement bee reuersed, then commundement is to bee given to the lord chancellour to doe execution accordingly. And so it was in anno 17 R. 2, in a writte of error brought in parliament by the deane and chapter of Lichfield, against the prior and convent of Newport-Pannell, as appeareth by the record. But if the iudgement bee affirmed, then the court of the King's-bench are to proceed to execution of the iudgment, as it appeareth in Flowerdewes case, P. 1. li. 7. fol. 19. But it is to bee noted, that in all such writtes of error, the lords are to proceede according to the lawe; and for their iudgment therein they are informed and guided by the iudges, and doe not follow their owne opinions or discretions otherwise.

This extrauagant discourse touching proclamations, and iudges opinions deliuered in parliament, and how they ought to bee regarded, I haue thought materiall and necessarie, both in respect of the time wherein wee liue, and the matter which we haue in hand. And these bee thinges which I thinke haue bene too lightly passed ouer. But if you condemne it as impertinent, I must then confesse I haue presumed too much vpon your patience; I pray you beare with mee, it is but my labour lost, and a little time mis-spent, if it seem so vnto you; you are wont to pardon greater faultes; call it either a passe-time, or waste-time as pleaseth you. Now, to returne to the case we haue in hand.

The generall question hauing had this passage (by proclamation, by commission, and by debating in parliament) remaineth yet without conclusion or iudgement: and as euery man abounds in his owne sence, so euery one is left to his owne opinion; specially those that were not satisfied with the graue resolution of the iudges in parliament, which (although some may tearne and account as bare opinions) I must alwayes valew, and esteeme as a reall and absolute iudgement. Now, I say, this generall question is reduced to two particular cases, and is iudicially depending in two the highest courts of iustice in this realme; and that is by one complainant against severall defendants for the freehoule and inheritance of severall parcells of land: and (as Mr. Solicitor said well) is a case, not fained, nor surmised, but a true case betweene true parties: and being *questio iuris, non facti*, is by both these courts adourned hither to bee decided, and determined by all the iudges of England, as the rarenesse of the case, and the weight and importance of it, both for the present and the future, doth require.—And the case being of this nature and qualitie, it is

not amisse to obserue the proceeding in it: for, it is worth the obseruing, and not to bee forgotten. The defendants counsell, men of great learning, and in their profession inferiour to none of their qualitie and degree, men conuersant and well exercised in the question, and such as in the great conference in parliament, most of them were specially selected and chosen, for so they well deserved, as most sufficient, able, and fit, as well for learning and knowledge, as for all other giftes of witte and nature, to handle so great and rare a question. And although it hath pleased them of their good discretion to vae the paines but of a few in the debating and arguing of the case at the barre: yet no doubt that was done vpon mature deliberation and conference with all the residue: and whatsoever the spirites, the learning, the wisdom, and knowledge of all the others, vpon long study, could affoorde, was put into the mouth of those few to serue as organs and instruments to deliuer it vnto vs: which they haue so well and sufficiently performed, that they deserue great praise and commendation: for, in my poore opinion, the witte of man could not deuisse to say more touching this question in lawe than they haue said. And whatsoever hath bene sithence spoken for that part, it is for the matter but the same in substance, which the counsell at the barre did deliuer; though it hath bene varied in forme, and amplified with other wordes and phrases, and furnished with shew of some other strained cases and authorities.

The handling of it by the learned and reuerend iudges hath bene such, as it may appeare to the world, that euery one hath spoken his owne heart and conscience; and hath laboured by long studie to search out the lawe and the true reason of the lawe in this rare case; and so they haue spoken, as *coram Deo et angelis*: none, with desire to seeme popular; for nothing ought to bee *tum populari quam veritati*: none to seeme to be time-seruers, or displeasers; for the king (whome vnder God they serue) being *pater patrie*, and soueraigne head of both these great vniued kingdome, is to them both, like as the head of a naturall body is to all the members of the same, and is not, nor cannot bee partiall more to one than to another. Hee deliuech in truth, and desireth it; and without truth hee cannot bee pleased. He ruleth by his lawe, and commaundeth his iudges to minister to all his subjects lawe and iustice sincerely, and truly; and equilly and iudifferently, without any partiall respect.

It was neuer seene, but that in all rare and difficult cases, there haue bene diuersitie of opinions; but yet without breach of charitie, which is the bond of vnitie. So it hath happened in this case. The case hath bene argued at large by fourteene learned iudges; twelue of them haue concurred in iudgement, but vpon severall reasons; for, as many wayes may leade to one end of the journey; so diuerse and severall reasons may conduce to one true and certaine conclusion.—And here I may

not omit the woorthie memorie of the late graue and reuerend iudge, sir John Popham, chiefe iustice of the King's bench deceased, a man of great wisdom, and of singular learning and iudgement in the lawe, who was absolutely of the same opinion, as he often declared, as well in open parliament, as otherwise.

The apostle Thomas doubted of the resurrection of our Saviour Iesus Christ, when all the rest of the apostles did firmly beleefe it: But that his doubting confirmed, in the whole church, the faith of the resurrection.—The two woortly and learned iudges that haue doubted in this case, as they beare his name, so I doubt not but their doubting hath giuen occasion to cleare the doubt in others; and so to confirme in both the kingdomes, both for the present and the future, the truth of the iudgement in this case.

Thus my lords, haue you hitherto nothing from mee but Amen, to that which all the iudges (sauiug two) haue saied; and much more you cannot expect from mee: yet, since I must giue iudgement in this case; and I saied in the beginning, that I would render the reasons of my iudgement (for that is the course of argument I must hoolde); I will now deliuer vnto you, what are the speciall and principall reasons that first haue induced mee, and still moue mee to houlde the opinion that I doe: and as I goe, I will indeuour to cleere some doubts and questions, that partly in the conference in parliament, and partly otherwise, I haue heard in; not onely touching this case it selfe, but also touching the forme and manner how it is to be decided and iudged.—The case is rare, and new (as it hath bene often saied); it was neuer decided *terminis terminantibus*; it was neuer iudged by any statute lawe, which is a positue lawe; nor by iudgement of the iudges of the common lawe.

Now, the first question is, as some would haue it, how it is to be iudged, and by what lawe; and haue wished that it might haue stayed vntill the parliament, and so bee decided by parliament. They that make this doubt, I will let them demurre, and die in their doubts: for, the case beeing adiourned hither before all the iudges of England, is now to be iudged by them according to the common lawe of England; and not tarrie for a parliament: for, it is no transcendent question, but that the common lawe can and ought to rule it, and ouer-rule it, as iustice Williams said well.—But then this question produceth another; that is, what is the common lawe of England? whether it be *ius scriptum*, or *non scriptum*? and such other like niceties: for, wee haue in this age so many questionists; and *quo modo* and *quare*, are so common in most mens mouthes, that they leaue neither religion, nor lawe, nor king, nor counsell, nor policie, nor government out of question.

And the end they haue in this question, what is the common lawe, is to shake and weaken the ground and principles of all government; and in this particular question of the law of England, to overthrow that law whereby this

realme hath many hundred yeares bene gouerned in all honour and happinesse: or at least to cast an aspersion vpon it, as though it were weake and vncertaine. I will therefore declare mine opinion in this point plainly and confidently, as I thinke in my conscience, and as I finde to be sufficiently warranted by ancient writers, and good authorities voide of all exception.

The common law of England is grounded vpon the law of God, and extendes it selfe to the originall lawe of nature, and the vniuersall lawe of nations.—When it respectes the church, it is called *Lex Ecclesie Anglicane*, as *Magna Charta*, ca. 1. '*Ecclesia Anglicana habeat omnia sua iura integra et illæsa.*'—When it respectes the crowne, and the king, it is sometimes called *Lex Coronæ*, as in stat. 25 Edw. 3, cap. 1. '*Lex Coronæ Angliæ est et semper fuit, &c.*' And it is sometimes called *Lex Regia*, as in *Registro* fo. 61. '*Ad iura regia spectat:*' and '*ad conseruationem iurium coronæ nostræ, et ad iura regni ne depereant, &c.*'—When it respectes the common subiects, it is called, *Lex Terræ*; as in *Magna Charta* ca. 39, '*Nisi per legale iudicium parium, vel per legem terræ.*'—Yet, in all these cases, whether it respectes the church, the crown, or the subiects, it is comprehended vnder this generall terme, the common lawes of England: which although they bee for a great parte thereof reduced into writing; yet they are not originally *leges scriptæ*.

This I first learned of the late lord treasurer Burleigh (whose honourable memorie England can neuer forget) and hearing it from him, I indeuored by my priuate studie to satisfie my selfe thorowlie in it. And whosoever shall well consider the lawes of England, which were before the Conquest (whereof wee haue some remnants and patches) or since the Conquest vntill *Magna Charta*, anno 9 H. 3. will make little doubt of it.—In H. 2's time Glanville writeth thus; '*leges Anglicanas licet non scriptas, leges appellari non videtur absurdum.*'—And in Hen. 3's time Bracton writeth thus: '*cum autem ferè in omnibus regionibus vtantur legibus et iure scripto, sola Anglia vsa est in suis finibus, iure non scripto et consuetudine; in ea quidem, ex non scripto ius venit quod vsus comprobauit.*'

But I may not agree with Bracton, that '*sola Anglia vsa est iure non scripto:*' for I find that the grauest, and the greatest learned writers of the Ciuile Lawe, both auncient and of this our time, doe hould the same opinion, touching the Ciuile Lawe it selfe, for thus they write: '*ex non scripto ius venit quod vsus approbauit.*' And thus; '*ius ciuile dictum ex non scripto natum est.*' And, '*ius non scriptum dicitur consuetudo, non quod scripto perpetuè careat, hoc enim falsum est: nam et consuetudines in memoriam constantiorem reducuntur in scripturam, vt cætera quoq; quæ sine scriptura perficiuntur: sed non scriptum ius est: id est, quod à scriptura vis eius non coepit nec pendet.*' So, hereby it may appeare how in this wee concurre with the Ciuile Lawe.



But hereupon these questionists moue another question, viz. If the common lawe be not written, how then shall it be knowen?—To this I answer; it is the common custome of the realme, as Bracton saith, 'ius venit quod vsus comprobauit;' and it standeth vpon two maine pillars and principall parts, by which it is to bee learned and knowen.—1. The first is, certaine knowne principles and maxims, and auncient customes, against which there neuer hath beene, nor ought to bee any dispute. As in cases of subiects; an estate in fee-simple, for life, for yeeres, dower, curtesie, &c. in cases of the crowne, the female to inherite: the eldest sole to bee preferred: no respecte of half blood: no tenant in dower, or by the courtesie of the crowne; no disability of the king's person by infuene, &c.—2. The second is, where there be no such principles, then, former iudgements giuen in like cases: and these be but 'arbitria iudicium, et responsa prudentium,' receiued, allowed, and put in practise and execution by the king's authoritie.

Of these Bracton speaketh; 'ego H. de Bracton animum erexi ad vetera iudicia iustorum perscrutanda; facta ipsorum, consilia, et responsa in vnam summam redigendo compilauit.'

And before the Conquest, king Ethelbert caused a booke to bee made, which was called *Decreta Iudiciorum*: and king Alured did the like, as master Lambard, a iudicious and learned obseruer of antiquities, doth remember. [Lambard in explicatione verbi Hyde.]—Of these also the iudges speake H. 33, H. 6. Moyle, fo. 8, 'we rule the law according to 'the auncient course.' Ashton, fol. 9, 'all our lawe is guided by vse, and by statute.' And Prysot saith, fol. 9, 'there cannot be a 'positiue law, but such as was iudged or made 'by statute.' Wherein I note also that hee equalleth a iudgement with a statute.—In 36 H. 6, fol. 25, Fortescue reasoneth thus; 'the lawe is as I haue saide, and so hath beene 'alwaies since the lawe beganne.'—In 37 H. 6, f. 22, Ascue reasons thus; 'such a charter 'hath bin allowable in the time of our prede- 'cessours, which were as sage and learned as 'wee bee.'—In H. 4, Edw. 4, fol. 41, Mark- ham reasoneth thus; 'it is good for vs to doe 'as it hath bin vsed before this time, and not 'to keepe one way one day for one party, and 'another day the contrary for the other party: 'and so the former precedents be sufficient for 'vs to follow:' and iudgement was giuen accordingly.—And in the former case 36 H. 6, Fortescue saith further; 'wee haue many 'courses and formes which be holden for lawe.'

Also euerie one of these foure principall courts, the Chaucery, King's Bench, Com- mou-Plees, and Eschequer, haue in many things scuerall courses and formes which are obserued for law, and that not onely in that proper court, but also in all courtes through the realme; whereof many examples be remembred in the case of the Mines in Plowden's Commentaries,

3. The third: but if there be no such former iudgements, nor direct examples or precedents, then this rule hath a further extention, which is this.

There is a rule in the common lawe, that *in nouo casu nouum remedium est apponendum. Et concordent clerici de breue faciundo, ita quod nullus recedat à Cancellaria sine remedio*: for the Chaucery is properly officina iustitie et aquitatis; where all original writs (which in auncient times were the grounds of all suites; are deuised and framed. And these clerici were graue and auncient men; skilfull, and long experienced in the course of the Chaucerie; and called 'clerici de prima forma:' and of late time 'magistri Cancellariae;' who in new and strange cases, besides their owne knowledge and experience, had oftentimes conference with the graue iudges for the deuising and framing of new writtes when neede requir- ed. And this I take to bee the same which is in the statute W. 2, cap. 24, [St. W. 2, cap. 24, anno 13 Ed. 1.] 'Et quotiescunque de cæ- tero euencrit in Cancellaria, quod in vno casu reperitur breue, et in consimili casu, ca- dente sub eodem iure et simili indigente reme- dio, non reperitur, concordent clerici de Can- cellaria in breui faciundo, vel attinent quereptes in proximum parliamentum: et scribantur casus in quibus concordare non possunt, et referant eos ad proximum parlia- mentum: et de consensu iurisperitorum fiat breue, ne contingat de cætero, quod curia regis deficiat conquerentibus in iusticia perqui- renda.'

Wherein I note these three things. First, the clerkes are to agree; and if they agree, that is an end, and standes for lawe, and then no referment to the parliament. Second, if the clerkes agree not, and so the case be referred to the parliament; then 'de consensu iurisperitorum fiat breue,' so 'consensus iurisperitorum' is the rule, and not the multitude of vulgar opinions. The third is, that iustice faile not them which complaine; which will often faile, if you stay vntill a parliament; for parliaments are not to be called for the wrong of a few priuate subiects, but for the great and vrgent affaires of the king and the realme.

I finde also a like rule in the ciuile lawe; 'vbi non est directa lex standum est arbitrio iudicis, vel producendum ad similia.' And another saith, 'de similibus ad similia iudicium et arguematatio recipiuntur.'

4. Besides these, there is another generall and certaine rule in the ciuile lawe, which I reserue to the last parte of that which I meane to speake in this matter.—So, leauing that vnto a more proper place, I will hereupon conclude, that if there bee no former iudgements, nor examples, nor precedents to bee found, then 'concordia clericorum, et arbitrium iudicium' is to seeke out the true and solide reason; and thereupon to ground their iudgements in all new cases: for it was truly saide by a learned gentleman of the lower house, 'deficiente lege recurrendum est ad consuetudinem: deficientis

'consuetudine recurrendum ad rationem.' And so from the iudges we shall haue *responsa prudentum* to decide all such new cases and questions. And according to this rule, all such new doubts and questions haue bene resolu'd and decided by the graue iudges in former times.

But here, before I proceede further, I am to make a suite, which is this:—That whatsoever I haue spoken, or shall happen to speake of the ciuile lawe; or whatsoever I shall cite out of any writer of that law, I pray fauor of my masters that professe it. I acknowledge that lawe to be auuncient and generall in many parts of the world; and I reuerence the professors of it, as men of great learning, wisdom, and iudgement. I professe it not; I haue learned little of it; but in that little I haue found that in the reall and essentiall partes of iustice, the ciuile and common lawe doe in many things concurre, though they differ much in the forme and manner of proceeding. And that which I shall haue occasion to produce of that lawe, will bee to shew how the common law and ciuile doe agree in one reason and iudgement in those things which I shall speake of.

Yet I must take libertie to say, that neither in Spaine, nor in France (those two great monarchies) it is not generally receiued nor allowed as a concluding and binding law.—They take there the reason of it onlie as a direction to their proceeding and iudgement: but to produce or alleadge it as a concluding or binding law, was no lesse than *capitis pena*.

This I make not of my selfe; for, besides common practice and experience, I haue an honest and substantiall witness, master Adam Blacwood a Scottishman, a man of singular learning in the ciuile lawe, who defendeth in like manner the lawes of Scotland, [Blacwood cap. 10.] as appeareth in his learned booke intituled, *Pro Regibus Apologia*, written by him against a seditious Dialogue or Libell made by George Buchanan, *De Iure Regni apud Scotos*, where he tells him, *aliud sceptrum, aliud plectrum*. But it is not amisse to recite his owne words, which are thus; 'Philippus cognomen-  
'to Pulcher, cum Lutetia: supremæ iurisdictionis curiam institueret, eam Romano iure  
'solutam esse declarauit: in eamq. sententiam  
'vetus extat eius curia: decretum, ne causarum  
'patroni Romanarum legum auctoritatem patriæ legibus opponant. Sed cum illæ bono et  
'æquo niti videntur et probabilem vtilitatis  
'publicæ causam continere, nos earum vtimur  
'haud imperio, sed ratione, cui omnes homines  
'naturæ præscripto subijciuntur. Quin etsi  
'quid aduersus rationem legum Romanarum  
'perperam ac temerè iudicatum est, id earum  
'multis pœnis haud æstimatur, sed vel principis, vel superioris magistratus arbitratu. Nam  
'cùm in publici muneris partem admittimur,  
'et conceptis verbis inauguramur, solemnî sacramento regiarum et municipalium legum  
'atq. morum obseruationem, nulla Romani iuris mentione, spondemus. Apud Hispanos  
'capitis pœnam ijs indictam legimus, qui Ro-

VOL. II.

'manarum legum auctoritatem vel in foro laudarent, vel in puluere scholastico profiterentur. Sed si quid occurreret patrijs legibus ac moribus indefinitum quod iudicanti religionem adferret, vnicum erat eximend. scrupulo regis consulendi remedium. Alaricus Tolosæ regnans, idem Gothis imperauit, vt si quis aduersus ipsius leges ciuile Romanorum ius citaret, temerè factum morte lueretur.'

Now to returne to that which I haue touched before, I say, that when there is no direct lawe, nor precise example, we must 'recurrere ad rationem, et ad responsa prudentum:' for, although 'quod non lego, non credo,' may bee a true and certaine rule in diuinitie; yet for interpretation of lawes, it is not alwaies so: for wee must distinguish betweene 'fidem moralem,' and 'fidem diuinam,' or else wee shall confound many things in the ciuile and politike gouernement of kingdomes and states. For, the first precedent, which wee haue now, had no precedent when it began; but as Tacitus saith, 'quæ nunc vetustissima creduntur noua fuerunt; et quod hodie exemplis tuemur, inter exempla futurum est.' And to those that hold, that nothing is to bee done but by former examples, Horace speaketh thus; 'O imitatores seruum pecus:' and Cicero saith, 'non exempla maiorum querenda, sed consilium est eorum à quibus exempla nata sunt explicandum.'

Thus hath iustice bene duely administred in England, and thereby the kings haue ruled, the people haue bene gouerned, and the kingdom hath flourished for many hundred yeeres; and then no such busie questionis is moued any quarrell against it.—Thus haue all doubts growing vpon Magna Charta, and Charta de Foresta, made in King Henry the thirds time, and vpon the statutes of Westmin. 1, Westm. 2, Westm. 3, and many other statutes made in Edw. 1. time: and vpon Prærogatiua Regis, and many o'her statutes made in Ed. 2. time, bene from time to time expounded; and so of later times, the statutes of fines, of vses, of willes, and many more.—Thus also haue all doubts and cases, whereof there was no statute or positieue lawe, bene alwaies expounded: for such are most of the cases which wee haue in our yeere-bookes, and bookes of reports, which are in effect nothing but *responsa prudentum*, as iustice Crooke did truely say.—Vpon this reason it is, that some lawes, as well statute lawe as common law, are obsolete and worne out of vse: for, all humane lawes are but *leges temporis*: and the wisdom of the iudges found them to bee vmeete for the time they liued in, although very good and necessarie for the time wherein they were made. And therefore it is saide 'leges humanæ nascuntur, vigent, et moriuntur, et habent ortum, statum, et occasum.'

By this rule also, and vpon this reason it is, that oftentimes auuncient lawes are changed by interpretation of the iudges, as well in cases criminall as ciuile.—In criminall cases the law was *voluntas reputabitur pro facto*; but it is

2 x

not so now, sauing in treason onely.—In an appeale of mainie Britton, fol. 48, saith 'soit le iudgement, que il perde autiel member, 'come il auer tolle a le plainti'e;' but it is not so now.—In auncient time, one present, aiding, comforting, and assisting to a murder, was taken to bee no principall, but an accessorie, as it appeareth M. 40 Edw. 3, fol. 42. et 40. Li. Ass. p. 8. and p. 25. But now in that case he is iudged a principall. And so it was ruled by all the iustices M. 4 Hen. 7, 18. and so Plowden affirmeth the lawe to be, in his Commentaries fol. 99. and 100.—In ciuile causes in auncient time, the lawe was houlden, that hee in remainder in taile could not haue an action of waste, nor be receiued vpon default of tenant for life: but afterwards, the lawe was often iudged otherwise; and so is the common experience and practise at this day.—In anno 40 Edw. 3, 28. Fynchden, chiefe iustice of the Common Place, saith, that in auncient time the vicar could not haue an action against the parson; but hee saith the contrarie is vsed at this day, which is the better.—In auncient time a disseisee could not enter vpon the feoffee of the disseisor, for sauing of the warranty; but for many yeeres the lawe hath bene houlden otherwise, and so the common practise yett remaineth.

By this rule it is also, that words are taken and construed, sometimes by extension; sometimes by restriction; sometimes by implication; sometimes a disjunctiue for a copulatiue; a copulatiue for a disjunctiue; the present tense for the future; the future for the present; sometimes by equity out of the reach of the wordes; sometime words taken in a contrary sence; sometime figuratiuely, as *contemns pro contento*, and many other like: and of all these, examples be infinite, as well in the ciuile lawe as common lawe.

And oftentimes the reuerend iudges haue had a graue regarde in their proceeding, that before they would resolue, or giue iudgement in such new cases, they desired to consult with the kings priuie counsell; as appeareth in diuerse cases in king Edward the third his time.—R. W. assaulted Adam Brabson in presence of the iustices of assise at Winchester, [59 E. 3, li. As. p. 1.] for which A. B. complained by bill before the said iustices, alledging this offence to bee in despite of the king and his iustices, to his damage of 100*l.* R. W. pleaded, not guiltie; and was found guiltie, and damages taxed to 10*l.* Thereupon the iudges awarded him to prison in the sherifes keeping. And for the fine, and that which should be further done for the king, for the assault done in the presence of the iudges, they would haue the aduise of the kings counsell: for in a like case, [M. 19 Edw. 3, iudgement 174.] because R. C. did strike a iurour at Westminster, which passed in an enquest against one of his friends; it was adiudged by all the counsell, that his right hand should be cut off, and his lands and goods forfeited to the king. These be the words in the booke.

In this case I note three things.—1. The iudges consulted with the counsell.—2. They haue a like case before when the counsell was also consulted with, viz. anno 19 E. 3, and yet they would not proceede in this case before they had againe consulted with the counsell.—3. That before anno 19 Edw. 3, there was no like case nor precedent for such a iudgement; and therefore the iudges would not of themselues pronounce that heauy iudgement before they had conferred with the counsell touching the same. And after they had the opiniou and aduise of the kings counsell, they proceeded to that iudgement.

Thomas Vghtred knight brought a *forme-done* against a poore man and his wife; [M. 39 Ed. 3, 35.] they came and vielded to the demaundant, which seemed suspitious to the court: whereupon they examined the matter, and staid iudgement, because it was suspitious. And Thorpe saide, that in the like case of Giles Blackett it was spoken of in parliament: and wee were commaunded, that when any like case should come, we should not go to iudgement without good aduise. Wherefore sue to the counsell, and as they will haue vs to doo, wee will; and otherwise not, in this case.

Greene and Thorpe were sent by the iudges to the kings counsel [M. 40 Ed. 3, 34.] (where there were 24 bishops and earles) to demand them, whether by the statute 14 E. 3, ca. 6. a word may be amended in a writ, as well as a letter or a sillable; for, the statute speakes but of a letter or a sillable; and it was answered, that it may well be amended: for, there cannot be a word without a sillable; and that it was a nice question of so sage men.

Thus *arbitria iudicum* and *responsu prudentum* haue bene receiued, allowed and reuerenced in all times as positive lawe; and so it must be still; for, otherwise much mischiefe and great inconuenience will ensue. For new cases happen every day: no lawe cuer was, or cuer can be made, that can provide remedie for all future cases, or comprehend all circumstances of humane actions which iudges are to determine. Therefore, when such happen, and complaint is made; what shall iudges doe? Shall they giue no remedie to the partie grieved? Shall they stay for a parliament? *Interim patitur iustus.* They must therefore follow *dictamen rationis*; and so giue speedie iustice. And in many matters of materiall circumstances they must guide themselues by discretion.

As in iudging vpon presumptions; to discerne which be *presumptiones temerariae*, which *probabiles*, which *violenta*.—So for time; what is a conuenient time, and what not.—So for waste; what is waste punishable, and what not.—So for tenders of money; what is a conuenient place for tender of money, and what not: and what is a lawfull tender, and what not.—So for disparagement; what is a disparagement, and what not: and so of other the like cases, which are infinite.

If it be said (for so some haue said) that if

this be thus, then the common lawe of England is vncerten; and so the rule of iustice, by which the people are gouerned, is too pliable, and too weake, and vncerten.—By the same reason it may be said, that all the lawes of all nations are vncerten: for, in the ciuile lawe, which is taken to be the most vniuersall and generall lawe in the world, they hould the same rule and order in all cases which be out of the direct words of the lawe; and such cases be infinite; for as I saide, new cases spring euery day, as malice and fraude increaseth. And since the Roman empire beganne, most of their laws bee either *edicta principum*, or *arbitria iudicum*, or *responsa prudentum*. And in their iudgements they are guided by arrests and former iudgements, as may appeare in the books of many that haue collected such arrests. And they attribute so much to such former iudgements, that as Prysot equalleth them to a positieue lawe, so they hould, that ‘sententia facit ius, et res iudicata pro veritate accipitur, et legis interpretatio legis vim obtinet.’—Nay (which is more vncerten) sometimes they relie vpon doctours opinions deliuered in their prelections and treatises. And when they finde them varying, and differing one from another (as sometimes they doe) then they preferre that which is *communior opinio*: and so in good reason they may: for, ‘pluralitas idem sententium semper superat; quia facilius inuenitur quod à pluribus quaeritur.’

But to conclude this point, I would aske of these nouelists, what they would haue done in Sibill Belknapes case, if they had liued in Henry the fourths time?

Sir Robert Belknappe, that reuerend and learned iudge, [M. 2. H. 4. 7.] of whom sundrie noble and worthy persons, and some now of great and eminent place in England, are descended, was banished out of the realme, (*relegatus in Vasconiam*) not for any desert or offence of his, but by the might of his potent enemies, and malice of the time. The lady his wife continued in England; she was wronged; she brought a writ in her owne name alone, not naming her husband. Exception was taken against it, because her husband was liuing; and it was adiudged good, and shee recovered; and the iudge Markeham said;

‘Ecce modo mirum quod femina fert brue regis, Non nominando virum coniunctum robore legis.’

Here was a rare and a new case, yet it was not deferred vntill a parliament: it was iudged, and her wrong was righted by the common law of England, and that ‘ex arbitrio iudicum, et ex responsis prudentum;’ and yet it was counted *mirum* with an *ecce*.

Now to apply this to R. Caluines case. His case is rare and new: so was that. There is no direct law for him in precise and expresse tearmes; there was neuer iudgement before touching any borne in Scotland, since king James beganne his happie raigne in England; hee is the first that is brought in question: so there was no direct lawe for Sibill Belknap to sue in her owne name without her husband, who was

then liuing; nay rather there was direct lawe against it. Yet by the lawe of England shee had iudgement to recouer with an *ecce modo mirum*: so by the lawe of England iudgement ought to bee giuen for Robert Caluine, but not with an *ecce modo mirum*; but vpon strong arguments deduced à *similibus*, and *ex dictamine rationis*.

But before I come to those arguments, I will vse a few words more touching some rules which I haue read for the interpretation of lawes.—There is a graue and learned writer in the ciuile law that setteth downe foue waies and formes of interpretation of lawes: that is, first, *interpretatio historica*; secondly, *etymologica*; thirdly, *analogica*; fourthly, *practica*.—In the argument of this case all these formes haue bene vsed, and largely handled: and the two first be those that seeme but light to me, and therefore in mine opinion haue bene too much stoude vpon, and ouerweighed.

For the historical interpretation, it is alwaies darke, obscure, and vncerten, of what kingdome, countrey, or place soener you speake; I doe alwaies and onely except the diuine histories written in the bible.—Liuy saith, ‘in tanta rerum vetustate multi temporis errores implicantur.’—Saint Augustine speaking of the supposed bookes of Henoch saith, ‘libri istius nimiam antiquitatem reiiciuntur.’—Wherefore, for this parte let this suffice, whether in the beginning there were one or severall kingdomes in Great Britaine; or one or seuerall monarches and kings of these two great and famous kingdomes in Great Britaine. The kin- our soueraigne is lawfully and lineally descended of the first great monarches and kings of both the kingdomes; [Fergus, Inas.] and that by so long a continued line of lawfull descent, as therein he exceedeth all the kings that the world now knoweth; and therefore to inquire further of historical knowledge in this case, I hould it needlesse.

For the etymological interpretation, there hath bene very much saied, euen as much as wit and art could devise. There haue bene alleddged manie definitions, descriptions, distinctiours, differences, diuisions, subdivisions, alusion of wordes, extension of wordes, construction of wordes; and nothing left vnsearched to finde what is *ligeantia*, *allegiantia*, *fides*, *obedientia*, *subiectio*, *subditi*; and who bee *aborigines*, *indigene*, *alienigene*, *aduenticij*, *denisati*, &c. And much of this hath bene drawne out of some writers of the ciuile lawe; amongst whome the etymological interpretation of the words *ligeus*, and *ligeantia*, is as vncerten and doubtfull, as it is with our common lawyers; and so vpon any of these there cannot be any certain rule found for iudges to iudge by, especially in new and rare cases.

As for definition, Vlpian teacheth vs, ‘omnis definitio in iure ciuili est periculosa.’ and it is said, that ‘definitio est duplex: propria, quae constat ex genere, et differentia: impropria, quae et descriptio vocatur, et est quaelibet rei designatio.’ so definition and description are

often confounded, and both vncerten. Then, since both be vncerten and dangerous, I will leaue both, and seeke a more certen rule to iudge by.

As for etymologie of words, I agree with him which saith, it is 'leuis et fallax, et plerumque 'ridicula.' It is a pedant grammarians fault. Marcus Varro and others haue bene noted for it. And if you examine the examples which some doe bring, you will perceiue how ridiculous and vaine it is. So this rule will not serue to finde out that which wee seeke for. These bee but 'tendiculæ verborum, et aucupationes 'syllabarum,' as one calleth them: it may haue some vse, and serue a turne in schooles, but it is too light for iudgements in lawe, and for the seates of iustice.—Aquinas setteth downe a more certen rule, 'in vocibus videndum, non 'tam à quo, quam ad quid sumantur.' And words should be taken *sensu currenti*: for vse and custome is the best expositor both of lawes and wordes, 'quem penes arbitrium et ius et 'norma loquendi.'—Wherefore, of the many and diuerse distinctions, diuisions, and subdiuisions, that haue bene made in this case, I will say no more but, 'confusum est quicquid in pul-'uerum sectum est:' and will conclude with hishop Juel; 'a man may wander and misse 'his way in mists of distinctions.'

Then leauing these historicall and etymologi- call interpretations, and these curious and sub- tile distinctions and diuisions, I say, *ligeantia*, or *allegiantia*, vnderstood *sensu currenti*, is *vinculum fidei et obedientie*, as iustice Daniel said well. And hee that is borne in any of the kings dominions, and vnder the kings obedience, is the kings liege subiect; and borne 'ad fidem 'regis' (for that is the proper and ancient word which the lawe of England hath vsed; 'ad fi-'dem regis Angliæ, ad fidem regis Franciæ') and therefore hee cannot bee a stranger or alien to the king, or in any of his kingdomes; and by consequence, is inhabed to haue lands in England, and to sue, and be sued in any reall action for the same.—And *ligeantia* hath some- times a more large extension: for, hee that is an alien borne out of the kings dominions, vnder the obedience of another king, if hee dwell in England, and be protected by the king and his lawes, hee oweth to the king the duetie of alle- geance; and so hee is *ligatus regi*, and *ligens regis*: and if hee commit treason, the indict- ment shall bee 'contra ligeantie sue debitum,' as it was in Shirley the Frenchmans case: yet is hee not the kings subiect: for, hee was not borne 'ad fidem regis.' But, this is not that ligeance which wee must finde: for, in a true and lawfull subiect, there must bee *subiectio*, *fides*, et *obedientia*; and those cannot bee se- uered, no more than true faith and charitie in a true Christian. And hee that hath these three à *natiuitate*, is *ligens regis*, and cannot bee a stranger or alien to the king, or in his kingdomes. And that it is so, may be proued by the rule of the other two interpretations of lawe; that is, *analogica*, et *practica*.

King James hath now the kingdomes of Eng-

land, Scotland, and Ireland, and the isles of Gernsey and Iersey by descent; all these bee his dominions, and vnder his subiection and obedience.—King Henry 2, had England and Normandy by descent from his mother Maud the emperesse; and Aniw and Maine by descent from his father, G. Plantagenet; and Ireland by conquest.—Henry 3, had England and Ireland by descent from his grandfather Henry 2; and Aquitany by descent from his grand-mother queene Elenor, wife to king Hen. 2, and daughter to the duke of Aquitany.—Edw. 1 had all the same by descent; and parte of Scot- land by conquest.—Edw. 2 and Edw. 3 had all the same by descent also: and besides, Edw. 3. claimed all France by descent from his mother queene Isabell, and had the most part of it in possession; and so had Henry 5 and Henry 6 also.

Now if in these kings times, subiectes borne in those countries, being then vnder their obedi- ence, were no aliens but capable of landes in England: and if at this time subiects borne in Ireland, or Gernsey and Iersey, be no aliens, but capable of lands in England; then, by an analogicall interpretation, why should not sub- iectes borne in Scotland be at this time in like degree? For, in proportion, and in likeness, and conueniencie, there can bee no difference at all.

But whether the subiects borne in those countries in the time of those kings were then capable of lands in England as naturall sub- iects; or were deemed aliens, is the question: and therein *inter etatio practica* is to bee con- sidered; and so the case is brought to be ex- amined *per similia*. And in diuinitie 'praxis 'sanctorum est interpres præceptorum.'—Now then the question is, whether the kings subiects of England and Scotland, that be Post-nati, may be resembled to the kings subiects of Ire- land, and the isles of Gernsey, &c. as now they bee; and to the subiectes of Normandie, Aniw, and Gascoyne, and parte of Scotland in former times, when the same were the dominions, and vnder the obedience of the king of England; for I speake alwaies, and would be vnderstoode of kingdomes and dominions in possession, and vnder obedience, and not of those whereunto the king hath right, but hath no possession or obedience, I holde, that in all points materiall concerning this question they are alike, though not in all things: (for, then it were *idem*, and not *simile*: and this can not bee better vnderstoode, than by examining the ob- iections to the contrary: which in substance may be reduced to foure in number.)

First for Ireland, it was gotten by conquest, and the conquerour may impose what lawes hee will vpon them: but it is otherwise of king- domes conning by descent.—This is a concei- pted difference, and lacks the foundation of reason, and hath not the true parts of a differ- ence: for those that are borne in Ireland, and those that are borne in Scotland, are all alike for their birth within the kings dominions, and are borne vnder the like subiection and obedi-

ence to the king and have the like bond; nay, even the same bond of allegiance; that is, they are borne *ad fidem regis*.—Besides where it is said, the conquerour may impose what laws hee will: then consider how it was in the interim before king Iohn gave lawes to Ireland.—Nay, which is more, I aske whether the conquerour of Ireland can give new lawes to England, and make Irishmen to bee as naturall borne subjectes in England (if their birth-right doe not give it them) which before the conquest they were not? For, that is properly the question. But if any difference bee, the case of descent is the stronger: for, (as iustice Yelverton saide) that is by an vndoubted title made by lawe; the other by a doubtfull title wonne by the sword.

But leave Ireland gotten by conquest; what say you to the great kingdome of France; which Edward 3 had first in right by lawfull descent, and after in possession by triumphant conquest; and which Henry 6 held after in possession by descent? Was euer doubt made, whether the subjectes borne there, so long as it was in subiection and obedience to the king, were capable of landes in England?

I will now turne the case, and aske another question; if king Iames our soueraigne had first bene king of England by lawfull descent (as now hee is) and after Scotland had descended vnto him, should not the subjectes of Scotland (I speak still of Post-nati) have bene iudged as naturall subjectes in England, as those of France were in Edward 3's time?—Then, he hauing now both kingdomes by lineall, true, and lawfull descent, it can make no difference touching the capacite of subjectes, which kingdome descended to him first, and which second; but both to him alike. And it is cleere, Post-nati in England are now capable and inheritable in Scotland, though some haue made a causelesse and needelesse doubt of it: and so on the other side those of Scotland are in England.

It is said, Normandie and Aquitania were no monarchies or kingdomes, but dukedomes or seignories in France, and holden of the crowne of France, and therefore not to bee resembled to Scotland, which is an ancient and absolute kingdome. This obiection reacheth not to the reason of our question: for, bee they kingdomes, be they seignories, yet the subjectes borne there were borne out of the kingdome of England, and so in that respect aliens: but in that they were borne within the kings dominions, and vnder his subiection and obedience, they were no aliens, but liege and naturall borne subjectes to the king; and so capable and inheritable in England.—I say besides, the dukes of Normandie and Aquitany were absolute princes, and had soueraigne power in those countries, although they did not beare the name of kings; as at this time the duke of Sauoy; the duke of Florence: the duke and state of Venice; and of late, the great duke of Russin; the duke of Burgundy; the archduke of Austria, &c.—So the difference in stile and

name makes no difference in souerainty: for, king Henry 8 had as absolute soueraigne in Ireland, when his stile was lord of Ireland, as when hee changed his stile and was called king of Ireland.—And to say, that the tenure of the crowne of Fraunce should give any priuiledge to them of Normandie and Aquitania in England is a strange conceipt; it might rather bee objected against them. But, as I saide before, they were borne within the kings dominions, and vnder his obeisance, and therefore as subjectes borne in England.—And if men may beleeeve some auncient stories, Aquitany and Normandy had sometimes kings and were kingdomes of themselues; and not depending nor subject to the crowne of France: and the kingdome of France was then a small portion of Gallia, and but a little one, in comparison of that which it is at this day. And some say, that there were 24 kings in Gaule: but as the kings of France increased in power and strength, they subdued their neighbor-princes, and so that kingdome grew to that greatnesse that now it is at; euen as the heptarchie in England was dissolved, and made an intire kingdome, when one of the kings mightier than the rest subdued his neighbors.

It is saide further, that Normandie and Aquitany were subjectes to the crowne of England; and to the great seale of England: but so is not Scotland: *ergo*, &c.—This standeth not well with that which was objected before; that they were but seignories boulden of the crowne of France. And it is true, that before Edward the thirds time, those kings of England, that held those great seignories, did acknowledge, that they held the same of the crowne of France.—But these obiections be light, and not worth the time that hath bene spent about them. The soueraintie is in the person of the king; the crowne is but an ensigne of soueraintie; the inuesture and coronation are but ceremonies of honour, and maiestie; the king is an absolute and perfect king before he be crowned, and without those ceremonies.

The seale is to be altered and changed at the will and pleasure of the king; hee may haue one, he may haue many, as pleaseth him. The king did vse queene Elizabeth seale, for diuerse moneths after his comming into England; queene Elizabeth vsed king Philip & queene Maries seale for a time; and queene Marie vsed king Edwards seale. And all that was so done, was well and lawfully done. Many things were done by auncient kings of England before the conquest by their signature, and signe manuell without anie seale at all; and some such since the conquest also: as graunts made by Maude the empress to Alberick de Vere, and others.—The king may by his great seale command all his subjects that bee vnder his obedience, wheresoeuer they bee in the world: so hee did in Normandie; so hee did in Aquitany; so hee did in that part of Scotland that he had in possession. And in 24 Edw. 1, his iudges kept ordinary courts of iustice there: and I haue seene the records of *placita azeroi*.

*tus regis apud Edinburgh, apud Roxburgh, apud S. Johns-towne, &c. in Scotia.* So hee may command his subjects, if they be in France, Spaine, Rome, or Turkie, or the Indies. And for seuerall seales the earle of Chester had a speciall seale for that his auncient county palatine. The duke of Lancaster had a speciall seale for his new countie palatine. And after, when these counties came to the kinges possession, the kinges continued seuerall seales in them both for the administration of iustice; but as subordinate to the great seale of England.—And I make little doubt, but if the king shall now command any of his subjects of Scotland vnder his great seale of England, they will, as they ought, dutifully obey him. As in king Edward the 1st, Edward the 2nd, and Edward the 3rd times, they commanded many of the lords of that parte of Scotland which then was vnder their obedience.—I finde, that in 18 Edw. 3rd quarto die Iunij, the king 'constituit Adomari de Valentia comitem Pembrochie custodem regni sui; ac locum suum tenentem quamdiu rex in partibus transmarinis moram fecerit.' And the next day, viz. die Iouis quinto die Iunij, 'rex ordinavit, quod magnum sigillum suum remaneret clausum in aliquo loco securo, dum rex esset in partibus transmarinis: et ordinavit quoddam aliud paruum sigillum interim pro regimine regni, ad breuia, &c. consignanda, sub teste Adomari de Valentia comitis Pembrochie.' Nota, heere was a petty seale *pro regimine regni*, wherein are comprised commissions for iustice, *mandatoris, et ad breuia consignanda*; which is for *remedia*, as they are termed.

It is saide, that Scotland hath lawes that are proper for that kingdom, and that they are not subject to the lawes of England, and so *de contra*.—And lastly it was saide, that in England every person was within the iurisdiction of some leete, and at the age of twelve years every one is to bee sworn in the leete to bee foiall and loiall to the king of England; that is, to the lawes of England (for so hee vnderstood loiall): but Post-nati in Scotland can not be so; and that they have another forme of oathe in Scotland: *ergo, &c.*

For this laste parte, of the oathe in the leete, the lord chief baron did cleere it so plainly, as more needs not to be said. This is *legalis ligeantia*, it is not *alta ligeantia* by birth, which is that which we haue now in question.

The historical discourse that hath bin made of leetes, of law-dayes, of *decenna, decennarij*, of the tenne-mens tale, and the oath of all male children of twelve yeeres, &c. taken at the leete, is no newes indeede, it is very olde.—Master Lambard hath it all, and more too, at large in *explicatione verborum* in the word *centuris*; it was before the conquest.—But it maketh nothing to this naturall allegiance and subjection of birth; it is not *alta ligeantia* by birth right; it is but *legalis ligeantia* by policie: and Fitzherbert calleth it 'swearing to the lawe.'—And if that were the onely bond and mark of allegiance, many are out of it, and so at liber-

tie. As, children vnder twelve yeeres; yet sometimes they may commit treason and felony; where, *malitia supplet aetatem*. So women of all sortes; yet they may be shrewd and daungerous traitours; and if they bee women nobly borne, or widows that were wiues to noble men, they shall be tried *per pures*.—Also noble men of all sortes, who are neither bound to attend the leete, nor to take that oath, as appeereth by Britton cap. 99, treating of the court called 'the shirifes turne,' out of which the leete seemeth to be extracted: for, whatsoever is not presented in the leete may be presented and punished in the 'shirifs turne.' And M. Kitchin citeth Britton in this point for the leete; and alleadgeth also the statute of Marlebridge cap. 10, to the same purpose.—And at this day the view of francke-pleges, and the putting in of francke-pleges, and the *decennarij*, are but bare names of things past, the vse and substance is obsolete and gone.—And as it was saide, few in this place haue put in such pleges, or taken that oath, and yet I trust we are good subjects, and beare true faith and allegiance.

But this hath beene so fully answered and cleered by the lord chiefe baron, and the lord Coke, chiefe iustice of the Common Pleas, as I doe wrong to spend time in it.

But touching the seuerall lawes; I say, that seuerall lawes can make no difference in matter of soueraintie; and in the bond of allegiance and obedience to one king: and so it concludeth nothing for the point in question.—Normandy and Aquitany had seuerall lawes differing from the lawes of England: so had Fraunce in king Edw. the 3, and Hen. the 6, his time.—Ireland, before king Iohns time, continued their auncient lawes, and so, for the most part, haue done euer since.—Gernesey and Iersey haue yet at this day seuerall lawes, which, for the most part, were the auncient lawes and customes of Norrandie.—Wales had, and in many things yet haue seuerall lawes: so for the county palatine of Chester also.

Yet these neuer were, nor must not be cancelled and cut off from their allegiance and obedience to the king; nor the kings subjects borne there be incapable of lands and inheritance in England: for where there is but one soueraine, all his subjects borne in all his dominions bee borne *ad fidem regis*; and are bound to him by one bond of faith and allegiance: and in that, one is not greater nor lesser than another: nor one to bee preferred before another, but all to bee obedient alike; and to be ruled alike; yet under seuerall lawes and customes. And as Saint Gregorie sayeth of the church, 'in una fide nihil officit ecclesie sancte diuersa consuetudo.' So I will conclude for this point, that diuersitie of lawes and customes makes no breach of that vnite of obedience, faith, and allegiance which all liege subjects owe to their liege king and soueraigne lord. And as none of them can be aliens to the king, so none of them can bee aliens or

strangers in any of his kingdoms or dominions; nor aliens or strangers one to another, no more than a Kentish-man to a Cheshire-man; or *à contra*.—And therefore all, that haue bin borne in any of the kinges dominions since hee was king of England, are capable and inheritable in all his dominions without exception.

And as to the other parte of the obiection, that there will be defect of triall; for, things done in Scotland, cannot bee tried in England; I say, that that maketh little to our present question, whether Post-nati in Scotland be aliens in England, and not capable of landes in England: but it trencheth to cast some asperition vpon the common lawe of England; that it is not sufficient to giue iustice to the kinges subiectes for lacke of sufficient meanes of triall of questions of fact. But to this baron Altham gaue so full an aunswere, as more cannot bee said: and so hee did both cleare the doubt, and did vphould the sufficiency of the law of England in that behalfe. And it seemeth strange, that this should now bee found out to bee obiected against Scotland, since it was neuer heeretofore obiected for France, Normandie, Aquitany, nor is at this day for Ireland, Gernesey, and Jersey, &c. whereas all stand vpon the same reason for the point of triall. But the wisdom of the lawe of England hath bene such, as there neuer failed certen rules for triall of all questions in fact; and those were fitted and adapted to the matter which was to be tried. And therefore, whosoeuer doth diligently obserue it, hee shall finde in the course and practise of the lawes of England about twenty seuerall formes of trialls; as by battell; by iurie, and that in diueres kinds; by wager of lawe; by proofes; by examination; by inspection; by certificates of diuers kinds; and by manie other wayes: and lest there should bee any defect in that behalfe, the law hath provided seuerall formes of ioyning of issues; and in that, hath speciall regard of things done out of the realme, as cuerie student may see in the books of reports.

Thus I haue passed these foure obiections, and therefore for this part I conclude, that if *argumentum à simili* were ever good and concludent in lawe, my lords the iudges haue proued this case by so many plaine and direct examples, and like cases, and by so manie strong arguments and solide reasons drawne out of booke cases, out of statutes, out of the true rules and forme of pleading, and out of ancient records and precedents, some produced by Mr. Attorney, and many more remembred by the iudges, as no one thing can bee more plainly exemplified, nor appeare more like to an other, than this case is to those cases which they haue remembred.

But if examples and arguments *à simili* doe faile, then it remaineth *recurrere ad rationem*; and what reason that ought to bee, and how to bee vnderstoude, is to be considered: for, it is said, that '*lex est ratio summa, iubens ea que*

*facienda sunt, et prohibens contraria.*' So it must be the depth of reason, not the light and shallow distempered reasons of common discousers walking in Powles, or at ordinaries, in their feasting and drinking, drowned with drinke, or blowne away with a whiffe of tobacco. Lucretius noteth, that in many there is '*rationis egestas*;' and Saint Gregory saith, '*qui in factis Dei rationem non videt, infirmitatem suam considerans cur non videat, rationem videt*;' for, although reason and knowledge bee infinite, yet no man can haue more of it than he is capable of; every man must receiue it, and keepe it in his owne vessell; he cannot borrow his neighbours braine-pan to put it in. And therefore it is not without cause, that one of the grauest and best learned lawyers of our age, [Hopperus de vera iuris prudentia p. 118.] and a priuie counsellor to one of the greatest monarches of Europe, describeth those that should bee interpreters of lawes by foure speciall qualities, that is, 1. *Ætate graues*, 2. *Eruditione præstantes*, 3. *Vsu rerum prudentes*, 4. *Publica autoritate constituti*: so, there must be grauitie, there must be learning, there must be experience, and there must be authoritie: and if any one of these want, they are not to be allowed to be interpreters of the lawe.—How all these qualities concur in these reuerend iudges, whom wee haue heard in this present case, I will spare to speake what I thinke; for, Chrysostom teacheth mee, '*qui laudatur in facie, flagellatur in corde.*'—In seeking out this depth of reason, the same author [Hopperus, *ibid.* page 119.] giueth a caution, which is this; '*vitium quod in hoc genere fugi debet est, ne, si rationem non inuenias, mox legem sine ratione esse clames.*' And in 36 H. 6. Fortescue saith the same in effect, which is thus; '*we haue many courses and formes which bee houlden for lawe, and haue bene houlden and vsed because of reason; and notwithstanding the reason be not ready in memory, yet by study and labour a man may finde it.*'

Now when wee come to examine by reason, whether Post-nati in Scotland shall be disabled as aliens, or shall be capable of lands in England, as naturall borne subjects there; wee are first to consider what is the reason while aliens in the dominions, and vnder the obedience of other forraine princes, are not capable of landes in England. And surely, the true reason is, that which was noted by baron Altham; and hath since bene ofte remembred, viz. the danger that might thereby come to the king and the common-weale: specially by drawing hither too great multitudes of them: for so the treasure of the realme might bee transported by them into other forraine kingdomes and countries; whereby it might bee vsed against the king, and to the prejudice of the state: and besides, they might vnder-hand practise sedition and rebellion in the kingdome, and cause many other daungers and inconueniences. But that reason cannot serue against Post-nati in Scotland, now that there is but one king of



both the kingdomes, no more than it can serue against those that are borne in Ireland, or Gernesey, or Iersey: and therefore in reason they are as capable of landes in England, as the kings subjects of Ireland, and Gernesey, and Iersey are.

Against this, there haue also beene many obiections made, and reasons deuised, that seeme witty, and haue some shew of probability to proue, that Post-nati in Scotland are aliens, and ought not in reason to bee capable of landes in England, videlicet.—1. That England and Scotland were two ancient seuerall kingdomes vnder seuerall kings, and seuerall crownes.—2. That they continue yet seuerall kingdomes.—3. That they haue yet seuerall lawes, seuerall seales, seuerall crownes, and seuerall kings: for, it is said, though king James be king of both, and hath but one naturall body, yet in iudgement of law, he is in respect of his two seuerall kingdomes, as two seuerall kings, and the subjects of each seuerall kingdome are bound to him by distinct allegiance, according to the seuerall lawes of the kingdome where they were borne.—And all this is grounded vpon this rule or fiction in lawe: ‘quando duo iura concurrunt in vna persona, æquum est acsi essent in diuersis.’

And vpon this ground is this new forme of pleading deuised, which the defendants haue vsed in this case, such as cannot be found in any record, euer to haue beene pleaded before; and may as well serue against the kinges subjects of Ireland, as against the Postnati of Scotland. And sithence in former times the like forme of pleading was neuer seene against any of the kinges of Englandes subjects, which were borne in any of his dominions out of England, as in Normandie or Aquitanie, or in France (I meane such part of it as was in the kinges possession, and in subiection and obedience to him, and not in that parte of France which his enemies helde) it may be probably inferred, that it was then generally houlden, that neither such a forme of pleading, nor the matter itselfe was sufficient in lawe to disable anie such plaintife: for, against French-men that were not vnder the kinges obedience wee finde it often pleaded. And as those that were not subjects to the king, nor borne vnder his obedience, did then presume to bring suites and actions in England; so it can not bee thought, but that the king hauing then so large and ample dominions beyond the seas, as Normandie and Aquitany, and many other parts of France, some of his subjects borne there, had cause to haue, and did bring the like suites in England. And sithence no such plea is found to haue beene then vsed against them, it can not in lawe and reason bee now allowed against the Post-nati in Scotland: for, I may say as Ascue saied in 37 H. 6. ‘Our predecessors were as sage and learned as we be.’

And I see not, but that in this case a good argument may bee reasonably deduced from the negatiue, as it was in the case reported by the great learned, and most graue and reue-

rend iudge sir James Dyer, chiefe iustice of the Common Pleas, anno 23 Elizab. The question there, was, whether an erroneous iudgement giuen in Bie, which is a member of the cinque-portes, might bee reuersed in the Kings Bench, or Common Place at Westminster; and it was thus resolued; ‘sed pro eo quod nullum tale breue in Registro, nec in aliquibus præcedentibus curiarum prædictarum inueniri poterat, dominus cancellarius Bromley per opinionem capitalium iusticiariorum vtriusque banci denegauit tale breue concedere.’ And so iustice Fenners argument houldeth well, viz. there is in this case no lawe to exclude the complainant, ergo hee is a liege and a naturall borne subject.

But the forme of pleading in the time of king Ed. 1. in Cobledickes case, which was cited out of Hengham, (and the booke shewed heere by the lord chiefe iustice Coke) is so direct and plaine for this our question, as nothing can be more plaine: and therefore I thinke it not amisse to report it againe.—That case was in effect and substaunce, thus:—A woman brought a writte of *ayel* against Roger Cobledicke, and declared of the seisin of Roger her grand-father, and conueied the discent to Gilbert her father; and from him to the demaundant, as his daughter and heire. The tenant pleaded, that the demaundant was a French-woman, and not of the ligeance nor of the fidelitie of England; and demaunded iudgement if shee ought to haue the action against him. This plea was houlden to bee insufficient; and thereupon the tenant amended his plea, and pleaded further, that the demaundant was not of the ligeance of England, nor of the fidelitie of the king; and demaunded iudgement, &c. And against that plea none exception was taken, but thereupon the demaundant prayed licence to depart from her writ. By this it appeareth plainly, that the first plea, alledging that shee was a French-woman, and not of the ligeance, nor of the fidelitie of England, was insufficient (and so declared by Berreford the chiefe iustice); for, there can bee no fidelitie nor allegiance due to England, respecting the land and soile without a soueraigne and king. But the second plea, alledging, that shee was not of the ligeance of England, nor of the fidelitie of the king, was good and sufficient: for, to the king fidelitie and allegiance is due; and therefore, since shee failed in that, shee was not to be answered: and thereupon shee praied licence to departe from her writte, and so she left her suite.

Now, for the reasons which haue beene drawne and strained out of the statute an. 14 Edw. 3. If they bee well examined, they serue little for this point which we haue in hand.—It is to be considered, at what time, and vpon what occasion that statute was made. King Edward the third being right heire to the crowne and kingdome of Fraunce by descent from his mother, and hauing spent many yeres for the recouering of the same, resolued to take vpon him the name and stile of king of France; be-

ing advised thereunto by them of Flaunders. Hereupon he did take the stile of king of Fraunce; and altered his seale and his armes; and after a while, placed the armes of France before the ancient armes of England, as they are borne at this day. This gave occasion for the making of this statute: for some people (*uscum gentes*, saith the statute) seeing this change, and considering the large and ample extent, and the magnificence of that great kingdome, beganne to doubt that the king would make his imperiall seate there; and conceiued thereby, that the kingdome of England, being the lesser, should bee in subiection of the king and kingdome of France, being the greater, and to bee governed and ruled by a vice-roy, or deputy, as they saw Ireland was. And though in the kings stile, England was placed before France, yet they sawe the armes of France marshalled before the armes of England; though at the first bearing thereof some say it was not so.—To cleere this doubt, and to take away this feare from the subiects of England, was this statute made, as doth plainly appeare by the wordes of the statute itselfe.

Now if you will make an apt and proper application of that case then betwene England and France, to this our case now, betwene Scotland and England, it must be thus:—1 Edw. 3, then king of England (being the lesser) had afterwards the kingdome of France (being the greater) by descent, and tooke the stile of king of France. King Iames king of Scotland (being the lesser) hath afterward the kingdome of England (being the greater) by descent, and taketh the stile of king of England.

2. King Ed. 3, altered his seale, and his armes, and placed the armes of France before the armes of England.—King Iames hath changed his seale, and his armes in England, and hath placed the armes of England before the armes of Scotland.

3. It was then doubted, that king Edw. 3 would remove his court out of England, the lesser, and keepe his imperiall seate and state in France, the greater.—King Iames hath indeede remooued his court out of Scotland, the lesser, and doth in his royall person (with the queene and prince, and all his children) keepe his imperiall seate in England, the greater.

4. In all these the cases agree; but yet one difference there is, and that is in the stile: for king Ed. 3, in his stile placed England, the lesser, being his ancient kingdome, before France, the greater, being newly descended vnto him.—But king Iames in his stile placeth England, the greater, though newly descended vnto him, before Scotland; the lesser, being his ancient kingdome.

5. Now, this being thus; perhaps Scotland might out of this example haue conceiued the like doubt against England, as England did then against France: but as there was then no doubt made, whether the kings subiects borne in England should be capable of lands in France; so, out of this statute, and vpon this example

VOL. II.

no doubt can bee inferred, whether the kings subiects now borne in Scotland, shall be capable of lands in England.

But, all these obiections, and the ground whereupon they are framed, viz. *quando duo iura, &c.* haue bene so thorowly and profoundly examined, and so learnedly and fully answered and cleered by the iudges, as I make no doubt but all wise and indifferent hearers be well satisfied therein.—And if there be any so possessed with a preiudicate opinion against trueth, and reason, that will say in their owne heartes, ‘*licet persuaseris non persuadebis;*’ and so, either serpent-like stop their eares, or else wilfully absent themselves, because they would not heare the weaknesse and absurdities of their owne conceits laied open and confuted: if there bee any such I say (as I trust there bee but few, and yet I feare there bee some) I would they had learned of Tertullian, that ‘*veritas docendo suadet, non suadendo docet.*’ And I wish that they bee not found among the number of those to whome St. Paul saith, ‘*si quis ignorat, ignoret;*’ and St. Iohn in the Apocalips, ‘*qui sordidus est, sordescat adhuc.*’ And I will exhort with St. Paul: ‘*qui tenet, teneat;*’ and not wauer or doubt by such weakke arguments and obiections.

But in this new learning, there is one part of it so strange, and of so dangerous consequent, as I may not let it passe, viz. that the king is as a king divided in himselfe: and so as two kings of two severall kingdomes; and that there be severall allegiances, and severall subiections due vnto him respectiue in regarde of his severall kingdomes, the one not participating with the other.

This is a dangerous distinction betwene the king and the crowne, and betwene the king and the kingdome: it reacheth too farre; I wish euery good subiect to beware of it. It was neuer taught, but either by traitours, as in Spencers bill in Edward the seconds time (which baron Snig, and the lord chiefe baron, and lorde Coke remembred) or by treasonable papists, as Harding in his confutation of the apologie maintaineth, that kings haue their authority by the positive lawe of nations, and haue no more power, than the people hath, of whome they take their temporall iurisdiction; and so Eiclerus Sinanca, and others of that crew. Or by seditious Sectaries and Puritans, as Buchanan de Iure Regni apud Scotos, Penry, Knox, and such like. For, by these, and those that are their followers, and of their faction, there is in their pamphlets too much such traitorous seede sowne.—But leaving this, I will adde a little more, to prooue, that in reason Robert Caluine, and other like Post-nati in Scotland, ought by lawe to be capable of landes in England: and for that, I wil remember one rule more which is certain and faileth not, and ought to bee obsrved in all interpretation of lawes; and that is, ‘*ne quid absurdum, ne quid illusorium admittatur.*’

But, vpon this subtile and dangerous distinction of faith and allegiance due to the king,

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and of faith and allegiance due to the crowne, and to the kingdome (which is the onely basis and fundamentall maine reason to disable the plaintife, and all Post-nati) there follow too many grosse, and fowle absurdities, whereof I will touch some few, and so conclude, that in lawe and reason this subtile, but absurd and dangerous distinction, ought not to be allowed. — His bond of allegiance, whereof wee dispute, is *vinculum fidei*; it bindeth the soule and conscience of every subiect severally and respectively, to be faithfull and obedient to the king: and as a soule or conscience cannot bee framed by policie; so faith and allegiance cannot bee framed by policie, nor put into a politike bodie. An oath must be sworne by a naturall bodie; homage and fealtie must be done by a naturall bodie, a politike body cannot doe it.

Now then, since there is but one king, and soueraigne, to whom this faith and allegiance is due by all his subiects of England and Scotland, can any humane policie diuide this one king, and make him two kings? Can 'cor regis Angliæ' be 'in manu Domini,' and 'cor regis Scotiæ' not so? Can there bee warres betweene the king of England and the king of Scotland, or betweene the kingdome of England and the kingdome of Scotland, so long as there is but one king? Can the king of England now send an army ruinal into Scotland against the king of Scotland? Can there bee any letters of marke or reprisall now granted by the king of England, against the subiects of the king of Scotland? Can there bee any protections now, 'quia profecturus in exercitu Iacobi regis Angliæ in Scotiam?' Nay shortly, can any man bee a true subiect to king Iames as king of England, and a traitor or rebell to king Iames as king of Scotland? Shall a foote breadth, or an inch breadth of ground, make a difference of birth-right of subiects borne vnder one king; nay, where there are not any certen bounds or limites knowne at all, but an imaginarie partition wall, by a concepted fiction in lawe? It is enough to propound these and such like questions, whereof many more might be remembered: they carry a sufficient and plaine answer in themselves: 'magis docet qui prudenter interrogat.'

As the king nor his heart cannot bee diuided, for he is one entire king ouer all his subiectes, in which soeuer of his kingdomes or dominions they were borne, so hee must not bee serued nor obeyed by halues; he must haue intire and perfect obedience of his subiects: for 'ligientin' (as baron Heron saied well) must haue foure qualities; it must bee '1. pura et simplex: 2. integra et solida: 3. vniuersalis non localis: 4. permanens, continua, et illæsa.' Diuide a man's heart, and you lose both parts of it, and make no heart at all; so he that is not an intire subiect, but halfe-faced, is no subiect at all: and hee, that is born an intire and perfect subiect, ought by reason and lawe to haue all the freedomes, priuiledges, and benefites pertaining to his birth-right in all the kinges dominions: and such are all the Post-

nati in England and Scotland. And the inconuenience of this imaginarie local allegiance hath beene so lately, and so fully declared by the lorde chiefe iustice Coke, as more needes not bee saied in it.—In some special cases there sometime may bee a king of subiects without land in possession, as iustice Fenner noted in the gouernment which Moses had ouer the people of Israel in the wilderness; and as in the case which sir Iohn Popham the late lord chiefe iustice did put in the parliament. If a king and his subiects bee driuen out of his kingdome by his enemies, yet notwithstanding hee continueth still king ouer those subiects, and they are still bound vnto him by their bond of allegiance, wheresoeuer he and they bee. But there can not bee a king of land without subiects: for, that were but 'imperium in belluas,' and 'rex et subditi sunt relatiua.'

I saied there was an other generall rule for expounding of lawes, which I reserued to bee last spoken of. I will now but touch it; for, I will not stand to examine by humane reasons whether kings were before lawes, or lawes before kinges; nor how kinges were first ordained: nor whether the kings or the people did first make lawes; nor the seueral constitutions and frames of states and common-weales: nor what Plato or Aristotle haue written of this argument. They were men of singular learning and wisdom; but wee must consider the time, and the countrie, in which they liued, and in all their great learning they lacked the true learning of the knowledge of God. They were borne and liued in Greece, and in popular states: they were enemies, or at least mislikers of all monarchies; yet one of them disdaind not to bee a seriant or mercenarie hireling to a monarch. They accompted all the world barbarous, but their owne countrie of Greece: their opinions therefore are no canons to give lawes to kinges and kingdomes, no more than sir Thomas Moores Vtopia, or such pamphlets as wee haue at euerie marte.

I beleue him that saieih, 'per me reges regnant, et principes iusta decernunt;' [Prou. c. 3.] and I make no doubt, but that as God ordained kinges, and hath giuen lawes to kinges themselves, so hee hath authorized and giuen power to kinges to giue lawes to their subiects; and so kinges did first make lawes, and then ruled by their lawes, and altered and changed their lawes from time to time, as they sawe occasion, for the good of themselves, and their subiects.—And this power they haue from God Almighty; for, as saint Augustine saieih 'in hoc reges Deo seruiunt sicut eis diuinitus præcipitur, in quantum sunt reges, si in suo regno bona iubeant, mala prohibeant, non solum quæ pertinent ad humanam societatem, verumetiam quæ ad diuinam religionem.'

And I should Thomas Aquinas his opinion to be good, 'rex solutus a legibus quoad vim coactiuam, subditus est legibus quoad vim directiuam propria voluntate.' And for this opinion there is a stronger authoritie, euen from

God himself in Ecclesiastes, c. 8. ver. 2. 'ego os regis obseruo; et præcepta iuramenti Dei: aud ver. 4. 'sermo illius potestate plenus est: nec dicere ei quisquam potest, quare ita facias?'

Now being led a little from the common law to the ciuile lawe, I finde in the ciuile lawe [Cod. 1. li. tit. 14, le. 1.] a direct text, warranting that generall rule which I reserued to this place, which is this; 'inter æquitatem iusque interpositam interpretationem nobis solis et licet et oportet inspicere.'

And another like text [ibidem le. 12.] in these words, 'sententia principis ius dubium declarans, ius facit quoad omnes.' And some graue and notable writers in the ciuile lawe say, 'rex est lex animata: some say, 'rex est lex loquens: some others say, 'interpretantur legem consuetudo et princeps: another saith, 'rex solus iudicat de causâ iure non definita.'

And as I may not forget saint Augustines words, which are these; 'generale pactum est societatis humanæ regibus suis obtemperare: so I may not wrong the iudges of the common lawe of England so much as to suffer an imputation to bee cast vpon them, that they, or the common lawe does not attribute us great power and authoritie to their soueraignes the kinges of England, as the Romane lawes did to their emperours: (a) for, Bracton, the chiefe iustice in the time of king Henry the 3rd, hath these direct wordes, 'de chartis regijs et factis regum, non debent, nec possunt iusticiari nec priuata personæ disputare. Nec etiam, si in illa dubitatio oriatur, possunt eam interpretari. Et in dubijs et obscuris, vel si aliqua dictio duos contineat intellectus, domini regis erit expectanda interpretatio et voluntas: cum eius sit interpretari cuius est condere.' And Britton in the time of king Ed. 1, writeth as much in effect.

So as now if this question seem difficult, that neither direct law, nor examples and precedents, nor application of like cases, nor discourse of reason, nor the graue opinion of the learned and reuerend iudges, can resolue it, here is a true and certen rule, how both by the ciuile lawe, and the ancient common lawe of England it may and ought to be decided: that is, by sentence of the most religious, learned, and iudicious king that euer this kingdome or island had.—But this case is so cleare as this needeth not at all.—And in this I would not be mis-vnderstoode, as though I spake of making of new lawes, or of altering the lawes now standing; I meane not so, but I speake only of interpretation of the lawe in new questions and doubts, as now in this present case: neither doe I mean hereby to derogate any thing from the high court of parliament; (farre be it from my thought) it is the great councill of the kingdome, wherein euery subiect hath interest. And to speake of the constitution or

(a) This language is surely very unguarded.  
EDITOR.

forme of it, or how, or when it was first begunne, is for busie questionists: it ought to bee obeyed and reuerenced, but not disputed; and it is at this time impertinent to this question.—But certen it is, it hath bene the wisdom of the kinges of this realm to reserue in themselves that supream power to call their nobles, clergie, and commons together, when they sawe great and vrgent causes; and by that great counsell to make edicts and statute for the weale of their people, and safetie of the kingdome and state, as in anno 10 Edw. 3, the assembly at Nottingham for the great wars in France: and in anno 20 H. 3, Prouisiones Merton, which I remembred before.

There haue bene made some obiections of inconueniencie, as for bearing of scot and lot, and such other charges; and some out of frugalitie, that the king shall lose his profit of making denizens, and such like. These are so light as I leaue them to the winde; they are neither fit for parliament, nor councill, nor court.

Another argument and reason againe the Postnati hath bene lately made out of diffidence and mistrust, that they will come into England sans number, and so as it were to surcharge our common; and that this may be in *secula secularum*. I know not well what this meanes. The nation is ancient, noble, and famous; they haue many honourable and wortie noblemen and gentlemen, and many wise and wortie men of all degrees and qualities; they haue lands and faire possessions in Scotland. Is it therefore to bee supposed, or can it in reason bee imagined, that such multitude sans number will leaue their natie soile, and all transport themselves hither? Hath the Irish done so, or those of Wales, or of the isles of Man, Gernesey, and Iersey? Whye should we then suspect it now more for Scotland?

Nay, doe you suppose that the kinge of England will euer suffer so great a parte of his dominions, and so great and famous a kingdome as Scotland is to be dispeopled? It is a doubt imagined without any foundation or ground of reason. But if it were to bee doubted, the twelue iudges that haue concurred in opinion, and that late worthy iudge Popham, had as great cause to feare it as any others. They are wise; they are learned; they haue faire possessions and good estates; they haue posteritie to care for as others haue.—Yet, admit it bee a matter worth the doubting of, what is that to the young Postnati that are not like in many yeares to come hither in such number? Shall we vpon this causelesse feare deprive them of their lawfull birth-right? Haue wee seene in these five yeeres past anie more of them than this one alone that haue gotten any lands in England? And this litle that he hath is so small and poore a portion, that his purchase is not great, and therefore no iust cause of offence to any.

Nay, if you looke vpon the Antenati, you shall find no such confluence hither, but some few (and very few in respect of that great and

populous kingdome) that haue done long and worthie seruice to his maiestie, haue, and still doe attend him, which I trust no man mislikes: for, there can bee none so simple, or childish (if they haue but common sense) as to thinke that his maiesty should haue come lither alone amongst vs, and haue left behinde him in Scotland, and as it were caste off, all his ould and worthie seruants.

And if these noble and worthie gentlemen of Scotland, I meane the Antenati, be louingly and brotherly entertained amongst vs, with mutuall loue and beneuolence, that so we may *coalescere*, and be vnited together, by marriage, and otherwise (as in some particular cases wee see it already happily begunne) no doubt God will blesse this vnion of both these nations, and make them, and the king, and Great Britaine to be famous through the world; and feared and redoubted of our enemies, and of all that wish vs ill: for, '*vis vnita fortior, et concordia multos facit vnum.*' But what may follow vpon such arguments of diffidence and suspition, which seeme but to hinder vnion, and to breede discord and dissention, I will not speake. Let euery wise man consider it well: for, '*humana consilia castigantur vbi celestibus se præferunt.*' And remember St. Pauls caution, '*si inuicem mordetis, videte ne ab inuicem consumamini.*'

And for the resemblance that hath bin made of this case of Postnati, but indeed for the vnion of both kingdomes, with the houswives cutting of her cloth by a threede, I will say but this, that if shee cut her peece of cloth in length aswell as in breadth, all the threads will be cutte, and the cloth marred. And this cutting in this our case, is, to cutte all aswell in length as in breadth, euen through all the kinges dominions; and so will rent asunder the whole frame of the vnion, and cut in peeces all the threeds of allegiance.

But now I will aske this question: how long shall this suspition and doubt continue? Shall there bee a dis-vnion for euer? If it be saied, no, but vntill the lawes and customes of both kingdomes bee made one and the same: then I aske; how, and when that shall be done? and it may bee, that the constitutions of the countries bee such as there can hardly in all things bee such an absolute and perfect reconciling or vniting of lawes as is fancied. Is it yet so betweene England and Wales, or betweene Kent and Cornwall, or betweene many other parts of this kingdome? I say no; and I speake it confidently and truly, it is not so, nor well can be so. Therefore let England and Scotland be in like degree now, as England and Wales were for

many hundred yeeres, and in many things are yet still; and yet let vnion and loue increase amongst vs, euen in *secula seculorum*. Let vs not be such as St. Bernard noteth, '*amant quod non decet, timent quod non oportet, doleant vanè, gaudent vanids.*' And let vs no longer make question, whether seuerall lawes and customes bee markes of seperation and dis-vnion, or of seuerall allegiances; for certainly they are not.

One other reason remaines against these Postnati, and that is out of a prouident foresight, or as it were a prophesying: what if a seperation of these kingdomes fall hereafter?

Of this I can say but *absit omen*. It is *potentia remota* (as iustice Williams saied) and I trust in God *remotissima*: and I will euer pray to God that it neuer fall so, vntill the king of all kinges resume all scepters and kingdomes into his owne hands. And let vs take heede of sinnes of ingratitude and disobedience; and remember, that Adam and Eue were punished, '*non propter pomum, sed propter vetitum.*' And for such prophets, let the prophet Ezechiel, ca. 13. answer them, '*væ prophetis insipientibus, qui sequuntur spiritum suum, et nihil vident.*' And the prophet Esay speaketh to all such with an other *væ*, '*væ illis qui dispergunt.*'

Now then, as M. Solicitor beganne with seeking out the truth; so I will conclude with Esdras words, '*magna est veritas et præualet.*' and with this further, '*eatenus rationandam donec veritas inueniatur: cum inuenta est veritas, figendum ibi iudicium: et in victoria veritatis, soli veritatis inimici pereunt.*'

#### THE CONCLUSION.

Thus I haue heere deliuered my concurrence in opinion with my lordes the iudges, and the reasons that induce and satisfie my conscience, that Ro. Caluine, and all the Post-nati in Scotland, are in reason, and by the common lawe of England, naturall-borne subjects within the allegiance of the king of England; and inabled to purchase and haue free-hould and inheritance of lands in England; and to bring reall actions for the same in England.

For, if they haue not this benefit by this blessed and happie vnion, then are they in no better case in England, than the king of Spaines subjects borne in Spaine, &c. And so by this vnion they haue gotten nothing: what they haue lost iustice Yeluerton did well note.

And therefore I must giue iudgement in the Chancery, that the defendants there ought to make direct answer to Ro. Caluines bill for the lands and euidences for which he complaines.

T. ELLESWERTZ, Canc.

86. The Trial of GEORGE SPROT, in Scotland, for High Treason, in conspiring with John Earl of Gowrie to murder King James I. 6 JAMES I. August 12, A. D. 1608. [Spotiswood's History of the Church of Scotland, p. 509.]

GEORGE SPROT, a notary, inhabiting at Aymouth, having given cause of suspicion by some Words which fell from him, and afterwards by some Papers found upon him, that he was privy to and acquainted with the Plotting of the late earl of Gowrie\* and Robert Logane, for the cruel murdering of king James, was seized and committed to prison; and after divers Examinations, being moved with remorse of conscience for the long concealing his fore-knowledge of this Conspiracy, confesseth, declareth, and deponeth, That he knew perfectly, that Robert Logane, late of Restalrig, was privy and upon the fore-knowledge of Gowrie's treasonable Conspiracy. And for the greater assurance of his knowledge, deponeth, That he knew that there were divers Letters interchanged betwixt them, anent the treasonable purpose aforesaid, in the beginning of the month of July 1600. Which letters James Bour, called laird Bour, servitor to Restalrig, (who was imployed mediator betwixt them, and privy to all that errand) had in keeping, and shewed the same to Sprot in the place of Fast-Castle. The first of Gowrie's Letters, containing in effect as followeth:

' Good laird of Restalrig, you understand what Conditions should have been betwixt us, of before. Indeed I purposed to have come by your house, but understanding of your absence in Lothian, I came not. Always I wish you either yourself to come West, or else to send some sure messenger, who may confer with me anent the purpose you know. But rather would I wish yourself to come, not only for that errand but some other thing that I have to advise with you.'

To the which Letter Restalrig wrote an Answer, and sent the same to the earl of Gowrie, by the said James Bour, of the tenour following:

' My lord, my most humble duty and service heartily remembered. At the receipt of your lordship's Letter I am so comforted, that I can neither utter my joy, nor find myself sufficiently able to requite your lordship with due thanks. And persuade your lordship in that matter, I shall be as forward for your lordship's honour, as if it were my own cause. And I think there is no living Christian that would not be content to revenge that Machiavellian massacring of our dear friends; yea, howbeit it should be, to venture and hazard life, lands, and all other things else. My heart can bind me to take part in that matter, as your lordship shall find better proof thereof. But one thing would be done, namely, That your lordship should be circumspect and earnest with your brother, that he be not rash

in any speeches touching the purpose of Padua. My lord, you may easily understand, that such a purpose as your lordship intendeth, cannot be done rashly, but with deliberation. And I think for myself, that it were most meet to have the men your lordship spake off, ready in a boat or bark, and address them as if they were taking pastime on the sea, in such fair summer-time. And if your lordship could think good, either yourself to come to my house of Fast-Castle by sea, or to send your brother, I should have the place very quiet and well provided after your lordship's advertisement, where we should have no scant of the best venison can be had in England: And no others should have access to haunt the place, during your lordship's being here, but all things very quiet. And if your lordship doubt of safe landing, I shall provide all such necessities as may serve for your lordship's arrival, within a flight-shot of the house. And persuade your lordship you shall be as sure and quiet here, while we have settled our Plot, as if you were in your own chamber: for I trust and am assured we shall hear word within a few days from them your lordship knoweth of; for I have care to see what ships comes home by. Your lordship knoweth I have kept the lord Bothwell quietly in this house in his greatest extremity, say both king and council what they liked. I hope, if all things come to pass, as I trust they shall, to have both your lordship and his lordship at one good dinner afore I die. *Hæc jocosè*, to animate your lordship: I doubt not, my lord, but all things shall be well. And I am resolved, whereof your lordship shall not doubt, of any thing on my part, yea, to peril life, land, honour and goods; yea, the hazard of hell shall not affray me from that, yea, although the scaffold were already set up. The sooner the matter were done, it were the better, for the king's back-hunting will be shortly; and I hope it shall prepare some dainty cheer for us to dine against the next year. I remember well, my lord, and I will never forget so long as I live, that merry sport which your lordship's brother told me of a nobleman at Padua; for I think that a *Persecere* to this purpose. My lord, think nothing that I commit the secrecy hereof and credit to this bearer; for I dare not only venture my life, lands, and all other things I have else, on his credit, but I durst hazard my soul in his keeping if it were possibly in earthly men; for I am so persuaded of his truth and fidelity. And I trow, as your lordship may ask him if it be true, he would go to Hell-Gates for me; and he is not beguiled of my part to him.

\* See No. 71, and the following articles.

‘ And therefore I doubt not but this will persuade your lordship to give him trust in this matter, as to myself. But I pray your lordship direct him home with all possible haste, and give him strait command, that he take not a wink sleep while he see me again, after he come from your lordship. And as your lordship desireth in your Letter to me, either rive or burn, or else send back again with the bearer; for so is the fashion, I graut.’

Which Letter, written every word with Restalrig's own hand, was subscribed by him after his accustomed manner, ‘ Restalrig,’ and was sent to the earl Gowrie by the said James Bour. After whose return, within five days, with a new Letter from Gowrie, he staid all night with Restalrig in Gunnes-Green,\* and Restalrig rode to Lothian the morn thereafter, where he staid five or six days. Then after his returning, past to Fast-Castle, where he remained a certain short space.

And farther deponeth, That he saw and heard Restalrig read the last Letter, which Bour brought back to him from Gowrie, and their conference there-aneut. And heard Bour say; Sir, if ye think to make any commodity by this dealing, lay your hand to your heart. And Restalrig answered, That he would do as he thought best. And farther said to Bour, Howbeit he should sell all his own land that he had in the world, he would pass thorow with the earl of Gowrie, for that matter would give him greater contentment, nor if he had the whole kingdom; and rather or he should falsify his promise, and recall his vow that he had vowed to the earl of Gowrie, he should spend all that he had in the world, and hazard his life with his lordship. To whom Bour answered: You may do as you please, sir, but it is not my counsel, that you should be so sudden in that other matter. But for the condition of Dirlton, I would like very well of it. To whom Restalrig answered, Content yourself, I am at my wit's end.

And farther, Sprot deponeth, That he entered himself thereafter in conference with Bour, and demanded what was done betwixt the Laird and the earl of Gowrie. And Bour answered, That he believed that the Laird should get Dirlton without either gold or silver, but feared that it should be as dear unto him. And Sprot inquiring how that could be; Bour said, They had another pie in hand, nor the selling of any land; but prayed Sprot, for God's sake, that he would let be, and not trouble himself with the laird's business; for he feared, within few days, the laird would be either land-less or life-less.

And the said George Sprot being demanded, if this his Deposition was true, as he would answer upon the Salvation and Condemnation of his Soul; and if he will go to death with it, seeing he knoweth the time and hour of his death to approach very near; deponeth for Auswer, That he hath not a desire to live, and

that he knows the time to be short, having care of no earthly thing, but only for clearing of his conscience in the truth of all these things, to his own shame before the world, and to the honour of God, and safety of his own soul; that all the former points and circumstances, contained in this his Deposition, with the Deposition made by him the 5th of July last, and the whole remanant Depositions made by him sen that day are true, which he will take on his conscience, and as he hopeth to be saved of God, and that he would seal the same with his blood.

And farther, being demanded, where this above-written Letter, written by Restalrig to the earl of Gowrie, which was returned again by James Bour, is now; deponeth, That he abstracted it quietly from Bour, in looking over and reading Bour's Letters, which he had in keeping of Restalrig's; and that he left the above-written Letter in his chest among his Writings, when he was taken and brought away, and that it is closed and folded within a piece of paper.

This aforesaid Deposition was made by him the 10th of August 1608, written by James Primerose, clerk of his majesty's privy-council, and subscribed with the said George Sprot's own hand, in the presence of the earl of Dunbar, the earl of Lothiane, the bishop of Rosse, the lord Schune, the lord Halyrudehouse, the lord Blantyre, sir W. Hart, his majesty's justice, Mr. John Hall, Mr. Patrick Galoway, Mr. Peter Hewart, ministers of the Kirks of Edinburgh. Subscribed with all their Hands.

And also the 11th day of the aforesaid month and year, the said George Sprot being re-examined, in the presence of a number of the council and ministers aforesaid, and it being declared to him, that the time of his death now very near approached, and that therefore they desired him to clear his conscience with an upright declaration of the truth; and that he would not abuse the Holy Name of God, to make him, as it were, a witness to untruths; and especially being desired that he would not take upon him the innocent blood of any person dead or quick, by making and forging lyes and untruths against them:

“ Deponeth, That he acknowledgeth his grievous offences to God (who hath made him a reasonable creature) in abusing his holy Name with many untruths, sen the beginning of this Process: but now being resolved to die, and attending the hour and time when it shall please God to call him, he deponeth with many attestations, and as he wisheth to be participant of the kingdom of Heaven, where he may be countable and answerable, upon the salvation and condemnation of his soul, for all his doings and speeches in this earth, that all that he hath deponed sen the 5th day of July last, in all his several Depositions, were true in every point and circumstance of the same; and that there is no untruth in any point thereof.”

And having desired Mr. Patrick Galoway to

\* A house of Restalrig's.

make a Prayer, whereby he might be comforted now in his trouble; which was done: the said Deponer, with many tears after the Prayer, affirmed this his Deposition to be true; and for the confirmation thereof, declared, that he would seal the same with his blood.

And the next day thereafter, being the 12th of the aforesaid month of August, upon the aforesaid Confession, the said George was brought forth and presented in Judgment upon Pannel, within the Tolbooth of Edinburgh, before sir Wm. Hart of Preston, his majesty's Justice, and there in a fenced Court holden by him that day, assisted by the honourable persons following, his assessors in that errand: they are to say, Alexander earl of Dumfermling, lord chancellor, George earl of Dunbar, treasurer, John abp. of Glasgow, David bp. of Rosse, Gawin bp. of Galloway, Andrew bp. of Brechine, David earl of Crawford, Mark earl of Lothian, John lord Abirneyth of Saltoun, James lord of Balmerineth, secretary, Walter lord Blantyre, John lord Hallyrudehouse, Michael lord Burley, sir Rd. Cokburne of Clarkintoun, kt. Mr. John Preston of Fenton Barnes, collector-general, sir John Skeyne of Curahil, knight, clerk of register: was delated, accused, and pursued by sir Tho. Hamilton of Binning, knight, advocate to our sovereign lord for his highness's entries, of the Crimes contained in his Indictment, produced by the said Advocate; whereof the Tenour followeth:

George Sprot, notary in Ayemouth, You are indicted and accused, forsomuch as John, sometime earl of Gowrie, having most cruelly, detestably, and treasonably conspired in the month of July, the year of God 1600 years, to murder our dear and most gracious sovereign the king's most excellent majesty: and having imparted that devilish purpose to Robert Logan of Restalrig, who allowed of the same, and most willingly and readily undertook to be partaker thereof: The same coming to your knowledge at the times and in the manner particularly after specified, you most unnaturally, maliciously, and treasonably concealed the same, and was art and part thereof in manner following. In the first, in the said month of July 1600 years, after you had perceived and known, that divers Letters and Messages had past betwixt the said sometime earl of Gowrie, and the said Robert Logan of Restalrig, you being in the house of Fast-Castle, you saw and read a Letter written by the said Robert Logan of Restalrig, with his own hand, to the said John, sometime earl of Gowrie, of the tenour following:

My Lord, my most humble duty and service heartily remembered. At the receipt of your lordship's Letter I am so comforted, that I can neither utter my joy, nor find myself sufficiently able to requite your lordship with due thanks. And persuade your lordship in that matter, I shall be as forward for your lordships honour, as if it were mine own cause. And I think there is no living Christian that would not be content to revenge that

Machiavellinn massacring of our dear friends, yea, howbeit it should be, to venture and hazard life, lands and all other thing else. My heart can bind me to take part in that matter, as your lordship shall find better proof thereof. But one thing would be done: namely, That your lordship should be circumspect and earnest with your brother, that he be not rash in any speeches touching the purpose of Padua.

And a certain space after the execution of the aforesaid Treason, the said Robert Logan of Restalrig, having desired the laird of Bour to deliver him the aforesaid Letter, or else to burn it; and Bour having given to you all Tickets and Letters, which he then had either concerning Restalrig, or others, to see the same, because he could not read himself; you abstracted the above-written Letter, and retained the same in your own hands, and divers times read it, concerning farther in substance nor is formerly set down, according to the words following:

My Lord, you may easily understand, that such a purpose as your lordship intendeth, cannot be done rashly, but with deliberation. And I think for myself, that it were most meet to have the men your lordship spake of, ready in a boat or bark, and address them as if they were taking pastime on the sea, in such far summer time. And if your lordship could think good, either yourself to come to my house of Fast-Castle by sea, or to send your brother, I should have the place very quiet, and well provided after your lordship's advertisement, where we should have no scant of the best venison can be had in England. And no others should have access to haunt the place during your lordship's being here, but all things very quiet. And if your lordship doubt of safe landing, I shall provide all such necessaries as may serve for your lordship's arrival, within a slight-shot of the house. And persuade your lordship you shall be as sure and quiet here, while we have settled our Plot, as if you were in your own chamber: for I trust, and am assured, we shall have word within few days from them your lordship knoweth of; for I have care to see what ships comes home by. Your lordship knoweth I have kept the lord Bothwell quietly in this house in his greatest extremity, say both king and council what they liked. I hope, if all things come to pass, as I trust they shall, to have both your lordship and his lordship at one good dinner afore I die. *Hæc jocosè*, to animate your lordship: I doubt not my lord but all things shall be well. And I am resolved, whereof your lordship shall not doubt, of any thing on my part, yea to peril life, land, honour and goods; yea, the hazard of hell shall not affray me from that, yea, although the scaffold were already set up. The sooner the matter were done, it were the better; for the king's buck-hunting will be shortly; and I hope it shall prepare some dainty cheer for us to dine against the next



year. I remember well, my lord, and I will never forget so long as I live, that merry sport which your lordship's brother told me of a nobleman at Padua: for I think that a Parasceve to this purpose. My lord, think nothing that I commit the secrecy hereof and credit to this bearer; for I dare not only venture my life, lands, and all other things I have else, on his credit, but I durst hazard my soul in his keeping, if it were possibly in earthly men; for I am so persuaded of his truth and fidelity. And I trow, as your lordship may ask him if it be true, he would go to bell-gates for me; and he is not beguiled of my part to him. And therefore, I doubt not but this will persuade your lordship to give him trust in this matter as to myself. But I pray your lordship direct him home with all possible haste, and give him strait command, that he take not a wink sleep, while he see me again, after he come from your lordship. And as your lordship desireth in your Letter to me, either rive or burn, or else send back again with the bearer; for so is the fashion, I grant.

Which Letter, written every word with the said Robert Logan his own hand, was subscribed by him after his accustomed manner, with this word, Restalrig.

And albeit by the contents of the aforesaid Letter, you knew perfectly the truth of the said most treasonable Conspiracy, and the said Robert Logan of Restalrig, his foreknowledge, allowance, and guiltiness thereof; like as you were assured of the same by his receiving of divers Letters sent by Gowrie to him, and by his sending Letters to Gowrie for the same purpose, and by sundry Conferences betwixt the said Robert Logane of Restalrig, and the said James Bour in your presence and hearing concerning the said Treason, as well in the said month of July immediately preceding the attempting of the said Treason, as at divers other times shortly thereafter, as likewise by the revealing thereof to you by the said James Bour, who was upon the knowledge and device of the said Treason, and was employed as ordinary messenger by the said Robert Logan of Restalrig, to the said sometime earl of Gowrie, in the traffick of the said damnable Treason, whereby your knowledge, concealing and guiltiness of the said Treason was undeniable: yet, for further manifestation thereof, about July 1602 years, the said R. Logan of Restalrig shewed to you that Bour had told him, that he had been somewhat rash to let you see a Letter which came from the earl of Gowrie to the said Robert Logan of Restalrig, who then urged you to tell what you understood by that Letter. To whom you answered, That you took the meaning of it to be, that he had been upon the counsel and purpose of Gowrie's Conspiracy. And he answered you, Whatever he had done, the worst was his own: but if you would swear to him, that you should never reveal any thing of that matter to any person, he should be the best sight that ever you saw; and in token of farther recompense he then gave you twelve

pound of silver. Nevertheless, albeit you knew perfectly the whole practices and progress of the said Treason, from the beginning thereof as said is, as well by the sight of the said Letters, as also by your Conferences with the said James Bour, called Laird Bour, and Robert Logan of Restalrig; yet during all the days of their life-time, who lived till the year of God 1606 years, or thereby, and so by the space of six years after that, you knew the guiltiness of the treasonable Conspiracy aforesaid, you most treasonably concealed the same; and so you was and is art and part of the said most heinous, detestable and treasonable Conspiracy, and of the knowledge and concealing thereof; and therefore you ought and should incur, underlie and suffer the sentence and pain of High-Treason. To the token, that ye have not only by your Depositions subscribed with your hand, and solemnly made in presence of many of the lords of his majesty's Council, and of the ministers of the Borough of Edinburgh, of the dates, the 5th, 15th and 16th days of July last by-past, and 10th and 11th days of August instant, confessed every head, point, and article of the Indictment above written, but also, by divers other your Depositions subscribed likewise with your hand, you have ratified the same, and sworn constantly to abide thereat, and to seal the same with your blood, which you cannot deny.

Which Indictment being read openly in judgment to the said George Sprot, before he was put to the knowledge of an inquest, he confessed in the presence of the said Lord Justice and whole Assessors above-named, the same and every point thereof to be true and of verity. And therefore the justice ordained the same Indictment to be put to the knowledge of a condign Inquest of the honest, famous and discreet persons under-written. They are to say: Wm. Trumbill of Ardre, Wm. Fisher, Merchant, Burgess of Edinburgh. Robert Stuart, there, Edward Johnston, Merchant, Burgess there, Harbert Maxwell of Cavens, James Tennent of Linhouse, Wm. Trumbill, Burgess of Edinburgh, John Hucheson, Merchant, Burgess of Edinburgh, John Leyis, Merchant Burgess there, James Somervell, Merchant, Burgess there, Wm. Simintoun, Burgess there, John Cunnison in Dirlton, Thomas Smith, Merchant, Burgess of Edinburgh, J. Cowtis, Burgess there, and G. Brown in Gorgymill. Which persons of Inquest being chosen, sworn and admitted, after the Accusation of the said George Sprot, before them, of the said treasonable, heinous, and detestable Crimes contained in the Indictment aforesaid, and reading of the said Indictment of new again in his and their presence; the said George Sprot of new confessed in the audience of the said Inquest the aforesaid Indictment, and every point thereof, to be true and of verity. Whereupon the said sir Thomas Hamilton of Binning, knt. his majesty's advocate, as before, asked Act and Instrument: and in respect thereof protested, in case the said Inquest cleasid him of the said

Crimes for wilful and manifest error. And therefore the whole forenamed persons of Inquest removed all together forth of Court to the Inquest House, where they being inclosed, by plurality of votes elected and made choice of the said Harbert Maxwell of Cavens, to be Chancellor, or Foreman. And having with great deliberation gravely considered the effect and whole circumstances of the said Indictment, and constant judicial Confession made by the party pannelled, as well before the said Lord Justice and his assessors, as thereafter in presence of the Inquest themselves, they all voted upon the whole effect of the said Indictment. And being ripely and well advised therewith, re-entered again in court, where they all in one voice, by the mouth of the said Chancellor or Foreman, found, pronounced, and declared the said George Sprot (according to his own Confession judicially made in their presence and audience) to be guilty, culpable, filed and convict of art and part of the said most heinous, detestable and treasonable Conspiracy contained in his Indictment above-written, and of the knowledge and concealing thereof. For the which cause the said Justice, by the mouth of the Dempster of Court, by his Sentence and Doom demerced and ordeined the said George Sprot to be taken to the Market-cross of Edinburgh, and there to be hanged upon a gibbet till he be dead, and thereafter his head to be stricken from his body, and his body to be quartered and demeaned as a traitor, and his head to be affixed and set up upon a prick of iron upon the highest part of the Toll-booth of Edinburgh, where the traitor Gowrie, and others of the Conspirators heads stand; and his whole lands, heritages, tacks, stedings, rooms, possessions, goods and geere to be forfeited and eschet to our sovereign lord his use, for his treasonable and detestable crimes above specified. Which was pronounced for doom.

Extractum de libro Actorum Adiorialis S. D. N. Regis per me D. Johannem Coburne de Ornestoun militem, Clericum Justitiarie ejusdem generalium. Sub meis signo et subscriptione manualibus.

The Doom being pronounced, the said George was conveyed to a privy house, where he remained at his secret meditation, and afterwards in conference with the ministers and others, unto the time all things was provided necessary for his execution: and being brought to the place where he was to die, he in public audience of the whole people, at the three sides of the scaffold, ratified the former Depositions made by him concerning the treasonable practices intended and devised betwixt Gowrie and Restalrig, for the murdering of our most gracious sovereign, and bereaving his highness of his life, and his own knowledge and concealing of their guiltiness. For the which he humbly craved God and his majesty forgiveness, being most sorry and grieved that he had offended God and the king's majesty in concealing such a vile, detestable and unnatural Treason, enterprized by them against his gracious sovereign, who hath

been ever so good and gracious to his subjects: protesting that if he had a thousand lives to render, and were able to suffer ten thousand deaths, it were not a sufficient satisfaction and recompense for his offence. And that God had preserved him from many great perils, when his life was in extreme danger, to bring him to this public Declaration of that detestable and horrible fact, in presence of all the people, uttered by him in these words following: 'To my own shame, and to the shame of the devil, but to the glory of God.' And for satisfaction of the consciences of all those that have or can make any doubt of the truth of this so clear a matter, he acknowledged that his haunting with Restalrig, who was a man without religion, and subject to many other vices, as also his continual being in company with the laird of Bour, who likewise was irreligious and without fear of God, and his being ingyred by them into their matters after his first sight of Restalrig's Letter written by him to Gowrie, brought him from one sin to another, and consequently upon this grievous crime, for the which most justly, worthily and willingly, he is now to render his life. And thereupon he desired all the people there present to beware of evil company, and namely of the society of those who are void of religion; saying to them, That this was the most glorious day that ever his eyes did see. In the midst almost of these Speeches, he had prostrate himself, and fell upon his knees in presence of the whole people, making a very pithy Prayer, in the form following:

'O Father, how shall I call thee Father, that am so unworthy to be called thy son? I have wandered astray like a lost sheep, and thou of thy mercy hast brought me home unto thee, and hast preserved my life from many dangers until this day, that I might reveal these hidden and secret mysteries, to mine own shame, and thy glory. Thou hast promised, that whensoever a sinner from his heart will repent and call to thee, that thou wilt hear him, and grant him mercy.'

And thus he continued a good space in a most fervent prayer, to the great admiration of all the standers by. And having ended the same, one of the Ministers prayed again, and the Prisoner joined with him, 'That God would forgive his sins, and receive his soul to mercy.' After which, Sprot standing up made divers requests: 1. That what he had delivered by his Confession on the scaffold, might be put into his Process, that the world might take notice of it. 2. That such as were present (as they might have opportunity) would be suitors unto the king, that his majesty would forgive him this offence; for the which, he said, he craved pardon of God, of his sovereign, and the world. And 3, he desired those of the ministry which were present, that wheresoever they came they would proclaim in the pulpit his Confession of his crime, his sorrow for the same, and his full hope that God would pardon him. And to the end that this might be performed, he took the hands of such ministers as stood near about him,

so binding a promise on them. And here, being told by the said ministers and other persons of quality, that being so near his departure out of the world, it concerned him to speak nothing but the truth, and that upon the peril of his soul: he answered, 'That to the end they should know, that he had spoken nothing but the verity, and that his Confession was true in every respect, he would (at the last gasp) give them some apparent token for the confirmation of the same. Then fitting himself to the ladder, the Executioner cometh to him, and, as the manner is, asking forgiveness of him; 'With all my heart,' saith he, 'for you do but your office, and it is the thing I desire; because suffering in my body, I shall in my soul be joined to my Saviour.'—Afterward, ganging up the ladder with his hands loose and untied, being on the upper part thereof, he desired liberty to sing the 6th

Psalm, and requested the people to accompany him in the singing thereof. Which being granted, he took up the Psalm himself with a very loud and strong voice, far by his accustomed form, being before his coming to the scaffold a weak-spirited man, of feeble voice and utterance; and was assisted with the number of a thousand persons at the least, who accompanied him in singing that Psalm. After the ending whereof he again openly repeated and ratified his said former Confession: and with that, recommending his soul to God, he fastened a cloth about his own eyes, and was cast over the ladder, so ending this mortal life. Before his last breath, when he had hung a pretty space, he lift up his hands a good height, and clapped them together aloud, three several times, to the great wonder and admiration of all the beholders. And very soon thereafter he yielded his spirit.

### 87. The Process and Trial of ROBERT LOGAN, of Restalrig, for High Treason, in conspiring with John Earl of Gowrie, to murder King James I. 7 JAMES I. A. D. 1609.

IN the year 1608, the earl of Dunbar, walking in his own garden, and conversing with a country gentleman, who lived near the place, falling accidentally to discourse on the matter of Gowrie's Forfeiture; this gentleman told the earl, that he being lately in company with one Sprott, a Notary, who lived in Eyemouth, who was ordinarily employed in the laird of Restalrig's service as a notary and trustee, and who was long acquainted with this gentleman who was speaking to the earl; told the earl, That this Sprott had told him things concerning that Treason which he had never heard before; but that he had never told it, so long as those concerned were alive. The Earl was curious to have the information, which the gentleman told him, and was in short:

'That unquhil Robert Logan of Restalrig, then dead, was a co-partner and contriver with the earl of Gowrie, and his brother Mr. Alexander, in all that affair; and that Sprott had several letters, yet lying by him, which he had found amongst Restalrig's Papers, and some papers belonging to one, commonly called laird Bour, the greatest confident of any man that Restalrig had, and who was also intimate with Sprott the notary.'—Whereupon the earl of Dunbar acquainted the King's Advocate, and Sprott was seized and carried into Edinburgh; who, before several lords of the Council, did, with great remorse of conscience, acknowledge,

'That he knew perfectly that Robert Logan, late of Restalrig, was privy to, and upon the fore-knowledge of Gowrie's treasonable Conspiracy: and for the greater assurance of his knowledge, deponeth, That he knew, that there were divers Letters interchanged betwixt them, anent the treasonable purposes aforesaid, in the beginning of the month of July 1600; which Letters, James Bour, called laird Bour,

servitour to Restalrig (who was employed mediator betwixt them; and privy to all that errand) had in keeping; and shewed the same to Sprott, in the place of Fastcastle.—And deponed, 'That he did abstract (i. e. steal) quietly from James Bour, the principal Letter written by Restalrig to the earl of Gowrie, which Bour had brought back from the earl of Gowrie (as was the custom amongst them at that time); and that when James Bour employed him (Sprott) to look over his Papers; that he did keep the same, and that it was yet in his keeping, and was in his chest, among his writings, where he left it when he was taken; (and accordingly, the Letter was found there by the Sheriff-depute who was ordered by sir Wm. Hart, Lord-Justice of Scotland, to seize the said chest, and search for this Letter, which was found, and delivered to the King's advocate).

Whereupon the king's advocate produced the summons of Treason, which was raised by warrant under the seals, on the 5th of Feb. 1609; against all the defenders and others concerned, to compare before our sovereign lord, or his Commissioner, and the estates of parliament, and justice-general, on the 19th day of April, 1609, to answer, &c. And likewise produced the verifications of the Executions, which were sworn to, by the heralds, messengers and witnesses, in plain parliament: all which are contained at length in the Records of parliament; as are also the letters of relaxation and executions thereupon; relaxing Robert Logan, eldest son to unquhil Robert Logan the accused, from the horn, and all perils thereby: which relaxations were registered in publick Records before the day of comparence: and then the Lord Advocate produced for verifying of the dittay and crimes, the pri-

principal letters, and did put them in the Clerk-Register's hands (where they lie among the public records); as likewise the Depositions of the witnesses, taken by the Lords of the Articles, in common form.

All which being produced in presence of his majesty's Commissioner, and the estates of parliament, upon the day of 1609, the defenders cited, and not comparing; the Advocate desired the Estates declaration on the relevancy: the true extracts whereof are as follow:

Sir Thomas Hamilton of Binnie, kt. Advocate to our sovereign lord, in his highness's name, for proving of the points of the said summons, and reason and cause of Treason and Lese Majesty contained therein, repeated divers missive bills, all written and subscribed by the said unquhill laird of Restalrig. All the Depositions of the witnesses, examined before the Lords of Articles before; and before the lords of secret council, George Sprott's Depositions, and conviction and execution to the death, for the same cause of Treason as Gowrie: together with divers writs and other probations, which were presently produced, before the said estates, by the said Lord-Avocate, in our sovereign lord's name, for proving of the foresaid summons of Treason, and the reason and cause of lese majesty contained therein: of the which missive bills and depositions produced by the said advocate in our sovereign lord's name, for proving the said Summons of Treason, and reasons therein contained, against the said Robert Logan and his foresaids; the tenour follows:

"Right Honourable Sir; my duty, with service remembered: Please you understand, my lord of Gowrie, and some others his lordship's friends and well wishers, who tenders his lordship's preferment, are upon the resolution you know, for the revenge of that cause: and his lordship has written to me anent that purpose; whereto I will accord in case ye will stand to and bear a part; and before ye resolve, meet me and Mr. Alex. Ruthven in the Caanongate, on Thursday the next week, and be as wary as you can: indeed Mr. Alex. Ruthven spoké with me, four or five days since; and I have promised his lordship an answer within ten days at farthest. As for the purpose, how Mr. Alex. Ruthven and I has set down the course, it will be a very easy done turn: and not far by that form, with the like stratagean, wherof we had conference in T. S. But in case you and Mr. Alex. Ruthven forgather, because he is somewhat uncautious; for God's sake beware with his recklessness as to this of Padua; for he told me one of the strangest tales of a nobleman of Padua that ever I heard in my life, resembling the like purpose; I pray you, sir, think nothing, although this bearer understand of it, for he is the special secretary of my life; his name is laird Bour, and was old Manderston's man for dead and life, and even so now for me. And for my own part, he shall know of all that I do know in this world, so

long as ever we live together; for I make him my household-man: he is well-worthy of credit; and I recommend him to you. Always to the purpose I think best, for our Plot, that we meet all at my house of Fast-castle: for I have concluded with Mr. Alexander, who I think shall be meetest to be conveyed quietly in a boat by sea; at which time, upon sure advertisement, I shall have the place very quiet and well provided; and as I receive your answer, I will post this bearer to my lord: and I pray you, as you love your own life, (because it is not a matter of mouse) be circumspect in all things, and take no fear but all shall be well. I have no will, that either my brother, or yet Mr. N. R. my lord's old pedagogue, know any thing of the matter till all be done that we would have done; and then I care not who gets wit, that loves us. When ye have read, send this my letter back again with the bearer, that I may see it burnt myself; for so is the fashion in such errands: and if you please write your answer on the back hereof, in case ye will take my word for the credit of the bearer, and use all expedition; for the turn would not be long delayed. Ye know the king's hunting will be shortly; and then shall be best time, as Mr. Alexander has assured me, that my lord has resolved to enterprize that matter. Looking for your answer, commits you to Christ's holy protection. From Fastcastle, the 18th day of July, 1600." Sic subscribitur, Yours to utter power ready,

RESTALRIG."

"Laird Bour, I pray you haste you west to me about the errand I told you; and we shall confer at length of all things. I have received a new letter from my lord of Gowrie, concerning the purpose that Mr. Alexander his lordship's brother spoke to me before: and I perceive that I may have advantage of Dirleton; in case his other matter take effect; as we hope it shall. Always, I beseech you, be at me the morn and even; for I assured his lordship's servants, that I shall send you over the water, within three days, with a full resolution of all my will, anent all purposes; and I shall indeed recommend you and your trustiness to his lordship, as ye shall find an honest recompence for your pains in the end. I care not for all the land I have in this kingdom, in case I can grip of Dirleton; for I esteem it the pleasantest dwelling in Scotland. For God's cause keep all things secret, that my lord, my brother, get no knowledge of our purposes; for I rather be earded quick. And so looking for you, I rest till speering. (Sic subscribitur,) Yours to power ready,

RESTALRIG.

"From the Caanongate, the 18th day of July. P. S. I am very ill at ease, therefore speed you hither."

"Right honourable sir; all my hearty with humble service remembered. Since I have taken in hand to enterprize with my lord of Gowrie, your special and only best beloved; as we have set down the plot already, I will request you, that you will be very circumspect

and wise, that no man get an advantage of us. I doubt not but you know the peril to be both life, lauds and honour, in case the matter be not wisely used. And, for my own part, I shall have a special respect to my promise that I have made to his lordship, and Mr. Alexander his lordship's brother, although the scaffold were set up. If I cannot come to Falkland the first night, I shall be timely in St. Johnston on the morn. Indeed, I lippered for my lord himself, or else Mr. Alexander his lordship's brother, at my house of Fastcastle, as I wrote to them both. Always I repose on your advertisement of the precise day, with credit to the bearer; for howbeit he be but ane sillie glyed old carle, I will answer for him, that he shall be very true. I pray you, sir, read, and either burn or send again with the bearer; for I dare hazard my life, and all I have else in the world, on his message, I have such proof of his constant truth. So commits you to Christ's holy protection. (Sic subscribitur.) Yours to all power, with humble service ready,

“RESTALRIG.

“From the Cannongate, the 27th day of July, 1600. P. S. I use not to write on the back of any of my letters, concerning this errand.”

“My lord, my most humble duty with service, in most hearty manner remembered: at the receipt of your lordship's Letter, I am so comforted, especially as your lordship's purpose communicated to me therein, that I can utter my joy, nor find myself able how to encounter your lordship with due thanks. Indeed, my lord, at my being last in the town, Mr. Alexander, your lordship's brother, imparted somewhat of your lordship's intention, anent that matter, unto me. And, if I had not been busied about some turns of my own, I thought to have come over to St. Johnston, and spoken with your lordship. Yet always, my lord, I beseech your lordship, both for the safety of your honour, credit, and more than that, that your life, my life, and the lives of many others, who may, perhaps, innocently smart for that turn afterwards, in case it be revealed by any, and likewise the utter wraking of our lands and houses, and extirpating of our name; look that we be all as sure as your lordship, and I myself shall be, for my own part. And then, I doubt not, but with God's grace, we shall bring our matter to ane fine, which shall bring the contentment to us all, that ever wished for the revenge of Machiavelian massacring of our dearest friends. I doubt not, but Mr. Alexander, your lordship's brother, has informed your lordship what course I laid down, to bring all your co-associates to my house of Fast-castle by sea; where I should have all materials in readiness, for their safe receiving on land and into my house; making, as it were, but a manner of passing time in ane boat on the sea, in this fair summer-tide; and no other strangers to haunt my house, while we had concluded on the laying our plot; which is already devised by Mr. Alexander and me. And I would wish, that

your lordship would either come, or send Mr. Alexander to me; and thereafter, I would meet your lordship in Leith, or quietly at Restalrig; where we should have prepared ane fine batted kit, with sugar, and comfits, and wine; and thereafter confer on matters; and the soqner we brought our purpose to pass, it were the better, before harvest. Let not Mr. W. R. your old pedagogue, ken of your coming: but rather would I, if I durst be so bold to intreat your lordship, once to come and see my own house, where I have kept my lord Bothwell in his greatest extremities; say the king and his council what they would: and in case God grant us happy success in this errand, I hope both to have your lordship, and his lordship, with many others of your lovers and his, at a good dinner before I die. Always I hope, that the king's buck-hunting at Falkland this year, shall prepare some dainty cheer for us, against that dinner, the next year, *jocose hoc* to animate your lordship, at this time: but afterwards we will have better occasion to make merry. I protest, my lord, before God, I wish nothing with a better heart, nor to atchieve to that which your lordship would fain attain unto; and my continual prayer shall tend to that effect; and with the large spending of my lands, goods, yea, the hazarding of my life, shall not afray me from that, although the scaffold were already set up, before I should falsify my promise to your lordship, and persuade your lordship thereof: I trow, your lordship has ane proof of my constancy already or now: but, my lord, whereas your lordship desires, in your letter, that I crave my lord, my brother's mind anent this matter, I utterly disassent from that, that he ever should be ane counselor thereto; for in good faith, he will never help his friend, nor hurt his foe. Your lordship may confide more in this old man, the bearer hereof, my man, laird Bour, than in my brother, for I lippen my life, and all that I have else, in his hands: and I trow he would not spare to ride to hell's-gate to pleasure me; and he is not beguiled of my part to him. Always, my lord, when your lordship has read my letter, deliver it to the bearer again, that I may see it burnt with my own eyes: as I have sent your lordship's letter to your lordship again; for so, it is the fashion I grant: and I pray your lordship to rest fully persuaded of me, and all that I have promised; for I am resolved, howbeit it were to die in the morn. I must intreat your lordship to expedite Bour, and give him strait directions upon pain of his life, that he take never a wink of sleep, until he see me again; or else he will utterly undo us. I have already sent another letter to the gentleman your lordship knows, as the bearer will shew your lordship, of his answer, and forwardness with your lordship; and I shall shew your lordship farther at meeting, when and where your lordship shall think it meetest. Till which time, and ever, I commit your lordship to the protection of Almighty God. Your lordship's own sworn and bunden man, to obey

and serve with effold and ever ready service, to his utter power, to his life's end. (Sic subscriptur)

RESTALRIG.”  
 “ From Gunn's Green, the 29th day of July, 1600. P. S. Prays your Jordship hold me excused for my unseemly letter, which is not so well written, as mister were; for I durst not let any writers ken of it; but took two sundry idle days, to do it myself. I will never forget the good sport that Mr. Alexander, your lordship's brother, told me of a nobleman of Padua. It comes so oft to my memory; and indeed, it is Aparastur to this purpose we have in hand.”

“ Right honourable; my hearty duty remembered, ye know, I told you, at our last meeting, in the Cannongate, that Mr. Alexander my lord of Gowrie's brother, had spoken with me anent the matter of our conclusion; and for my own part, I shall not be hindmost. And sinsyne, I got a letter from his lordship's self, for that same purpose. . . And upon the receipt thereof, understanding his lordship's frankness and forwardness in it; God knows, if my heart was not lifted ten stages. I posted this same bearer to his lordship, to whom you may concredit all your heart in that, as well as I: For, and it were my very soul, I durst make him messenger thereof, I have such experience of his truth, in many other things. He is a silly old glyed carle, but wonder honest; and as he has reported to me his lordship's own answer, I think all matters shall be concluded at my house of Fastcastle; for I, and Mr. Alexander Ruthven, concluded, That ye should come with him and his lordship, and only another man with you, being but only four in company, intil one of the great fishing-boats be sea to my house, where ye shall land als safely, as on Leith-shore; and the house against your lordship's coming to be quiet; and when you are about half a mile from shore, as it were passing by the house, to gar set forth a waff. But for God's sake, let neither any knowledge come to my lord, my brother's ears, nor yet to Mr. W. R. my lord's old pedagogue; for my brother is kittle to shoe behind, and dare not enterprize for fear, and the other will dissuade us from our purpose with reasons of religion, which I can never abide. I think there is none of a noble heart, or carries a stomach worth a penny, but they would be content and glad, to see ane contented revenge of Greyteill's death; and the sooner the better his lordship be quick; and bid Mr. Alexander remember on the sport he told me of Padua: for I think with myself, that the cogitation on that should stimulate your lordship. And, for God's cause, use all your courses *cum discretione*. Fail not, sir, to send back again this letter: for Mr. Alexander learned me that fashion, that I may see it destroyed myself. . . So, till your coming, ever commits you heartily to Christ's holy protection. From Gunn's Green, the last day of July, 1600.”

The superscription is torn away from the last letter.

The DEPOSITIONS of the Witnesses produced, are as follow :

“ Mr. Alexander Watson, minister at Coldingham, of the age of 50 years, married, depones, The five missive Letters subscribed by the laird Restalrig, and produced in process by the Lord Advocate, for proving of the reasons of Treason pursued against Robert Logan, son and apparent heir to Robert Logan of Restalrig, being shown to this deponent; and he having at length sighted and considered the same, depones, That he takes upon his conscience, that he verily believes, that the said five missive Letters, and every one of them, are verily and truly written by the said unquhile Robert Logan of Restalrig, with his own hand: and proves this of some of his knowledge, that not only he thinks, that the character of every letter resembles perfectly the said unquhile Robert's hand-writ every way; but also agrees with his fashion of spelling, which he has particularly remembered in every one of the said missive Letters, in thir points following: First, That he never used to write ane *x* in the beginning of any word, such as *zou*, *sor's*, *zeld*, *sea*, and sick-like; but ever writ *y*, instead of the said *x*. That he writ all words beginning with *w*, with single *v*; and when that letter *w* fell to be in the midst or end, he put ane double *w*. That when he writ *quhan*, *quhair*, *qtk*, or any such words, whilk uses to be written and spelled by others, with which he wrote only *qh*, *quhen*, *quhair*, and sick-like. Whensver a word began with *con*, he never wrote *con* at length, but wrote with an *l*. Whenever *t* fell to be in the end of a word, he wrote it without a stroke through *t*, and did the like whenever it fell in any part of ane word. And for farther confirmation of the premises, he produced three Letters written every word, and subscribed by the said unquhile Robert Logan of Restalrig, and comparing them to the five other Missives produced by the Advocate, show evidently the direct conformity of the same, as well in the character and true resemblance of the hand-writ, as in the spelling and writing of divers writs, syllables and letter, according to the particulars above-specified. (Sic subscriptur.) Mr. ALEXANDER WATSON.”

“ Mr. Alexander Smith, minister of Chirneside, of the age of 30 years, or thereby, married, depones, That he was well acquainted with the unquhile laird of Restalrig, by reason he was pedagogue to his bairns, and has seen very many of his hand-writs; and having seen, read, and at length considered the five missive Letters produced by the Advocate; and inquired, if he knew the same to be the laird of Restalrig's proper hand-writ? Declared, upon his great oath, That he certainly believes the saids five letters, and every word thereof, to be the laird of Restalrig's proper hand writ; because he finds the character thereof to agree every way with the shape of his ordinary writing; and remarked very particularly the manner of Restalrig's spelling of many words, otherwise nor other men commonly uses to write and spell, accord-

ing to the hail particulars remarked of before, by Mr. Alexander Watson, the witness immediately preceding; and, in these points, and in all others, conform to the said Mr. Alexander Watson's deposition in all things; *reddens causam scientie*, because he was perfectly acquainted with the laird of Restalrig's hand-writ in his lifetime; and was pedagogue to his bairns many years, and in his company. (Sic subscriptur.)

Mr. ALEXANDER SMITH.  
 " Sir John Arnott, Provost of Edinburgh, of the age of threescore ten years, or thereby, married, depones, That he was well acquainted with Robert Logan of Restalrig, and with his hand-writ, because he had received divers of his letters himself, and seen many other letters written by him. And the five missive Letters produced by the Advocate being shown to him; and he having seen and considered the same, remembered that he had seen, read, and perfectly considered the Laird of Restalrig's hand-writ, as the letters written by the deponent at any time, or his own hand-writ. And so takes on his conscience, That the foresaids five missive Bills, produced by the Advocate, are the proper hand-writ and subscription of the said unquihle laird of Restalrig, be his judgment. And, for verification thereof, has produced four writs, all written be the said unquihle laird of Restalrig, and sent to this deponent, to Archibald Johnston, agreeing perfectly in spelling and character, with the saids missives. (Sic subscriptur,) Sir JOHN ARNOTT."

" Alexander Cuik, Sheriff-Clerk of Berwick of the age of 50 years, or thereby, married, depones, That he was well acquainted with the unquihle laird of Restalrig, and has seen many and sundry of his writs, and received divers of his letters directed to himself; and being desired to see and consider the five Letters produced by the Advocate, and to declare whether he knew and esteemed to be all written by unquihle laird of Restalrig; depones, upon his conscience, That he believes and esteems the saids hail letters to be all written by the laird of Restalrig; *reddens causam scientie*, because, not only the character agrees every way with the shape of Restalrig's hand-writ; but also the spelling in many particulars, wherein Restalrig differed from other men's form of writing. And in the particulars thereof, depones conform to the two first Witnesses, the ministers of Coldingham and Chirnside; *reddens eandem causam scientie*. (Sic subscriptur,) ALEXANDER CUIK."

" William Home in Aytoun-mill, of the age of 33 years, or thereby, married, depones, That all the five Missives above-written, being shown to this deponent, and having at length considered every one of them, takes upon his conscience, That to his knowledge, that the saids five missive letters are all written and subscribed by the unquihle laird of Restalrig; for the special reasons contained in the Depositions made by Mr. Alex. Watson, and Mr. Alex. Smith, ministers; and Alex. Cuik, Sheriff-Clerk of Berwick; to whom he is conform

in all things, *reddens eandem causam scientie*. (Sic subsc.) WM. HOME."

" John Horne, Notary in Aymouth, of the age of 42 years, or thereby, *solutus*, depones, The foresaids five missive bills, being at length sighted and considered by this deponent, depones and declares, upon conscience, to his knowledge, all the saids five Missives are the laird of Restalrig's proper hand-writ and subscription, for the reasons above-written in the deposition of Wm. Home, *reddens eandem causam scientie*. (Sic subsc.) JOHN HORNE."

" Mr. Wm. Hogg, minister at Aytoun, of the age of 30 years, or thereby, married, depones, That he knew well the laird of Restalrig, and has seen of his writs, and produced one letter, written by Restalrig to the laird of Aytoun, as written with Restalrig's own hand-writ. And having considered the five writs produced by the Advocate; declares, That he thinks them likely to be his writs; and that the same appears to be very like his writ, by the conformity of letters and spelling. (Sic subsc.) WM. HOGG."

The DEPOSITION and DECLARATION of George Sprott, as emitted by him, both before the Jury, judicially; and also upon the scaffold, at the time of his Execution, on the 12th of Aug. 1608. Which Deposition and Declaration was made before the Council, on the 10th Aug. 1608, written by the Clerk of Council, James Primrose; and subscribed by Sprott's own hand, in the presence of the earl of Dunbar, the earl of Lothian, the bishop of Ross, the lord Holy-rood-House, the lord Scoon, the lord Blantyre, sir William Hart, Lord Justice, Mr. John Hall, Mr. Patrick Galloway, Mr. Peter Hewart, all three Ministers of the Kirks of Edinburgh.

George Sprott, notary in Aymouth, being brought to the scaffold and place of execution, he, in public audience of the hail people, at the four nooks of the scaffold, ratified his former Deposition, anent his knowledge, and concealing of Restalrig's guiltiness of Gowrie's Treason: for the which, he craved God and his majesty humble forgiveness; being most sorry and grieved that he had offended God, and the king's majesty, in concealing such a vile, detestable, and unnatural Treason, enterprized by the earl of Gowrie and laird of Restalrig, against his natural king, so good and so godly a prince, who has ever been so gracious to his subjects, and to this hail island: protesting, That if he had a thousand lives to render, and were able to suffer ten thousand deaths, it is not sufficient satisfaction and recompence for his so foul and horrible offence; and that God had preserved him from many great perils, when his life was in extreme danger, to bring him to this public declaration of that detestable and horrible fact, in testifying of the truth; as he said publickly, in presence of all the people, in these words following: ' To my own shame, the shame of the devil, and the

'glory of God; for satisfying the consciences of all these (if any be), that has, or can make any doubt of the truth of this so clear a matter.' And he acknowledges, that his haunting with Restalrig, who was a man without religion, and subject to many other vices; and his thoughts of himself in thir matters, after the first sight of Restalrig's Letter written to Gowrie, and his continual bearing of company with Restalrig and laird Bour, who was irreligious, and without fear of God, brought him from one sin to another, and consequently to this grievous crime, for the which, most justly, worthily and willingly, he is now to render his life. And he desired all the people to beware of ill company; and namely, of the company of those who are void of religion. And he desired, that this his Declaration might be inserted in his Process: as also, he desired the ministers of God's Word to publish this Declaration to their folks, from their pulpits; and took every one of them who were present by the hand, with their promise to do the same: saying unto them, That this was the most glorious day that ever his eyes did see; and with these words he prostrates himself, and falls upon his knees, in presence of the hail people, and made a very pithy Prayer. (See p. 706). And so he continued a good space, in a most fervent prayer, to the great admiration and rejoicing of all the people; and in a better form and manner nor any of the beholders and hearers can be able to set down in writ, the same not being written in the present time, because there was no place of writing upon the scaffold, in respect of the prease and multitude of people. And going up the ladder, he desired liberty to sing the 6th Psalm, and requested the people to accompany him in singing thereof; which being granted, and he being at the ladder-head, the same was tane up and sung by himself, with a very loud and mighty voice, and was assisted with above the number of 500 persons, who with tears accompanied him in singing of that song. After the ending thereof, he repented and ratified his former Deposition: and with that, recommending his soul to God, he was thrown over, and so ended his mortal life. In witness whereof, we under-subscribers, who, for the most part, were all of us upon the scaffold with him, and remained with him unto the time of his death; and others of us in so convenient places near to the scaffold with him, that we did bear all that was spoken by him, have subscribed this presents with our hands. (Sic subsc.) Glasgow, B. Galloway, M. B. Brechin, Balfour of Borley, Holy-rood-house, John Preston, Thomas Regra, Peter Sharp, Balcanquhal, Mr. Hewat, Mr. George Blyth, Mr. Patrick Galloway, John Hall, Walter Charles Lamsden, Richard Tobie, Baillie of Edinburgh, William Speir, Baillie, James Ainsly, Baillie of Edinburgh, &c.

What is contained in this speech being consonant to his Deposition made before the Privy Councill, as also before the Inquest; here is added the Deposition, as emitted by him.—

This Sprott, after diuers Examinations, being moved with remorse of conscience, for the long concealing of the foreknowledge of this treasonable Conspiracy; confesseth, declareth, and deponeth, with the peril of his own life:

"That he knew perfectly, that Robert Logan\*, late of Restalrig, was privy, and upon the foreknowledge of Gowrie's treasonable Conspiracy. And for the greater assurance of his knowledge, deponeth, that he knew that there were divers Letters interchanged betwixt them, anent the treasonable purpose aforesaid, in the beginning of the month of July, 1600. Which letters, James Bour, called laird Bour, serritor to Restalrig, (who was employed mediator betwixt them, and privy to all that errand) had in keeping, and shewed the same to Sprott in the place of Fastcastle. And producing the earl of Gowrie's letter to Restalrig; Which Letter, written every word with Restalrig's own hand, was subscribed by him after his accustomed manner, (Restalrig;) and was sent to the earl of Gowrie, by the said James Bour. After whose return within five days, with a new letter from Gowrie, he staid all night with Restalrig in Gun's Green (a house of Restalrig's): and Restalrig rode to Lothian, the morn thereafter, where he staid five or six days. Then after his returning passed to Fastcastle, where he remained a certain short space. And further deponeth, That he saw and heard Restalrig read the last letter, which Bour brought back to him from Gowrie, and their conference thereanent. And heard Bour say, sir, if you think to make any commodity by this dealing, lay your hand to your heart. And Restalrig answered, that he would do as he thought best. And further said to Bour, howbeit he should sell all his own land that he had in the world, he would pass through with the earl of Gowrie; for that matter would give him greater content-

\* Great part of this Evidence is in the Trial of George Sprot, No. 86, though not so full. For the earl of Cromerty, in his Account of the Conspiracies of the earl of Gowrie, (from whence this is taken) says, p. 126, 'Mr. Crawford did bring a pamphlet printed at London, anno 1609, published by Dr. George Abbot, then archbishop of Canterbury, who being providentially in Scotland in the year 1608, the doctor's curiosity brought him in amongst the multitude of hearers of that Trial, of G. Sprott, whereby he was so convinced of the truth of Gowrie's Treasons, and of the malice of the king's calumniators, as moved the good doctor to intreat for an extract and account of the whole process, attested by sir William Hart, Lord Justice of Scotland, at that time (which the doctor brought with him to England, and caused it to be printed, with a long Preface, from which the Trial of G. Sprott, is taken.) But that Paper, printed at London, being drawn out as a Memorial for Dr. Abbot's own use, and not as a full Abstract of what is recorded, which I now publish from the original Depositions, Letters, and other Writs, lying in record.



ment, nor if had the whole kingdom: and rather or he should falsify his promise, and recall his vow that he had vowed to the earl of Gowrie, he should spend all that he had in the world, and hazard his life with his lordship. To whom Bour answered, You may do as you please, sir; but it is not my counsel that ye should be so sudden in that other matter. But for the condition of Dirltoun, I would like very well of it. To whom Restalrig answered, content yourself, I am at my wit's end.—And farther Sprott deponeth, That he entered himself thereafter in conference with Bour, and demanded what was done betwixt the laird and the earl of Gowrie? And Bour answered, That he believed that the laird should get Dirltoun without either gold or silver, but feared that it should be as dear unto him. And Sprott enquiring how that could be: Bour said, they had another pye in hand nor the selling of any land; but prayed Sprott, for God's sake, that he would let be, and not trouble himself with the laird's business; for he feared, within few days, the laird would either be landless or lifeless.—And the said George Sprott being demanded, If this his Deposition was true, as he would answer upon the salvation and condemnation of his soul; and if he would go to death with it, seeing he knoweth the time and hour of his death to approach very near? deponeth for answer, "That he hath not a desire to live, and that he knows the time to be short, having care of no earthly thing, but only for clearing of his conscience in the truth of all these things to his own shame, before the world, and to the honour of God, and safety of his own soul: That all the former points and circumstances contained in this his deposition, with the deposition made by him the 5th of July last, and the whole remanent depositions made by him sen that day, are true; which he will take on his conscience, and as he hopeth to be saved of God, and that he would seal the same with his blood."—And farther, being demanded, where this above-written Letter, written by Restalrig to the earl of Gowrie, which was returned again by James Bour, is now? deponeth, "That he abstracted it quietly from Bour, in looking over and reading Bour's letters which he had in keeping of Restalrig's; and that he left the above-written letter in his chest among his writings, when he was taken and brought away, and that it is closed and folded within a piece of paper." This foresaid Deposition was made by him the 10th August, 1608, written by James Primrose, Clerk of his majesty's Privy-Council; and subscribed with the said George Sprott's own hand; in the presence of the earl of Dunbar, the earl of Lothian, the bishop of Ross, the lord Scoon, the lord Holy-rood-house, the lord Blantyre, sir W. Hart, his majesty's justice, Mr. John Hall, Mr. Patrick Galloway, Mr. Peter Hewart, ministers of the kirks of Edinburgh. (Subscribed with all their hands.)

And also the 11th day of the foresaid month and year, the said George Sprott being ex-

mined in the presence of a number of the Council and ministers foresaid; and it being declared to him, That the time of his death now very near approached, and that therefore they desired him to clear his conscience with an upright declaration of the truth; and that he would not abuse the holy name of God, to make him, as it were, a witness to untruths; And specially being desired, that he would not take upon him the innocent blood of any person dead or quick, by making or forging lies and untruths against them:

"Deponeth, That he acknowledgeth his grievous offences to God, (who hath made him a reasonable creature) in-abusing his holy name with many untruths sen the beginning of this Process; but now being resolved to die, and attending the hour and time when it shall please God to call him, he deponeth with many attestations, and as he wisheth to be participaut of the kingdom of heaven, where he may be countable and answerable upon the salvation and condemnation of his soul, for all his doings and speeches in this earth, that all that he hath deponed sen the fifth day of July last, in all his severall depositions, were true in every point and circumstance of the same; and that there is no untruth in any point thereof."

And having desired Mr. Patric Galloway to make a prayer, whereby he might be comforted now in his trouble; which was done. "The said deponer, with many tears after the prayer, affirmed this his deposition to be true; and for the confirmation thereof, declared, that he would seal the same with his blood."

I had almost forgotten that, which in this action of his death was strange, and in a manner marvellous. For being urged by the minister and other of good rank upon the scaffold, that now at this end he should declare nothing but the truth (touching the matter for which he suffered) on the peril of his own salvation and condemnation of his soul; he for the greater assurance of that his constant and true Deposition, promised (by the assistance of God) to give them an open and evident token before the yielding of his spirit. Which he accomplished thereafter: for before his last breath, when he had hung a pretty space; he lift up his hands a good height, and clapped them together aloud three several times, to the great wonder and admiration of all the beholders. And very soon thereafter he yielded his spirit.

As in the Account of Gowrie's and his brother's Process, I did not insert the Libel and Summons, nor Executions, *verbatim*: as being very tedious and useless to readers; on the same motives I do so here, but I insert the Doom and Sentence *verbatim*: the Libel, Summons and Autographons of these and others being at full, in the public Records, and patent to all enquirers.

June 1609. To which Summons, with the Executions and Indorsations thereof respective foresaids, being this instant day read in presence of his majesty's Commissioner and Retutes

of parliament, first in Latin, and thereafter in Scots; The said Robert Logan being oft times called of new, at the Tolbooth window of the said Court of Edinburgh, to have appeared and answered to the said Summons of Treason, and Reasons and Causes therein contained: And he not comparing to have defended in the said matter: and to have answered to the said Summons, The said air Thomas Hamilton of Byynie, kt., Advocate to our sovereign lord, desired the said estates declaration, if the Reasons of the said Summons were relevant: the which Estates found the said summons and Reasons and Causes therein contained relevant. Therefore the said Advocate of new for proving of the foresaid Summons of Treason raised against the said Robert Logan, bearing and containing as is above-written; repeated all the foresaid missive Bills, and the said Depositions of the said Witnesses examined before the saids Lords of Articles and Lords of Secret Council respective; and also George Sprotts Deposition, Conviction and Confession, in Judgment, and at his Execution to the death, for the said cause of Treason; with the hail other Writs and probations produced and repeated by him of before; for proving of the foresaid Summons of Treason, and Reasons therein contained; and desired the saids Estates of parliament yet, as of before, to advise the probations foresaid, led and deduced in the said matter; and to pronounce their sentence of parliament thereuntil, according to the said probations and their consciences: And thereafter, the hail Depositions of the Witnesses, missive bills, and hail writs, and probations, being read, seen, and considered by the foresaid hail estates of parliament; and they therewith being ripely advised, the said lord commissioner and estates of parliament findes, discerns, and declares, That the foresaid unquhil Robert Logan of Restalrig committed and did in his life-time, open and manifest Treason, in all the points, articles, and manner, contained

in the said Summons: and therefore it was given for doom by the mouth of Divid Lindsay, Dempster of parliament, in manner and form as follows:

‘ This court of parliament shows for law, that the said unquhil Robert Logan of Restalrig, in his life-time committed the foresaid crime of treason and lese majesty; and that he was art and part guilty, and partaker thereof, against our sovereign lord and authority royal; and that the foresaid cruel, wicked and treasonable crimes were interpreted, by his causing, persuasion, counsel and help. Likeas, the said unquhil Robert Logan of Restalrig, treasonably counselled the foresaid crime of lese majesty to his death, and in his death, in all manner, at length contained in the said summons: and therefore, depones and declares the name, memory and dignity of the said unquhil Robert Logan of Restalrig, to be extinct and abolished, and his arms cancelled, riven and delete furth of the books of arms, and nobility; so that his posterity shall be excluded, and be unhabile to possess or enjoy any offices, honours, dignities, lands, tenements, rooms, rents, possessions or goods, moveable or unmoveable, rights and others whatsoever, within the kingdom, in all time coming; and that all the said goods, lands, rooms, tenements and other goods, moveable and unmoveable, rights and others whatsoever pertaining to the said unquhil Robert Logan of Restalrig; or which might otherways have pertained to him, at any time, since his conspiring of the said treasonable crimes, to be escheat and forefaulted to our sovereign lord; to appertain and remain perpetually with his majesty in property. And this I give for Doom.’

*Note,* Here, as in Gowrie’s Process, that the citing of dead persons is among the legal forms, prescribed both by our laws, and laws of several other nations.

88. The Trial of the Lord BALMERINOTH,\* at St. Andrews, for High Treason: the 10th of March, 7 JAMES I. A. D. 1609. [Copied from a MS. in the Bodleian Library, Rotulæ in Archivo, A. 3033. 44, 10. And though short, is a more perfect Copy than that in the Cotton Library, Julius, F. 6. N. 34.]

THE Lords being set, the lord Balmerinoth was sent for; and being come, the Lord Advocate told him, There was a Warrant come from his majesty for his Trial, and therefore desired

to know, whom he had entertained to speak for him.

He answered, “ He had great necessity to speak, the cause being such as concerned his

\* The lord Balmerino was a professed Protestant: but, upon what motive is not known, he often pressed the king to write a Letter of Compliment to the Pope, which, it seems, his majesty had as often refused to do. Hereupon, as the thing is related, Balmerino writ the Letter, and bringing the king several Dispatches at a time when his majesty was in haste to be gone

a hunting, thrust it in among the rest; and the king, through inadvertency, in that hurry, signed it. The Letter thus signed, was sent away, and no more heard of it till some years after, cardinal Bellarmine mentioning of it to the king’s disadvantage, his majesty was obliged to take notice of, and to question the Secretary about it.

life and estate; but he had greater necessity to hold his peace, by reason of his offence, which was such as it admitted no excuse; and my grief for it so great, as it will not suffer me to extenuate my crime: and therefore I will neither make any friend but rested in that, whereunto myself fell with out the advice of any; nor will I desire a lawyer to make that seem less, which I would have all the world know to be such as it is.—Herein are two points in which I would have all men satisfied concerning his majesty: First, for his majesty's innocency in the writing of the letter; for I protest I could never draw him to hear with patience my notion. But he did utterly and absolutely refuse to take that course against conscience, which would neither satisfy me, who in a politic natural course had conceived it might be becomful for his majesty; and so applied myself to that crooked device, which hath worthily brought me to this estate wherein I now stand.—The second thing concerning his majesty, is this: That whereas some in malice to his majesty, or my friends in commiseration of my estate, may think and report it too rigorous and cruel a course, which is held against me in a matter of this moment, the suggesting of a letter of recommendation, to proceed against my life and estate; I would have such know, that his majesty's clemency is many ways testified unto the world, in cases that have seemed more nearly to concern him; and therefore men should not judge of his majesty's disposition to mercy by this action: but rather cast their eyes upon my unhappiness, who have offended in such a point as his majesty can extend no favour to me without the damage of his own honour, which being dearer to him than his life, it must needs be more tendered than twenty thousand such lives as mine. And therefore I desire not to be spared at so dear a rate as the impeachment of his majesty's honour.—There are likewise two things concerning myself, which I desire all men to understand. First, That I had no aim at the alteration of Religion, or to bring in a Toleration, or what you will term it, by the writing of that letter: but merely a politic course, as I have said, which, as a natural man, I conceived might further his majesty's right. And this I protest to be true, as I shall answer God in the Day of Judgment, when the secrets of all hearts shall be disclosed.—Next, I would have no man think

that it was gain or any private advantage that drew me to that: for I protest I never received or expected the least reward from any prince in the world, save from the King my master. And this, as I shall answer the great God in heaven."

This said, the Jury was called, and in their hearing was read the Indictment, which aggravated his crime by his majesty's favours to him, which had deserved more regard: by his majesty's refusal; by the dangers which did follow, or might have done: imputing all the Treasons which have been a-foot since, to be fruits of that letter; and lastly, charging him with having intelligence with foreign estates, and encroaches of the Gospel, for the subversion of the state of Religion.

To all these he replied not one word.

Then was read his Confession taken in Frankland, the effect of that which he made in London. Then was read the Speech he uttered before the Council at Whitehall, containing his sorrow, his sins, the favours he had received, his unworthiness of them, his desire to give his majesty satisfaction for his offence to the last drop of his blood. Last, was read a Letter from his majesty to the Lord Advocate, shewing his majesty's refusal to listen to the Lord President's motion, and setting down some circumstances which passed betwixt his majesty and the Lord President at the time of the refusal; against all which the President said nothing.

So the Jury going together, after a time returned, and found him Guilty of all the parts of the Indictment.

Then the Lords conferring upon the Bench; my Lord Justice signified, That they were not to proceed further till they knew more of the king's pleasure. And so advising the Lord President to fit himself for God; and giving the Jury thanks for their pains and care they had of his majesty's honour; the court rose.

He was by order from court detained a prisoner for some time; and afterwards made a sort of prisoner at large: till at last, in consideration of his submissive behaviour, and the sufferings he had undergone; the king was pleased to pardon him, and to restore his blood and estate.\*

\* His son was tried for a Libel in the following reign. See A. D. 1634.

## 89. The Case of PROCLAMATIONS. Mich. 8 JAMES I. A. D. 1610. [12 Coke's Reports, 74.]

**MEMORANDUM**, that upon Thursday, 20 Sept. Regis Jacobi, I was sent for to attend the lord chancellor, lord treasurer, lord privy seal, and the chancellor of the duchy, there being present the attorney, the solicitor, and recorder; and two questions were moved to me by the lord treasurer; the one, if the king by his proclamation may prohibit new buildings in and

about London, &c. the other, if the king may prohibit the making of starch of wheat; and the lord treasurer said, that these were preferred to the king as grievances, and against the law and justice: and the king hath answered, that he will confer with his privy council, and his judges, and then he will do right to them. To which I answered, that these questions

were of great importance. 2. That they concerned the answer of the king to the body, viz. to the commons of the house of parliament. 3. That I did not hear of these questions until this morning at nine of the clock; for the grievances were preferred, and the answer made when I was in my circuit. And lastly, both the Proclamations, which now were shewed, were promulgated, anno 5 Jac. after my time of attorneyship: and for these reasons I did humbly desire them that I might have conference with my brethren the judges about the answer of the king, and then to make an advised answer according to law and reason. To which the lord chancellor said, that every precedent had first a commencement, and that he would advise the judges to maintain the power and prerogative of the king; and in cases in which there is no authority and precedent, to leave it to the king to order in it, according to his wisdom, and for the good of his subjects, or otherwise the king would be no more than the duke of Venice: and that the king was so much restrained in his prerogative, that it was to be feared the bonds would be broken: and the lord privy seal said, that the physician was not always bound to a precedent, but to apply his medicine according to the quality of the disease: and all concluded that it should be necessary at that time to confirm the king's prerogative with our opinions, although that there were not any former precedent or authority in law; for every precedent ought to have a commencement.

To which I answered, that true it is that every precedent hath a commencement; but when authority and precedent is wanting, there is need of great consideration, before that any thing of novelty shall be established, and to provide that this be not against the law of the land: for I said, that the king cannot change any part of the common law, nor create any offence by his proclamation, which was not an offence before, without parliament. But at this time I only desired to have a time of consideration and conference with my brothers, for 'deliberandum est diu, quod statuendum est semel'; to which the solicitor said, that divers sentences were given in the Star-chamber upon the proclamation against building; and that I myself had given sentence in divers cases for the said proclamation: to which I answered, that precedents were to be seen, and consideration to be had of this upon conference with my brethren, for that 'melius est recurrere, quam male currere'; and that indictments conclude, 'contra leges et statuta,' but I never heard an indictment to conclude, 'contra regiam proclamationem.' At last my motion was allowed, and the lords appointed the two chief justices, chief baron, and baron Altham to have consideration of it.

Note, the king by his proclamation, or other ways, cannot change any part of the common law, or statute law, or the customs of the realm, 11 H. 4, 37. Fortescue De laudibus Angliæ legum, cap. 9, 18 Ed. 4, 35,

36, &c. 31 H. 8, cap. 8, hic infra: also the king cannot create any offence by his prohibition or proclamation, which was not an offence before, for that was to change the law, and to make an offence which was not; for 'ubi non est lex, ibi non est transgressio': ergo, that which cannot be punished without proclamation, cannot be punished with it. Vide le stat. 31 Hen. 8, cap. 8, which act gives more power to the king than he had before, and yet there it is declared, that proclamations shall not alter the law, statutes, or customs of the realm, or impeach any in his inheritance, goods, body, life, &c. But if a man should be indicted for a contempt against a proclamation he shall be fined and imprisoned, and so impeached in his body and goods. Vide Fortescue, cap. 9, 18, 34, 36, 37, &c.

But a thing which is punishable by the law, by fine, and imprisonment, if the king prohibit it by his proclamation, before that he will punish it, and so warn his subjects of the peril of it, there if he permit it after, this as a circumstance aggravates the offence; but he by proclamation cannot make a thing unlawful, which was permitted by the law before: and this was well proved by the ancient and continual terms of indictments, for all indictments conclude, 'contra legem et consuetudinem Angliæ, or 'contra leges et statuta, &c.' But never was seen any indictment to conclude 'contra regiam proclamationem.'

So in all cases the king out of his providence, and to prevent dangers, which it will be too late to prevent afterwards, he may prohibit them before, which will aggravate the offence if it be afterwards committed: and as it is a grand prerogative of the king to make proclamation, for no subject can make it without authority from the king, or lawful custom, upon pain of fine and imprisonment, as it is held in the 22 H. 8, Procl. B. But we do find divers precedents of proclamations which are utterly against law and reason, and for that void; for 'quæ contra rationem juris introductæ sunt, non debent trahi in consequentiam.'

An act was made, by which foreigners were licensed to merchandize within London; H. 4, by proclamation prohibited the execution of it; and that it should be in suspense 'usque ad proximum parliament,' which was against law. Vide dors. claus. 8 H. 4. Proclamation in London. But 9 H. 4, an act of parliament was made, that all the Irish people should depart the realm, and go into Ireland before the feast of the Nativity of the blessed Lady, upon pain of death, which was absolutely in *terrorum*, and was utterly against the law.

Hollished 722. anno Domini 1546, 37 H. 8, the whore-houses, called the stews, were suppressed by proclamation and sound of trumpet, &c.

In the same term it was resolved by the two chief justices, chief baron, and baron Altham, upon conference betwixt the lords of the privy council and them, that the king by his proclamation cannot create any offence which was

not an offence before, for then he may alter the law of the land by his proclamation in a high point; for if he may create an offence where none is, upon that ensues fine and imprisonment: also the law of England is divided into three parts, common law, statute law, and custom; but the king's proclamation is none of them: also 'malum aut est malum in se, aut prohibitum,' that which is against common law is 'malum in se, malum prohibitum,' is such an offence as is prohibited by act of parliament, and not by proclamation. Also it was resolved, that

the king hath no prerogative, but that which the law of the land allows him.

But the king for prevention of offences may by proclamation admonish his subjects that they keep the laws, and do not offend them; upon punishment to be inflicted by the law, &c.

Lastly, if the offence be not punishable in the star-chamber, the prohibition of it by proclamation cannot make it punishable there: and after this resolution, no proclamation imposing fine and imprisonment, was afterwards made, &c. But see 12 Coke's Reports 20.

90. The Cases of BARTHOLOMEW LEGATT and EDWARD WIGHTMAN, for Heresy: 10 JAC. I. A. D. 1612. [Fuller's Church Hist. B. 10. § 4.\*]

A true Relation of the Commission and Warrants for the Condemnation and Burning of Bartholomew Legatt and Edward Wightman; the former at West Smithfield, the latter at Litchfield.

BUT leaving the outlandish, let us come to our English Vorstinus (though of far less learning, of more obstinacy, and dangerous opinions) I mean that Arian, who this year suffered in Smithfield: his name Bartholomew Legate, native county Essex, person comely, complexion black, age about 40 years: of a bold spirit, confident carriage, fluent tongue, excellently skilled in the Scriptures; and well had it been for him, if he had known them less, or understood them better; whose ignorance abused the word of God, therewith to oppose God the word. His conversation (for ought I can learn to the contrary) very unblameable; and the poison of heretical doctrine is never more dangerous, than when served up in clean cups, and washed dishes.—King James caused this Legate ofieu to be brought to him, and seriously dealt with him to endeavour his conversion. One time the king had a design to surprize him into a confession of Christ's Deity, as his majesty afterwards declared to a right reverend prelate, by asking him, Whether or no he did not daily pray to Jesus Christ? Which, had he acknowledged, the king would infallibly have inferred, that Legate tacitly consented to Christ's divinity as a searcher of the hearts. But herein his majesty failed of his expectation, Legate returning, That indeed he had prayed to Christ in the days of his ignorance, but not for these last seven years. Hereupon the king in choler spurned at him with his foot; 'away base fellow' (said he) it shall never be said, that one stayeth in my presence, that hath never prayed to our Saviour for seven years together.—Often was he convened before the bishops in the consistory of St. Paul's, where he persisted obstinate in his opinions, flatly denying the authority

of that court. And no wonder that he slighted the power of earthly bishops, denying the divinity of him, who is 'the shepherd and bishop of our souls.' 1 Pet. ii. 25. The disputation against him, was principally managed by John King, bishop of London, who gravelled and utterly confuted him with that place of Scripture, John xvii. 5. 'And now O Father, glorify thou me with thine ownself, with the glory which I had with thee before the world was.' This text, I say, was so seasonably alledged, so plainly expounded, so pathetically enforced by the eloquence, and gravity of that bishop (qualities wherein he excelled) that it gave marvellous satisfaction to a multitude of people there present, that it is conceived, it happily unproselyted some inclinable to his opinions; though Legate himself remained pertinacious, both against the impressions of arguments, and scripture, daily multiplying his enormous opinions. It is the happiness nature indulgeth to monsters that they are all barren; whereas on the contrary, monstrous positions are most procreative of the like, or worse than themselves.

Before we set down his pestilent opinions; may writer and reader fence themselves with prayer to God, against the infection thereof; lest otherwise, touching such pitch (though but with the bare mention) defile us, casually tempting a temptation in us, and awaking some corruption which otherwise would sleep silently in our souls. And, if notwithstanding this our caution, any shall reap an accidental evil to themselves, by reading his damnable opinions, my pen is no more accessory to their harm, than that apothecary is guilty of murder, if others, out of a liquorish curiosity, kill themselves with that poison, which he kept in his shop for sovereign use to make antidotes thereof. His damnable Tenets were as followeth: 1. That the Nicene creed, and Athanasius creed, contain not a profession of the true Christian faith. 2. That Christ is not God of God begotten, not made; but begotten, and made. 3. That there are no persons in the Godhead. 4. That Christ was not God from everlasting, but began to be God, when he took flesh of the Virgin Mary. 5. That the world

\* Very diligent efforts were made, but unsuccessfully, to discover any records of the Trials of these two persons.

was not made by Christ. 6. That the Apostles teach, Christ to be man only. 7. That there is no generation in God, but of creatures. 8. That this assertion, God to be made man, is contrary to the rule of faith, and monstrous blasphemy. 9. That Christ was not before the fulness of time, except by promise. 10. That Christ was not God, otherwise than an anointed God. 11. That Christ was not in the form of God equal with God, that is, in substance of God, but in righteousness, and giving salvation. 12. That Christ by his Godhead wrought no miracle. 13. That Christ is not to be prayed unto.—For maintaining these opinions, Legate had long been in prison in Newgate, yet with liberty allowed him to go abroad; not contented wherewith he openly boasted, and often threatened to sue the court, which committed him, for reparations for false imprisonment; so that his own indiscretion in this kind, hastened his execution. For hereupon bishop King finally convented him in the consistory of St. Paul's, and that worthy prelate, foreseeing that his proceedings herein would meet with many listening ears, prying eyes, and prating tongues, chose many reverend bishops, able divines, and learned lawyers to assist him. So that the consistory, so replenished for the time being, seemed not so much a large court, as a little convocation. By the counsel and consent of these, by his definitive sentence, he pronounced, decreed and declared the foresaid Bartholomew Legate an obdurate, contumacious, and incorrigible heretic. And by an instrument called a Significavit, certified the same into the chancery, delivering him up unto the secular power, the church-keys in such cases craying the help of the civil sword. Whereupon, king James, with his letters, dated March 11, under the privy-seal, gave order to the broad-seal to direct the writ *De Hæretico comburendo*, to the sheriffs of London, for the burning of the foresaid Legate. \* Now as the bishop herein surrendered Legate to the secular power, my Ecclesiastical History in like manner resigns him to the Civil Historian, together with all the doubts, difficulties, and legal scruples attending on, or resulting from his condemnation. Let the learned in the law consider on what statute the writ for his burning was grounded, whether on those old statutes enacted in the reigns of Richard the 2nd, and Henry 4th; or on the branch of some other new sta-

\* Some learning concerning Heresy and the writ *De Hæretico comburendo*, is to be found in 5 Co. Rep. Caudrey's case, 12, Co. Rep. 20, 56, 89, 92 (Legatt's case) Barrington's Obs. on Stat. 2 H. 4. 2 H. 5. See also in 1 Hale's P. C. c. 30. and the notes of the editors; (though note (*u*) in Wilson's edition is absurd;) a learned history of the law of heresy. Lord Hale for the cases of Legatt and Wightman refers to the Chronicle of sir Richard Baker, who however gives no particulars. Collier likewise is very brief. See also a good Summary in 4 Black. Comm. c. 4. s. 2.

tute to that effect. Let them satisfy us, how far those laws were repealed in 1mo Elizabeth, and how far they still stand in force; as, though not to [pretended] Lollardism, yet to blasphemy. Let them examine the judgment of the learned Fitz-Herbert, whether sound in his assertion, That heretics, before the writ of their burning be issued out against them, must first be convicted of heresy before a provincial convocation; whilst others affirm, That they being convicted before their ordinary, sufficeth, provided it be for such opinions which convocations have formerly condemned for heretical.—To Smithfield he was brought to be burned. See here, it is neither the pain nor the place, but only the cause makes a Martyr. In this very Smithfield how many Saints in the Marian days, suffered for the testimony of Jesus Christ? Whereas now one therein dieth in his own blood for denying him. Vast was the conflux of people about him. Never did a scare-fire at midnight summon more hands to quench it, than this at noon-day did eyes to behold it. At last, refusing all mercy, he was burned to ashes. \* And so we leave him, the first that for a long time suffered death in that manner: and, oh that he might be the last to deserve it! In the next month Edward Wightman of Barton upon Trent, convicted before Richard Neile bishop of Coventry and Litchfield, was burned at Litchfield for far worse opinions (if worse might be) than Legate maintained. Mary Magdalen indeed was once possessed with seven devils, but ten several heresies were laid to Wightman's charge; namely, those of Ebion, Cerinthus, Valentinian, Arrius, Macedonius, Simon

\* Hume tells us (appendix to the reign of James 1st.) "Stowe says that these Arians were offered their pardon at the stake if they would merit it by a recantation." The following are the words of Stow: "Wednesday the 18th of March, Legat, an obstinate Arian heretique, was burned in Smithfield: he refused all favour and contemned all ecclesiastical government, and upon Easter Eve, the 11th of April following, Edward Wightman, another obstinate miscreant heretique, was burned at Litchfield, having likewise more favour offered him than he had grace to accept." Stow's Annales, 1004. He has not one syllable of *pardon*, or *the stake*, or *recantation*. Thus it is, as bishop Butler has observed in his excellent Sermon on the government of the tongue, that "Some persons, when they have heard the least imperfect hint of an affair, will, out of their own head, add the circumstances of time and place and other matters to make out their story." Mrs. Macaulay says that "one of these heretics was lunatic at the time of his condemnation:" for which assertion I cannot find the slightest trace or pretence of authority, unless it be what Hume farther says, that "a madman who called himself the Holy Ghost," probably he had in his mind Wightman, "was without any indulgence for his frenzy condemned to the same punishment."

Magus, Manes, Manichæus, Photinus, and of the Anabaptists. Lord! What are we when God leaves us? Did ever man maintain one heresy, and but one heresy? Chains of darkness, we see, have their links, and errors are complicated together. God may seem well-pleas'd with this seasonable severity. For the fire thus kindled, quickly went out for want of fuel. I mean, there was none ever after that openly avowed these heretical doctrines. Only a Spanish Arias, who, condemned to die, was notwithstanding suffered to linger out his life in Newgate, where he ended the same. Indeed, such burning of heretics much startled common people, pitying all in pain, and prone to asperse justice itself with cruelty, because of the novelty and hideousness of the punishment. And the purblind eyes of vulgar judgments looked only on what was next to them, (the suffering itself) which they beheld with compassion, not minding the demerit of the guilt, which deserved the same. Besides, such being unable to distinguish betwixt constancy and obstinacy were ready to entertain good thoughts even of the opinions of those heretics, who sealed them so manfully with their blood. Wherefore king James politely preferred, that heretics hereafter, though condemned, should silently, and privately waste themselves away in the prison, rather than to grace them and amuse others with the solemnity of a public execution, which in popular judgments usurped the honour of a persecution.

*A Narration of the Burning of Bartholomew Legatt.*

James R. James by the Grace of God, King of England, Scotland, France and Ireland, Defender of the Faith, &c. To our right trusty, and right well beloved Counsellor, Thomas, lord Ellesmere, our Chancellor of England, Greeting. Whereas the reverend father in God John bishop of London having judicially proceeded in a cause of heresie against Bartholomew Legatt, of the city of London, in the diocess of the said bishop of London, concerning divers wicked errors, heresies, and blasphemous opinions, holden, affirmed and published by the said Bartholomew Legatt, and chiefly in the thirteen blasphemous positions following, viz. 1. That the creed called the Nicene Creed and Athanasius's creed, contain not a profession of the true Christian faith, or that he will not profess his faith according to the same creeds. 2. That Christ is not God of God begotten, not made, but begotten and made. 3. That there are no persons in the Godhead. 4. That Christ was not God from everlasting, but began to be God, when he took flesh of the Virgin Mary. 5. That the world was not made by Christ. 6. That the Apostles teach Christ to be Man only. 7. That there is no generation in God, but of creatures. 8. That this assertion, God to be made Man, is contrary to the rule of faith, and monstrous blasphemy. 9. That Christ was not before the fullness of time, except by promise. 10. That

Christ was not God otherwise than anointed God. 11. That Christ was not in the form of God equal with God, that is, in substance of God, but in righteousness and giving salvation. 12. That Christ by his Godhead wrought no miracle. 13. That Christ is not to be prayed unto.—Wherein he the said Bartholomew Legatt hath before the said reverend father, maintained his said most dangerous and blasphemous opinions, as appeareth by many of his confessions publickly made and acknowledged. For which his damnable and heretical opinions, he is by definitive sentence, by the said reverend father, John, bishop of London, with the advice and consent of other reverend bishops, learned divines, and others learned in the laws, assisting him in judgment, justly adjudged, pronounced, and declared to be an obstinate and incorrigible heretic, and is left by them under the sentence of the great excommunication, and therefore, as a corrupt member, to be cut off from the Church of Christ, and society of the faithful, and is to be, by our secular power and authority, as an heretick, punished; as by the Significavit of the said reverend father in God, the said bishop of London, bearing date at London the third of March, in the year of our Lord 1611, in the ninth year of our reign, and remaining in our court of Chancery, more at large appeareth. And although the said Bartholomew Legatt hath, since the said Sentence pronounced against him, been often very charitably moved and exhorted, as well by the said bishop, as by many grave and learned divines, to disswade, revoke and remove him from the said blasphemous and heretical opinions, yet he arrogantly and willfully persisted and continueth in the same. We therefore, according to our regal function and office, minding the execution of justice in this behalf, and to give example to others, least they should attempt the like hereafter, have determined, by the assent of our council, to will and require, and do hereby authorize and require you, our said chancellor, immediately, upon the receipt hereof, to award and make out, under our great seal of England, our writ of execution according to the tenor in these presents ensuing. And these Presents shall be your sufficient warrant and discharge for the same.

Rex vicecomitibus London, salutem. Cum reverendus in Christo pater, Johannes, London episcopus, nobis Significavit, quod, cum ipse in quodam hereticæ pravitatis negotio contra quendam Bartholomeum Legatt, subditum nostrum, civitatis London, dicti London episcopi diocess. et jurisdictionis, ritè et legitime procedens, per acta inactitata, ducta, proposita, et per confessiones ipsius Bartholomei Legatt, coràm præfato episcopo judicialiter factas et recognitas, comperit et invenit præfatum Bartholomeum, Legatt quamplurimos nefandos errores, falsas opiniones, hæreses, et blasphemias execrandas, et scelerata dogmata catholicæ et orthodoxæ fidei et religioni et sacrosancto Dei verbo expressè contraria et repugnantia, scienter, maliciôsè, animoque pertinaci, obdurato,

plandque incorrigibili, credere, tenere, affirmare, et publicare; idem reverendus pater, London episcopus, cum consilio et consensu tam reverendorum episcoporum et aliorum theologorum quam juris etiam peritorum in judicio assiden. et assisten., eundem Bartholomeum Legatt, per sententiam suam definitivam, obduratum, contumacem, et incorrigibilem hæreticum pronuntiavit, decrevit, et declaravit, eaque occasione, tanquam protervum hæreticum et membrum putridum et contagiosum, ab ecclesiâ Christi et fidelium communione recisum et amputatum fore. Cum igitur sancta mater ecclesia non habeat quod ulterius facere et exequi valeat in hac parte, idem reverendus pater præfatum Bartholomeum Legatt, ut blasphemum hæreticum brachio nostro seculari reliquit condignâ animadversione plectend', prout per literas patentes præfati reverendi in Christi patris, London episcopi, in hac parte superinde confect' nobis in chancellar' nostram certificat' est. Nos igitur ut zelator justitiæ et fidei catholicæ defensor, volentesque ecclesiam sanctam ac jura et libertates ejusdem et fidem catholicam manuteneere et defendere, ac hujusmodi hæreses et errores ubique, quantum in nobis est, eradicare et extirpare, ac hæreticos sic convictos animadversione condignâ puniri; attendentesq; hujusmodi hæreticum in formâ præd' convictum et damnatum juxtâ leges et consuetudines regni nostri Angliæ in hac parte consuet' ignis incendio comburi debere: Vobis præcipimus quod dictum Bartholomeum Legatt in custodiâ vestrâ existen' apud West-Smithfield in loco publico et aperto ex causâ præmissâ eorâum populo publicè igni committi, ac ipsum Bartholomeum Legatt in eodem igne re-liter comburi fac' in hujusmodi criminis detestationem, aliorumque Christianorum exemplum manifestum, ut in simile crimen labantur. Et hoc sub periculo incumbentis nullatenus omitatis. Teste, &c. HENRY HIBIRTE.

This containeth a Warrant to be granted by your majesty unto the lord chancellor of England for the awarding of a writ under the great seal of England to the sheriff of the city of London, for the burning of Bartholomeum Legatt, who is convicted of divers horrible heresies before the bishop of London, and by his sentence left to the secular power, as is by the said bishop certified to your majesty into your highness's court of Chancery. And is done by force of your majesty's commandment to me given under your highness's sign-manual.

HENRY HIBIRTE.

The King to the Sheriffs of London, greeting. Whereas the reverend father in Christ, John, bishop of London, hath signified unto us, that, when he in a certain business of heretical pravity against one Bartholomeum Legatt, our subject, of the city of London, of the said bishop of London's diocess and jurisdiction, rightly and lawfully proceeding, by acts enacted, drawn, proposed, and by the confessions of the said Bartholomeum Legatt, before the said bishop judicially made and acknowledged, hath found the said Bartholomeum Legatt very many wicked

errors, false opinions, heresies, and cursed blasphemies, and impious doctrines, expressly contrary and repugnant to the Catholick faith and religion, and the holy word of God, knowingly and maliciously, and with a pertinacious and obdurate plainly incorrigible mind, to believe, hold, affirm, and publish; the same reverend father, the bishop of London, with the advice and consent, as well of the reverend bishops and other divines, as also of men learned in the law, in judgment sitting and assisting; the same Bartholomeum Legatt by his definitive sentence hath pronounced, decreed, and declared to be an obdurate, contumacious and incorrigible heretick, and upon that occasion as a stubborn heretick, and rotten contagious member to be cut off from the church of Christ, and the communion of the faithful; and whereas the holy mother church hath not power to do and execute any thing further in this matter, the same reverend father hath left the aforesaid Bartholomeum Legatt as a blasphemous heretick to our secular power, to be punished with condign punishment; as by the letters patents of the said reverend father in Christ, the bishop of London, in this behalf, above made, is certified unto us in our chancery. We therefore, as a zealous promoter of justice, and a defender of the Catholick faith, and being willing to maintain and defend the holy church, and rights and liberties of the same, and the Catholick faith; and such heresies and errors every where, what in us lieth, to root out and extirpate, and to punish with condign punishment hereticks so convicted; and considering that such an heretic, in form aforesaid convicted and condemned, ought according to the laws and customs of this our kingdom of England in this part accustomed, to be burned with fire; We do command you, that the said Bartholomeum Legatt, being in your custody, you do commit publicly to the fire, before the people, in a public and open place in West-Smithfield, for the cause aforesaid, and that you cause the said Bartholomeum Legatt to be really burned in the same fire, in detestation of the said crime, for the manifest example of other Christians, lest they slide into the same fault: And this you are in no wise to omit, under the peril that shall follow thereon. Witness, &c. HENRY HIBIRTE.

*A Narration of the Burning of Edward Wightman.*

James R.—James, by the Grace of God, King of England, Scotland, France and Ireland, Defender of the Faith, &c. To our right trusty and right well-beloved Counsellor, Thomas, lord Ellesmere, our chancellor of England, Greeting. Whereas the reverend father in God, Richard, bishop of Coventry and Lichfield, having judicially proceeded in the examination, hearing, and determining, of a cause of heresy against Edward Wightman, of the parish of Burton upon Trent, in the diocess of Coventry and Lichfield, concerning the wicked heresies of the Ebionites, Cerinthians, Valentinians, Arians, Macedonians, of Simon Magus, of



Manes, Manichees, of Photinus, and Anabaptists, and of other heretical, execrable, and unheard-of, opinions, by the instinct of Satan, by him excogitated and holden, viz. :

1. That there is not the trinity of persons, the Father, the Son, and the Holy Ghost, in the unity of the Deity. 2. That Jesus Christ is not the true natural Son of God, perfect God, and of the same substance, eternity and majesty with the Father in respect of his Godhead. 3. That Jesus Christ is only man and a meer creature, and not both God and man in one person. 4. That Christ, our Saviour, took not human flesh of the substance of the Virgin Mary his Mother; and that, that Promise, 'The Seed of the Woman shall break the serpent's head,' was not fulfilled in Christ. 5. That the person of the Holy Ghost is not God coequal, coeternal, and coessential with the Father and the Son. 6. That the three creeds, The Apostles Creed, the Nicene Creed, and Athanasius's Creed, are the heresies of the Nicolaitanes. 7. That he the said Edward Wightman is that prophet spoken of in the eighteenth of Deuteronomy in these words, 'I will raise them up a prophet,' &c. And that, that place of Isaiah, 'I alone, have troden the wine-press;' and that place, 'Whose fan is in his hand,' are proper and personal to him, the said Edward Wightman. 8. And that he the said Wightman is that person of the Holy Ghost spoken of in the Scriptures; and the Comforter spoken of in the 16th of St. John's Gospel. 9. And that those words of our Saviour Christ of the Sin of Blasphemy against the Holy Ghost, are meant of his person. 10. And that, that place, the fourth of Malachy, of Elias to come, is likewise meant of his person. 11. That the soul doth sleep in the sleep of the first death, as well as the body, and is mortal as touching the sleep of the first death, as the body is: And that the soul of our Saviour Jesus Christ did sleep in that sleep of death as well as his body. 12. That the souls of the elect saints departed, are not members possessed of the triumphant Church in Heaven. 13. That the baptizing of infants is an abominable custom. 14. That there ought not to be in the church the use of the Lord's Supper to be celebrated in the Elements of Bread and Wine; and the use of Baptism to be celebrated in the Element of Water; as they are now practiced in the Church of England: But that the use of Baptism is to be administered in water, only to converts of sufficient age of understanding, converted from infidelity to the faith. 15. That God hath ordained and sent him, the said Edward Wightman, to perform his part in the work of the Salvation of the world, to deliver it by his teaching, or admonition, from the heresy of the Nicolaitanes; as Christ was ordained and sent to save the world, and by his death to deliver it from sin, and to reconcile it to God. 16. And that Christianity is not wholly professed and preached in the Church of England, but only in part. Wherein he the said Edward Wightman, hath before the said rev. father, as

also before our commissioners, for causes ecclesiastical within our realm of England, maintained his said most perilous and dangerous opinions, as appeareth by many of his confessions, as also by a book written and subscribed by him, and given to us. For the which his damnable and heretical opinions, he is, by definitive sentence, declared by the said rev. father, the bishop of Coventry and Lichfield, with the advice and consent of learned divines, and other persons learned in the laws assisting him in judgment, justly adjudged, pronounced and declared to be an obstinate and incorrigible heretic, and is left by them under the sentence of the great excommunication, and therefore, as a corrupt member, to be cut off from the rest of the flock of Christ, lest he should infect others professing the true Christian faith: and is to be by our secular power and authority, as an heretic, punished: as by the Significavit of the said rev. father in God, the bishop of Coventry and Lichfield, bearing date at Lichfield, the 14th of December, in the 9th year of our reign, and remaining in our court of Chancery, more at large appeareth. And, although the said Edward Wightman hath, since the said sentence pronounced against him, been often very charitably moved and exhorted, as well by the said bishop, as by many other godly, grave and learned divines, to dissuade, revoke, and remove him from the said blasphemous, heretical, and anabaptistical opinions; yet he arrogantly and wilfully persisteth and continueth in the same. We therefore, according to our regal function and office, minding the execution of justice in this behalf, and to give example to others, lest they should attempt the like hereafter, have determined, by the assent of our council, to will and require, and do hereby authorise and require you, our said chancellor, immediately upon the receipt hereof, to award and make out under our great seal of England, our writ of execution according to the tenour in these presents ensuing. And these presents shall be your sufficient warrant and discharge for the same.

Rex vic' civitatis nostræ Lich. salutem. cum reverendus in Christo pater, Richardus, providentiâ divinâ Coventr' et Lich' episcopus, nobis Significaverit, quod ipse contra et adversus quendam Edwardum Wightman, parochiæ de Burton super Trent, Coventr' et Lich' dioces., de et super nephandis heresibus Ebionis, Cerinthi, Valentiniani, Arii, Macedonii, Simonis Magi, Manetis, Manechorum, Photini, et Anabaptistarum, aliorumq; heresiarcharum, et insuper de aliis execrandis opinionibus instinctu Satana excogitatu et antehac inauditis, juxta canonum ecclesiasticorum, legumque et consuetudinum hujus regni nostri Angl' exigentiam, judicialit' procedens, prædictus Edwardus Wightman, coram præfato rev. patre, ac aliis theologis et jurisperitis sibi in judicio assistentibus, comparens, prædicta nephanda crimina, hæreses, ac alia detestanda blasphemia et errores, contumaciter et ex quâdam pertinaciâ, scienter, maliciose, animo; obdurato, publicavit, defendebat, et

disseminabat, per sententiam definitivam ejusdem rev. patris, cum consensu theologorum et jurisperitorum prædictorum, justè, legitime, et canonicè contra eundem Edwardum Wightman in eà parte latam, hereticus adjudicatus et pronuntiatus existit; et ideò, tanquam ovem morbidam, è grege Domini, ne subditos nostros suà contagione inficiat, ejiciendum et eliminandum fore decreverit: Cum igitur Sancta Mater Ecclesia non habeat quod ulterius in hac parte facere et exequi debeat, idem rev. pater eundem Edwardum Wightman ut blasphemum et damnatum hæreticum brachio nostro seculari reliquit, condignà animadversione plectendum; prout per literas patentes præfati rev. patris, episcopi Coventr' et Lich', in hac parte superinde collectas nobis in cancellariam nostram certificatum est. Nos igitur, ut zelator justitiæ et fidei catholicæ defensor; volentesque ecclesiam sanctam, ac jura et libertates ejusdem, et fidem catholicam, manuteneri et defendere, ac hujusmodi hæreses et errores ubique (quantum in nobis est) eradicare et extirpare, ac hæreticos sic convictos animadversione condignà puniri, attendentesq; hujusmodi hæreticum, in formâ prædictâ convictum et damnatum, juxtâ leges et consuetudinem regni nostri, Angliæ in hac parte consuetem ignis incendio comburi debere; tibi præcipimus quod dict. Edwardum Wightman, in custodiâ tuâ existentem, in aliquo loco publico et aperto infra civitatem prædictam, ex causâ premissâ, coràm populo publicè igni committi, et ipsum Edwardum Wightman in eodem igne realiter comburi facias, in hujusmodi criminis detestationem, aliorumque Christianorum exemplum manifestum, ne in simile crimen labantur. Et hoc sub periculo incumbenti nullatenus omittas. Teste, &c. HENRY HIBIRTE.

This containeth a Warrant to be granted by your majesty unto the lord chancellor of England, for the awarding of a writ under the great seal of England, to the sheriff of the city of Lichfield, for the burning of Edward Wightman, who is convicted of divers horrible heresies before the bishop of Coventry and Lichfield, and by his sentence left to the secular power, as is by the said bishop certified to your majesty, into your highness's court of Chancery.

And is done by force of your majesties commandment to me given under your highness's sign manual. HENRY HIBIRTE.

The King to the Sheriff of our city of Lichfield, Greeting. Whereas the rev. father in Christ, Richard, by Divine Providence of Coventry and Lichfield, Bishop, hath signified unto us that he judicially proceeding, according to the exigence of the ecclesiastical canons, and of the laws and customs of this our kingdom of England, against one Edward Wightman of the parish of Burton upon Trent, in the diocese of Coventry and Lichfield, of and upon the wicked heresies of Ebion, Cerinthus, Valentinian, Arius, Macedonius, Simon Magus, of Manes, the Manichees, Photinus, and of the Anabaptists, and other arch heretics; and moreover of other cursed opinions by the instinct of Satuo excogitated and heretofore unheard of, the aforesaid

VOL. II.

Edward Wightman appearing before the aforesaid rev. father, and other divines, and persons learned in the law, assisting him in judgment, the aforesaid wicked crimes, heresies and other detestable blasphemies and errors stubbornly and pertinaciously, knowingly, maliciously, and with an hardened heart, published, defended and dispersed; by definitive sentence of the said rev. father, with the consent of divines, and persons learned in the law aforesaid, justly, lawfully and canonically against the said Edward Wightman in that part passed, stands adjudged and pronounced an heretic, and therefore, as a diseased sheep, out of the flock of the Lord, lest our subjects he do infect by his contagion, he hath decreed to be cast out and cut off. And whereas the holy mother church hath not power to do or execute any thing further in this matter, the same reverend father, the same Edward Wightman as a blasphemous and condemned heretic, hath left to our secular power to be punished with condign punishment; as, by the letters patents of the aforesaid reverend father the bishop of Coventry and Lichfield in this behalf thereupon made, is certified unto us into our Chancery. We therefore, as a zealous promoter of justice and a defender of the catholic faith, and being willing the holy church, and the rights and liberties of the same, and the catholic faith, to maintain and defend, and such like heresies and errors every where, so much as in us lies, to root out and extirpate, and heretics so convicted, to punish with condign punishment; and considering that such an heretic in the aforesaid form convicted and condemned, ought, according to the laws and customs of this our kingdom of England in this behalf accustomed, to be burned with fire; do command thee that thou cause the said Edward Wightman, being in thy custody, to be committed to the fire in some public and open place within the city aforesaid, for the cause aforesaid, before the people, and the same Edward Wightman in the same fire cause really to be burned; in detestation of the said crime, and for a manifest example to other Christians, that they may not fall into the same crime. And this you are in no wise to omit, under the peril that shall follow thereon. Witness, &c.

Expeditum apud Westmonasterium, nono die Martii, 1611, Anno Regis Jacobi Angl' &c., nono. Per WINDEBANK.

The following two Cases of Pardon being found with the preceding Instruments are here printed, as being somewhat curious.

*The PARDON of Theophilus Higgons.*

JAMES Rex; Rex omnibus ad quos, &c. salutem. Cum nobis dat' est intelligi, quod Theophilus Higgons de London, clericus, in partes transmarinas absque licencia nostrâ regiâ emigraverit, ibidemque duos annos et dimidium, vel eo circiter, conmoratus, et cum Jesuitis et Presbyter' conversatus, fuerit, atque in eodem temporis spatio in seminarium Anglicum apud Doway et Sanct' Omer' aliquantisper permanerit, et se ecclesiæ Romanæ reconciliaverit.

3 B

Necnon quedam scandalosa et periculosa contra statum hujus regni, nostri tam ecclesiasticum quam temporale, et verbis et scriptis protulerit, et enunciauerit, atque etiam quosdam à subditis nostris à religione in hoc regno nostro stabilità seducere et auertere operam et vires intenderit: Postea tamen, per sancta et bona media, et precipuè ex penitentia et instinctu misericordiae et gratiae diuinae, praedictam peruersitatem suam, ac falsas et opprobriosas opiniones praedictas, penitus abnegauerit, seque religioni verae et reformatae, et in hoc regno promulgatae et stabilitae uniformem exhibuerit: Scientia igitur, quod nos pietate moti, de gratia nostra speciali, ac ex certis scientia et mero motu, nostris, pardonauimus, remisimus, et relaxauimus, ac per praesentes, pro nobis hereditus et successoribus nostris, pardonamus, remittimus, et relaxamus, praed. Theophilo Higgonis, de London, clerico, (seu quocunque alio nomine, cognomine, sive additione nominis vel cognominis, officii artis, dignitatis loci vel locorum, idem Theophilus Higgonis censeatur, vocetur, sive nuncupetur, aut nuper censebatur, vocabatur, sive nuncupabatur,) omnes et omnimodas offensas de transeundo in partes transmarinas absque licentia nostra, ibidemque commorando, et cum Jesuitis et Presbyteris conversando, ac in seminaris Anglico apud Doway et Sanct. Omer. permanendo, atque ecclesiae Romanae se reconciliando, ac scandaloso aliqua contra statum regni hujus tam ecclesiasticum quam temporale, et scribendo et loquendo, atque aliquos à subditis nostris à religione hujus regni nostri auerendo et seduendo; Atque omnes alias offensas delicta, contemptus, malefacta, et transgressionis quasunque, praemissa, aut eorum aliquod, vel aliqua, in aliquo tangentes, vel concernentes, per praedictum Theophilum Higgonis ante datam praesentium qualitercunque commissas sive perpetratas atque etiam omnes et omnimodas offensas, prodiones, felonias, et puniuntur ratione alicujus vel aliquorum, facti, vel factorum superiorum mencionatorum commissas, perpetratas vel incurras; Licet idem Theophilus Higgonis de praemissis vel aliquo praemissorum iudicatus, impetitus convictus, atinctus, adjudicatus, ut ligatus, seu condemnatus existit vel non existit, aut inde indictari, impetiri, conuinci, attingi, adjudicari, utlegari, seu condemnari, contigerit in futurum; Nec non omnes et omnimod. utlegarias si quae in ipsum Theophilum Higgonis, occasione praed. seu earum aliqua, fuerint promulgatae sive promulgandae. Ac omnia et omnimoda iudicia, atincturas, convictiones, condemnationes, penas mortis, penas corporales imprisonantes, ac omnes alias forisfacturas, executiones, punitiones, et penalitates, quaecunque super vel versus ipsum Theophilum Higgonis ratione seu occasione praemiss. sive eor. alicujus habit. fact. reddit. sive adjudicat. aut habend. faciend. reddend. seu adjudicand.; Necnon omn. et omnimod. action. sect. querel. impetition. et demand. quaecunque quae nos versus ipsum Theophilum Higgonis ratione sive occasione praemiss. seu eor. alicujus habemus

habuimus seu in futurum habere poterimus, aut hered. seu successor. nostri habere poterint in futur. sectamque pac. nostrae quae ad nos versus ipsum Theophilum Higgonis pertinet seu pertinere poterit in futur. et firmam pacem, et hanc pardonation. nostram eidem Theophilo Higgonis inde damus et concedimus per praesentes. Aliquo statut. act. provisione seu restrictione in contrar. inde in aliquo non obstante. In cuius rei, &c. teste, &c. FRANCIS BACON.

"It may please your excellent majesty. This Bill containeth your majesty's gracious pardon unto Theophilus Higgonis, clerk, for any offence or contempt in passing over the seas, or reconciliation to the church of Rome, or remaining in seminaries, or conversing with Jesuits or priests, or other offences of that nature; for which he is penitent, and hath converted and conformed himself to the religion established in this realm.

"I have no warrant for the drawing of this Bill, save that sir Edward Hoby, to whom the party bears special obligation, did by his letter to me signify your majesty's pleasure to this purpose: But, because the party's conversion was so notorious, and so generally liked, I have presumed to commend this Bill to your majesty's signature. FRANCIS BACON."

Expeditum apud Westmonasterium, 24th die Julii, 1611, anno regis Jacobi nono. Per Windebank.

#### *The Pardon of Sir Eustace Harte.*

JAMES R.; Rex omnibus ad quos, &c. salutem. Sciatis, quod nos de gratia nostra speciali, ac ex certa scientia et mero motu nostris, pardonauimus, remisimus, et relaxauimus, ac per praesentes, pro nobis, hereditibus et successoribus nostris, pardonamus, remittimus, et relaxamus, Eustathio Harte, de villa de Southampton, militi, (seu quocunque alio nomine, cognomine, seu additione nominis vel cognominis, dignitatis, officii loci, vel locorum, idem Eustathius Harte sciatur, censeatur, vocetur, seu nuncupetur, aut nuper sciebatur, censebatur, vocabatur, sive nuncupabatur,) omnia et singula crimina et offensas adulterii, fornicationis, et incontinentiae, quasunque, per ipsum Eustathium Harte cum aliqua muliere sive aliquibus mulieribus, ante datam praesentium, ubicunque, quandocunque, quomodocunque, et qualitercunque, facta commissas sive perpetrata: Necnon omnia et singula factas, impetitiones, actiones, fines, penas, amerciaments, et punitiones quasunque, tangentes seu concernentes praemissa, seu eorum aliquod: Exceptis semper extra has praesentes omnibus et singulis raptibus mulierum Angl. vocat. rapes, et omnibus et singulis incestis et buggeriis, et omnibus aliis criminibus et offensis, unde aliqua. billa, actio, querela, aut informatio, ante datam praesentium exhibita fuit, et coram nobis et consilio nostro in Camera Stellata aut aliquibus aliis curiis nostris apud Westmonasterium, aut in aliqua, vel aliquibus curiis nostris ecclesiasticis, aut coram aliquo vel aliquibus iudice vel iudicibus aut commissionariis nostris eccle-

siasticis modò dependot remanet prosequenda. In cuius rei, &c. Teste, &c.

" This containeth your majesty's pardon to sir Eustace Harte, knight, of all adulteries, fornications and incontinencies committed with any woman before this time, and also of all imprisonments, fines and punishments in respect of the same.

" It containeth nevertheless an exception of

all rapes, incest and buggeries, and all sutes wherein any bill or sute is depending in the court of Star-chamber, or any other your majesty's courts at Westminster, or in any ecclesiastical court whatsoever. THOMAS RIDLEY, Cancellarius Winton. Ex. Levinus Munck."

Expeditum apud Westmonasterium undecimo die Julii, 1616, anno regis Jacobi quarto decimo. Per Windebank.

## 91. The Earl of SHREWSBURY'S Case; or the Case of Dignities: 10 JAMES I. A. D. 1612. [12 Coke's Reports, 106.]

BY force of certain letters (bearing date 28 Martii 1612), of the lords of the privy council, directed to sir Humphrey Winch, sir James Lay, sir Anthony Saintleger, and sir James Hulleston; they did certify to their lordships the claim of Gilbert earl of Shrewsbury, to the dignities of the earldom of Waterford, and barony of Dangarvan in Ireland, in such manner as followeth;

King Henry the sixth, by his letters patent, in the twentieth year of his reign, did grant to his thrice beloved cousin John earl of Shrewsbury, in consideration of his approved and loyal services, in the city and county of Waterford, 'pro eo quoque eundem consanguineum nostrum prædicta terra nostra Hiberniæ in partibus illis contra inimicorum et rebellium nostrorum insultus potentius defendat, ipsum in comitem Waterford, una cum stilo et titulo ac nomine et honore cideam debitum ordinamus et creamus, habendum,' to the said earl and his heirs males of his body; and further by the said letters patent did grant the castles, lordships, honours, lands, and manors of Dungarvan to the said earl and the heirs males of his body, to hold the premises of the king and his heirs, by homage and fealty, and by the service of being his majesty's Seneschall in the realm of Ireland: afterwards in the parliament called Des Absentees, holden at Dublin in Ireland, the 10th of May the 28th of Henry the eighth, by reason of the long absence of George earl of Shrewsbury out of his realm; it was enacted, that the king, his heirs, and assigns, shall have and enjoy in the right of his crown of England, all honours, manors, castles, lordships, franchises, hundreds, liberties, count-palatines, jurisdictions, annuities, fees of knights, lands, tenements, &c. and all and singular possessions, hereditaments, and all other profits, as well spiritual as temporal whatsoever, which the said George earl of Shrewsbury and Waterford, or any other person or persons had to his use, &c. King Henry the eighth, by his letters patent, the twenty ninth year of his reign, reciting the said statute De Absentees; 'nos præmissa considerantes, et nolentes statum, honorem, et dignitatem prædicti Comitum diminueri, sed amplius augere, de certâ scientiâ et mero motu, &c.' did grant to the said earl and his heirs, the abbey of Rufford, with the land thereto belonging in the county of Nottingham, and the lordship of

Rotherham in the county of York, the abbies of Chesterfield, Shirbrook, and Glossadel in the county of Derby, with divers other lands and tenements of great value, to be holden in capite; and the questions were;

1. Whether by the long absence of the earl of Shrewsbury out of Ireland, by reason whereof the king and his subjects wanted their defence and assistance there, the title of the honour be lost or forfeited, the said earl being a peer of both realms, and residing here in England.

2. Whether by the said act De Absentees, an. 28 H. 8. the title of the dignity of the earl of Waterford, be taken from the said earl, as well as the manors, lands, tenements, and other hereditaments in the said act specified.

And afterwards by other letters patent of the lords of the council, dated the 27th of Sep. 1612, the two chief justices and the chief baron were required to consider of the case which was inclosed within their letters, and were to certify their opinions of the same.

Which case was argued by counsel learned in the law, in behalf of the said earl, before the said chief justices and chief baron, upon which they have taken great consideration and advisement, after they had read the preamble, and all the said act of the 28 H. 8. it was unanimously resolved by them all, as followeth.

As to the first it was resolved, that forasmuch as it does not appear what defence was requisite, and that the consideration executory was not found by office to be broken as to that point, the said earl of Shrewsbury notwithstanding does remain earl of Waterford.

As to the second, it was resolved, that the said act of the twenty eighth of H. 8. De Absentees, doth not only take away the possessions which were given to him at the time of his creation, but also the dignity itself, for although one may have a dignity without any possession 'ad sustinendum nomen et onus,' yet it is very inconvenient that a dignity should be clothed with poverty: and in cases of writs, and such other legal proceedings, he is accounted in law a nobleman, and so ought to be called, in respect of his dignity; but yet if he want possessions to maintain his estate, he cannot press the king in justice to grant him a writ to call him to the parliament; and so it was resolved in the case of the lord Ogle, in the reign of Ed.

6th, as the baron of Burleigh, lord treasurer of England, at the parliament anno 35 Eliz. did report: and therefore the act of the 28 H. 8, (as all other acts ought to be) shall be expounded to take away all inconvenience, and therefore by the general words of the act, viz. 'of honours and hereditaments, the dignity itself, with the lands given for maintenance of it, are given to the king, and the dignity is extinct in the crown:' and the cause of degradation of George Nevill, duke of Bedford, is worthy the observation, which was done by force of an act of parliament, 16 June 17 Ed. 4, which act reciting the making of the said George Duke, doth express the cause of his degradation in these words: 'and forasmuch as it is openly known, that the said George hath not, or by inheritance may have any livelihood to support the same name, estate, and dignity, or any name of estate;' and oftentimes it is to be seen, that when any lord is called to high estate, and hath not convenient livelihood to support the same dignity, it induceth great poverty and indigence, and causeth oftentimes great extortion, imbracery and maintenance to be had, to the great trouble of all such countries where such estate shall happen to be: wherefore the king by advice of his lords spiritual and temporal, and by the commons in this present parliament assembled, and by the authority of the same, ordaineth, establisheth, and enacteth, that from henceforth the same creation and making of the said duke, and all the names of dignity given to the said George, or to John Nevill, his father, be from henceforth void and of none effect, &c. In which act, these things are to be observed.

1. That although the duke had not any possessions to support his dignity, yet his dignity cannot be taken away from him without an act of parliament.

2. The inconveniences do appear where a great state and dignity is, and no livelihood to maintain it.

3. It is good reason to take away such dignity by act of parliament; and therefore the said act of the 28 H. 8, shall be expounded according to the general words of the writ, to take away such inconvenience: and although the said earl of Shrewsbury be not only of great honour and virtue, but also of great possessions in England, yet it was not the intention of the act to continue him earl in Ireland, when as his possessions in Ireland were taken away from him, but that the king at his pleasure might confer as well the dignity as the possessions to any other, for the defence of the said realm. And the said letters patent de anno 29 H. 8, have no words to restore the dignity which the act of parliament hath taken away; but it was not the intent of the king 'diminuere statum, honorem, et dignitatem ipsius Comitum,' but 'augere' his possessions for maintenance of his dignity, for so much appears by this word 'augere'; for he doth by the said letters patent, with exceeding great bounty, increase the revenues of the said earl in England, which the king did think was an increase of large possessions in England, instead of all that which was taken away from him by the act of the 28 H. 8.

And whereas it was objected, that the general words 'honours and hereditaments' are explained and qualified by the said words relative subsequent, 'which the said George, or any to his use hath;' and therefore it shall not be intended of any honour or hereditament, but of such whereof others are seized to his use, and no man can be seized of the dignity, and therefore that the said act doth not extend to it; but that it is to be understood 'reddendo singula singulis,' and these words, 'which the said George earl hath,' are sufficient to pass the dignity; and with this agrees the opinion of all the judges of England in Nevill's case upon the like words in the statute of the 28 H. 8, in the seventh part of my Reports, fol. 33 and 34.

92. The Arraignment and Confession of the Lord SANQUIRE, (who being a Baron of Scotland, was arraigned by the Name of Robert Creighton, esq.) at the King's-bench Bar, in Westminster-hall, the 27th of June, for procuring the Murder of John Turner, a Master of Defence, whom he caused to be shot with a Pistol by one Carliel, a Scottish-man, for thrusting out one of his Eyes in playing at Rapier and Dagger.\* 10 JAMES, I. A. D. 1612. [From an authentic MS. lent the Editor of the second edition of this Work.]

ALL things according to the usual form being prepared, and the prisoner brought to the bar, his Indictment was read.

\* Wilson's account of this matter is as follows, in 2 Kennett, 688. "The wheel of fortune running towards the Scots, turned by the

*Copia* INDICTAMENTI R. Creighton, Armig.  
"Middl: JUR' presentant pro dom' rege  
super sacr'm suum qd' cum Rob' Carliel nuper

viscount Rochester, was unhappily diverted upon the lord Sanquire, a baron of that nation, and married to a good family in England; who

de Lond' yeoman, et Jacob' Irweng nuper de Lond' præd' yeoman, Deum præ oculis suis non habentes, sed instigatione diabolica seduct', undecimo die Maii anno regni Domini nostri Jacobi, Dei grat' Angl' Franc', et Hiberniæ regis, fidei defensor', &c. decimo, et Scotiæ xlv. apud London, videl't, in parochia Sancti Dunstani in occident', in warda de Farringdon extra London præd', &c. vi et armis, &c. felonice ac ex maliciis suis præcogitat', in et super quendam Johan' Turner adtunc et ibidem in pace Dei et dicti domini regis existen', insultum et affraim fecer', et præd' Robertus Carliel quoddam tormentum, Anglice vocat' a pistol, valor' quinque solidorum adtunc et ibid' onerat' cum pulvere bombardico, et glandine plumbea, Anglice, charged with gun-powder

some years before, meeting with a sturdy fencer, one John Turner, who was a master of the weapon-trade in his own school, the young lord strove to put some affront upon him, (making it no little conquest to disgrace a master in the art, as they termed it) and the man apprehensive of the attempt, with a bold rudeness pressed so hard upon him, that he thrust out one of the baron's eyes. This mischief was much regretted by Turner, and the baron being conscious to himself that he meant his adversary some ill, took the accident with as much patience, as men that lose one eye by their own default use to do for the preservation of the other. Some time after, being in the court of the late great Henry of France, and the king (courteous to strangers) entertaining discourse with him, asked him, How he lost his eye: He (cloathing his answer in a better shroud than a plain fencer's) told him; It was done with a sword: The king replies, Doth the man live? And that question gave an end to the discourse, but was the beginner of a strange confusion in his working fancy, which neither time nor distance could compose, carrying it in his breast some years after, till he came into England, where he hired two of his countrymen, Gray and Carlisle, men of low and mercenary spirits, to murder him; which they did with a case of pistols in his own house in White-friars, many years after the loss of his bodily eye: Thus the baron lost the eye of his reason. This bold nefarious act was very deeply resented at court, and the king's commands were so active for apprehension of the murderers, that they were all three taken; one upon the borders of Scotland, so far had his fears carried him; another in a ship bound for Hamburgh, who escaping in a storm, the seas delivered up; and the lord himself being obscured, in this tempest of his soul, hearing 1,000*l.* was offered to bring his head, so liberal was the king for justice, threw himself into the arms of his mercy, by the mediation of the archbishop of Canterbury, to whom he presented himself an object of pity; but no intercession could prevail, their lives satisfied the law, the baron not having the honour of a noble death." See also Rapin,

and one leaden bullet, quod quidem torment' idem Robertus Carliel in manu sua dextra adtunc et ibid' habuit et tenuit in et super præfat' Johan' Turner adtunc et ibid' felonice, voluntarie, et ex malicia sua præcogitat', sagittavit, et exoneravit, Anglice, did shoot off and discharge, et præd' Ro. Carliel cum glandine, plumbea præd', torment præd', adtunc et ibid' emiss. præfatum Johan' Turner in et supersi, nistram partem pector' ipsius Johan' Turner prope sinistram mamillam ipsius Joh' Turner adtunc et ibid' felonice percussit, dans eidem Jo. Turner adtunc et ib' cum glandine plumbea præd' e torment' præd' adtunc et ib'm emiss. in et super præd' sinistram partem pector' ipsius Jo. Turner unam plagam mortal' latitud' dimid' unius pollic' et profunditat' quinq; pollic' de qua quid' plaga mortali præd' J. Turner apud Lond' præd', in paroch' et ward' præd', instant' obiit: Et præd' Jac. Irwenge, felonice, et ex malicia sua præcogitat', adtunc et ib'm fuit præsens, auxilians, assistans, abettans, confortans, et manutens, præfat' Robert' Carliel ad felon' et murdr' præd' in form' præd' felonice faciend' et perpetrand': Et sic prædict' Robert' Carliel et Jacobus Irweng præfat' Johan' Turner apud Lond' præd', in paroch' et ward' præd', modo et forma præd', felon', voluntar', ac ex maliciis suis præcogit' interfecerunt et murdaverunt, contra pacem dicti dom' reg' nunc, coron' et dignitat' suas: Quidam Robert' Creighton nuper de paroch' Sanctæ Margaret' in Westm' in com' Middl' armig' Deum præ oculis suis non habens, sed instigatione diabolica seduct' ante felon' et murdr', præd', per præfat' Rob. Carliel et Jacob. Irweng modo et forma præd' fact' et perpetrat', scil't, decimo die Maii, an' regni dicti domini nostri Jacobi, Dei grat' Angl', Franc', et Hibern' regis decimo, et Scotiæ xlv. præd' Robert' Carliel apud prædict' paroch' Sanctæ Margaret' in Westm' præd', in com' Middl' præd' ad felon' et murdr' præd' modo et forma præd' faciend' et perpetrand', malicios. felonice, voluntar', et ex malicia sua præcogitata, incitavit, movit, abettavit, consuluit, et procuravit, eontr' pacem dicti domini regis nunc, coron' et dignitat' suas, &c."

He then was demanded by the Clerk of the Crown, whether he was guilty of procuring the murder of John Turner, or not guilty? He made answer to this effect:

"My Lords; That which at my Arraignment the other day I pleaded to the contrary, was not that I could be so unworthy to deny any syllable of that I had formerly professed before so honourable personages, nor out of any desire that the least thing might be concealed, which might serve for evidence to convince me of this foul fact, whereof I now stand accused and indicted, and whereof I formerly have, and now do most willingly and penitently confess myself to be guilty; my purpose then was only to gain time for the disposing of some temporal affairs, and for the better preparing of my soul for her departure from this body; for that I should long live, I neither expect, nor much

desire. And now, my lords, if that may stand with the course of the laws of the land (whereof I am altogether ignorant) I will ease this jury, the king's counsel, and your lordships, and will confess myself guilty of this fact in the same manner as it is laid in the Indictment.—Or if that may not be permitted by law, yet shall I give such evidence against myself, as I shall not leave it needful in any point to be aggravated; only in some circumstances I will endeavour, if not to extenuate the fact, yet at least to move your lordships and this worthy audience to pity my case; wherein as I know I can say nothing of substance that can help in a legal course of proceeding, so I much fear that those circumstances I would deliver, I shall not be able at all to express my own thoughts, both by reason of my own imperfections, and also for that I lack the perfect use of the phrase of this country. But for that point, in such passages as I shall not be understood in, I will humbly intreat your lordships in your wisdom, and this audience in their charity to conceive, that my meaning is, to make a full and true relation of all the passages of this business.—The first motive of this fatal accident was (as it is well known,) that Turner playing with me at foils, now about seven years past, at my lord Norria's house in Oxfordshire, put out one of my eyes, and that (as my soul and conscience was over-persuaded) willingly and of set purpose. At the taking up of the foils, I protested unto him, I played but as a scholar, and not as one that would contend with a master in his own profession, and thereupon requested him, That he would play as with a scholar; the order whereof, though it be unknown to your lordships, yet to divers honourable personages that are present it is known to be, to spare the face. After this loss of mine eye, and with it the great hazard of the loss of life, I must confess I ever kept a grudge of my soul against him, but had no purpose to take so high a revenge; yet in the course of my revenge, I considered not my wrongs upon terms of Christianity, for then I should have sought for other satisfaction; but being trained up in the courts of princes and in arms, I stood upon the terms of honour, and thence befel this act of dishonour; whereby I have offended, 1. God; 2. My prince; 3. My native country; 4. This country; 5. The party murdered; 6. His wife; 7. Posterity; 8. Carliel, now executed; and lastly 9. My own soul. And am now to die for mine offence.—1. First towards God; I hope that my earnest prayer and supplications unto him, have, (now at last) obtained his grace and pardon for this my horrible sin, for at my return from this place, the people (of whom I expected scorn and disgrace) did by their pity and clemency move that in me, which the pride of mine own heart would not till then suffer me to see; then I became to have a sense and feeling of the fulness of my offence, which formerly I could not persuade myself was any more than a just revenge for so foul a wrong; and since that time such inward comfort and consolation have I felt in my soul, that

I doubt not but that my hearty contrition and true repentance is accepted before God, and that he of his mercy hath pardoned mine offence.—2. For my offence unto the king's majesty; if I had more than my life to make satisfaction unto him, I would think myself happy: and this favour I request of your lordships, that the king may be truly informed of the sincerity of my confession, and of my hearty repentance, and if it please him not of his favour and clemency to pardon me this offence, yet I humbly desire, That I may die in his grace and favour.—3. For mine own country, let me intreat you that this my singular offence may not be laid as an aspersion or blemish unto my country; but that myself alone may bear the shame of it, and my body the punishment.—4. Of this country, because I do deserve no favour, I desire that of Christianity, you would be pleased to pity me as a repentant and sorrowful man.—5. For the party murdered, my blood must satisfy the law, to which I shall add such true repentance and hearty sorrowfulness, as I hope, by Christ's mercy, will make satisfaction for my offence.—6, 7. For his wife and posterity, some relief I have given already, and more, God willing, I will add unto it.—8. For Carliel, his too much affection to me made him too forward an executioner of my will and wicked purpose; but I hope by his repentance, he is pardoned his offences to God: in him I must confess my sin is doubled, and I pray God to pardon it me; for the manner of the murder, I neither commanded, nor gave allowance to pistol him. But I confess, that at the request of Carliel and Graye, I gave either of them a pistol to bring themselves off, after they should kill him. For him who is now suspected, I protest before God and all this company, I never knew him, nor spake with him, nor dealt either directly or indirectly with him in all my life.—9. Lastly, For myself, I commit my body to the king, and my soul to God.

“But, my lords, besides mine own offence, which in its own nature needs no aggravation, divers scandalous reports are given out, which blemish my reputation, which is more dear to me than my life—First, That I made shew of reconciliation with Turner, the which I protest is utterly untrue; for what I have formerly said, I do again assure your good lordships, That ever after my hurt received, I kept a grudge in my soul against him, and never made the least pretence of reconciliation with him; yet this, my lords, I will say, that if he would have confessed and sworn he did it not of purpose, and withal would have forsworn arms, I would have pardoned him: for, my lords I considered that it must be done either of set purpose or ignorantly: if the first, I had no occasion to pardon him; if the last, that is no excuse in a master: and therefore for revenge of such a wrong I thought him unworthy to bear arms.—The second obloquy is, That to defer the revenge so long, argues an inveterate malice, and an ill disposition. For the deferring of my revenge, I answer, that at the receiving the

hurt I was so astonished that I thought I had been slain; and by the opinion of my physicians from Oxford and other places, my life was then in much danger for many days after; yet after some months recovering my strength, and getting some ease in mine eye, I went immediately over into France, and there continued two years, hoping of the recovery of mine eye again. At the king of Denmark's coming hither, I came out of France, and then hearing at Greenwich that Turner played there before the two kings; I must confess, that after those prizes done, I sought for him up and down; and if I had met him in any place of the court, I was then resolved to have run him through; though I must confess the place had made my offence far greater. But missing him there that day, the next day I went after him to London, and there sought after him for two days, but could not meet with him; the first news then I heard of him was, that he was gone into the country unto the lord Norris's, and so for that time I was prevented of my purpose. Before his return I went into Scotland; and after my return again, I laid about for him, ever intending all this while to have acted it myself. But seeing the difficulty of it, both for that I was well known about the White-friars, where he dwelt and kept school, and yet did not myself know Turner, but carried others with me for my direction, I afterward agreed with two of my countrymen, who undertook the acting of this tragedy; but nothing ensued upon it, and therefore I desire I may conceal their names. After this, my occasions called me over into France and other parts, so that my residence in this country was very little, till now at last I dealt with this unfortunate Carliel, who took unto him one Graye for his partner, and brought him unto me; and those two I directed to take a lodging in the Fryers, the better to discover how myself might come to revenge myself on the person of Turner. But after some delay they told me, I could with no conveniency come myself to do it: but they said, they would undertake it: to which I assented, but prescribed neither time nor manner how they could effect it. After this, Graye fell quite off, and went to the ships for Denmark, which Carliel came and told me, and withal that Turner was then gone out of town; but since Graye had deceived him, he would have nobody but himself, and would assuredly kill him at his return, though it were with the loss of his own life. But I being long delayed by two others whom formerly I spake of, and now also by these two, and seeing Graye gone, I thought that Carliel had spoken this but to give me content, and the more to insinuate himself into my favour, so that I left him without any further direction, or much regard to his speech; and never heard more of him till I heard that Turner was slain; the time whereof, and the manner, I protest before God and his angels, I was altogether ignorant of; for had I expected it to have been done, I would not have staid myself here at the last cast, for before that time I could

with ease have gone over into France, for I had a licence to travel, and for transporting some horses.—Another aspersion is laid on me, that this was God's just judgment, for that I was an ill-natured fellow, ever revengful and delighted in blood. To the first, I confess I was never willing to put up a wrong, where upon terms of honour I might right myself, nor never willing to pardon where I had a power to revenge. To the second I say, that I was never guilty of blood till now, yet I have had occasion to draw my sword both in the field, and upon sudden violences, and have both given and received hurts, and yet was never guilty of blood unto death till now; only I must confess that upon commission from the king to suppress wrongs done me in my own country, I put divers of the Johnsons to death; but for that I hope, I shall need neither to ask God nor man forgiveness.—Lastly, The objection that since my imprisonment I have attempted, by the means of my countrymen, to break prison and escape, a course which I protest upon my salvation was never moved unto me by any, nor did I ever lodge such a thought in my breast; and for the further confirmation of that, I refer myself unto the marshal, and his officers, who in the prison have seen and best know my deportment during my imprisonment.—“ Thus, my lords, have I troubled you with a tedious discourse, whereof I know no circumstance can in any point of law do me any good, nor would I be thought all this while to plead for my life; my desires only are, that my life might satisfy for mine offence, and that my reputation might not be left defamed.

“ Lastly, my lords, and the rest of the honourable and worshipful presence, I desire in charity, that you will consider these few circumstances to move you to pity. 1. The indignity I received from so mean a man. 2. That it was done willingly, for I have been informed he bragged of it after it was done. 3. The perpetual loss of mine eye. 4. The want of law to give satisfaction for such a loss. 5. The continual blemish I received thereby. Lastly, Unto this, I add my voluntary and free confession. Let me now add my last request to your lordships, that the king may be truly informed of these things. Contrition, confession, and satisfaction are the means to obtain pardon from God for our sins; and these many times do move the mercy of princes, which if his highness shall extend to me, I shall desire my life may be spent to do him service; or if not, I shall most willingly submit myself to his majesty's good pleasure, and yield to die.”

The lord Sanquair having ended his speech, sir Francis Bacon (Solicitor General) spake as followeth:

Sir Francis Bacon. In the case of life and death the Jury's part is in effect discharged; for after a frank and formal confession their labour is at an end: so that what hath been said by Mr. Attorney General, and shall be by myself, is rather convenient than necessary.—My lord Sanquair, your fault is great; it cannot be extenuated, and it needs not be aggravated;



and (if it needed) you have made so full an anatomy of it, out of your own feeling, as it cannot be matched by myself, or any man else out of a conceit.—This Christian and penitent course of yours, draws me thus far, that I agree, that even in extreme evils there are degrees: so this instance of your offence is not of the highest strain; for if you had sought to take away a man's life for his vineyard as Ahab did, or for envy as Cain did, or to possess his bed as David did, surely this offence had been more odious. Your temptation was revenge, which the more natural it is to man, the more have laws, both divine and human, sought to repress it: (*mihi vindicta.*) But in one thing you and I shall never agree, that generous spirits (you say) are hard to forgive; no, contrariwise, generous and magnanimous spirits are readiest to forgive; and it is a weakness and impotency of mind to be unable to forgive.—But to the purpose; howsoever murder may arise upon several motives less or more odious, yet the law both of God and man involves them in one degree; and therefore you may read that in Job's case, which was a murder upon a revenge, and matched with your case; he for a dear brother, and you for a dear part of your own blood; yet there was a severe charge given, 'it shall not pass unpunished.'—And certainly the circumstance of time is heavy unto you; it is now five years since this unfortunate man, Turner, be it upon accident or despite, gave the provocation, which was the seed of your malice. All passions are assuaged with time; love, hatred, grief, &c. all fire burns out with time, if no fuel be put to it: for you to have been in the gall of bitterness so long, and to have been in a restless case of his blood, is a strange example. And I must tell you plainly, that I conceive you have sucked those affections of dwelling in malice rather out of Italy, and outlandish manners, where you have conversed, than out of any part of this island of England and Scotland.—But now farther, my lord, I would have you look a little upon this offence in the glass of God's judgment, that God may have the glory. You have friends and entertainment in foreign parts: it had been an easy thing for you to have set Carliel, or some other bloodhound on work, when your person had been beyond the seas; and so this news might have come to you in a packet, and you might have so looked on how the storm would pass: but God bereaved you of this providence, and bound you here under the hand of a king, that is, though abundant in clemency, yet no less zealous of justice.—Again, when you came in at Lambeth, you might have persisted in the denial of the procurement of the fact, Carliel (a resolute man) might have cleared you: for they that are resolute in mischief, are commonly obstinate in concealing their procurers; and so nothing should be against you but presumption. But then God; to take away all obstruction of justice, gave you the grace (which ought indeed to be more comfort unto you than any evasion, or device, whereby you might have escaped) to

make a clear confession.—Other impediments there were not a few, which might have been an interruption to this day's justice.—But God in his providence removed them.—But now, that I have given God the honour, let me also give it where it's next due, which is to the king our sovereign. This murder was no sooner committed, and brought to his majesty's ears, but his indignation (wherewith at first, he was moved,) cast himself presently into a great deal of care and providence to have justice done.—First, came forth his proclamation somewhat of a rare form, and devised and in effect directed by his majesty himself, and with that he did prosecute the offenders (as it were) with the breath and blasts of his mouth. Then did his majesty stretch forth his long arms, (for kings you know have long arms) one of them to the sea, where he took Gray shipped for Sweden, who gave the first light of testimony; the other arm to Scotland, and took hold of Carliel, ere he was warm in his house, and brought him the length of this kingdom under such safe watch and custody, as he could have no means to escape, nor learn no lessons to stand mute; in which case perhaps this day's justice might have received a stop. So that I may conclude that his majesty hath shewed himself God's true lieutenant, and that he is no respecter of persons, but English, Scots, noblemen, fencer, (which is but an ignoble trade) are all to him alike in respect of justice.—Nay, I may say farther, that his majesty hath had in this matter a kind of prophetic spirit; for at what time Carliel and Gray, and you, my lord, yourself, were fled no man knew whither, to the four winds; the king ever spake in a confident and undertaking manner, that wheresoever the offenders were in Europe, he would produce them forth to justice; of which words God hath made him master.—Lastly, to return to you, my lord, though your offence hath been great, your confession hath been free, and your behaviour and speech full of discretion; and this sheweth, that though you could not resist the temptation, yet you bear a generous and Christian mind, answerable to your noble family of which you are descended. This I commend in you, and take it to be an assured testimony of God's mercy and favour; in respect whereof all worldly things are but trash: and so it is fit for you, as your state now stands, to account them.

Then being demanded, whether he would speak any more for himself, he said, no; only desired that the king might be made acquainted with what he had already said.

Whereupon Judgment being required for the king; Mr. Justice Yelverton gave Sentence of death against him as followeth:

“ My Lord Squire; You are a nobleman of Scotland, and (as I have heard yourself say) a baron of above three hundred years antiquity; which I believe to be true. But now you have most wonderfully dishonoured the nobility of your ancient house by this unhappy action; an action of murder so base and so barbarous, as the like I never heard of, nor saw the like a

man shall never read of.—The manner of it is such, as is exceeding strange: done upon the sudden! done in an instant! done with a pistol! done with your own pistol! under the colour of kindness: As Cain talked with his brother Abel, he rose up and slew him.—Your executioners of the murder left the poor miserable man that was murdered no time to defend himself; no time to pray for himself; scant any time to breathe out these last words, Lord have mercy upon me! The ground of this malice that you bore him grew not out of any offence that he ever willingly gave you, but out of the pride and haughtiness of your own self; for that in the false conceit of your own skill, you would needs importune him to that action, the sequel whereof did most unhappily breed your blemish, the loss of your eye.—And you have prosecuted this malice very long; for you solicited others, four or five years at the least, to have committed this foul and heinous murder. And this your fault is far greater than if you had committed the fact yourself; for then it had been but your own single murder only; but now have you made them who were the executioners of your malice, murderers also with you: so you have made their bodies subject to the justice of man, and their souls subject to the justice of God, which, without his great mercy, they must endure.—All these circumstances do exceedingly aggravate your offence.—This offence of yours is called one of the crying sins; for God said unto Cain, 'The voice of thy brothers blood' (a strange phrase, a voice of blood!) crieth unto 'me from the ground.'—And for the punishment of it, it is said elsewhere in the sacred word of God, 'That he that sheddeth man's blood, by 'man shall his blood be shed.' Again, 'But this 'punishment of blood is not indeed to shed 'blood; for it is better that one should die by 'the law, than many without it.'—You are, my lord, to take a serious consideration of the short estate of your life wherein presently you stand; for by the justice of the law, you must suffer the pains of death, and be assuredly persuaded, the time is not far off: for though the king be exceeding merciful, yet is he also exceeding just. And he hath had such an extraordinary care of justice in this case, that though it were plotted by you, my lord, that the murderer should escape, and fly into his own country of Scotland, far remote from the justice of the law of England; yet his majesty's care hath so pursued him, that there he was quickly apprehended, and that country could be no protection for him. Nay, his majesty most religiously, and most like a just prince, protested, that if he were in any part of Christendom to be found, he would surely have him; so zealous is he of justice in this so heinous an offence of murder. And in a matter that concerns justice, he respects not his own native nation of Scotland, more than he doth his own hereditary realm of England.—Therefore, my lord, prepare yourself to die; and though the manner of your death be by the law of England unfitting (as you perhaps may think) for a man of your honour and blood,

VOL. II.

yet surely it is fit enough for a man of your merit and offence. And the law of England makes no difference of subjects in matters of felony for the manner of their deaths, when there is no difference of subjects in the manner of their offences; and not where, but how a man dieth, maketh to the purpose: for the way to Heaven is of like difference from all places. And, indeed; there is no death miserable, which the death of the soul doth not follow.—Death is the way of all the world, the passage of all the earth, and the end of all men; and not men alone, but all worldly things are mortal, the soul of man only excepted.—Therefore, my lord, provide carefully that your soul may have a good and godly departure from the body, which will surely be by your unfeigned confession and earnest repentance of all your sins, and especially of this most bloody, this most heinous and crying sin, by your humble calling and crying upon God for his mercy and forgiveness, and by confident and steadfast faith in Christ Jesus, to receive and accept it.—For repentance is an act of all acts, and faith in the mercies of God is the Star that goeth before the face of repentance, and very exceeding available by these three syllables, peccavi. And so with this short exhortation I will end; and wish, whatsoever your life hath been heretofore, yet that your death may be happy now. And so I will proceed to Judgment.

"You have been indicted as accessory to wilful murder, as accessory in procuring the murder; and upon this indictment you have been arraigned, and upon your arraignment you pleaded Not Guilty; but since, upon better advisement and judgment, you have confessed the fact: The court therefore doth award, That you shall be had from hence to your former place of imprisonment, and from thence to the place of execution, and there be hanged till you be dead. And God have mercy upon your soul."

And then the judge, speaking to the sheriff, said, Mr. Sheriff, see execution be done.

On Monday following, being St. Peter's day, the 29th of June, 1612, the lord Sanquair was brought from the prison somewhat early in the morning, into the Great Palace-yard, before Westminster-hall great gate, there to suffer death on a gibbet erected for that purpose; where being ascended the ladder, he spake to the people a good while, excusing himself for the fact no otherwise than formerly he had done at the King's-bench bar: Asking God and the world forgiveness for the same, protesting his detestation thereof, now that he truly understood the foolishness of it; affirming, that till he first was brought to his trial, the devil had so far blinded his understanding, that he could not apprehend that he had done amiss, or otherwise than was fitting for a man of his rank and quality, having been trained up in the wars, and lived the life of a soldier, which sort of men, he said, stood more on points of honour than religion. He humbly thanked God that had opened his eyes, and given him

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the grace to see his offence, and truly to apprehend the foulness of it. At length, he professed himself to die a Roman catholic, and desired all Roman catholics there present to pray for him. He said, that for worldly respects, he had long neglected the public profession of his faith in that kind, and he thought God was angry with him for it; and he knew not but God might inflict this just punishment upon him for that neglect; and therefore he advised all men that stood so affected in heart, not to procrastinate nor delay; for delays, he said, are dangerous. The religion, he said, was a good religion, a saving religion, and if he had been constant in that religion, he was verily persuaded he had never fallen into that misery. So falling to his prayers for a while in private, and after in public praying for the king and queen, their royal issue, and the state both of England and Scotland, with the lords of the council and church, he submitted himself to the will of the executioner; who casting him off the ladder, suffered him there to hang a long time, that people in this great man might take notice of the king's greater justice.

Note, That this lord was tried by the country, but challenged his trial by peers, which was denied him, because though he were a lord in Scotland, yet he was no lord of the parliament here in England, nor had any English barony.—Note also, That Carliel, and another with him, but whether it were Gray or no, I cannot certainly affirm; but sure I am, it was one that was with Carliel when he did the fact (and I take it to be my lord's page), were hanging on two gibbets set up in Fleet-street, over against the great gate of the White friars, very early in the morning, before the lord Sanchar had his trial\*.—Note also, That one of those gibbets was higher than the other by the length of a man, or thereabouts; and I demanding the reason thereof, was answered by a stander-by, that the manner of Scotland is, that when a gentleman is hanged with a man of meaner quality than himself, the gentleman hath the honour of the higher gibbet, and thinks himself much wronged if he be not so disposed of. Whether this answer was serious, or by way of scorn, let him that desireth to be resolved by enquiry resolve himself.

Sir Edward Coke, in his ninth Report, p. 117, et seq. gives the following Account of

THE LORD SANCHAR'S CASE.

ROBERT Creighton, lord Sanchar†, a baron of Scotland, of his malice prepenze at Westminster, in the county of Middlesex, incited and procured Robert Carliel to kill John Turner, who accordingly associating himself with one James Irweng, the 11th of May now last past, killed the said John Turner within the city of London. And the king in his zeal to justice in this case, immediately sent for the

\* See the Record of the conviction of Carliel and Irweng, in Coke's ninth Report, p. 114.

† Wilson's Hist. p. 59, 60.

two chief-justices, and chief-baron, and commanded there should be speedy proceeding against the lord Sanchar, according to law. To which the justices answered, That the lord Sanchar was but an accessory in this case, and therefore he (a) could not by law be convicted before the principal is attained; but if the principal could be apprehended, then both might be attained with more expedition than could be, if the principal should be attained by utlagary. Then it was asked, how the lord Sanchar, being an ancient baron of Scotland, should be tried: And it was answered by them, That none within this realm of England is accounted (b) a peer of the realm, but he who is a lord of the parliament of England; for every subject either is a lord of the parliament, or one of the commons, and the lord Sanchar was not a lord of the parliament within this kingdom, and therefore should be tried by the commons of the realm, viz. knights, esquires, or others of the commons; and therewith agree our books, as well ancient as others, (c) 11 E. 3, Brief 473, 8 R. 2. (d) Process. pl. ult. (e) 20 E. 4, 6, a. b. 20 E. L. (f) 360. Then the king asked, in what court, after the principal is attained, the lord Sanchar should be tried? And the justices answered, that forasmuch as the procurement was in Middlesex, it was most convenient to try him in the King's-bench: And thereupon the king resolved, that he should not be committed to the Tower, but to the prison of the King's-bench, where he might be, if occasion required, sooner and easier examined, than if he should be committed to the Tower: And the king commanded the said justices, that all things should be prepared for the legal proceeding; and that he would endeavour to cause not only the principal, but others also who might discover the truth of the fact, to be apprehended. And thereupon the said chief-justices conferred with the other justices of the king's-bench, before whom the lord Sanchar should be tried. And before them divers questions were moved concerning the legal proceeding in this case. 1. Upon the statute of (g) 2 E. 6, c. 24, by which it is enacted, as to this point in this manner: 'And further be it enacted by the authority aforesaid, That where any murder or felony hereafter shall be committed or done in one county, and another person or more shall be accessory or accessories by any manner of wise to any such murder or felony in another county, that then an indictment found or taken against such acces-

(a) 4 Co. 43, b.

(b) Co. Lit. 16, b. 7 Co. 15, a. Calvin's Case, 2 Inst. 3 Inst. 30.

(c) 7 Co. 15, b. 16, a. Calvin's Case

(d) Fitz. Process 224, 7 Co. 15, b. Calvin's Case.

(e) 7 Co. 15, b. Calvin's Case. Br. Nourse de Dignity 49.

(f) 7 Co. 15, b. 23, a. Calvin's Case. Dy. 360, pl. 6, Co. Lit. 261, b.

(g) 2 et 3 E. 6, c. 24, 3 Inst. 113.

ory, or accessories, upon the circumstance of such matter before the justices of the peace, or other justices or commissioners, to enquire of felonies, where such offence of accessory or accessories in any manner of wise shall be committed or done, shall be as good and effectual in law, as if the principal offence had been committed or done within the same county where such indictment shall be found: and that the justices of gaol-delivery, or oyer and terminer, or two of them, of or in such county where the offence of any such accessory shall be hereafter committed and done, upon suit to them made, shall write to the Custos Rotulorum, or keepers of the Records, where such principal shall be hereafter attainted or convicted, to certify them whether such principal be attainted, convicted, or otherwise discharged of such principal felony; who upon such writing to them, or any of them directed, shall make sufficient certificate in writing, under their seal or seals, to the said justices, whether such principal be attainted, convicted, or otherwise discharged or not. And after they that so shall have the custody of such records, do certify that such principal is attainted, convicted, or otherwise discharged of such offence by the law; that then the Justices of gaol-delivery or of oyer and terminer, or other there authorised, shall proceed upon every such accessory, in the county or counties where such accessory or accessories became accessory, in such manner and form as if both the said principal offence and accessory had been committed and done in the said county where the offence of the accessory was or shall be committed or done. And that every such accessory, and other offenders above expressed, shall answer upon their arraignments, and receive such trial, judgment, order, and execution, and suffer such forfeitures, pains and penalties, as is used in other cases of felony: any law or custom to the contrary heretofore used in any wise notwithstanding. And upon this statute, divers (A) questions were moved; 1. If the indictment in the county of Middlesex of the accessory should recite, that the principal was indicted before Commissioners of oyer and terminer in the city of London (as in truth he was) or if the indictment should recite *in facto*, that the principal committed the murder in London, &c.? And it was resolved, that the indictment in Middlesex should recite, *de facto*, that the principal committed the murder in London. For the recital, that the principal is indicted of murder in London, is no direct affirmation that the principal committed the murder; for the indictment is but an accusation, and in lieu of the king's Declaration, which may be true or false; and this agrees with former precedents. And accordingly the indictment was drawn; upon which the accessory was convicted, as appears before by the indictment itself.

2. The second question moved upon the

(A) 3 Inst. 48, 49.

statute, was, If the (i) justices of the King's-bench are within these words, justices of Gaol-delivery, or Oyer and Terminer? And it was objected, That the King's-Bench is the highest court of ordinary justice in criminal causes within the realm, and paramount the authority of justices of Gaol-delivery, and commissioners of Oyer and Terminer; and as it is held in 27 Ass. 1. is (k) more than the eyre; for they shall examine the errors of the justices in eyre, gaol-delivery, and oyer and terminer; and therefore inasmuch as the justices of the King's bench are paramount and superiors over all the others, they cannot be included within their inferiors, viz. justices of gaol-delivery, or of oyer and terminer. Also the justices of the King's-bench have a distinct and supreme court; and the justices of gaol-delivery, and oyer and terminer, other distinct and subordinate courts. And therefore it was adjudged, Hill. 30 El. Reg. in the King's-bench, that where R. (l) Smith was indicted of forgery of a false deed at the sessions of (m) peace in the county of Oxford; and the statute of 5 El. c. 14, which inflicts the punishment, and upon which act the indictment was grounded, provides, that the indictment shall be taken before justices of assize, and justices of oyer and terminer: and although the justices of peace by their commission have power to hear and determine felonies, trespass, &c. and have an express clause *ad audiendum et terminand'* so that they are, as it was urged, justices of oyer and terminer; yet it was resolved *per tot' cur'* that because there was a commission of oyer and terminer known distinctly by that name, and the commission of the peace known distinctly by another name, that the said indictment was not well taken, and therefore was quashed. But it was resolved, that the (n) justices of the King's-bench are the sovereign justices of gaol-delivery, and of oyer and terminer; and therefore they are included within the said words: and therefore it is held in 7 E. 4, 18. a. & 4 H. 7, 18. that if an indictment of forcible entry be removed into the King's-bench, the justices of the King's (o) bench shall award restitution; and yet the statute of 8 H. 6. c. 9,

(i) 3 Inst. 103, 3 Mar. Br. Oyer and Termin. 8, 4 Inst. 73, Cowley, 66, Postea 118, b.

(k) Stauf. Cor. 35, a. 4 Inst. 73, Fitz. Assize 246, Br. Escape 21, Br. Jurisdiction. 66, Postea 118, b. Br. Judges, Justices, &c. 16.

(l) Cro. El. 78, 697, 3 Inst. 103, Cawl. 258, 259.

(m) Cr. El. 601, 697, Cawl. 258, 259, Savil 134, H. P. C. 165.

(n) H. P. C. 165, Cawley 66, 3 Inst. 103, Antes 118, a. 3 Mar. Br. Oyer et Terminer 8, 4 Inst. 73.

(o) Kelw. 159, a. b. Dy. 187, pl. 6, 11 Co. 59, a. b. 65, a. 1 Roll. Rep. 92, B. forcible Entre 27, Dall. 25, pl. 8, Dall. in Kelw. 203, pl. 2 Dall. in Nash. pl. 2, Fitz. Entre 44, Br. Restitut. 11 Dall. Just. c. 314, Jenk. Cent. 197, 221.

speaks only of justices of the peace; but the reason is, because they have the sovereign and supreme authority in such cases. And according to this resolution, the justices of the King's-bench wrote according to the said act to the justices of gaol-delivery in London, before whom the principal was, &c. who certified the record, &c. as appears before at large.

3. It was moved, if the lord Sauchar could not in term-time be indicted, arraigned, and convicted, at Newgate before commissioners of (p) oyer and terminer for the county of Middlesex, and it was resolved he could not; for the King's-bench, as hath been said, is (q) more than eyre, and therefore in (r) term-time no commissioner of oyer and terminer, or gaol-delivery, by the common law, can sit in the same county where the King's-bench sits; for (s) *in presentia majoris cessat potestas minoris*, and therewith agrees 27 Ass. p. 1. But Carliel and Irweng were indicted and attainted in London, where the murder was committed, before justices of oyer and terminer in the (t) term-time, because in another county than where the King's-bench sits.

4. It was moved, if the lord Sauchar being indicted in the king's-bench, if there must be (u) fifteen days for the return of the *re. fa.* for if fifteen days are requisite, he cannot be arraigned this term. And it was resolved not, because the offence was committed in Middlesex, where the court sits; but if the indictment had been taken in any other county, and removed thither, there ought to be 15 days, &c. and therewith agree the precedents, and the continual usage of the same court.

5. It was resolved, that forasmuch as there was not any direct proof, that James Irweng was commanded or procured by the lord Sauchar to commit the murder, but that he associated himself to Robert Carliel who was procured by him, that the (v) best way is to indict the lord Sauchar, as accessory to Robert Carliel only: for indictments which concern the life of men ought to be framed as near the truth as may be, *et eo potius* because they are to be found by the oath of the grand inquest, which finding is called (x) *verdictum, quasi dictum veritatis*: and yet it was resolved, that if one is indicted as accessory to (y) two, and he is found accessory to one, the verdict is good. Vide the statute of W. 1. c. (z) 14. by which it is enacted, that none be outlawed

(p) H. P. C. 156, 3 Inst. 27, 4 Inst. 73.

(q) Stanf. Cor. 35, a. 4 Inst. 73, Fitz. Assise 246, Br. Escape 21, Br. Jurisdiction 66, 27, Ass. pl. 1, Br. Judges, Justices, &c. 16, Antea 118, a.

(r) 10 Co. 73, b. 3 Inst. 27.

(s) 10 Co. 73, b. 2 Inst. 26, 166.

(t) Post. 121, u.

(u) 2 Inst. 550, 568, H. P. C. 157, Co. Lit. 134, b.

(v) 2 Inst. 183. (x) Co. Lit. 226, a.

(y) 2 Inst. 183, H. P. C. 265.

(z) 2 Inst. 182, 138, 3 Inst. 183.

upon appeal of commandment, force, aid, or receipt, until, be that is appealed of the deed be attainted, so that one like law be used therein through the realm: which is but an affirmance of the common law: for there cannot be an accessory unless there be a principal, no more than there can be a shadow unless there be a body. But this word Appeal has two significations in law; one general, and that is taken for an accusation, generally, and *accusatio est duplex*, either by inquisition, i. e. by indictment, and that is at the suit and in the name of the king; or by the party, and in his name, as in appeal by writ or bill: or by appeal, i. e. accusation of an approver; and therewith agree all our books, and Stamf. l. 9. de Plac' cur' c. 52. f. 142. b. where he saith, after the confession of the crime, the felon may appeal, *s. accuso* others condutors with him to do the felony: and in this particular sense for accusation of the party it is often taken. And as there are two manner of accusations, so there are two manner of attainders of felony, *s. by judgment given, s. one at the king's suit, and the other at the suit of the party*; and both these attainders are in two manners, one after appearance, and the other upon default after appearance, two ways, *s. either by verdict or confession*; and at the suit of the party, a third way, *s. by battle*, upon default by process of outlawry, where judgment is given by the (a) coroners, or by those whom an act of parliament and custom have enabled. And in the statute of W. (b) 1. these words, upon appeal of commandment, &c. are to be intended of an accusation generally, *s. by indictment, as by writ or bill, &c.* and these words, until he that is appended of the deed be attainted, are meant of all manner of attainders, either at the king's suit, or at the suit of the party, and either upon appearance or upon default. And afterwards in the same act, provision is made for the appeal of the party, which implies that the word appeal shall be taken in the general sense.

6. It was resolved, that if the principal is (c) erroneously attainted, either for error in the process, or because the principal being out of the realm, &c. is outlawed, or that he was in prison at the time of the outlawry, &c. yet the accessory shall be attainted, for the attainder against the principal stands till it is reversed; and therewith agrees (d) 2 R. 3, 12, the resolution of all the justices in the King's-bench. And in 18 E. 4, 9. b. the (c) principal was erroneously outlawed for felony, and the accessory taken, indicted, arraigned, convicted, attainted, and hanged; and afterwards the principal reversed the outlawry, and was indicted and arraigned of the said felony, and found not guilty, by which he was acquitted;

(a) 4 Co. 34. b. Co. Lit. 288. b. Cr. El. 50.

(b) W. 1. c. 14, 2 Inst. 182, 183, 184.

(c) Ant. 68. a. b. 2 R. 3, 21. b.

(d) Ant. 68. b. 2 R. 3, 21. b.

(e) Br. Cor. 165.

and all this appears in the said-book; then it will be demanded, that forasmuch as there cannot be an accessory unless there is a principal, and in case there is no principal, how the heir of the accessory shall be restored to the land which his father had forfeited by the said unjust attainder? To that it is to be answered that the heir may enter, or have his action; for now upon the matter by act in law, the attainder against his father is without any writ of error utterly annulled, for by the reversal of the attainder against the principal, the attainder against the accessory, which depends upon the attainder of the principal, *ipso facto* is utterly defeated and annulled; and this notably appears in an ancient book, in the time of E. 1, tit. Mort-damnest, 46. where the case is, A was indicted of felony, and B. of the receipt of A. A. elained himself (and is outlawed): B. was taken, and put himself upon inquest, and found guilty, for which B. was attainted, and hanged, and the lord entered as into his escheat; and afterwards A. came, and reversed the outlawry, and pleaded to the felony, and was found not guilty, by which he was acquitted; whereupon the heir of B. brought a (f) Mortdauncester against the lord by escheat, who came and shewed all this matter, and there was a demur upon it; and it was awarded, that the heir of B. should recover seison of the land; for if B. was now alive, he should go quit by the acquittal of A. because he could not be receiver of a felon, when A. is no felon; and all this appears in the said book *Vide* A. E. 3, 36. b. in *Dower* 43 E. 3, 3. a. in *Assise et Reides* 8 H. 4, 4. 11 H. 4, 4. 4 E. 4. 20. 6 E. 4, 9. 13 E. 4, 4. 9 H. 6, 38. b. 8 H. 7, 10. et vide the case of sentence (g) of deprivation of one, and presentment, institution, and induction of another; and after by relation of a general pardon, *ipso facto*, all are restored without appeal, or new presentment, admission, or institution, *quod vide* (h) *Dy. Nota* reader, to oust all quest. to what gaol offenders shall be committed, it is enacted by the statute of (i) 5 H. 4, c. 10. that none shall be imprisoned by any justice of the peace, but only in the common gaol, saving to lords and others, who have gaols, their franchises in that case. By which it appears, how justices of peace offend, who commit felons, &c. to either of the Counters in London, and other prisons, which are not common gaols.

But forasmuch as several persons have earnestly desired to know the circumstances, as well of the proceeding, as of the fact itself, I will comply with their request.

Robert Creighton, baron of Sanchar, a Scotchman, about five years ago played at foils with John Turner a fencing-master, and it hap-

pened that Turner in playing struck out the baron's eye with his foil; upon which the baron, finding himself impatient under so great an affront, and not able to bear the loss of his eye without having his revenge, resolved to procure somebody to kill Turner; and among his other servants, he prevailed upon Gilbert Gray and Robert Carliel, Scotchmen, two of his followers, to shoot Turner upon the first opportunity that should offer. These two then undertook to accomplish this design, and industriously endeavoured to execute it; but the ninth day of May last, Gray repenting of a purpose and act so barbarous, vile and bloody, being touched with the moion of the Holy Ghost, resolved to proceed no farther; which the baron of Sanchar being informed of, and that Gray slackened in his promise, Robert Carliel, as is aforesaid, undertook to execute what he had promised: who, the eleventh of May following, associating himself with James Irweng a Scotchman, of the frontiers, about seven o'clock in the evening came to a house in the Friars, which Turner used to frequent as he came from his school, which was near that place; and finding Turner there, they saluted one another; and Turner with one of his friends sat at the door asking them to drink; but Carliel and Irweng turning about to cock the pistol, came back immediately, and Carliel drawing it from under his coat, discharged it upon Turner, and gave him a mortal wound near the left pap; so that Turner, after having said these words, Lord have mercy upon me! I am killed; immediately fell down. Whereupon Carliel and Irweng fled, Carliel to the town, and Irweng towards the river; but mistaking his way, and entering into a court where they sold wood, which was so thorough-fare, he was taken. Carliel likewise fled, and so did also the baron of Sanchar. The ordinary officers of justice did their utmost, but could not take them: for in fact, as appeared afterwards, Carliel fled into Scotland, and Gray towards the sea, thinking to go to Sweden, and Sanchar hid himself in England.

The impediments of justice, difficulties of law, and impossibilities of legal proceeding to take Carliel, the principal, which were in this case, are remarkable, and worthy of consideration. The cure and remedy of the whole ought to be only and wholly attributed to the great care of his most excellent majesty, and to his perpetual love and zeal for justice, as will clearly appear by what follows.

The impediments of justice were two: The truth of this fact, touching the baron of Sanchar, could not appear, because it consisted only in the words of his mouth by incitation and procurement; but by Gray and Carliel, who were fled, or by himself; and he was likewise gone.—2. It was not as yet known whither they were fled, and it could not be found out by all the search and diligence which was used by the officers and magistrates of justice.

The difficulties of law are manifest by the foregoing resolutions.

(f) H. P. C. 270. 1 Rol. 777.

(g) 6 Co. 13. b. 14. Co. Inst. 238. Hob. 82. 293. Cr. El. 41. 789: Moor 132. Owen 87. Latch. 29. 141. 1 Sid. 164, 168. Palm. 412.

(h) *Dy.* 235. pl. 19. 6 Co. 13. b.

(i) 2 Brownl. 41. 2 Inst. 43. Cor. El. 830.

Impossibilities of legal proceeding.—1. It was impossible by legal process to apprehend the body of Carliel, being in Scotland.—It was impossible also to proceed against the baron of Sanchar, who was but an accessory, before the principal was attainted; a thing which would have required a very long proceeding, if he had not been taken.—Now therefore let us behold here the love and zeal which his majesty always had for justice, who being informed by some of his principal judges, with whom he had consulted touching the nature of this present case, and finding if this fact should be left to the ordinary proceeding of the law, Carliel the assassin could not be taken, and that no ordinary power had been able to find Gray the witness, nor Sanchar the author; lo! the king by proclamation gives authority to any person whatsoever to apprehend these three, with a promise of great reward.

Upon this, the baron of Sanchar, well knowing that the principal assassin and the witness were fled, surrendered himself, and denied that he incited or procured the fact: wherefore his majesty sent post to the sea-ports (the gates of the kingdom), as also into Scotland, and other places of his dominions, where his admirable prudence had hopes of finding them; and the Lord so crowned his royal thoughts, and gave such a blessing to his zeal for justice, that some of his couriers took Gray at the port of Harwich, ready to embark for Sweden; and Carliel in Scotland, thinking to cross the sea for his greater safety. Gray then, being by his majesty's command examined, confessed the whole truth of the fact against the baron of Sanchar, who likewise by his majesty's direction being confronted with Gray, and particularly examined touching certain articles, special and pertinent sayings by his majesty himself, confessed by writing under his own hand, that he had incited and procured this assassination; and being pressed thereupon by the questions, he discovered a long and inveterate malice which he had had, with all the occasions and material circumstances of this murder.

His majesty having regard to that which the Holy Ghost admonishes us of ('quia nan profertur cito contra malos sententia, absque timore ullo filii hominum perpetrans mala' (k)) gave orders two days after, that Carliel the principal should be brought to London; that he and James Irweig, in full term, (a thing not usual) might be carried before the justices at Newgate, and attainted and convicted. And a few days after the baron of Sanchar was like-

wise attainted and convicted at the King's Bench in full term; and in a short time after, to accomplish his majesty's zeal for justice, the baron Sanchar was (l) hanged publicly in term-time at the palace of Westminster, according to the judgment and sentence he had before received.

I have reported this case with all the circumstances, because this example has not its parallel: for although it is true, that the late queen Mary is very famous on account of the exemplary justice which she caused to be executed upon baron Sturton, for the barbarous murder of Harquill; yet this present example of the baron of Sanchar very much surpasses that of the baron of Sturton, and that for many considerations. 1. Because the baron of Sturton was taken by the ordinary course of the law, even within the kingdom; but the principal in this case could not be taken by any common power, but by the means of his majesty's royal and absolute power only. 2. The baron of Sturton's offence was very apparent, and without any difficulty of law: on the contrary, this of Sanchar was thereof (as appears) very full; but by his majesty's command, all these difficulties, with the conference and grave consideration of his principal judges, after search of cases precedent, were resolved and cleared up, and notwithstanding the impediments, difficulties and impossibilities in legal proceeding, greater expedition was used in this case than in that. In short, the accomplishment of the whole, the clearing up the truth of the fact in the case of the baron of Sanchar, must be attributed to the great wisdom, power and vigilance of his majesty, as appears by that which has been thereof said before.

The baron of Sanchar was a man of a very ancient and noble family in Scotland; he was a man of great courage and wit, endowed with many excellent gifts, as well natural as acquired. The eloquence of his discourse, with the civility and discretion of his behaviour, when he came before and went from the judges, compelled the people (who honoured him on account of his moral virtues, and those for his sake) to bewail his fall with great grief (although the occasion of it was this base and barbarous assassination, premeditated for five years together with a malice bloody and inveterate): this extraordinary affection of the people was, as he himself confessed, a very great consolation to him in his last troubles and afflictions. But at last their compassion abated, because they perceived he died a true Catholick.

(k) Ecclesiast. 8. 11, Antea 118. b.

(l) 3 Inst. 13.

## 93. Proceedings against Mr. JAMES WHITELOCKE, in the Star-Chamber, for a Contempt of the King's Prerogative: 11 JAMES I. 1613.

[" Mr. Whitelocke, the subject of this Prosecution, is supposed to have been the same gentleman, as afterwards became sir James Whitelocke, the judge of that name, and father of Mr. Belstrode Whitelocke, the famous writer of the Memorials. See the note in vol. 3, of lord Bacon's Works, 4to ed. p. 471. He appears to have been prosecuted simply for giving a private verbal Opinion as a barrister, on a point of Prerogative, against the crown, to sir Robert Mansell; who, being Treasurer of the Navy and Vice-Admiral, had consulted Mr. Whitelocke, on the legality of a commission issued by king James for examining into and reforming the Disorders and Abuses of the Navy. *Ibid.* At the same time, sir Robert Mansell was himself charged, for questioning the prerogative of the crown, and animating the lord-admiral against the commission. *Ibid.* same page, and the note in p. 472. The hearing was at Whitehall before the Lords of the Council, with the intervention of lord chief justice Coke, lord chief baron Tanfield, and the Master of the Rolls; the king's Attorney and Solicitor speaking against Mr. Whitelocke, and Mr. Henry Montagu, the king's serjeant, against sir Robert Mansell. *Ibid.* Both humiliated themselves; in consequence of which they were recommended to the crown as proper objects of pardon, and were accordingly enlarged on the terms of subscribing a submission. *Ibid.* & *Reliq. Wotton*, p. 421. 3rd ed. there cited. The following Speech of lord Bacon, who was at this time Attorney-General, is the only remnant we meet with of the proceedings in the Case, exclusive of the circumstances before-mentioned. The Speech seems imperfect, it ending abruptly. What there is of it, though not without passages characteristic of lord Bacon's nervous eloquence and curiosity of argument, is in our opinion far from stating any thing like a just ground of prosecution. In the present age it would be deemed a monstrous doctrine to assert, that lawyers were not at liberty to give Opinions to their clients on questions of prerogative. Little apology can be made for such a doctrine even in lord Bacon's time; for it was ever lawful for the subject to contest questions of prerogative in the king's courts; and if it was so, how could it be contrary to law to take the advice of council on such subjects? Indeed lord Bacon professes not to controvert the right of asking and giving counsel in law. But then he qualifies this right by a distinction; for he exempts and gives a privilege to high commissions of regimen and cases of state; a description so large and indefinite, that, if it should be acquiesced in, it would leave few

acts of the crown on which a lawyer could safely give an opinion. Particular delicacy and caution certainly ought to be used, where the prerogative of the crown is drawn into question; and it may be possible for a lawyer to exercise the right of giving Opinions so indecently and licentious, as to render himself responsible criminally. But then the crime arises from the abuse, not from the want of the right. It may also be possible to put a case so strong, as to be beyond the line of a professional Opinion. Thus if a private lawyer should be consulted, whether the king had a right to the crown, who can doubt that he would answer such a question at his peril? But the question, on which Mr. Whitelocke gave his opinion, was not of this kind, being on a commission from the crown, the legality of which it was competent to the subject to controvert, and consequently to take legal advice about. On the whole, the true rule seems to be, that a barrister may give his opinion on every question, however relative to the king or his prerogative, which the subject may contest with the crown in a court of justice; but that in exercising this right he must keep so within the bounds of an opinion, as not under the color of it to obtrude either private or public scandal. In respect to Mr. Whitelocke's particular case, the subject of the Opinion he gave seems perfectly unexceptionable; nor could it be an offence, that his Opinion was against the extent of the prerogative, or that it was erroneous. The only ground then, on which he could be criminally responsible, was for some licentious and extraneous matter introduced into the Opinion; in respect to which no judgment can now be decisively formed, as the words of the Opinion do not appear; though as far as a conjecture may be made from lord Bacon's manner of observing on the Opinion, it was equally innocent both in subject and language." *Hargrave.*]

SPEECH of the Attorney-General sir FRANCIS BACON, from the 3d volume of the last 4to edition of his Works, p. 471.

MY Lords; The offence wherewith Mr. Whitelocke is charged, (for as to sir Robert Mansell, I take it to my part only to be sorry for his error) is a Contempt of a high nature, and resting upon two parts: on the one, a presumptuous and licentious censure and defying of his majesty's prerogative in general; the other, a slander and traducement of one act or emanation hereof, containing a commission of survey and reformation of abuses in the office of the navy.—This offence is fit to be opened and set before your lordships, as it hath been



well begun, both in the true state and in the true weight of it. For as I desire, that the nature of the offence may appear in its true colours; so, on the other side, I desire, that the shadow of it may not darken or involve any thing that is lawful, or agreeable with the just and reasonable liberty of the subject.—First, we must and do agree, that the asking and taking, and giving of counsel in law is an essential part of justice; and to deny that, is to shut the gate of justice, which in the Hebrews commonwealth was therefore held in the gate, to shew all passage to justice must be open: and certainly counsel in law is one of the passages. But yet, for all that, this liberty is not infinite and without limits. If a jesuited papist should come, and ask counsel (I put a case not altogether feigned) whether all the acts of parliament made in the time of queen Elizabeth and king James are void or no: because there are no lawful bishops sitting in the upper house, and a parliament must consist of lords spiritual and temporal and commons; and a lawyer will set it under his hand, that they be all void, I will touch him for high treason upon this his counsel. So, if a puritan preacher will ask counsel, whether he may stile the king defender of the faith, because he receives not the discipline and presbytery; and the lawyer will tell him, it is no part of the king's stile, it will go hard with such a lawyer.—Or if a tribunitious popular spirit will go and ask a lawyer, whether the oath and band of allegiance be to the kingdom and crown only, and not to the king, as was Hugh Spenser's Case, and he deliver his opinion as Hugh Spenser did; he will be in Hugh Spenser's danger.—So as the privilege of giving counsel proveth not all opinions: and as some opinions given are traitorous; so are there others of a much inferior nature, which are contemptuous. And among these I reckon Mr. Whitelocke's; for as for his loyalty and true heart to the king, God forbid I should doubt it.—Therefore let no man mistake so far, as to conceive, that any lawful and due liberty of the subject for asking counsel in law is called in question, when points of disloyalty or of contempt are restrained. Nay, we see it is the grace and favour of the king and his courts, that if the case be tender, and a wise lawyer in modesty and discretion refuseth to be of council, for you have lawyers sometimes too nice as well as too bold, they are then ruled and assigned to be of council. For certainly counsel is the blind man's guide; and sorry I am with all my heart, that in this case the blind

did lead the blind.—For the offence, for which Mr. Whitelocke is charged, I hold it great, and to have, as I said at first, two parts; the one a censure, and, as much as in him is, a circling, nay a clipping, of the king's prerogative in general: the other, a slander and depravation of the king's power and honour in this commission.—And for the first of these, I consider it again in three degrees: first, that he presumed to censure the king's prerogative at all. Secondly, that he runneth into the generality of it more than was pertinent to the present question. And lastly, that he hath erroneously, and falsely, and dangerously given opinion in derogation of it: First, I make a great difference between the king's grants and ordinary omissions of justice, and the king's high commissions of regiment, or mixed with causes of state. For the former, there is no doubt but they may be freely questioned and disputed, and any defect in matter or form stood upon, though the king be many times the adverse party. But for the latter sort, they are rather to be dealt with, if at all, by a modest, and humble intimation or remonstrance to his majesty, and his council, than by bravery of dispute or peremptory opposition.

Of this kind is that properly to be understood, which is said in Bracton, 'de chartis et factis regis non debent, aut possunt, justitiam rii aut private personæ disputare; sed tutius est, ut expectetur sententia regis.'—And the king's courts themselves have been exceeding tender and sparing in it; so that there is in all our law, not three cases of it. And in that very case of 24 Ed. 3, Ass. pl. 2. which Mr. Whitelocke vouched, whereas it was a commission to arrest a man, and to carry him to prison, and to seize his goods without any form of justice or examination preceding; and that the judges saw it was obtained by surreption; yet the judges said they would keep it by them, and shew it to the king's council.—But Mr. Whitelocke did not advise his client to acquaint the king's council with it, but presumptuously giveth opinion, that it is void. Nay, not so much as a clause or passage of modesty, as that he submits his opinion to censure: that it is too great a matter for him to deal in; or this is my opinion, which is nothing, &c. But *illotis manibus*, he takes it into his hands, and pronounceth of it, as a man would scarcely do of a warrant of a justice of peace, and speaks like a dictator, that 'this is law,' and 'this is against law,' &c.

94. Proceedings against MARY Countess of SHREWSBURY, before a Select Council, for a Contempt, in refusing to answer fully before the Privy Council, or to subscribe her Examination. Trin. 10 JAMES I. A. D. 1612. [Coke's Report, p. 94.]

["The occasion of examining lady Shrewsbury before the Privy Council, was her conduct in respect to the marriage of lady Stuart. This latter lady was first-cousin to James I.; for she was the daughter of Charles earl of Lenox, the younger brother of James's father lord Darnley. Her mother was Elizabeth daughter of sir William Cavendish. The countess of Shrewsbury was aunt to lady Arabella, being sister to her mother. A marriage took place between lady Arabella and sir William Seymour, who at the Restoration recovered the dukedom of Somerset for his family. Being a marriage with one so nearly related in blood to the king, and without his consent, it was deemed an offence against the royal prerogative,\* on which account lady Arabella and her husband were imprisoned; the former in a private house at Lambeth, the latter in the Tower. But both escaped from their confinement with a view to retire abroad; and the countess of Shrewsbury was taken into custody as privy and accessory to the escape of lady Arabella. On being examined by the privy-council, the countess refused to discover what she knew of the affair of the Marriage and Escape, or to subscribe her Examination; and for this refusal she was brought before a select council, whose proceedings on the occasion are the subject of the following Case. What we shall first lay before the reader is lord Coke's Account of the Case, from his 12th Report. Lord Bacon's Speech, which is next given, was first printed in the Cabala, but is here taken from the last edition of his Works, vol. 3, p. 265. For further particulars, relative to the Marriage of lady Arabella Stuart, and the Proceedings against her, sir William Seymour her husband, and lady Shrewsbury, the curious reader may consult Winwood's Memorials of State, vol. iii. p. 117. 119. 201. 279. 280. 281. 454." Hargrave.]

Trin. 10 Jac. 1.

IN this term, before a select council at York-house; *scil.* the lord chancellor, the archbishop, the duke of Lenox, the earl of Northampton, lord privy seal, the earl of Suffolk, lord chamberlain, the earl of Worcester, the earl of Pembroke, viscount Erskin, viscount Rochford, the lord Zouch, the lord Knolls, the lord Wootton,

\* With respect to the royal prerogative concerning the education and marriage of persons of the royal family, see the opinions of the judges, A. D. 1717, *infra.* & st. 12 G. 3, c. 11, and the debates thereon in Cobb. Parl. Hist.

the chancellor of the exchequer, the chancellor of the duchy, Fleming chief justice of the king's Bench, Philips master of the rolls, Coke C. J. of the Common Pleas, and Tanfield chief baron. The countess of Shrewsbury (the wife of Gilbert earl of Shrewsbury) then prisoner in the Tower, was brought before the said lords, and by the attorney and solicitor of the king was charged with a high and great contempt of \* dangerous consequence; for they declared that the lady Arabella, being of the blood royal, had married - - - - Seymour, second son of the earl of Hertford, without privity or assent of the king, for which contempt the said Seymour was committed to the Tower, and had escaped and fled beyond the seas; the lady Arabella being under restraint escaped also, and embarked herself upon the sea, and was taken before she got over; of which flight of the said lady Arabella, the said countess, being her aunt, very well knew and abetted, as is directly proved by Crompton, and not denied by the lady Arabella; and admit it, that the lady Arabella had no evil intent against the king (who had always a great and special care of her, and was very bountiful unto her, until her marriage with the said Seymour, which was the *ponum velitum*;) yet when she fled, and when she should be environed with evil spirits, *cum perversis perversi possit*, and when she shall be in another sphere, she will not move within the same orb.

And the lords of the Privy Council, knowing the *arcana imperii*, did shew divers perilous consequences, and the rather for this, that the said countess is an obstinate popish recusant, and as was said, perverted also the lady Arabella. Now the Charge was in two points.

1. That the said countess of Shrewsbury, by commandment of the king, being called to the council-table, before the lords of the council at White-hall, and there being required by the lords to declare her knowledge touching the said points, and to discover what she knew concerning them, for the safety of the king, and quiet of the realm; she answered, that she would not make any particular answer; and being again asked by the king's command by the council at Lambeth, and being charged again to answer to the said point, she refused for two causes. 1. For that she had made a rash vow that she would not declare any thing in particular touching the said points; and for that (as she said) it was better to obey God than man. 2. She stood upon her privilege of no-

\* Of contempts. See 1 Hawk. ch. 21. per tot. ch. 22. sect. 2, 3, 4, ch. 23, sect. 1, 2, 3, &c. ch. 24, sect. 2, 3, 4. 2 Hawk. ch. 10, sect. 15, 17, 19.

bility, *scil.* to answer only when she was called judicially before her peers; for that such privilege was allowed (as she said) to William earl of Pembroke, and to the lord Lumley.

2. The second point of her charge was, that when such answer which she had made was put in writing, and read to her, yet she refused to subscribe to it. Which denial to discover and discharge her conscience in a case which toucheth the safety of the king, and quiet of the realm, was urged by the king's council to be a great and high contempt, and that nobility hath not any such privilege as is alleged, nor any such allowance as was supposed; and that rash and illegal vows make not an excuse, and that this precedent being now upon the stage, was of very dangerous consequence: and the said countess hearing the charge, yet persisted in her obstinate refusal, for the same reasons and causes upon which she had insisted before: and the lord chancellor began, and the archbishop, and all the other lords began with the first, and adjudged it a great and high contempt, and the lord chancellor said, that that was against the law of England, with which all the lords agreed.—And that no such allowance was given to the said earl of Pembroke, or to the lord Lumley in respect of their privilege of nobility, but that they were *voce populi, et ideo non audiende*: and the lord archbishop principally proved, that as well the contempt, as the said rash vow was against the law of God, which he and the earl of Northampton principally proved by divers texts and examples in holy scripture. And the effect of all that which the three justices said, was, that after the sentences of all the learned, prudent, and honourable personages and counsellors of estate, they might well be silent; but in regard that *silentium in senatu est vitium*, they would speak something briefly, *viz.*

That three things in this case are to be well considered: 1. Whether the refusals aforesaid of the said countess were offences in law against the king, his crown and dignity. 2. What manner of proceeding this is, and whether it was justifiable by precedent or reason. 3. What is the demerit of the offences, and how punishable.

As to the first, it was resolved by the justices and master of the rolls, that the denying to be examined was a high and great contempt in law, against the king, his crown and dignity; and that if it should be permitted, it would be an occasion of many high and dangerous designs against the king and the realm, which cannot be discovered: and upon hope of impunity it will be an encouragement to offenders, as Fleming justice said, to enterprize dangerous attempts.

And the Master of the Rolls said; that it was not any privilege of nobility, to refuse to be examined in this case, no more than of any subject.

Also, if one that is noble, and a peer of the realm, be sued in the Star Chamber, or in Chancery, they ought to answer [*Quere the ex officio*

oath 12 Co. 26, 27.] upon their oaths, (a) and may be examined in the Star Chamber upon interrogatories upon their oaths: and if one who is noble be produced as a witness between

(a) "But in 1628, the house of lords came to a Resolution, declaring it to be the ancient right of the nobility of this kingdom and the lords of the upper house of parliament, to answer in all courts as defendants upon Protestation of Honour only. Journ. Dom. Proc. 6. May, 1628. This Resolution was in consequence of an order, made about two years before by the Star Chamber against the earl of Lincoln, to answer a bill on oath; though this order had passed after great deliberation, and was founded on an unanimous opinion of the lords of the privy council, and of all the judges except Doderridge who was absent. See the earl of Lincoln's Case, W. Jo. 152. Hutt. 87. Cro. Cha. 64. In 1640, the lords renewed the declaration of this privilege in answering as defendants without oath, with an explanation, that it extended to all answers and examinations on interrogatories, in all causes as well criminal as civil, and in all courts and commissions, and also to the widows and dowagers of temporal peers. Journ. Dom. Proc. 31 Dec. 1640. The present practice of our courts of equity conforms to this order of the lords." Hargrave.

A Peer, sitting in judgment, gives not his verdict upon oath, like an ordinary jurymen, but, upon his honour. 2 Inst. 49.—He answers also to Bills in Chancery upon his honour and not upon his oath; 1 P. W. 146; but when he is examined as a witness either in civil or criminal cases, he must be sworn, (whether in inferior courts, or in the high court of parliament) for the respect which the law shows to the honour of a peer does not extend so far as to overturn a settled maxim, that 'in judicio non creditur nisi juratis.' Salk. 512. Cro. Car. 64.—In many cases, the protestation of honour shall be sufficient for a peer; as in trial of peers, they proceed upon their honour, (though formerly it was to be on oath), and in action of debt upon account the plaintiff being a peer, it shall suffice to examine his attorney, and not himself upon oath; but where a peer is to answer interrogatories, or make an affidavit, as well as where he is to be examined as a witness, he must be upon his oath. Bract. lib. 5. c. 9. 4 Rep. 49. 3 Inst. 29. W. Jones 152. 2 Salk. 512.—Sir Thomas Meers contra lord Stourton, in *Case*. Sir Thomas Meers exhibited a Bill against the lord Stourton, and it was ordered, that the lord Stourton should be examined upon interrogatories touching his title; and it was objected, That he being a peer of the realm, ought to answer upon his honour only; and it was ruled by Harcourt, Lord Keeper, that where a peer is to answer to a Bill, his answer put in upon his honour is sufficient; but where a peer is to answer interrogatories, to make an affidavit, or be examined as a wit-

party and party, he ought to be sworn, or otherwise his testimony is of no value; and so is the common experience in the said courts: and the chief justice said, that forasmuch as where order is neglected, confusion will follow, he would recite some of the honourable privileges which the law of England (more than any other law) attribute to the nobility of England in legal proceedings; and they will not be impertinent, but give a great light to the case now in hand.

(1.) If a baron, viscount, earl, or other lord of parliament and peer of the realm be plaintiff in any action, and the defendant will plead that the plaintiff is not a baron, viscount, earl, &c. as he is named in the writ, this shall not be tried at the common law by jury, who may be corrupted, nor by witnesses, as in the Star Chamber, or Chancery, who may be suborned; but it shall be tried by the record in Chancery, which imports by itself solid truth; so great regard hath the law to the trial of their honour and dignity, &c.

(2.) Their persons have many honourable privileges in law. 1. At the suit of a subject their bodies shall not be arrested, neither *capias* nor *exigent* lieth against them. 2. For the honour and reverence which the law gives to nobility, their bodies are not subject to torture in *causâ criminis læsæ majestatis*. (a). 3. They are not to be sworn in assizes, juries, or other inquests. 4. If any servant of the king, named

ness, he must be upon his oath.—In the pleas of parliament, 18 Edw. 1, between the earl of Gloucester and earl of Hereford, on long debate whether John de Hasting, a baron, ought to be sworn, because he was a peer of the realm, it was resolved that he ought to lay his hand on the book. The like was resolved, 10 Car. in B. R. by the court, where the lord Dorset's testimony was requisite. See Dy. 314. b. marg. pl. 98. See also 1 Cobb. Parl. Hist. 1202.—A bill was against a Peeress to discover deeds; she answers on her honour and confesses deeds. She shall produce them only upon her honour, and not on oath. Ch. Prec. 92. Jacob's Law Dict. Title, Peers.—In a case the earl of Shaftsbury against lord Digby, reported in 2 Mod. 98. Trin. T. 28 Car. 2. When this cause was tried at the bar, which was in Easter Term last, the lord Mohun offered to give his testimony for the plaintiff, but refused to be sworn, offering to speak upon his honour. But Wyld, Justice, told him, in causes between party and party he must be upon his oath. The lord Mohun asked him, whether he would answer it. The judge replied, that he delivered it as his opinion. And because he knew not whether it might cause him to be questioned in another place, he desired the rest of the judges to deliver their opinions, which they all did, and said he ought to be sworn. And so he was, but with a *salvo jure*; for he said there was an order in the house of Peers, 'that it is 'against the privilege of the house for any 'lord to be sworn.'

in the cheque roll, compass or intend to kill any lord of parliament, or other lord of the king's council, this is felony. 5. In the Common Pleas, a lord of parliament shall have knights returned on his jury. 6. He shall have day of grace. 7. A lord of parliament shall not be tried in case of treason, felony, or misprision of them, but by those who are noble and peers of the realm. 8. In trial of a peer, the lords of parliament shall not swear, but they give their judgment *super fidem et ligeantiam domino regi debitam*, so that their faith and allegiance stands in equipoise with an oath in the case of a common person in trial of life: and the writs of parliament, directed to the lords of parliament, are *sub fide et ligeantia, &c.*

And the reason and cause, that the king gives them many other privileges, is for this, because all honour and nobility is derived from the king as the true fountain: and the king honours with nobility, for two causes. 1. *Ad consulendum*, and for that reason he gives them a robe. 2. *Ad defendendum regem et regnum*, and for that cause he gives them a sword.—And forasmuch as they derive their dignities, accompanied with all those honourable privileges, from the king, to deny to answer, being required thereto by the king, to such points as concern the safety of the king and quiet of the realm, is a high contempt and disobedience, accompanied with great ingratitude.

This denial is 'contra ligeantiam suam

(a) "It is surprising, that doctrine so reflecting on the law of England should escape from one of lord Coke's character. His language as attorney general at the Trials of the earls of Essex and Southampton implies the same obnoxious tenet. But in his third Institute he gives it as his opinion most decisively, that all Tortures of accused persons are contrary to our law; and to prove it cites lord chancellor Fortescue's famous book 'De laudibus legum Angliæ,' where he argues for a preference of our law to the civil law from the latter's allowance of torture. 3 Inst. 35. In the case of Felton, for the murder of the duke of Buckingham, the judges were unanimous, that Felton could not be tortured by the rack; for 'no such punishment,' said they, 'is known or allowed by our law.' 1 Rush. 638. 639. As to the instances of Torture collected by a most respectable writer of the present time, they only prove an irregularity of practice. Barrington Ant. Stat. 4th ed. 33. 88. 395. If torture was lawful, we should find rules to direct its application." Hargrave.

The use of Torture appears to have been continued in Scotland until the Revolution, at which time it was complained against with other grievances. See 2 M'Dowall's Instit. of the Laws of Scotland 660. The use of torture in Scotland is abolished by "An act for improving the two kingdoms." Stat. 7 Anne, c. 21, § 5. Concerning the use of Torture among the Romans see Tit. 8. de Questionibus:—See vol. 1, p. 505, note (c).

'debitam,' against the faith and allegiance of a person noble, due to the king, and which the law greatly esteems. And that this denying is against her faith and allegiance appears by the ancient oath of allegiance, which is imprinted in the heart of every subject, 'scil. ero verus et fidelis, et veritatem præstabo domino regi de vitâ et membro, et de terreno honore, ad vivendum et moriendum contra omnes gentes, &c. Et si cognoscam aut audiam de aliquo damno aut malo quod domino regi evenire poterit, quod non revelato,' &c. And this oath of allegiance is common to all subjects, as well those of the nobility as commonalty. But the law hath greater account of the faith and allegiance of a nobleman, than of one of the commons, for this, that the breach of their allegiance is more dangerous to the king and estate, for 'corruptio optimorum est pessima;' and for this reason, the countess by her allegiance was bound, without being demanded, to reveal to the king what she knows concerning the premises, upon which great mischief may happen to the king and the realm. But being commanded by the king to declare her knowledge, the denying of it doth greatly aggravate the offence. 'Qui contemnit præceptum, contemnit præcipientem.' Command and obedience are the ligament of government, and 'ligeantia est legis essentia;' for without allegiance and obedience, the law cannot proceed.

As to the second point, viz. concerning the manner of this proceeding. 1. Privative, it is not to fine and imprison, or inflict corporal punishment upon the countess; for fine and imprisonment ought to be assessed in some court judicially.\* 2. Positive, the fine is 'ad monendum,' or at the most 'ad minuendum;' it is 'ad instruendum non ad destruendum.'

This selected council is to express what punishment this offence justly deserved, if it be judicially proceeded within the Star-Chamber; for which reason this manner of proceeding is out of the mercy and grace of the king against this honourable lady, that she seeing her offence may submit herself to the king, without any punishment in any court judicially.

If Sentence shall be given in the Star-Chamber according to justice, you the lords shall be agents in it: but in this manner according to the mercy of the king, the king is only agent; the law hath put rules and limits to the justice of the king, but not unto his mercy, that is transcendent and without any limits of the law; 'et ideo processus iste est regalis plane et rege dignus.'

Also inasmuch as the allegiance and obedience of the subject, is the best flower in his imperial-garland. to the intent, that it may neither be blasted, nor impaired by this dangerous example, to the prejudice of his royal prerogative and posterity, this proceeding hath been thought necessary: and this is fortified by the

\* Vide the earl of Essex's case, 42 & 43 Eliz. 421.

precedent of the earl of Essex, against whom such proceedings were in this very place, anno 42 and 43 Eliz. reg.

And as to the last point it was resolved by all *quasi una voce*, that if a sentence should be given in the Star-Chamber judicially, she should be fined 20,000*l.* and imprisoned during the king's pleasure. Vide 12 Co. 69, &c.

'Hoc in terrorem, sed quære quid inde venit?'

SPEECH OF SIR FRANCIS BACON, from vol. iii. of his Works,\* 4to edit. p. 265.

Your lordships do observe the nature of this Charge: my lady of Shrewsbury, a lady wise, and that ought to know what duty requireth, is charged to have refused, and to have persisted in refusal to answer, and to be examined in a high cause of state, being examined by the council-table, which is a representative body of the king. The nature of the cause, upon which she was examined, is an essential point, which doth aggravate and increase this contempt and presumption; and therefore of necessity with that we must begin. How graciously and parent-like his majesty used the lady Arabella before she gave him cause of indignation, the world knoweth. My lady notwithstanding, extremely ill-advised, transacted the most weighty and binding part and action of her life, which is her marriage, without acquainting his majesty; which had been a neglect even to a mean parent; but being to our sovereign, and she standing so near to his majesty as she doth, and then choosing such a condition as it pleased her to choose, all parties laid together, how dangerous it was, my lady might have read it in the fortune of that house wherewith she is matched; for it was not unlike the case of Mr. Seymour's grandmother.—The king nevertheless so remembered he was a king, as he forgot not he was a kinsman, and placed her only 'sub libera custodia.' But now did my lady accumulate and heap up this offence with a far greater than the former, by seeking to withdraw herself out of the king's power into foreign parts.

That this flight or escape into foreign parts might have been seed of trouble to this state, is a matter whereof the conceit of a vulgar person is not uncapable. For although my lady should have put on a mind to continue her loyalty, as nature and duty did bind her; yet when she was in another sphere, she must have moved in the motion of that orb, and not of the planet itself: and God forbid the king's felicity should be so little, as he should not have envy and enviers enough in foreign parts. It is true, if any foreigner had wrought upon this occasion, I do not doubt but the intent would have been, as the prophet saith, 'they have conceived mischief, and brought forth a vain thing.' But yet your lordships know

\* In addition to the particulars collected by Mr. Barrington, see 3 Harl. Misc. 124, 130, 182, 537, and Birch's edition of Bacon's works, vol. 3, p. 259, 478.

that it is wisdom in princes, and it is a watch they owe to themselves and to their people, to stop the beginnings of evils, and not to despise them. Seneca saith well, 'non jam amplius levia sunt pericula, si levia videantur;' dangers cease to be light, because by despising they grow and gather strength.

And accordingly hath been the practice both of the wisest and stoutest princes to hold for matter pregnant of peril, to have any near them in blood to fly into foreign parts. Wherein I will not wander; but take the example of king Henry the seventh, a prince not unfit to be paralleled with his majesty. I mean not the particular of Perkin Warbeck, for he was but an idol or a disguise; but the example I mean, is that of the earl of Suffolk, whom the king extorted from Philip of Austria. The story is memorable, that Philip, after the death of Isabella, coming to take possession of his kingdom of Castile, which was but matrimonial to his father-in-law Ferdinand of Aragon, was cast by weather upon the coast of Weymouth, where the Italian story saith, king Henry used him in all things else as a prince, but in one thing as a prisoner; for he forced upon him a promise to restore the earl of Suffolk that was fled into Flanders. And yet this I note was in the 21st year of his reign, when the king had a goodly prince at man's estate, besides his daughters, nay, and the whole line of Clarence nearer in title; for that earl of Suffolk was descended of a sister of Edward the fourth. So far off did that king take his aim. To this action of so deep consequence, it appeareth, you, my lady of Shrewsbury, were privy, not upon foreign suspicions or strained inferences, but upon vehement presumptions, now clear and particular testimony, as hath been opened to you; so as the king had not only reason to examine you upon it, but to have proceeded with you upon it as for a great contempt; which if it be reserved for the present, your ladyship is to understand it aright, that it is not defect of proof, but abundance of grace that is the cause of this proceeding; and your ladyship shall do well to see into what danger you have brought yourself. All offences consist of the

fact which is open, and the intent which is secret. This fact of conspiring in the sight of this lady may bear a hard and gentler construction; if upon overmuch affection to your kinswoman, gentler; if upon practice or other end, harder. You must take heed how you enter into such actions; whereof if the hidden part be drawn unto that which is open, it may be your overthrow; which I speak not by way of charge, but by way of caution.

For that which you are properly charged with, you must know that all subjects, without distinction of degrees, owe to the king tribute and service, not only of their deed and hand, but of their knowledge and discovery. If there be any thing that imports the king's service, they ought themselves undemanded to impart it; much more if they be called and examined, whether it be of their own fact or of another's, they ought to make direct answer. Neither was there ever any subject brought in causes of estate to trial judicial, but first he passed examination; for examination is the entrance of justice in criminal causes; it is one of the eyes of the king's politic body; there are but two, information and examination; it may not be endured that one of the lights be put out by your example.

Your excuses are not worthy your own judgment; rash vows of lawful things are to be kept, but unlawful vows not; your own divines will tell you so. For your examples, they are some erroneous traditions. My lord of Pembroke spake somewhat that he was unlettered, and it was but when he was examined by one private counsellor, to whom he took exception. That of my lord Lumley is a fiction; the pre-eminences of nobility I would hold with to the last grain; but every day's experience is to the contrary. Nay, you may learn duty of lady Arabella herself, a lady of the blood, of an higher rank than yourself, who declining, and yet that but by request neither, to declare of your fact, yieldeth ingenuously to be examined of her own. I do not doubt but by this time you see both your own error, and the king's grace in proceeding with you in this manner.

95. Case of Mr. WILLIAM TALBOT, Hilary-Term, on an Information *ore tenus*, for maintaining a Power in the Pope to depose and kill Kings: 11 JAMES I. A. D. 1613.

[“In lord Bacon's Works there is a Speech by him as Attorney-General and prosecutor in this Case. 2 Bac. last 4to ed. 577. According to the title of the Speech, the cause of the prosecution appears to have been this. Mr. Talbot, who was a counsellor at law of Ireland, being asked, whether the doctrine of Suarez in respect to the deposing and killing of kings excommunicated was true or not, answered, that he submitted his opinion to the judgment of the Roman Catholic church. This answer he subscribed, and we

presume, that it was given on being examined before the Privy-Council; though that circumstance is not expressly stated by lord Bacon. What the Judgment of the Star-Chamber was, we do not find noticed.” Hargrave.]

SPEECH of SIR FRANCIS BACON, Attorney-General, the last day of Hilary-Term, 11 Jan. 1.

MY Lords; I brought before you the first sitting of this term the cause of Duels. But now this last sitting I shall bring before you

a cause concerning the greatest Duel which is in the Christian world, the duel and conflict between the lawful authority of sovereign kings, which is God's ordinance for the comfort of human society, and the swelling pride and usurpation of the see of Rome in *temporalibus*, tending altogether to anarchy and confusion. Wherein if this pretence in the pope of Rome, by cartels to make sovereign princes as the banditti, and to proscribe their lives, and to expose their kingdoms to prey; if these pretences, I say, and all persons that submit themselves to that part of the pope's power in the least degree, be not by all possible severity repressed and punished, the state of Christian kings will be no other than the ancient torment described by the poets in the hell of the heathen; a man sitting richly robed, solemnly attended, delicious fare, &c. with a sword hanging over his head, hanging by a small thread, ready every moment to be cut down by an accusing and accursed hand. Surely I had thought they had been the prerogatives of God alone, and of his secret judgments: 'solvam ciugula regum, I will loosen the girdles of kings;' or again, 'he poureth contempt upon princes;' or, 'I will give a king in my wrath and take him away again in my displeasure:' and the like. But if these be the claims of a mortal man, certainly they are but the mysteries of that person, which 'exalts himself above all that is called God,' 'supra omne quod dicitur Deus.' Note it well, not above God, though that in a sense be true, but 'above all that is called God;' that is, lawful kings and magistrates.

But, my lords, in this duel I find this Talbot, that is now before you, but a coward; for he hath given ground, he hath gone backward and forward; but in such a fashion, and with such interchange of repenting and relapsing, as I cannot tell whether it doth extenuate or aggravate his offence. If he shall more publicly in the face of the court fall and settle upon a right mind, I shall be glad of it; and he that would be against the king's mercy, I would he might need the king's mercy: but nevertheless the court will proceed by rules of justice. The offence, therefore, wherewith I charge this Talbot, prisoner at the bar, is this in brief and in effect: that he hath maintained and maintaineth under his hand a power in the pope for the deposing and murdering of kings. In what sort he doth this, when I come to the proper and particular charge, I will deliver it in his own words without pressing or straining.

But before I come to the particular charge of this man, I cannot proceed so coldly; but I must express unto your lordships the extreme and imminent danger wherein our dear and dread sovereign is, and in him we all, nay, all princes of both religions, for it is a common cause, do stand at this day, by the spreading and enforcing of this furious and pernicious opinion of the pope's temporal power; which though the modest sort would blanch with the distinction of *in ordine ad spiritualia*, yet that is but an illusion; for he that maketh the dis-

inction, will also make the case. This peril, though it be in itself notorious, yet because there is a kind of dullness, and almost a lethargy in this age, give me leave to set before you two glasses, such as certainly the like never met in one age; the glass of France and the glass of England. In that of France the tragedies acted and executed in two immediate kings; in the glass of England, the same, or more horrible, attempted likewise in a queen and king immediate, but ending in a happy deliverance.

In France, Henry 3, in the face of his army, before the walls of Paris, stabbed by a wretched Jacobine frier. Henry 4, a prince that the French do surname the Great, one that had been a saviour and redeemer of his country from infinite calamities, and a restorer of that monarchy to the ancient state and splendor, and a prince almost heroical, except it be in the point of revolt from religion, at a time when he was as it were to mount on horseback for the commanding of the greatest forces that of long time had been levied in France, this king likewise stilletted by a rascal votary, which had been enchanted and conjured for the purpose.

In England, queen Elizabeth, of blessed memory, a queen comparable and to be ranked with the greatest kings, oftentimes attempted by like votaries, Someville, Parry, Savage, and others, but still protected by the Watchman that slumbereth not. Again, our excellent sovereign king James, the sweetness and clemency of whose nature were enough to quench and mortify all malignity, and a king shielded and supported by posterity; yet this king in the chair of majesty, has vine and olive branches about him, attended by his nobles and third estate in parliament; ready in the twinkling of an eye, as if it had been a particular doomsday, to have been brought to ashes, dispersed to the four winds. I noted the last day my lord chief justice, when he spoke of this Powder Treason, he laboured for words; though they came from him with great efficacy, yet he truly confessed, and so must all men, that that treason is above the charge and report of any words whatsoever.

Now, my lords, I cannot let pass, but in these glasses which I speak of, besides the facts themselves and danger, to shew you two things: the one, the ways of God Almighty, which turneth the sword of Rome upon the kings that are the vassals of Rome, and over them gives it power; but protecteth those kings, which have not accepted the yoke of his tyranny, from the effects of his malice: the other, that, as I said at first, this is a common cause of princes: it involveth kings of both religions; and therefore his majesty did most worthily and prudently ring out the alarm-bell, to awake all other princes to think of it seriously and in time. But this is a miserable case the while, that these Roman soldiers do either thrust the spear into the sides of God's anointed, or at least they crown them with thorns; that is, piercing and pricking cares and fears, that they can never be quiet or secure of their lives or states. And as this peril is common to princes of both religions, so

princes of both religions have been likewise equally sensible of every injury that touched their temporals.

Thuanus reports in his story, that when the realm of France was interdicted by the violent proceedings of pope Julius the second, the king, otherwise noted for a moderate prince, caused coins of gold to be stamped with his own image, and this superscription, 'perdam nomen Baby-louis à terra.' Of which Thuanus saith, himself had seen divers pieces thereof. So as this catholic king was so much incensed at that time in respect of the pope's usurpation, as he did apply Babylon to Rome. Charles the 5th, emperor, who was accounted one of the pope's best sons, yet proceeded in matter temporal towards pope Clement with strange rigour; never regarding the pontificality, but kept him prisoner thirteen months in a pestilent prison; and was hardly dissuaded by his council from having sent him captive into Spain; and made sport with the threats of Frosberg the German, who wore a silk robe under his cassock, which he would shew in all companies; telling them that he carried it to strangle the pope with his own hands. As for Philip the fair, it is the ordinary example, how he brought pope Boniface the 8th to an ignominious end, dying mad and enraged; and how he stiled his rescript to the pope's bull, whereby he challenged his temporals, *sciat satuitas vestra*, not your beatitude, but your stultitude; a stile worthy to be continued in the like cases; for certainly that claim is mere folly and fury. As for native examples here, it is too long a field to enter into them. Never kings of any nation kept the partition-wall between temporal and spiritual better in times of greatest superstition. I report me to king Edw. 1, that set up so many crosses, and yet crossed that part of the pope's jurisdiction, no man more strongly. But these things have passed better pens and speeches: here I end them.

But now to come to the particular charge of this man, I must inform your lordships the occasion and nature of this offence. There hath been published lately to the world a work of Suarez a Portuguese, a professor in the university of Coimbra, a confident and daring writer, such an one as Tully describes in derision; 'nihil tam verens, quam ne dubitare aliqua de re videretur:' one that fears nothing but this, lest he should seem to doubt of any thing. A fellow that thinks with his magistrality and goose-quill to give laws and menages to crowns and sceptres. In this man's writing, this doctrine of deposing or murdering kings seems to come to a higher elevation than heretofore; and it is more arted and positived than in others. For in the passages which your lordships shall bear read anon, I find three assertions which run not in the vulgar track, but are such as wherewith mens ears, as I suppose, are not much acquainted. Whereof the first is, that the pope hath a superiority over kings, as subjects, to depose them; not only for spiritual crimes, as heresy and schism, but for faults of a

temporal nature: forasmuch as a tyrannical government tendeth ever to the destruction of souls. So by this position, kings of either religion are alike comprehended, and none exempted. The second, that after a sentence given by the pope, this writer hath defined of a series, or succession, or substitution of hangmen, or bourreaux, to be sure, lest an executioner should fail. For he saith, that when a king is sentenced by the pope to deprivation or death, the executioner who is first in place is he to whom the pope shall commit the authority, which may be a foreign prince, it may be a particular subject, it may be general; to the first undertaker. But if there be no direction or assignation in the sentence special nor general, then, *de jure*, it appertains to the next successor, a natural and pious opinion; for commonly they are sons, or brothers, or near of kin, all is one, so as the successor be apparent; and also that he be a catholic. But if he be doubtful, or that he be no catholic, then it devolves to the commonalty of the kingdom; so as he will be sure to have it done by one minister or other. The third is, he distinguisheth of two kinds of tyrants, a tyrant in title, and a tyrant in regiment; the tyrant in regiment cannot be resisted or killed without a sentence precedent by the pope; but a tyrant in title may be killed by any private man whatsoever. By which doctrine he hath put the judgment of kings titles, which I will undertake are never so clean but that some vain quarrel or exception may be made unto them, upon the fancy of every private man; and also couples the judgment and execution together, that he may judge him by a blow, without any other sentence.—Your lordships see what monstrous opinions these are, and how both these beasts, the beast with seven heads, and the beast with many heads, pope and people, are at once let in, and set upon the sacred persons of kings.

Now to go on with the narrative. There was an extract made of certain sentences and portions of this book, being of this nature that I have set forth, by a great prelate and counsellor, upon a just occasion; and there being some hollowness and hesitation in these matters, wherein it is a thing impious to doubt, discovered and perceived in Talbot, he was asked his opinion concerning these assertions, in the presence of the best: and afterwards they were delivered to him, that upon advice and *sedato animo*, he might declare himself. Whereupon, under his hand, he subscribes thus;

'May it please your honourable good lordships: concerning this doctrine of Suarez, I do perceive, by what I have read in this book, that the same doth concern matter of faith, the controversy growing upon exposition of scriptures and councils, wherein, being ignorant and not studied, I cannot take upon me to judge; but I do submit my opinion therein to the judgment of the catholic Roman church, as in all other points concerning faith I do. And for matter concerning my loyalty, I do acknowledge my sovereign liege lord king



' James, to be lawful and undoubted king of all the kingdoms of England, Scotland, and Ireland; and I will bear true faith and allegiance to his highness during my life.

WILLIAM TALBOT.'

My lords, upon these words I conceive Talbot hath committed a great offence, and such a one, as if he had entered into a voluntary and malicious publication of the like writing, it would have been too great an offence for the capacity of this court. But because it grew by a question asked by a council of estate, and so rather seemeth, in a favourable construction, to proceed from a kind of submission to answer, than from any malicious or insolent will; it was fit, according to the clemency of these times, to proceed in this manner before your lordships. And yet let the hearers take these things right; for certainly, if a man be required by the council to deliver his opinion whether king James be king or no; and he deliver his opinion that he is not, this is high treason. But I do not say that these words amount to that; and therefore let me open them truly to your lordships, and therein open also the understanding of the offender himself, how far they reach.

My lords, a man's allegiance must be independent and certain, and not dependent and conditional. Elizabeth Barton, that was called the holy maid of Kent, affirmed, that if king Henry 8, did not take Catharine of Spain again to his wife within a twelvemonth, he should be no king: and this was treason. For though this act be contingent and future, yet the preparing of the treason is present.—And in like manner, if a man should voluntarily publish or maintain, that whensoever a bull of deprivation shall come forth against the king, that from thenceforth he is no longer king; this is of like nature. But with this I do not charge you neither; but this is the true latitude of your words, that if the doctrine touching the killing of kings be matter of faith, then you submit yourself to the judgment of the catholic Roman church: so as now, to do you right, your allegiance doth not depend simply upon a sentence of the pope's deprivation against the king; but upon another point also, if these of doctrines be already, or shall be declared to be matter of faith. But, my lords, there is little won in

this: there may be some difference to the guilt of the party, but there is little to the danger of the king. For the same pope of Rome may, with the same breath, declare both. So as still, upon the matter, the king is made but tenant at will of his life and kingdoms, and the allegiance of his subjects is pinned upon the pope's acts. And certainly it is time to stop the current of this opinion of acknowledgment of the pope's power *in temporalibus*; or else it will sap and supplant the seat of kings. And let it not be mistaken, that Mr. Talbot's offence should be no more than the refusing the oath of allegiance. For it is one thing to be silent, and another thing to affirm. As for the point of matter of faith, or not of faith, to tell your lordships plain, it would astonish a man to see the gulph of this implied belief. Is nothing excepted from it? If a man should ask Mr. Talbot whether he do condemn murder, or adultery, or rape, or the doctrine of Mahomet, or of Arius, instead of Suarez; must the answer be with this exception, that if the question concern matter of faith, as no question it doth, for the moral law is matter of faith, that therein he will submit himself to what the church shall determine? And, no doubt, the murder of princes is more than simple murder. But to conclude, Talbot, I will do you this right, and I will not be reserved in this, but to declare that that is true; that you came afterwards to a better mind; wherein, if you had been constant, the king, out of his great goodness, was resolved not to have proceeded with you in course of justice: but then again you started aside like a broken bow. So that by your variety and vacillation you lost the acceptable time of the first grace, which was not to have convicted you.

Nay, I will go farther with you. Your last submission I conceive to be satisfactory and complete. But then it was too late; the king's honour was upon it; it was published and a day appointed for hearing. Yet what preparation that may be to the second grace of pardon, that I know not: but I know my lords, out of their accustomed favour, will admit you not only to your defence concerning that that hath been charged; but to extenuate your fault by any submission that now God shall put into your mind to make.

pendant, he most favours; with which of them he is most conversant, and to which he would confer the better-of-the-day, if in his power.

4. Whether he has communicated to any body, or any body has conferred with him concerning the nature and substance of his deposition in this cause; And if he answer in the affirmative, then let him declare with whom he so conferred, and what the discourse that passed between them. 5. Whether he came of his own accord, or by compulsion, to give his testimony in this cause. 6. Let him depose what he knows of the contents in, the 4th article of the libel put in, in this cause; or any part thereof: And in what month and year the earl of Essex attained to the full age of 18 years; and in what place and places the earl and the plaintiff, for the whole space of three years after such time, had society of bed and board, cohabited and lay together; and for how long together in each distinct place. 7. Let him likewise depose what he can say to the contents in the sixth article of the aforesaid libel; and whether he knows what perpetual and incurable impediment the earl did and does labour under; and let him express the nature and quality thereof, and when he knew it; and let him give the causes of such his knowledge in every circumstance. 8. Let him depose likewise what he can say to the contents in the 10th Article of the said libel: And of the time and place, and how often, and before whom the earl confessed and acknowledged, as in the said Article is contained and specified.

DEPOSITIONS upon the Articles of the Libel put in by the Lady Frances Howard, taken June 2, 1613.

Katharine Fines, daughter of Thomas lord Clinton, aged about 18 years, deposeth, that she hath known the lady Frances for about a year and a half, and the lord of Essex for above a year.—To the 1st, 2d, and 3d Article, cannot depose.—To the 4th Art. says, That from Midsummer last to All-hollantide, the earl of Essex and lady Frances remained and kept company together as man and wife; first in the countess of Leicester's house at Drayton in Warwickshire; and after at the earl's own house at Chartley in Staffordshire: And that for two of the nights they lodged at Drayton, being on a Sunday at night, and on a Monday at night, they to her knowledge lay together in one chamber; she seeing the earl go into the said chamber undressed and ready for bed; and she verily believes they did lie together in the same bed those two nights, for that she knows there was but one bed in the said chamber. That before Christmas last the said lady Frances lying at Salisbury-house in the Strand, the earl came thither and went into the chamber where lady Frances was in bed, and went to bed to her, and there was no other bed in that chamber; and this deponent heard the earl and lady Frances talking together a good part of that night.

Her DEPOSITIONS to the Interrogatories administered for the other side.

To the 1st Art. Speaks as to her birth and abode.—2d Art. That she is cousin-german to the lady Frances.—3d Art. That as to this cause, she favours the parties equally; that her conversation is most with the plaintiff; and that if it were in her power, she would give the decision according to right.—4th Art. Answers in the negative.—5th Art. That she was not compelled, but was made acquainted by some that she should be used as a Witness in this cause, and had notice given her when she should come.

The DEPOSITION of Elizabeth Raye, the daughter of William Raye, of Woodstock in Oxfordshire, gent. taken to the Libel: Aged above 20 years.

That she has known the lady Frances for above two years; and the earl of Essex for the same time.—To the 4th Art. That she served the lady Frances for above twelve months, and that shortly after she came to serve her, my lady went to my lord Knowles's house at Cawsam in Oxfordshire, where she stayed about a fortnight, and the lord Essex came thither to her, and laid in naked bed with the said lady Frances divers nights, as this deponent hath heard them report that attended the lady in her chamber: That the deponent herself at Drayton attending the said lady in her chamber, did see them in naked bed together as man and wife for divers nights; as they did likewise afterwards at Chartley, for above a quarter of a year, and at Michaelmas after that, at Durham-house at London.

Her Examination to the Interrogatories on the other side.

To the 1st Art. Speaks as to her abode at distinct times.—2d Art. Answers in the negative.—3d Art. That she favours both parties equally; converses with neither of them; and if in her power, would have right take place.—4th Art. Answers negatively.—5th Art. That she was requested to come to testify in this cause, but was not compelled by any process.—6th Art. Hath heard it reported that the earl of Essex was 29 years old in January last.—7th and 8th Art. No wise concern this deponent.

The DEPOSITION of Frances Britten, Widow, taken to the Libel.

That she is aged about 55 years, and hath known both the parties respectively from their infancy.—To the 4th Art. That the deponent having oftentimes occasion of business with the lady Frances, hath come to her since her marriage to the earl, and hath seen the earl and she dine and sup together as man and wife: That between Michaelmas and All-hollantide was three years, this deponent coming to lady Frances's lodging at Hampton-Court early in the morning, she was brought into the bed-chamber, where she did see them in naked bed.

said lady Frances hath been, and is fit and able to have copulation with a man, and such a one as may be carnally known; neither hath in this regard any impediment. VIII. Moreover, the said lady Frances remaineth, and is at this present a Virgin. Also at the time of the pretended Marriage, the said lady Frances was unacquainted with the Earl's want of ability and impediment, formerly mentioned. IX. And furthermore the said Earl, long before this suit commenced, hath very often, and at sundry times, confessed in good earnest, before Witnesses of good credit, and his friends and kinsfolks, that although he did his best endeavour, yet he never could; nor at this time can, have copulation with the said lady Frances, no not once. X. And lastly in regard of womanish modesty, the lady Frances hath concealed all the former matters, and had a purpose ever to conceal them, if she had not been forced, through false rumours of disobedience to the said Earl, to reveal them.—She requireth, since this pretended Matrimony is but in fact, and not in right, it may be pronounced, declared, and adjudged as none, and of none effect; and she may be quiet and free from all knots and bonds of the same, by your sentence and authority.

The Earl of Essex put in his ANSWER the 5th of July, 1614.

The 1st and 2nd he answereth affirmatively.—To the 3rd, he thinketh that at the time of his Marriage, he was full 14 years, and is now 22 and upwards; neither since hath had, or hath any sickness or impediment to hinder him, but that he might have had copulation with a woman, saving in the time of his sickness of the small pox, for two or three years after his marriage, which continued for a month or six weeks, and at another time, when he had a few fits of an ague.—To the 4th, he affirmeth, that for one year he divers times attempted; that the two other years, when he was willing, she shewed herself sometimes willing, but other times refused, and he lay in bed most commonly with her, but felt no motions or provocations.—To the 5th, he answereth, that he never carnally knew her, but found not any defect in himself, yet was not able to penetrate into her womb, nor enjoy her.—To the 6th, he believeth, that before and after the Marriage, he hath found an ability of body to know any other woman, and hath oftentimes felt motions and provocations of the flesh, tending to carnal copulation, but for perpetual and natural impediments, he knoweth not what the words mean; but that he hath lain by the lady Frances two or three years last past, and had no motion to know her, and he believes never shall.—To the 7th, he believeth not that the said lady Frances is a woman able and fit for carnal copulation, because he hath not found it.—To the 8th and 9th, he believeth them both to be true, and thinketh that once before some witnesses of credit, he did speak to this purpose, 'That he oftentimes had endeavoured carnally to

know her, but that he did not, nor could not.

Doubts conceived out of the Fact and Process in the Suit between the lady Frances Howard, and the Earl of Essex.

1. Whether the Libel be defective, especially in the 4th Article, where it is said, that 'Dominus Comes Essex pluribus et iteratis vicibus' (which may be verified and satisfied in two or three times) 'dictam dominam Franciscam ejus uxorem prætersam cognoscere tentavit,' &c.—2. Whether the Answer of my lord of Essex to the said 4th Article in that behalf, being but thus, 'That he did divers times attempt, &c.' be full, certain and sufficient.—3. Whether in this case my lord of Essex his oath 'cum 7 manu propinquorum' be not by law requisite, as well as my lady's.—4. Whether my lord of Essex would be inspected by physicians, to certify (so far as they can by art) the true cause and nature of the impediment.—5. Whether by triennial cohabitation, there having been no carnal copulation between them '(Impedimentum malefici' being accidental), 'presumatur præcessisse vel potius subsecutum fuisse matrimonium contractum et solemnizatum.—6. Whether they ought 'post præceptum judicis' (notwithstanding their triennial cohabitation before the suit begun) to cohabit together, 'saltem per aliquod temporis spatium arbitrio judicis moderandum,' for further trial, &c.'

DEPOSITIONS taken in the case of the Earl of Essex, and the Lady Howard.

The Oath taken by the Lady Frances Howard.

"That since the earl of Essex was 18 years of age, he and I have for the space of 3 years divers and sundry times lain together in naked bed all night. And at sundry of the said times the said earl hath purposely endeavoured and attempted to consummate marriage with me, and to have carnal copulation with me for procreation of children: and I have at such times, as the said earl hath attempted so to do, yielded myself willing to the same purpose. All which notwithstanding, I say and affirm upon my Oath, that the said earl never had carnal copulation with me, FRANCES HOWARD."

INTERROGATORIES administered to all Witnesses (excepting the earl and countess of Suffolk) produced, and examined on behalf of the earl of Essex, and who had been produced against him on the part of the lady Frances Howard, in a Suit brought by the said lady against the earl of Essex, for the Nullity of a pretended marriage.

1. Let each witness be interrogated, as to his age, birth, condition, and place of abode; and where he has chiefly resided for ten years last past; and how long he has known the parties contesting. 2. Whether he is a relation or kinsman of the party on whose behalf he is produced; and if so, in what degree of consanguinity. 3. Which of the parties, plaintiff or de-

fendant, he most favours; with which of them he is most conversant, and to which he would confer the better-of-the-day, if in his power.

4. Whether he has communicated to any body, or any body has conferred with him concerning the nature and substance of his deposition in this cause; And if he answer in the affirmative, then let him declare with whom he so conferred, and what the discourse that passed between them. 5. Whether he came of his own accord, or by compulsion, to give his testimony in this cause. 6. Let him depose what he knows of the contents in, the 4th article of the libel put in, in this cause; or any part thereof: And in what month and year the earl of Essex attained to the full age of 18 years; and in what place and places the earl and the plaintiff, for the whole space of three years after such time, had society of bed and board, cohabited and lay together; and for how long together in each distinct place. 7. Let him likewise depose what he can say to the contents in the sixth article of the aforesaid libel; and whether he knows what perpetual and incurable impediment the earl did and does labour under; and let him express the nature and quality thereof, and when he knew it; and let him give the causes of such his knowledge in every circumstance. 8. Let him depose likewise what he can say to the contents in the 10th Article of the said libel: And of the time and place, and how often, and before whom the earl confessed and acknowledged, as in the said Article is contained and specified.

DEPOSITIONS upon the Articles of the Libel put in by the Lady Frances Howard, taken June 2, 1613.

Katharine Fines, daughter of Thomas lord Clinton, aged about 18 years, deposes, that she hath known the lady Frances for about a year and a half, and the lord of Essex for above a year.—To the 1st, 2d, and 3d Article, cannot depose.—To the 4th Art. says, That from Midsummer last to All-hollantide, the earl of Essex and lady Frances remained and kept company together as man and wife; first in the countess of Leicester's house at Drayton in Warwickshire; and after at the earl's own house at Chartley in Staffordshire: And that for two of the nights they lodged at Drayton, being on a Sunday at night, and on a Monday at night, they to her knowledge lay together in one chamber; she seeing the earl go into the said chamber undressed and ready for bed; and she verily believes they did lie together in the same bed those two nights, for that she knows there was but one bed in the said chamber. That before Christmas last the said lady Frances lying at Salisbury-house in the Strand, the earl came thither and went into the chamber where lady Frances was in bed, and went to bed to her, and there was no other bed in that chamber; and this deponent heard the earl and lady Frances talking together a good part of that night,

Her DEPOSITIONS to the Interrogatories administered for the other side.

To the 1st Art. Speaks as to her birth and abode.—2d Art. That she is cousin-german to the lady Frances.—3d Art. That as to this cause, she favours the parties equally; that her conversation is most with the plaintiff; and that if it were in her power, she would give the decision according to right.—4th Art. Answers in the negative.—5th Art. That she was not compelled, but was made acquainted by some that she should be used as a Witness in this cause, and had notice given her when she should come.

The DEPOSITION of Elizabeth Raye, the daughter of William Raye, of Woodstock in Oxfordshire, gent. taken to the Libel: Aged above 20 years.

That she has known the lady Frances for above two years; and the earl of Essex for the same time.—To the 4th Art. That she served the lady Frances for above twelve months, and that shortly after she came to serve her, my lady went to my lord Knowles's house at Cawsam in Oxfordshire, where she stayed about a fortnight, and the lord Essex came thither to her, and laid in naked bed with the said lady Frances divers nights, as 'this deponent hath heard them report that attended the lady in her chamber: That the deponent herself at Drayton attending the said lady in her chamber, did see them in naked bed together as man and wife for divers nights; as they did likewise afterwards at Chartly, for above a quarter of a year, and at Michaelmas after that, at Durham-house at London.

Her Examination to the Interrogatories on the other side.

To the 1st Art. Speaks as to her abode at distinct times.—2d Art. Answers in the negative.—3d Art. That she favours both parties equally; converses with neither of them; and if in her power, would have right take place.—4th Art. Answers negatively.—5th Art. That she was requested to come to testify in this cause, but was not compelled by any process.—6th Art. Hath heard it reported that the earl of Essex was 24 years old in January last.—7th and 8th Art. No wise concern this deponent.

The DEPOSITION of Frances Britten, Widow, taken to the Libel.

That she is aged about 55 years, and hath known both the parties respectively from their infancy.—To the 4th Art. That the deponent having oftentimes occasion of business with the lady Frances, hath come to her since her marriage to the earl, and hath seen the earl and she dine and sup together as man and wife: That between Michaelmas and All-hollantido was three years, this deponent coming to lady Frances's lodging at Hampton-Court early in the morning, she was brought into the bed-chamber, where she did see them in naked bed

together; as likewise she did at lady Frances's lodging at Whitehall: That perceiving them in bed together, this deponent slept back, but the lady Katherine Howard her sister being there, called the deponent in, and then lady Frances slept out of her bed, and left the earl there: That this was on St. Valentine's-day, for that lady Katharine told the earl, that there was a Valentine for him. Cannot depose further, saying that when this deponent was at Hampton-court, as is before mentioned, after the earl and lady Frances were risen, the lady missing a pendant ruby that usually hung at the ring in her ear, desired this deponent to look for it in the bed. That thereupon she and the lady's chamber-maid turned down the bed-cloaths, and there they saw the places where the earl and lady had lain, but that there was such a distance between the two places, and such a hill between them, that this deponent is persuaded they did not touch one another that night.

Her Examination on the other Side.

To the 1st Art. Hath already spoken.—2d Art. Answers negatively.—3d Art. That she favours both parties equally, converses most with the plaintiff, but would have right take place in the decision of the cause, if in her power.—4th Art. Speaks negatively.—5th Art. Came at the request of lady Frances, but no ways compelled.—6th Art. Refers herself to her former deposition.—7th and 8th Art. Do not concern her to answer.

The DEPOSITION of Catherine Dandenell, one of the lady Frances's domestick servants; aged about 16 years.

Hath known the lady Frances about four years, and the earl for about three.—To the 4th Art. That about this time three years, lady Frances went to the lord chamberlain, her father's at Awdley-end in Essex, and remained there all that summer, whither the earl came to her and staid sometimes a week, sometimes a fortnight, and they conversed together as man and wife, and lay together many nights, to this deponent's knowledge, who had seen them so over night, and had found them together in naked bed in the morning; as she likewise hath, at the earl's house at Chartley; and at the lady Walsingham's at the Tilt-yard; and the countess of Leicester's at Drayton; and at Salisbury-house, and Durham-house.

Her Examination to the Interrogatories on the other Side.

To the 1st Art. Hath already spoke.—2d Art. Answers negatively.—3d Art. Most favoureth the lady Frances, and is most in her company, and wisheth the victory to go where she right is.—4th Art. Answers negatively.—5th Art. That she comes at the plaintiff's request, no ways compelled.—6th Art. Refers herself to her former deposition.—7th and 8th Art. Do not concern her to answer.

The DEPOSITION of Anne Jasonim, one of the domestick servants of lady Frances; aged about 24 years.

Hath known the parties in difference between three and four years.—To the 4th Art. That for all such time she hath attended on lady Frances as her chamber-maid, and that all along until within these 12 months last, the earl hath cohabited at bed and board with the said lady Frances at White-hall, Chartley, Tilt-yard, and other places: Hath often seen them lie together naked in one and the same bed, and at Salisbury-house in the Strand, since Christmas last.

In her examination on the opposite side, deposeth as the last witness did.

The DEPOSITION of Thomas Bamforde, yeoman; aged about 40 years.

Hath known the lady Francis by sight about five years, and the earl by sight about three years.—To the 1st, 2d and 3d Art. Cannot depose.—4th Art. Deposeth, That in 1611, about the latter end of the summer, the earl of Essex and lady Frances were at the lady Corbett's house in Derbyshire, whom the deponent then did and still doth serve; that they continued there about a week, and dined or supped together in the said house, and lay together in one and the same naked bed, as it was commonly thought amongst the servants of the said house.

His Examination on the other Side.

To the 1st Art. Hath already spoken. 2d Art. Answers negatively. 3d Art. That he favours both sides equally, converses with neither, and wisheth the victory in this suit may go according as the equity of the cause requireth. 4th Art. Answers negatively. 5th Art. Came on request of lady Frances, no ways compelled. 6th Art. Refers himself to his former deposition. 7th and 8th Art. Not concerned to answer.

The DEPOSITION of George Powell, gent. aged about 36 years.

Hath known the parties in difference about three years. To the 1st, 2d and 3d Art. Cannot depose. 4th Art. Says, That he served the earl and lady Frances from May 1609, to this time, and still doth attend on lady Frances. During all which time they did cohabit and keep company together as man and wife, sometimes at Whitehall, Greenwich, and in their progress attending the king and queen, at Kensington, all the summer 1611 at Chartley, at Durham-house, Awdley-end, and other places. That their cohabitation together continued till the end of the year 1612, and that it was commonly reported amongst the servants of the house, that they did lie together in one and the same naked bed. That this deponent hath from time to time seen their servants put them to bed together; and that he hath come to their chamber to know their commands, and it was

told him that they were in bed together. That in June or July 1609, this deponent being called into their lodging-chamber at Greenwich in a morning, saw them in naked bed together.

His Examination on the other Side.

To the 1st Art. Hath spoken already. 2d Art. Answers negatively. 3d Art. Favours both parties equally, is most conversant with lady Frances, his employment being to wait on her, and wishes that right may take place.—4th Art. Answers negatively: 5th Art. Comes on request of lady Frances to give his testimony, and no ways compelled thereto. 6th Art. Refers to his former deposition. 7th and 8th Art. Concern not this deponent to answer.

The DEPOSITION of William Power, of London, merchant; aged near 60 years.

Hath known lady Frances about ten years, and the earl of Essex for about seven. To the 1st Art. Says, The earl and lady Frances were in Christmas time, other seven years since last Christmas, or seven come Christmas again, to his knowledge married together in the chapel at White-hall, for that this deponent was present at the marriage. 2d and 3d Art. Cannot depose any thing certainly. 4th Art. Says, That this time two years they cohabited as man and wife, and kept house together at the earl's house at Chartley. That this deponent was there about four months, and hath divers times been in their lodging-chamber in a morning, and hath seen them in naked bed together.

His Examination on the other side.

To the 1st Art. Hath already spoken. 2d Art. Answers negatively. 3d Art. Favoureth both the parties in this suit alike, is most in the plaintiff's company: And wisheth they were come to an agreement. 4th Art. Answers negatively. 5th Art. That he came on no compulsion, but was requested by sir William Button, on behalf of the lady Frances. 6th Art. Refers himself to his depositions made to the 4th Art. of the libel. 7th and 8th Art. Not concerned to answer the same.

The DEPOSITION of Benjamin Orwell, one of the domestick servants of the lady Frances; aged above 17 years.

Hath known the parties in difference for seven years. To the 1st 2d and 3d Art. Cannot depose. 4th Art. Saith, That for these two years last past, the deponent hath continually attended on lady Frances at Kensington, Chartley, the lady Corbett's, countess of Leicester's, lord Knowles's; and in all those places the earl and lady Frances cohabited together as man and wife, and, as it was said by their attendants, did commonly lie together in the same bed naked. Hath seen the earl come out of the lady's lodging-chamber in his pantafoles, having nothing on him but his shirt: and verily believes he at such times came out of bed from the said lady Frances.

His Examination on the other-side.

To the 1st Art. Hath spoken already. 2d

Art. Answers negatively. 3d Art. That touching this suit, he favoureth the parties alike, is most in company with the plaintiff; and if it were in him, he would bestow the victory where the most right is. 4th Art. Answers negatively. 5th Art. Answers, He was desired by sir Wm. Button, on the plaintiff's behalf, to come and testify in this cause, and is not compelled. 6th Art. Refers to his former deposition. 7th and 8th Art. Not concerned to answer.

The DEPOSITION of the right hon. Thomas, earl of Suffolk, Lord High Chamberlain of the Houshold, taken the 10th of June, 1613, aged about 57 years.

To 1st Art. Says, It is true, for he was present at the solemnization of the pretended marriage. 2d Art. That lady Frances was above 13 years of age at the time of the said marriage, and is now above 22 years old. 3d Art. That at the time of the marriage the earl was above 14 years of age, as the deponent hath heard his friends, who were likely to know his age, report; and is now above 22 years old. That to that time and since, the earl was, in the judgment of men, of good health and strength of body, except at two several times, when he was sick of the small-pox and an ague; and was likely to be able to have the carnal knowledge of a woman, for any thing this deponent could judge. 4th Art. Knows that after the earl was come to the age of 18 years, he and lady Frances kept company, and lay together as man and wife, for three whole years: hath seen them in bed together sometimes. 5th and 6th Art. That notwithstanding the premises, the earl never had any carnal knowledge of lady Frances, nor never could, as the earl hath confessed to the deponent. 7th 8th and 9th Art. Believes these Articles to be true. 10th Art. That the earl, in this deponent's hearing, confessed divers times, in several companies, that he hath done his endeavour to have carnal knowledge of lady Frances, and yet never could. 11th Art. Believes this article to be true. 12th 13th 14th and 15th Art. Refers himself to the register of the court of delegates. 16th Art. Says his above Depositions are true.

The DEPOSITION of the right hon. Katherine countess of Suffolk; aged about 47 years.

To 1st, 2d, 3d Art. Deposeth they are true. 4th, 5th, 6th, 7th Art. Believes to be true. 8th Art. Deposeth to be true of her knowledge. 9th Art. Believes to be true. 10th Art. Hath heard it reported, and believes it to be true. 11th Art. Believes the same to be true. 14th Art. &c. Concludes as the earl of Suffolk.

The Lord Archbishop of Canterbury's REASONS against the Nullity.

Inasmuch as we firmly believe, that the Scripture doth directly, or by consequence, contain in it sufficient matter to decide all controversies, especially in things appertaining

to the church, as that Marriage among Christians can be no less accounted than a sacred thing, as being instituted by God himself in Paradise, honoured by the presence of our Saviour himself, declared by St. Paul to be a sign of the spiritual conjunctions between Christ and the Church:—I would be glad to know, and by what text of scripture, either by the Old or New Testament, a man may have a warrant to make a nullity of a marriage solemnly celebrated, *propter maleficium versus hanc*.—Which I do the rather ask, because I find warrant expressly in the scriptures to make a nullity of a marriage *propter frigiditatem*, by the words of our Saviour, Mat. xix. 12. 'For there be some chaste, or Eunuchs, which are so born of their mothers' belly, and there be some which are made chaste of men, and there be some which have made themselves chaste for the kingdom of heaven.'—I would also know gladly, what antient father amongst the Greeks or Latins, by occasion of interpretation of scripture, or any disputation, hath mentioned *maleficium versus hanc*.—The like I demand touching antient councils, either general or provincial, and concerning stories ecclesiastical, whether any such matter be to be found in them.—If for aught that appeareth never mention was made of this, till Hircanus, Rhemisis episcopus, who lived 400 years after Christ; it may well be conceived that this was a concomitant of darkness or popish superstition, which about that time grew to so great an height (God permitting them) that punishment might fall upon the children of unbelief.—But since the Light of the Gospel is now in so great a measure broken forth again, why should not I hope that those, who have embraced the gospel, should be free from this *maleficium*; especially since amongst a million of men in our age, there is but one found in all our country, who is clearly and evidently known to be troubled with the same? And if there should be any which should seem to be molested, we are taught to use two remedies, the one temporal physic, the other eternal.—For the first, our Saviour said, 'Hoc genus demoniorum non eicitur, nisi per orationem et jejunium;' and St. Peter speaking of the devil, 'Cui resistite firmè in fide;' and the Canonists themselves prescribe alms, fasting and prayer to be used in this case; but that they join supplication and their exorcisms therunto, and for corporeal medicine to be applied therewith as against a disease: so is the judgment of our late divines, whether they speak of *maleficium* or not. Now admit the earl of Essex might be imagined to be troubled with *maleficium versus hanc*; I demand what alms hath been given, what fasting hath been used, and what prayers have been poured forth to appease the wrath of God towards him or his wife; or what physic hath been taken, or medicine hath been applied for three years together? Not one of these things; but the first hearing must be to pronounce a nullity in the marriage, of which declaration we know the he-

ginning, but no mortal man's wit can foresee the end, either in his person, or in the example.

Then the Archbishop, for confirmation of his Opinion, shewed the Testimony of Melancthon, Pezelius, Hemingius, Polanus, Arcularius, Beza, Zanchius.

*Judicium Philippi Melancthonis de Divortii ex Impotentia.*

Personæ quæ non sunt idoneæ ad commixtionem conjugalem nequaquam sunt conjuges, sed cum explorata est frigiditas, Judex pronunciet illas personas liberas esse. Nec fit tunc divortium, quia non erat conjugium, juxta dictum Mat. 19. sed fit declaratio, ut alii sciant, illam societatem non esse conjugium, et personæ quæ habet naturæ vires integras, concedi aliam felicioris copulationem legitimam. Sed ad explorandum frigiditatem Jura tempus constituunt, si res dubia est, ne ante triennium fiat sejunction. Eodem modo pronunciant de iis in quibus natura ita læsa est fascino aut veneficio, ut ope medica sanari non possit, si toto triennio frustra tentata est medicatio.—Tanta autem est virtus aliquarum mulierum, ut occultent imbecillitatem virorum, sicuti viri doctissimi Simonis Grynei soror narravit, se, mortua prima conjugē, duxisse viduam virginem, quæ undecim annos nupta fuerit viro frigido, nec unquam ulli, ante mortem viri, hanc rem patefecit. Hæc Melancthon in locis: Loco de conjugio, quæ Christopherus Pezelius suis in Melancthonis examen explicationibus inseruit, et eis adjecit hanc annotationem. Impotentia alia naturalis, alia accidentalis est. Naturalis, cum quis natura non est idoneus ad commixtionem conjugalem. Accidental, cum quis est castratus, aut veneficio corruptus. Rursus quæ ex veneficio accidit impotentia, aut curari potest medicamentis, aut est perpetua. Ex his distinctionibus sumitur explicatio questionis, an, et quomodo impotentia sit causa divortii. Nam inter impotentes, non potest constare conjugium, quia deest causa sufficiens et finalis. Primum, si persona illa quæ sana est, decepta fuit, et ignorans duxit impotentem, non igitur potuit esse consensus, qui est causa efficiens Matrimonii. Secundò, duplex est finis conjugii; unus est generatio sobolis, sicut dicitur, Crescite et multiplicamini: Alter finis est, Vitatio confusionis libidinum, juxta dictum; Vitandæ fornicationis causa unusquisque habeat uxorem, Hæc Pezelius 2 parte explicat. In Examen Melancthon.

*In eadem Causa Hemingii Judicium.*

Inhabilitas corporum ad usum matrimonii divortii causa est, et nonnunquam fascino et veneficio adeo inhabiles redduntur viri, ut nunquam sanari possint. Sed plura sunt judicii perpendenda, antequam divortii sententiam ferat. Primum, an impotentia præcesserit Nuptias. Secundum, an sit subsecuta Nuptias. Tertium, an sit curabilis. Quartum, an ejus rei mulier conscia fuerit ante Nuptias. Si præcesserit Nuptias, potest liberari persona sana divortium petens, non enim fuit verum conjugium, siquidem non legitime consentiunt, cum unus fallit,

alter errat, fallit impotens, errat potens. Cum ergo Deus nec fallaciam nec errorem probat, non est dicendus eos conjunctis. Proinde Judex, si intellexerit ex probationibus incusabile esse vitium, mox declarabit suo testimonio, non fuisse Matrimonium; verum si spes sit curationis, triennium statuatur, in quo patienter expectetur curatio; quæ si frustra tentata fuerit, Judex pronuntiabit Conjugium nullum fuisse.—Si subsecutum est vitium post nuptias et complexum maritalem conjugum, nullo pacto permittendum est divortium: fortuna enim afflicta, et absit culpa, patienter in conjugio ferenda est. Si alter fuerit conscius infirmitatis alterius ante nuptias, cogantur simul habitare, et alia officia sibi mutuo præstare: Nam persona conscia vitii alterius absque dubio fraudem meditata est; quæ fraus non debet illi prodere, si postea divortium petat. Hæc Hemingius libello de Conjugio, Repudio, et Divortio.

*Polani professoris Theo. nuper in Academia Basiliensi Judicium.*

Conjugium inire possunt, qui non sunt natura vel arte Spadones, aut quibus natura non est læsa fascino aut veneficio. Tales enim personæ nequaquam fiunt conjuges. Ideo etiam nuptiis celebratis, cum trienni spatium explorata est spadonis frigiditas, aut toto triennio tentata est naturæ læsæ medicatio, Judex pronuntiare potest illas personas liberas esse. Polanus lib. 10. Syntag. cap. 53.

• *Arcularii nuper professoris Theol. in Academia Marpurgensi Judicium.*

Inter personas quæ propter frigiditatem aliudve naturæ vitium ad usum conjugii sunt ineptæ, cum non sit conjugium, teste Christo Mat. 19. divortium hic locum habere poterit. Si quam igitur personam talem alteri jungi contingat, Judex explorata frigiditate aut naturæ vitio, utramque personam liberam pronuntiabit. Porro ad explorandam frigiditatem Jura triennii tempus præscribunt, præsertim si res dubia sit. Idem judicium est de eis quorum natura vel fascino vel veneficio ita sit læsa, ut ad conjugii usum reddantur inepti; et omnem medicorum operam intra triennium inanem fuerint experti. Hæc Arcularius in arca fœderis, cap. 28.

*Theodori Beze Judicium.*

Sponsalia cum personis paralyti immedicabili, quæ corpus prorsus enervavit, frigiditate insanabili, genitalium partium privatione, vel adeo insigni læsione, ut perpetua coitus impotentia necessario consequetur, affectis contracta prorsus inutilia sunt, cum ad matrimonium a Deo vocati videri non possint, qui fidem in sponsalibus datam præstare, naturali objecto vitio nequeunt. Quod si sponsalibus factis, conjugio tamen nondum re ipsa consummato, ejusmodi malum supervenerit, sentio ejusmodi sponsalia, veluti Deo ipso jubente, dirimenda; ut quid objecto perpetuo impedimento, palam demonstrat, sibi istiusmodi sponsalia non pla-

cere. Beza lib. de Divort. et Repud. pag. 91. Genev. 1591. impress.—Atque hanc suam doctrinam Beza multis ex sacras scripturæ testimoniis probat: sed tantum pag. 91. e duas cautiones adjecit. Primum, si frigidus postea convaleuit, repetere priorem uxorem, errore, viz. Separatam oportet, etiamsi alteri postea esset conjuncta: secundam cautionem, recte omnino in istiusmodi controversiis constitutum est, (ne quid videlicet fieret, quod postea mutari sine magno offendiculo non posset) ut triennium saltem ab ipso copulationis, i. e. ductæ uxoris die expectaretur, priusquam isti morbi insanabiles esse, et sponsalia conjugium dirimenda pronuntiarentur. Hoc autem omnino de his vitiiis accipiendum est quæ per se non patent. Nam alioqui, ut in executione, vel siquis naturæ vitio, testibus aut genitali membro careat, quorsum ullum temporis intervallum?

*Zanchii Judicium.*

Quemadmodum Beza, sic nec Zanchius impotentiam ex veneficio attiget, sed tantum docet, quosdam esse casus, quibus matrimonia in ipsa Ecclesia benedicta nulla sint, et subinde hæc exempla subiungit. Si cum eo contrahitur, qui vir non erat, sed spado, aut propter perpetuum ei insanabilem morbum, officium conjugii præstare nullo modo potest. Hæc Zanchius lib. 4. de op. Dei, cap. 3. sed illam nec scripturæ testimoniis nec rationibus confirmat.

To these Arguments of the Archbishop, the king vouchsafed to give an Answer himself which was as follows:

*The King's Answer.*

To the first article, that the Scripture doth directly or by consequence contain sufficient matter to decide all controversies, especially in this appertaining to the church: this in my opinion is preposterous, and one of the puritans arguments, without a better distinction or explanation.—For the orthodox proposition is, that the Scripture doth directly, or by consequence, contain in it sufficient matter to decide all controversies in points of faith and salvation, of which sort a nullity of marriage cannot be accounted for one; and therefore your consequence upon the former proposition must fail.—For further satisfaction of your following question (I say) your second question doth answer it: if there be warrant in Scripture for pronouncing a nullity *propter frigiditatem*, then all the means which may make him *frigidus versus hanc*, must be comprehended therein; for why doth the church justly condemn the marriage of a man with his sister's daughters, or the marriage of two sisters, but *ut paritate rationis*, for none of them are *in terminis* prohibited by the Scripture? Only the conclusion gathered *à paritate rationis*. For if it be not lawful to marry the father's wife, because thereby you discover your father's shame; nor his sister, because she is his kinswoman; nor your own sister, because thereby you discover your father's and your mother's shame: it can no more be lawful to marry your sister's daughter, for thereby also you discover



your own shame; as also the same reason serves for ascending or descending in points of consanguinity, *quia par est ratio*.—The like is in this case; for although Christ spake only of three sorts of eunuchs, yet ‘*Ratio est quia non potest esse copulatio inter eunuchum et mulierem*,’ and therefore St. Paul, 1 Cor. 7. telleth us clearly, that it is not ‘*Conjugium sine copulatione*.’ I conclude, therefore, a *paritate rationis*, that Christ did comprehend under these three sorts all inability which doth perpetually hinder ‘*copulationem versus hanc*,’ whether it be natural or accidental; for what difference is there between cutting off the hand, and being made impotent thereof? ‘*Amputatio et mutilatio membri*,’ is all one in the civil law; and that is a like defrauding of the woman, when either he who is to be her husband is gelded, or when the use of that member towards her is by any unlawful means taken from him. Neither is it any way needful to crave the particular warrant of Scripture for a nullity, no more than of warrant in this place for any nullity at all; for Christ doth not directly say, that a marriage so made shall be nullified, neither doth he teach us what form or process shall be used in that, neither makes he mention of the triennial probation, no more than he forbiddeth marriage within the fourth degree, without leave obtained of the bishop of the diocese. It is then sufficient to all moderate Christians to be taught out of the Word of God, that marriage is *nulla sine copulatione*; and these words, *quos Deus conjunxit*, are never found in Scripture, where *et erunt ei* doth not proceed, viz. they two shall be one flesh.—But whether the impediment be universal, or *versus hanc* only; or whether the fault thereof hath been born with him, or done to him by violence, or fallen unto him by disease, or disproportion, or inaptitude betwixt the parties, or unnatural practices, that is ever *par ratio*, he is *eunuchus versus hanc et omnes alias*, seeing to him only was she married.—Then *paritate rationis*, such nullities are grounded upon the aforesaid warrant of Scripture, neither had Christ any occasion to speak of the Jews marriage concerning *maleficium versus hanc*; for though it be apparent that God made king Abimelech and his servants unable to abuse Sarah, Abraham’s wife, and so was he made by God himself *eunuchus versus hanc*, and that it be not improbable that the devil being God’s ape, should imitate God’s works, by his filthy witchcraft, by making such as God will permit him, unable *versus hanc*: howbeit, it is very probable that it was long after that time the devil put that trick upon the earth.—As for the third and fourth Questions, what mention the Fathers and Councils do make of *maleficium versus hanc*, I answer, that it may be (if they were well searched) that either something to this purpose in them, or at the least *aliquid analogum*, with a *paritate rationis*, or by consequence, may serve to decide the question.—But leaving this to search, my main Answer is, That we must distinguish oft-times: for in all the first ages,

as long as persecution lay heavy upon the church, and before the empire became Christian, the church did not meddle with anything, which drew a consequence after it of possessions, or inheritance, as marriage doth; nay, even divers hundred years after the conversion of the emperors, the judgment and decision of all such questions did still remain *in foro civili*, till the popedom began to wax great, and assume, or rather usurp to herself a supreme and independent judicatory in all ecclesiastical causes: and therefore the Fathers and Councils had no occasion to make mention of that which was not *de prefori* at that time.—And besides, that is an evil argument to say such a thing is not lawful, because the Fathers and Councils made no mention of it: for you know much better than I, divers and many points betwixt the Papists and us are never mentioned by the Fathers, because they could never have dreamed that such questions would arise; and therefore are the Fathers exact only in such questions as were agitated upon the state at that time, as ‘*De Trinitate, de duobus in Christo Naturis*,’ and such like: and therefore it is sufficient that there can be nothing found which may justly be understood to contradict this opinion.—And it is very probable (as I said before) that this trick of *maleficium* had not then been put in practice in the world, and therefore not known or mentioned by them; for why may not the Devil as well find out new tricks of witchcraft (when God will permit him) as he did daily new sects of heresies? For his malice can never end until the end of times.—To the fifth Argument, my former answer doth also serve; for till the 400th year after Christ, it may be that devilish trick came never to be discovered. You know the old Proverb, *ex malis moribus bona leges*: and it is not unlikely that the time of darkness gave the Devil occasion to devise such new tricks (look my Dæmonology); and yet was that law for which you cite Hircanus, by Charles the Great, who in many great points (as you know) had so great light, as I do scarce term this time a time of blindness: but howsoever the darkness was in points of superstition, I will still maintain (as I have ever done) that for matters of order and policy, all the world shall never be able to find out any so good and so old an order of argument to be put in the place of it: in sign whereof there is no well governed commonwealth in the Christian world, wherein the common-law is not received to judge in questions of that nature; and it is certain, that this question now in hand, is only a question of order and policy: for the ground of this question, that the essential point of matrimony cannot be accomplished *sine copula*, is warranted by express Scripture, and confessed by yourself.—To your sixth Argument (or rather hope) I fear that hope shall prove contrary to faith; for as sure as God is, there be Devils, and some Devils must have some power, and their power is in this world, neither are the Elect exempted from this power; Job

was not, Paul was not: Christ said to all his disciples, 'Cribaverit vos Sathanas;' and if the Devil hath any power, it is over the flesh, rather over the filthiest and most sinful part thereof, whereunto original sin is soldered; as God, before and under the law, to show *officium* of purging man's original sin, ordained the *præputium* of the foreskin: and to exempt this of our profession from the power of witchcraft, is a paradox never yet maintained by any learned or wise man.—That the Devil's power is not so universal against us, that I freely confess; but that it is utterly restrained *quoad nos*, how was then a minister of Geneva bewitched to death, and were the witches daily punished by our law? If they can harm none but the papists, we are too charitable for avenging of them only.—Satan is permitted to punish man, as well for his breach of the second as of the first table, and thereof are we no less guilty than the papists are; and if the power of witchcraft may reach to our life, much more to a member, not so governed by the fancy, wherein the Devil hath his principal operation; and he may so estrange the husband's affection towards the wife, as he cannot be able to perform that duty to her; for that is a common thing in many men's natures, that they cannot do that thing but where they love, nor fight but where they are angry. God keep us therefore from putting the trial of our profession upon miracles; let the miracle-mongers live by their own trade.—To the seventh Argument touching Remedies, what do you know, whether both parties, or either of them hath used these means of remedy or not? And that special remedy should be used publicly, for there I can see no necessity; for 'Non interest reipub. nec eccles.' and private persons are commanded to do their fastings and alms, secretly and in private: no such cure also is likely to succeed well, except the parties own hearts and desires be set thereupon.—And as for your Conclusion upon your *incommodum*, whether upon his person or the example, I can see none in either, so as to the couple, between them marriage was never accomplished truly; they will peradventure both of them by the declaration of the nullity be capable to accomplish marriage with others, which they could never do between themselves; wherein they may have the satisfaction of their hearts, and enjoy the blessing of procreation of children.—And as for the Example, the law shall be fulfilled with due administration of justice, which cannot prove for an example or precedent of a counterfeit nullity hereafter, 'Auctoritas facti,' or rather 'non facti, sed luce clarior' in this case, besides the many probations and confessions of the parties which have been taken in this process: whereas by the contrary, they shall be forcibly kept together, but never their persons or affections, and they still be forced to live in perpetual scandal, or misery, or both; and what such a kind of forced continency may avail, the monks continency may teach us: and for a precedent in time to come, that reacheth no

VOL. II.

further, than to open a way of lawful relief, to any person who shall chance to be distressed in that sort.—And for legal Doubts, they concern none of your calling; if your conscience be resolved in points of divinity, that is your part to give your consent to the nullity, and let the lawyers take the burden of making that firm; and as for the triennial probation, I hope no man can be so blind as to make a doubt, whether that be taken before or after the suit begun; and in conclusion of divine solution of this question proved clearly, that this resolution of this doubt, howsoever it was in blindness as you think, that is now proved in the greatest time of light and purity of the profession of the gospel.—And for your Extract upon the late Divines Opinions upon this Question, I cannot guess what your intent was in sending them to me, for they all agree in terms with my opinion: but there is such a thing as 'maleficium, et maleficiale versus hanc;' and your very interlude passages prove that clearest: and for that advice concerning the remedies, that is but 'consilium non decretum,' not imposing a necessity: but is to be used by discretion, as occasion shall prove and require it.—To conclude then, if this may satisfy your doubts, I will end with our Saviour's words to St. Peter, 'Cum conversus fueris, confirma fratres tuos;' for on my conscience, all the doubts I have yet seen, are nothing but 'nodos in scirpo querere.'"

Notwithstanding the Confessions in the Earl's Answer, the Court thought it necessary to satisfy themselves of the truth by the inspection of midwives and matrons. Whereupon it was decreed by the Court, that six midwives of the best note, and ten other noble matrons, out of which they themselves would chuse two midwives, and four matrons, should inspect the Countess, the Entry whereof is as follows:

"Tunc Domini, viz. Arch. Cant. Lond. Eliens. Covent. et Licht. Cæsar, Parry, Donne, Bennet, Edwards, habita inter eos privata deliberatione, ex numero matronarum predicta elegerunt; the lady Mary Tirwhit, wife of sir Philip Tirwhit, bart.; lady Alice Carew, wife of sir Matthew Carew; lady Dalison, wife of sir Roger Dalison; lady Anne Waller, widow. Ex ex obstetricum numero, &c. Margaritam Mercer et Christianam Chest. Et assignarunt procuratorem dictæ dominæ Franciscæ ad sistendum hujusmodi inspectrices coram reverendo Patre Episc. London. Cæsar, Donne, &c. inter cæteros nominat. isto die inter horas quintam & sextam post meridiem, juramentum in hac parte subituras, atque inspectione facta fideliter relaturas earum judicium juxta earum scientiam et experientiam, &c. coram dictis Dominis delegatis, sicut præfertur, assignatis quam cito fieri possit ante horam quartam et sextam post meridiem diei Jovis proxime, alioquin ad comparend. hoc in loco, coram Commissariis dicto die Jovis inter horas quartam et sextam post meridiem ejusdem diei, earum judicium hanc in parte tunc relaturas, et ad

interessendum hora et loco respective predictis, ad videndum inspectrices predictas juramento in hac parte onerari; nec non quibuscunque aliis diebus hora et loco predictos dominos Commissarios nominat. dictis inspectricibus, ad referendum earam judicium assignat."

Accordingly between the hours of that day aforesaid, were presented before the delegates the said ladies, and sworn *ad inquirend. et inspicieud.* 1. Whether the lady Frances were a woman fit and apt for carnal copulation without any defect, which might disable her for that purpose. 2. Whether she were a virgin carnally unknown by any man. Whereupon they went from the presence of the Commissioners into the next room where the countess was, who was left alone with the said ladies.\* After some convenient time they returned, and delivered in their Report under their hands; all persons being removed except the Register, that so the ladies and midwives might more freely deliver their secret Reasons, &c. which were not fit to be inserted into the Record; and this is in sum their Report:

1. That they believe the lady Frances fitted with abilities to have carnal copulation, and apt to have children. 2. That she is a virgin uncorrupted.

And to corroborate all this, the countess in open court produced seven women of her consanguinity, that inasmuch as the truth was best known to herself, she might by virtue of her Oath discover the same, and her oath should be no farther regarded than as it was confirmed by the oath of her kinswomen. In order hereto the Countess took an oath, That since the earl was 18 years old, for three years he and she had lain in bed, &c. as in the Libel.

And then the seven noble women, viz. Katharine countess of Suffolk, Frances countess of Kildare, Elizabeth lady Walden, Eliz. lady Knevet, lady Katharine Thynne, Mrs. Katharine Fiennes, Mrs. Dorothy Neale, being sworn, deposed that they believed the same was true; and in particular because, 1. That after they were both grown to years of puberty, they both endeavoured copulation. 2. That notwithstanding, on her part, as appeared by the inspectors, she remained a Virgin uncorrupted. 3. That the Earl had judicially sworn, That he

\* Some Authors say, that the countess, under a pretence of modesty, having obtained leave to put on a veil, when she was inspected, caused a young woman of her age and stature, dressed in her clothes, to stand the search in her place. Sir Anthony Weldon, p. 81 of his "Court and Character of King James," positively affirms this, vouching his authority in these words: "If any make doubt of the truth of this story the author delivers, upon the reputation of a gentleman, he had it verbatim, from a knight, sir W. B. (otherwise of much honour, though the very dependancy on that family may question it) which did usher the lady into the place of inspection, and hath told it often to his friends in mirth."

never had, nor could, nor should ever know her carnally.

#### THE SENTENCE.

Whereupon the Delegates declared the law to be, That *impotentia coeundi in viro* whatsoever, whether by natural defect, or accidental means, whether absolute towards all, or respective to his wife only, if it precede matrimony, and be perpetual (as by law is presumed, when after three years trial, after the man is of the age of 18 years, there has been *nil ad copulam*, and the marriage not consummated) is a just cause of Divorce *à vinculo matrimonii*; and that the Proofs produced in this Case were abundantly sufficient to convince them, of the Earl's Impotency; and therefore pronounced Sentence that they should be divorced from each other, and be at liberty to marry again; which Sentence was as follows:

' That Robert earl of Essex, and the lady Frances Howard, contracted by shew of Marriage, did cohabit in one house, and lie together in one bed; *nudus cum nuda, et solus cum sola*; and that the said lady Frances did shew herself prompt and ready to be known of him, and that the said Earl neither did nor could have knowledge of her, although he did think himself able to have knowledge of other women; and that the said lady Frances by inspection of her body by midwives, expert in matter of Marriage, was proved to be apt for carnal copulation with man, and yet a virgin: Therefore we the said Judges deputed in the Cause, first invoking the name of Christ, and setting God before our eyes, do pronounce, decree, and declare, That the earl of Essex, for some secret, incurable, binding impediment, did never carnally know, or was or is able carnally to know the lady Frances Howard: And therefore we do pronounce, have decreed, and do declare, the pretended Marriage so contracted and solemnized *de facto* between them, to have been, and to be utterly void and to no effect, and that it did want, and ought to want the strength of the law: And that the lady Frances was, and is, and so ought to be free, and at liberty from any bond of such pretended marriage, *de facto*, contracted and solemnized. And we do pronounce, that she ought to be divorced, and so we do free and divorce her, leaving them as touching other marriages to their consciences in the Lord.

' Which our definitive Sentence and Decree we ratify and publish. Thomas Wint.; Lancel. Ely; Rich. Coven. and Lichf.; John Roffen. bishops.—Julius Cæsar, Thomas Farry, Daniel Donue, Doctors.'

The following Commissioners could not agree to this Sentence, and therefore absented themselves. George Cant.; John London.; bishops.—John Bennet, Francis James, Thomas Edwards, doctors.

Dec. 5. Soon after this Sentence, the countess was married to the viscount Rochester, lately made earl of Somerset.

*The foregoing Account of the Proceedings between the Earl of Essex and Lady FRANCES HOWARD, being but short and very imperfect, wanting the Arguments of the Civilians, &c. the following Account, written by Dr. George Abbot, Archbishop of Canterbury, with the Speech he intended to have made, and King James's Letter to him, will throw much light upon that affair, and help greatly to explain it.*

THE CASE OF ROBERT EARL OF ESSEX, AND THE LADY FRANCES HOWARD.

Some MEMORIALS touching the Nullity between the Earl of Essex and his Lady, pronounced September 25, 1613, at Lambeth (and the Difficulties endured in the same), by George, Archbishop of Canterbury.

BEING at the Court at White-Hall, on the 12th of May, 1613, or thereabouts, his majesty moved me, that I would be a commissioner in a controversy to be begun between the earl of Essex and his lady for the separating of them; and when his majesty had ended those few words with me, my lord chamberlain, who was then in the gallery, spake also unto me to that purpose. It was unto me a matter very strange, having heard before of some contentments between that noble couple; but never imagining that matters were come to that head. My answer was alike to both, "That I did not know the ground whereupon they intended to move; but that, if I were to be a judge in any such question; I would pray, that other bishops, being near the town and court, might be joined with me." The persons that were named then, were, my lord of London, my lord of Ely, and my lord of Litchfield (for at that time was my lord of Bath with the queen's majesty at Bath). Besides, I prayed both the king's majesty, and my lord Chamberlain, 'That before any such thing were entered into, I might speak privately with my lord of Essex, for the satisfying of mine own mind;' which by both was permitted unto me. The day after I sent for the earl; and having private speech with him, only about the ability of his body, and nothing else, I found him generally much reserved in talk, but only avowing the ability of himself for generation; and that he was resolved never to lay any blemish upon himself that way. I knew not well what to make of this; for I did not then understand, that some lords had met before at White-Hall on both parts, (the lord privy-seal, the lord chamberlain, the earl of Southampton, and the lord Knowles, as afterwards I heard) to settle an order by consent, how this prosecution should be; that is to say, That a separation should be made, and my lord's honour every way preserved.

Within a day or two, coming to White-Hall, I had speech with the lord chamberlain, in the gallery going towards St. James's Park. I might not reveal all particulars of that which passed in private; but yet I told his lordship, 'That I had spoken with the earl of Essex, and I perceived it was like to be a matter of

great difficulty, and therefore wished his lordship to be well advised, before any thing was brought into publick." I told him, 'That he must proceed either upon confession or proof: that it was probable, the earl would not confess his own impotency, for then he blemished himself: that my lady's oath in that case was not sufficient; and how other proofs might be had, I could not conceive: that the earl in open estimation was to be thought an able man; that his father was not thought in that kind insufficient.' The lord chamberlain replied, 'That, perhaps, the father's sin was punished upon the son: that it was truth, that the earl had no ink in his pen: that himself had confessed, that he could not know a woman, and that before divers noblemen, and some of them his own friends, naming, as I remember, the earls of Northampton and Worcester, and the lord Knowles.' All this while I never dreamed of 'impotentia versus hanc', but conceived, that they would charge the earl simply with disability. The lord chamberlain then seemed unto me fully resolved to proceed, and told me whom he would have in the commission, the bishops of London, Ely, and Litchfield, the two Chancellors of the Exchequer and Dutchy, my Judges; (for so he called them) sir Daniel Dun, sir John Bennet, Dr. James, and Dr. Edwards. I told his lordship, 'That I liked the persons very well.' The next news I heard was about a day or two after, 'That the commission was out under the great seal;' which I wondered at, by reason that I thought, that my words to the lord chamberlain being well weighed, would have moved some longer consideration. Well: the commission is brought; it is accepted, and proceeding decreed; the earl of Essex is called; the libel is put in. When we saw it, and that it contained 'impotentia versus hanc', most of us, who were not acquainted with the project before, were much amazed at it. I told the counsel for my lady, 'That they had laid a very narrow bridge for themselves to go over.' So said my lord of London, and divers of the rest; only my lord of Ely was still silent. My lord of Litchfield, two several times, uttered speeches, as much grieving and repining at this controversy: 'That he was ordinary to the earl of Essex, and had been in his house at Chartley, which he saw to be well governed; and the earl did bear himself most religiously therein, to his great comfort: that his wife had the honour to be cousin-german to the countess of Suffolk; and therefore he had no reason but

to wish well to the earl of Essex and his lady both. Yet, if he had been worthy to be consulted withal, he should have thought that seven years had been little enough to have deliberated, whether it were fit to bring such a business into question before the world.' Another time he told us, 'That it was very good, that we should proceed with great wariness in this cause: for,' saith he, 'the world looketh on us what we do; and there were not more eyes upon the earl's father losing his head, than there be upon the earl now losing his wife.' He told me afterwards, 'That he had ill-will for those speeches, and complained that some among us did tell tales of all that was said and done.' (And so it appeared afterwards, that sir J. Cæsar and sir Daniel Dun did.) Sir Thomas Parry, in all his speeches, privately murmured against this nullity, till he came to Windsor: where, the day that the king heard us, the lord chamberlain, in my presence, spake privately with him and sir Julius Cæsar about this matter; and from that time forward, Mr. Chancellor of the Dutchy was altered. My lord of Ely, also, for a great while, was in dislike of the separation, (as I have credibly heard he opened himself to sir Henry Savile) until such time as the king spake with him, and then his judgment was reformed. But truth it is, that among us he said nothing.

Now the earl's answer is taken, which appeareth. In it there were divers things very-observable. He used no ill speech of his lady, for which we all much commended him. I gave him so strict a charge to speak the truth, requiring him, as he would answer me before God, at the last day, to deliver nothing for favour or affection, but to inform us in the verity, that it wrung from him something which I supposed he intended not to speak so plainly. He gave the reason of his having no motions to know his lady carnally, and of his thinking that he never should, 'When I came out of France, I loved her; I do not so know, neither ever shall I.' When he was to answer to the article, that she was 'Virgo incorrupta;' he smiled, and said, 'She saith so, and she is so for me.' Sir Daniel Dun caught these words, and bid the register set down then, 'credit articulum esse verum.' These things gave me no great encouragement to the business; but yet being at very little leisure, I let matters go on, and in mine own part resolved nothing. Then the witnesses were deposed, but not published. The inspectresses were chosen, who came most unwillingly unto it; and howsoever sir Julius Cæsar and sir Daniel Dun, whom we never suspected to be as parties in the cause, as afterwards they appeared to be, made all clear and fair weather; yet my lord of London told us openly, 'That he being with them, found that the ladies knew not well what to make of it; that they had no skill, nor knew not what was the truth; but what they said, was upon the credit of the midwives, which were but two, and I knew not how tampered with.' Then came the lady Frances to take her oath, with

the seven Compurgators. I noted therein some things. A paper was brought, containing, *verbis præcisiss,* what her ladyship would swear. We saw it, and considered it, and found it too bare and slight to enforce any thing. The commissioners advised, that it should be more full. Dr. Steward accordingly drew it; but he must go forth to the lady, to know whether she would swear it. At last it was agreed unto. When she came to subscribe it, after the oath taken, one or two of her brothers standing at her back, put her in mind that she must not write her name Frances Essex, which she most willingly remembered, and subscribed Frances Howard. We saw my lord of Litchfield's wife to be one of the seven. We were afterwards informed very credibly, That the lady Knevet had declared her sorrow, that she was used in such an action, and said, 'That she wept all the day about it.' These things pleased me little, that nobody took comfort in the business.

Things go on in a course till Midsummer day. Then did the king deal with me privately, as if he had received divers complaints against me. The first was, 'That we delayed the proceeding, inasmuch as the meeting was put off, from the 18th of June, till the 2d or 3d of July.' My answer was, 'We had rather gone too fast: we had sat forenoon and afternoon. The term now grew to an end, and we had many businesses to dispatch of the king's: That the commission day for causes ecclesiastical was put off for a week, by reason of Midsummer day falling on a Thursday; and consequently, that our proceeding in this cause, which commonly attended the other commission, was of necessity to be deferred.' But my principal answer was, 'That we could not shorten it; for the counsel on both parts had agreed upon that day in July, and so it was upon the acts: howsoever, therefore, the counsel for my lady moved openly in court to abbreviate the time, yet the counsel for my lord would not renounce nor alter their term probatory, but kept them close unto it.' Another objection was, 'That I acquainted not the king, from time to time, how matters did go.' I answered, 'That I knew not myself: for as yet there was no publication of witnesses; when any thing came to my knowledge, his majesty should understand it.' It was added, 'That divers persons repaired unto me, who wished not well to the business.' 'Belike,' said I, 'they mean the earl of Southampton, who came in the other day, when we were all sitting together: but his coming was about John Cotton's cause; and I never had a word with him in all my life, touching this business.' 'No,' said the king, and smiled, 'it is sir Henry Nevile.' 'Indeed,' quoth I, 'he was with me the other day, and this very morning: but your majesty well knows what was the reason. It was touching that cause, which your majesty commanded me to send for him about. I delivered him your mind the one day, and he gave me an answer the other.' At this time, his majesty cast out some words, as if he wished

well to the nullity; but it was so obscurely, that I did not conceive that earnestly he desired it. After this day, the complaints were many which were made to the king against me, and many threats were used, and divers tricks were played to urge me to yield to the nullity. One was, 'That I should suffer the earl of Essex to go out of town.' I answered, 'He had made his answer, and had his proctor, and it was our custom then not to stay men.' His majesty commanded me to inquire, if his presence were not necessary; and if it were, then I should stay him. I sent to sir Daniel Dun, to sir John Bennet, and to Dr. Steward; and they all agreed, that there was no need of his lordship's being in town. And of this I sent word to the lord chamberlain; and my lord of Essex was permitted to depart. One while it was given out, that I was moved by the queen to cross them; when, in truth, I had not spoke with her thereabout: another while, that I had spoke with the earl of Essex at first, and hence his lordship grew less pliable; when they knew about what it was, and were told of it before. And it was not forgotten, that when I gave charge to the earl of Essex, to answer truly to the positions in the libel, I named the case of my lord of Devonshire and the lady Rich, as if I had compared this cause unto theirs. When afterwards the earl's counsel took exception to the libel, it was given out, that they were animated by me to oppose; whereas I never spake with them, nor knew any thing of their purpose. And ever that was one, that there were delays used. Yea, it was to my face delivered as a threat, that archbishop Grindal had been overthrown for not giving consent to the divorce of Dr. Julio, as implying, that the same would be my case.

About this time, the lords, and the rest of the seoffees, were to meet at Mr. Sutton's hospital, about the settling of it. The day that we were to come thither, my lord chamberlain, in the privy gallery at Whitehall, shewed his anger towards me, that we had not sent for the keys to his lordship, and that he might deliver over the cause. But when I came to the Charter-house, there was delivered me a letter, written all with my lord's own hand, and directed to the lord archbishop, the lord chancellor, and the lord privy seal; wherein he did twice take exception to me by name, and, in a sort, braved me, that so he might pick a quarrel to me; whereunto I replied not, but bore it with patience.

A little before Whitsuntide, his lordship was very kind to me, and of his own accord proffered me a chamber at Greenwich, which my lord, my predecessor, had; but after twice proffering of it, and my accepting of the same, his lordship fell off strangely, and I never spake of it more. These complaints and threats made me to suspect all was not well; for what needed these things to me, in a matter of justice?

The time now grew on, that his majesty was to go abroad in progress on a Sunday, which was the day before the counsel for my lord were to put in their answers and exceptions to the libel. The lord privy seal shewed me a letter

of the king's to his lordship, wherein he was to expostulate with me for delaying the business. I gave his lordship answer what was done, and his lordship professed that he was satisfied, and that no man could do more than I did. On the Monday, the counsel for my lord put in their answer, which was round and picquant. The lord chamberlain had notice of it, and complained thereof to the king. I sent his majesty the copy thereof, and received from the king a letter written all with his majesty's own hand, shewing dislike thereof. At that time, sir Wm. Button threatened sir Daniel's servant hard for that answer, as the said sir Daniel divers weeks after told me. The commissioners considered of the answer, and disallowed it, giving order, that no record should remain of it, but that it should be utterly defaced. This was very well accepted, and now my lord of Canterbury was a very honest man. But till this was done, their followers gave out, that the king had in two letters so schooled the archbishop, as he was never schooled in all his life.

Things now being quiet, I called sir William Button one commission-day unto me, and spake thus to him: 'Sir William Button, you have followed this business from the first, and have been present at the acting of all things. Have you ever seen me, in word or deed, do any matter that doth not become me?' (for indeed hitherto I had no way declared myself, because we were not come to consider of the proofs.) 'What is then the cause that I am thus complained upon, that I cannot one day be quiet?' His answer unto me was, 'That the lord chamberlain was every way a kind father to his children; but in this of his daughter, he was so passionate till it had an end, that he lay as on a grid-iron, broiling till the matter were accomplished.' Quoth I, 'It shall not be delayed by me.' Now, the counsel on both sides drew on to inform us, wherein I noted, that whereas the libel was laid in nature of *maleficium versus hanc*, my lady's counsel, upon the shutting up of the cause, would not apply themselves thereunto, neither would they willingly hear of it; which seemed strange, since all the books which they brought, particularly to the cause, did mention that; and Doctor Steward had publicly and expressively said, 'That it was that which they did mean.' This troubled me somewhat, because I perceived that they themselves could not tell what to make of it. But afterwards fell out another matter, which very much alienated my judgment from the cause: It appeared, that sentence could not be given, till the time that the king entering his progress, was gone as far as Windsor, and then his majesty was soon to depart to Farnham. Sir Daniel Dun told us, 'That he was to attend the king in progress; that he must be at Farnham; that he was old and lame; that it would be too great a trouble for him, to come back again at the day of sentence.' He therefore prayed, 'That we would hear him deliver his judgment of the whole matter.' This proffer seemed

woodrous strange to most of us ; and putting it by handsomely, we resolved not to trouble him therewith : And in this opinion we arose. But afterwards, my lord of Litchfield cometh to my study door, where I and my lord of London were about another business, and telleth us, That my lord of Ely, and Mr. Chancellor of the Exchequer, were very desirous to hear sir Daniel speak ; and that he, for his part, was of the mind that it would do very well, and therefore he importuned us both to give consent unto it. We imagining no great harm could come thereby, assented, and the next day is appointed for that purpose. There sir Daniel cometh with a formal declaration, divided into six parts ; to every one of which he spake so largely, that with a little replying of ours, it spent a whole afternoon. Matters which I most observed therein, were these : He told us, ' That by our commission we might hear this cause summarily.' He brought a book, ' That he who hath power to hear a matter summarily, is in nature of an arbiter chosen by both parties, and therefore may judge in discretion, as he shall think fit ;' and more to that purpose. I thought with myself, that this was strange doctrine in a matter of marriage ; that as arbitrators, we might adjudge a wife to her husband, or not adjudge her, according to our discretion. In his discoursing of my lord's impotency *versus hanc*, he beat upon the matter of *maleficium*, and yet by no means he would have it to be that apparently. He insisted much, ' That the sentence was to be given in general terms, not naming any particular impotency.' I told him, ' In such a sentence, the world look that we should yield a reason of that which we did.' He replied, ' That it was fit to give no reason.' ' And here,' said Mr. Chancellor of the Exchequer, ' a judge is not to give a reason of his sentence, but only to God. I would give no reason to any prince in the world. I was once called before queen Elizabeth, about a sentence which I gave, and she demanded of me the reason thereof ; I told her, ' A judge was bound to give no reason of that which he pronounced, but only to God.' I marvelled much at these things, and at last replied, ' Well, let it be we acquaint not the world with the reason of that which we do ; yet is it not fit, that I who am the judge, and must pronounce the sentence, know the ground of that which I am to pronounce?' Here, after a little pausing, one of them said, ' Yes, for you may see that in the books and depositions.' Quoth I, ' But I cannot see that there which may satisfy me. But Mr. Chancellor,' said I, ' and sir Daniel Dun, commissioners, you perhaps be not driven to it, yet I shall be forced of necessity to tell men the reason of the sentence : For as soon as this cause is sentenced, every man who is discontented with his wife, and every woman discontented with her husband, which can have any reasonable pretence, will repair to me for such nullities. If I yield unto them, here will be strange violations of marriages ; if I do not, I

must not tell them, that it was fit for my lord of Essex, but it is not so for you ; for the law knoweth no persons, but is indifferent to all. If I then repel them, I must shew a reason : Your case is not like that of my lord of Essex ; for his case was thus, yours is thus. And so must I deliver the reason, or men will not be answered.' In this time of debating, I asked sir Daniel Dun, ' I pray you, master of the requests, what examples have we of any nullity in England, pronounced in this kind? Might a man see any precedent of it? For I would be loath to do any thing that never was done before.' ' Yes,' saith he, ' there be precedents thereof. In Anne of Cleve's case we have an example, and another in one Bury, which I have here in my book ;' and thereupon out of a note-book of his own, he read now a line or two, and then two or three other lines in another place, and so forward. My answer was, ' I did not think that king Henry's separation from Anne of Cleve, was for any such matter, but upon a precontract.' I said, ' King Henry the 8th was a strange prince in that kind : He put himself into many marriages ; and when he began that with Anne of Cleve, he feared lest the emperor, and king of France, should combine with the pope against him, and therefore he was desirous to strengthen himself with the protestant princes in Germany ; and for that he thought this marriage was much be-beneficial. But afterwards growing into peace with one or both of those princes, he grew soon weary of the marriage, because he liked not the woman.' But then I promised to consider further of these two cases. This was the end of that day's labour, which when at night I had recounted with myself, I thought it was an audacious part, for such a one as sir Daniel was, to teach us out of such poor grounds, both what to do, and how to do. I found by my observation, that it was a set match, that thus he should be heard ; that he was prepared for the purpose ; for no man upon the sudden, or one day's warning, could deliver so much, and so digested. And now I began to assure myself, that he did not shew himself a judge, but was a stickler for the nullity. I much suspected the conscience of the man, knowing him reasonably well before, both out of mine own estimation of him, and out of the judgment of my two predecessors, the lords Whitgift and Bancroft, who held him for a man most corrupt. Yet the next day I sent unto him for his note-book, and I caused the record of Anne of Cleve to be brought unto me. Reading over all the latter, I found not one word tending to the present case. Good Lord! thought I, how doth this man deceive me! Perusing his own book for that of Bury, I found it to be nothing but the pleadings of advocates on both sides, when about the 40th of Eliz. there was some question in the common law courts about Bury's land, Bury himself being dead many years before. But I saw more in this book against the cause now in his hand, than for it ; and by some other writings in my house, I discovered

that Bury's divorce, anno 1561, was for want of his *s—s*; which Dr. Steward also, being now of counsel for my lady, and who formerly stood for Bury's brother against the supposed son, publicly acknowledged. These things made me in my heart much dislike the cause, and procured in me a hard opinion touching sir Daniel Dun, who should not have wronged me, being my officer, as dean of the arches.

Within few days after, the message cometh to us, that we were all to attend the king at Windsor. This accordingly was done. The morning before the hearing, the lord chamberlain in my presence spoke first earnestly with the chancellor of the Exchequer, and afterward with the chancellor of the Duchy, who that day fell from us, as appeared by the few words that he had before the king. Some few days before that, had sir John Bennet, by sir William Batton and Dr. Edwards been otherwise dealt withal, earnestly to give consent to the nullity; but that day we dealt in it more than three hours. His majesty propounding the matter, asked, 'How things did stand?' Sir Julius Cæsar said, 'That sir Daniel Dun was best able to speak unto it.' And then, *ex composito*, sir Daniel begins, and tells a great tale, and especially insisteth upon *Non potuit*. When he had done, I answered him, and showed the want of ground for that conclusion, out of other the earl's evident answers, 'That the *Non potuit* was for lack of love, and not for want of ability.' I challenged sir Daniel for abusing the king with a false report, and especially for his two precedents of Bury's case, and that of Anne of Cleve. Amongst us, was divers ways showed the insufficiency of the proofs; that the libel was laid short to the cause, and the proofs were short of the libel; that we had very many times called upon the counsel for my lady, that they should look that they rightly laid their matter, and made their proof strong; that, in the end, they complained not of the judges, when the fault was in themselves: (Where my lord of Litchfield added, 'That himself fearing the worst, had gone to Doctor's Commons, and warned the counsel for my lady, that they should look to it.') Among other things there uttered, sir Daniel Dun said, 'What a disgrace will this be to my lord chamberlain and his daughter, if it should not now go forward!' My answer was, 'they should have looked to that before they did begin it: we were not the men that set the matter on foot; if it were a disgrace, they put it on themselves. But,' quoth I, 'must I, to save any man from disgrace, send my soul unto hell, to give a sentence whereof I saw no ground? I will never do it.' My lord of London, sir John Bennet, and Dr. Edwards, did carry themselves well that day, although sir John Bennet had much opposition from the king himself. When we saw the king earnest, I fell down on my knee, and with tears in mine eyes, I said, 'I beseech your majesty, if ever I have done you any service, whom I do serve with a faithful heart, or may do you any service,

rid me of this business.' I had said before, 'That I was the unfittest man that might be, to judge of such a cause; I was no married man, I was no lawyer, and I had not had the time, by reason of my infinite businesses, to read so much of that matter, as other men had.' I observed that day many things in his majesty's carriage of the matter: he was earnest, but gracious and moderate. He found fault with the libel, and said, 'that complaints were made that we went too slow, but he perceived we went too fast.' He marvelled that my lord of Worcester, and the lord Knowles, were not examined as witnesses. He constantly professed, 'That he believed that my lord of Essex was impotent for a woman.' He told us, 'that some of the earl's friends had put a woman to him, and he would not touch her.' His majesty said, 'that the earl was once purposed to have gone to Poland, to have tried whether he might be unwitched.' To which things my reply was, 'I would to God we might see these things legally proved.' That his majesty much disliked that course, and therefore he set the course now in prosecution; and therefore if there were any error in it, he had done the lord chamberlain wrong, and he must take it upon him.' In sum, I found his majesty much troubled what to do, as I gathered, especially by these words, 'if my lord of Canterbury, and my lord of London, have a negative voice, we must either begin all again, and have a new libel, or we must have a new commission, and put other adjuncts.' The conclusion from his majesty was, 'That we should all meet at Lambeth on the morrow, and if we could unanimously consent, then go to the sentence; if not, we should put it off unto another day, and certify him of it, and so farther understand his pleasure. When the king was risen from his chair he fell to inveighing against these marryings of young couples, before they be acquainted one with another. He told us the inconvenience of it, how he knew in Scotland a father who married his only child to a man against her will: that she withstood it; yet her father forced her to marry him: that being gone home with her husband, after a very few days she run away from him: that her father jerked her, and sent her home again: that not long after, she poisoned her husband, and was burnt for it, while the king was in Scotland. After his majesty's going out, I followed him, and told him, I evidently perceived, that it was in the earl of Essex, 'Vitium Animi non Corporis.' His majesty swore he thought so. There passed some other speech from the king to me, touching his own lying with the queen the first night that he married her. But at the last, I kissed his hand and departed. After I was gone, the lord chamberlain speaking somewhat against me, the king replied, 'The archbishop hath so adjured me to be rid of this matter, that I cannot tell what to say to him.' This did sir Julius Cæsar tell me that day at dinner, at Eaton-College, letting me know, that the king found no fault with me. But afterward,



the king coming to dinner, after his meat had stayed for him on the table more than a quarter of an hour, he sate him down in his chair, and casting his leg over one side of it, he eat no meat for a great space of time, neither said he any word, but sat musing to himself; which every man observed. And it was given out by some in the court, that I was gone away in the king's displeasure. Within some few days after, it was also more ways than one brought credibly to my ears, That the archbishop and my lord of London should be hereafter kept to their spiritualities, and should meddle no more in temporal matters: and within a while it came so far, as that they should have their temporalities taken from them. Sir John Bennet was at Windsor moved by sir Thomas Lake in the lord Fenton's name, and afterwards by the lord Fenton himself, That he should alter his opinion, and make his peace with the king, for his majesty was not well pleased with him.

As I came homeward from Windsor in my coach, and all that same night, two things did run much in my mind; the one of them was, what a strange and fearful thing it was, that his majesty should be so far engaged in that business: that he should profess, that himself had set the matter in that course of judgment: that the judges should be dealt withal beforehand, and, in a sort, directed what they should determine: that the like example had not been seen: that his majesty did win himself much honour in the case of Sutton's hospital; that notwithstanding all importunity, he had suffered the judges to do their conscience. This strange moving to the contrary, did make me marvelously suspect, that it was no direct matter; and, as a dutiful servant to my most gracious master, I wished in my heart, that his majesty's hand might be taken off the business. The other point was, that we had all this while, in our debates, never, or very little meddled with points of divinity. And I thought with myself, that much might be said therein against Maleficium, and the nullity to be pronounced thereupon 'versus hanc;' for out of this we could never get in all our talking, though they would never cleave fast to it. I therefore, having formerly revolved some such things in my mind, rose early on the day that we were to debate things at large, and set down my mind in writing out of something in divinity. The copy of this appeareth. The day after we came from Windsor, (being Tuesday) we met, and all the forenoon we insisted on that which I had briefly written: but to deliver my conscience freely before God, I received no kind or shew of satisfaction. My lord of Ely sat little less than dumb, as if he had never dreamed of any such matter. Divers of the commissioners wondered at him; that he, who had spent so much time in reading of the canonists touching this question, should not think upon divinity. Briefly up and down by others somewhat was said, but nothing to contentment. After dinner, sir John Bennet propounded reasons out of the law, but without any satisfaction. I observed

two special points that afternoon: the one was, that we all thought my lord of Essex his answer to the libel was neither plain nor sufficient. And now it was remembered, that my lord of Litchfield had put to him certain questions, that four things were necessary to generation; 'membrum virile,' erection, penetration, and 'ejaculatio seminis;' which, although they were then smiled at, and since that time much sport had been made at the court and in London about them; yet now our married men on all hands wished that punctually his lordship might have been held to give his answer unto them. This instructed me, that the proofs were not full. A second thing was, that when towards the evening, I wished that a reconciliation might be laboured between my lord and my lady, that it should best become us; my lord of Ely, who from the first beginning of the process had been always very silent, spake home about that, much disliking that any such thing should now be sought; that it was too late; that it might be the cause of poisoning and destroying one of another to bring them together again. Well, when we could not agree upon our conclusion, we were inforced to put all off unto a longer day; and as the king commanded, I was to certify his majesty of it. I wrote a letter to the king, praying humbly that I might be freed from the trouble of this cause, or, at least, give no sentence in it till I were a married man, and so might better understand the business. I inclosed also six reasons of sir John Bennet, taking exceptions in law against the nullity. And withal I joined mine own reasons in divinity, of which I said in my letter, that I knew not where to seek an answer to them; meaning, that the commissioners had given me none. These reasons afterwards cost me a great deal of trouble.

The next progress in this controversy was, that I was advertised, that it was his majesty's pleasure that the cause should be put off until the 18th of September; and withal there was brought a new commission of adjuncts, whereinto my lords of Winchester and Rochester were put. The day that I perceived this, acquainting the two chancellors of the exchequer and Dutchy therewith, in the gallery at Lambeth, I told them, "That I hoped now, that for my part, I should be freed from any trouble therein farther, for I did desire to be rid of it." They both answered me, "That they desired in like sort to be quit of the matter." A good business, thought I, that nobody taketh comfort of it, unless it be sir Daniel Dun; of whom I forgot before to note, that on the day of meeting, next after our coming from Windsor, he, with a great deal of insolency, challenged me for my speech before his majesty the day before. "Do not abuse the king, sir Daniel Dun." I remembered it was in mine own house, and if I had rattled him according to his deserts, my lord chamberlain would have said it had been done for his sake; and in the progress, sir Daniel having the king's ear, would have made things worse than they were; and I therefore forbore

him with such patience, that some of the commissioners told me afterwards, that they wondered how I could endure those behaviours, at the hands of a man of his quality: But yet they commended me for it. Now grew I to consider what were the reasons why these two Commissioners were joined to us; and therein I had many advertisements from divers friends, divers ways. We resolved for my lord of Winton, that it was supposed, that there was no great amity between him and me: That when I was Dean there, there was some disagreement between us, which they supposed yet continued: That he had an old grudge to me, for having the archbishoprick, which his lordship so much desired. Besides, it was some tickling unto him, that his gravity and learning should either win in the archbishop, or lay some blemish upon him, if he stood out. Certain it is, that sir William Button was with him; and, doubtless, would tell him how acceptable this service would be to his majesty. I heard of good credit, and secretly, that he was put in hope to be made a privy counsellor; and the fame was general, that for the father's labour the son should be made a knight. It seemeth, at the first, that he had no great fancy unto it; but being wrought upon, he consented; so that he might be required by his majesty to be present. This was done by a letter from Salisbury, which, at his being at Lambeth, he shewed me; that I should take notice, that he had not comè, unless he had been commanded. I leave him for the time, only signifying, that in the vacation, he sent for divers books from London, and had Dr. Steward much with him, to inform him in all particulars. Yet I may not forget, that while he held off his consent, some hard opinions were raised of him at court; as I found by a letter from my lord of Litchfield to me. For there he was found fault with, that he attended not the king at Farnham, or at Andover. And there blame was laid, that Mr. Love, who was so great with my lord of Winton, was like to get the Warden's place at Winchester, Dr. Harmer being reported to be dead. Concerning the bishop of Rochester, it was well known that he had opened himself before the king's going in progress, that he liked well of the nullity. Coming once or twice while we were about it, he, with some in my house, disputed earnestly for it. He was a great dependant of my lord of Litchfield. This was a way to make him well esteemed, and to arise high in preferment. But, in truth, he should not have verified the report which archbishop Bancroft on his death-bed gave of him, together with Butler and Carrier, to the king by a message, unless he did some such thing. When he was put into the Commission, he in divers places seemed to be much offended that he was made one. His grief was, that he was set in opposition against me; He would never give his voice to it, unless I consented. These, and the like things he spake, as elsewhere, so to some of my servants in my house at Croydon: For, under another colour, he came three times in the vacation to

VOL. II.

me; but I never spake a word with him about that matter, as knowing it would be an argument against me, that I laboured to draw away the king's Commissioners; and the end shewed, that I had no great reason to trust him. Besides these two adjuncts, the new commission itself seemed very strange unto me. There were eight made of the quorum; and it was so laid, that if three of them, with two other, consented, the sentence might be given; so that, by the words thereof, if seven had denied, five might have pronounced and prevailed. A matter so uncouth, that, as I credibly heard, my lord of Winton himself found much fault therewith. Again there was a clause, 'Legibus, Statutis, Ordinationibus, Constitutionibus quibuscunque non obstantibus;' so resolved they were to have it dispatched. Every thing now stood at a pause; and my lord of Ely (who, at first, delivered his judgment against it to sir Henry Savile, as I heard it avowed upon good credit; but afterwards said, he was better instructed by the king) began to hearken what men said of the matter, as appeared by speech which he had with sir John Peyton: to whom, notwithstanding, he told some things of the insufficiency of my lord of Essex. The weather grew fair; he hoped the overflowing of the Isle of Ely would cease; he would go down in his visitation; he came and took his leave of me, but not one word of the nullity.

Now was his majesty abroad, and I had more leisure to consider of this question, I read what I could; I conferred with many men about divers circumstances, so to inform myself the better. I prayed frequently to God to direct me aright. I often perused the depositions, but I found little satisfaction. I perceived most of the lords had a great dislike of this proceeding: that the better sort of men had generally a detestation of it; that the judges and lawyers much condemned it. I heard many strange stories of the lady's carriage. Something was freely spoken of a woman arraigned at Buty; and how to shut that up, and so to free the earl, this course was consented upon.

These things, though out of charity I entertained not as absolutely true, yet the concurrence of them from so many, made me that I could not contemn them. Besides, now grew the rumour strong, that a new husband was readily provided for her: Whereof I called to mind the opinion of sir Henry Nevile, delivered to me at Windsor; and I did not forget a speech of Overbury's once to me in that kind. I understood, that at Christmas last there was a reconciliation wrought between the earl and his lady, howsoever it fell out. Yea, that when the lords met at Whitehall about the matter of separation, there was three times that day a likelihood to make them friends; which we thought implied no disability of my lord of Essex, even in their own opinion. I farther understood, that whereas it was whispered among us, the commissioners, That at Christmas last my lord of Essex being in bed with his

3 G

lady should labour a quarter of an hour carnally to know her, and in the end should say, "Frankey, it will not be," and so kissed her, and bid her good night: That this was not true; but that the earl, the night before his going from London, at the end of Trinity Term, said, with tears in his eyes, "That when he went to bed to her at Christmas last, he had forgiven all things as clearly as he wished that God should forgive him his sins; but when they were alone, she reviled him, and miscalled him, terming him cow, and coward, and beast;" And he added, "That she was as bitter a woman as any was in the world: Which things so cooled his courage, that he was far from knowing, or endeavouring to know her." These matters, together with the small joy which the commissioners had to deal in the business, made me have no great fancy unto it. On the other side, I heard that my lord chamberlain, or his followers, gave out, that what was done, was performed by the king's direction, otherwise it had not been begun; and therefore, they expected that his majesty should see it effected; that they rested themselves on him. I was much grieved that they had this advantage on my master, who being so engaged, as I thought, could not well go backward or forward: And, to increase my sorrow, I was privately advertised from court, that his majesty did mean himself to give an answer to my reasons above-mentioned. I heard another way, that his majesty in the progress wrote much with his own hands. From another friend I was told, That the king, with his answer to the reasons, had written to me a sharp letter. Yea, by another I learned the contents of the letter, which was full of sharpness.

These things in the summer kept me full of expectation of some great discontentment. Yet my heart still assured me, that I was guilty of no wickedness. I found all persons with whom I spake, of my mind, for the dislike of the nullity. In many businesses to and from the king by letters, I found nothing but well. His majesty sent me warrants for three bucks, as formerly he had done, and with some kindness joined.

Thus I was tossed in my thoughts; and in all my troubles I had recourse to God in prayer.

By this time, the 18th of September draweth nigh, and I am informed, That my lord of Winchester, the Tuesday before, was come to town; and that besides my lady's counsel, sir Julius Cæsar, and sir Daniel Dun, did, at St. Mary Overy's house, daily attend his lordship. I expected no great good of this: only from the king I heard nothing but well. For some few days before, his majesty had been at Whitehall, where I kissed his hand, and he did not only look merrily upon me, but he gave me promise of the bishoprick of Lincoln for my brother, as I understood it. Some other matters also passed quietly in speech, and I found no disturbance. But on the 17th of September, the day before our new meeting at Lambeth, my lord of Litchfield being sent from the king,

bringeth divers papers unto me sealed up. I opened them, and found there my reasons first; secondly, an answer to them\*; and, thirdly, a letter, all written with the king's hand unto me. I read them all presently, without any abatement, whereunto I was helped by my foreknowledge that such things would come. I said little unto it; only I asked my lord of Litchfield, "Whether he knew what those papers contained?" He told me, "That the king had read unto him the answers to the reasons, and had given him the letter to seal up in a paper; but in reverence to his majesty, he held it not his duty to look into it." Growing afterward in some speech of our next day's business, I told him plainly, "That having spent much time in this vacation, in perusing the books, I could not find any where, but especially in the answer of my lord of Essex, that which would give me contentment." I read the places, and my lord confessed with me, "That there was not enough." He told me also, "That unless I gave my consent to the separation, that he would never give his." So much reverence in him did I find both then, and divers times before, against this divorcement. At last he mentioned one thing which pleased me wondrous well, and that was, That he should call for my lord of Essex again, and new examine him, upon some points to be farther declared, *ad informandum animum judicis*. For hence, either we should know so much as might persuade us to decree a separation, or the world might be satisfied that we had no reason for it. These things thus settled, his lordship separateth. Then I withdrew myself to my study, and read over again and again the papers from the king. I found them very sharp, and perceived by the time that they arrived unto me, that they were detained till that day, that I might be overwhelmed with them on the sudden, and have no time to deliberate, before we were to come the second time to sit in judgment. These things did much trouble me, so that I did sleep but a little that night. I revolved many things, and much tumbling I had in my mind. It grieved me infinitely, that the king should make himself a party therein; that some unthankfulness, and other matters, were little less than reproaches unto me: Methought, my faithful heart to my master deserved no such sharpness. I devised how I might give the king contentment, and it was some comfort to me, that we thought upon a course of new examining my lord of Essex. But as things stood, I could not force my conscience, which cried upon me, "That it was an odious thing to God and men, to give such a sentence, without better warrant." I here cast what might befall to the church in my disgrace; how Papists would scorn at it; how it might be my own ruin, and that divers

\* See pp. 794, 798, for the archbishop's Reasons, and the king's Answer to them: But the king's Letter to the archbishop is there omitted; but here inserted, after the archbishop's intended Speech, at the end of this case.

ways; a hazard to my friends, and to the commissioners which were of my mind; how my lord of London had a wife and children, which might all be overthrown at one blow. But after midnight sleeping, towards the morning, I considered on the other side, That my conscience was more to me than all the world; that it was a fearful thing, in place of judgment, to give a sentence against mine own heart; that Olivarius, the chancellor of France, upon such an occasion, grew mad, and died in it; that the manner of our sentence must be, 'Solum Deum præ oculis habentes, à rei veritate inspecta: All which, and the like meditations, did much preponderate with me. Then I slept again, and now rising, I found my heart much settled, to persist in that which I held to be truth. I poured out earnestly my prayers to God, and was now strongly resolved to leave all to God, remembering, That he had preserved me from my mother's womb; that he had from time to time rid me out of all my troubles; that his power was the same still; that he would never forsake me, if I turned not from him. I forgot not, "That the hearts of kings were in the hand of the Lord;" that I had experience of the graciousness, both of God and the king, the year before; when standing earnestly in a good cause, that prince Henry should not marry a Papist, I received some sharp words from the king for my labour; but the next day his majesty used me very kindly again. To this I added, That poverty, imprisonment, death itself, were things contemptible to a resolved mind: that some of my predecessors, as archbishop Cranmer, and my lord Grindal, had given good examples of these sufferings, and they were recorded in the catalogue of the righteous. These thoughts thus revolved, I read again the letter from the king, and drawing out into a paper all the sharp words, I considered them again and again, and methought they were not altogether so bitter as I apprehended them; that they were wrung from his majesty by my lord chamberlain's importunity; that my master had deserved at my hands, that I should bear patiently twenty times more; and that all was nothing, so the clearness of my conscience might be preserved. With these resolutions on the Saturday I came to Lambeth, where I met with the news of Overbury's death, and the sound of some fearful apprehensions thereupon bruited about the city. I made trial of my lord of London's constancy, telling him *aut cecidit, aut cadendum*. I found him most resolved, avowing unto me, "That if he should pronounce for the dissolution of the marriage, he thought the devil would that night fetch away his soul." Yea, he was earnest on me to persist where I began, telling me, "That the eyes of the whole church of England were upon me, and expected of me, that I should shew myself a worthy man." At last we came to sit, where my lords of Winchester and Rochester took their places. The commission was read, the fact, and manner of the process was opened, and nothing notable

done, saving that my lord of London proposing, that it was fit that my lord of Essex should be called to explain himself farther, for the fishing out of the truth. All the commissioners most willingly assented thereunto (yea, my lord of Winchester and Rochester expressly), saving sir Julius Cæsar, who softly declared his dislike thereof, in my hearing. When the court was risen, I spake with my lord of Litchfield, and not thinking fit to return any thing to the king in writing, I prayed him to acquaint his majesty how things stood; and to tell him, that upon this course of new calling my lord of Essex, I hoped in the end, we should give his majesty satisfaction. The Sunday I spent at Croydon, and preached on that text of Christ's raising the widow's son of Naim, to the great comfort of my own heart. That day I conferred with a friend, and settled some courses, if any trouble should befall unto me. I was also by a good friend informed, that my lord of Essex, on that Sunday morning, having five or six captains and gentlemen of worth in his chamber, and speech being made of his inability, rose out of his bed, and taking up his shirt, did shew to them all so able and extraordinarily sufficient matter, that they all cried out shame of his lady, and said, That if the ladies of the court knew as much as they knew, they would tread her to death.

On the Monday we met at Lambeth again, and information was given on the part of my lady. These things passed quietly. When the court was risen, my lord of Litchfield told me, That he had made his majesty acquainted with our proposition on Saturday; but that his majesty was strongly against it, my lord of Essex should any more be called, and that by no means he would endure it, for that peradventure the said earl, either being provoked by the late challenge between him and Mr. Henry Howard, or otherwise instigated by the earl of Southampton, might speak somewhat which might unarr the business. This made me still suspect, that all was not right; and I replied to my lord, "If that be denied us, and we have no farther proof, I shall never give sentence for the nullity: As good declare my mind at first, as at last, and I pray you so acquaint his majesty." When I went homeward, I much revolved this in my heart, thinking, good Lord! What a case is this? Shall any truth be kept from us? Are they afraid to have all out? Do they only look to attain their own ends, and care not how our consciences be entangled and ensnared? On the Wednesday we met again, and now Dr. James is come to us, and by and bye cometh in my lord of Ely, who, as it seemed, had meant to have kept him away, but the king sent an express messenger for him, requiring him, by letter, to be there on the Tuesday night. Now are we *plena curia*. Before we sate down, sir Thomas Lake delivereth a message unto me from the king, that his majesty desired a speedy end of this business; that it had hung long, and the world was in expectation of it; that the terms grew on, which would be full of busi-

nesses: That his majesty on Monday was to go to Windsor to meet the queen, and my lord chamberlain with him; that therefore he would have us to fall close to our work, not to trouble ourselves on the morrow to come see the king, who would come late to Whitehall, because some ceremonies were to be performed, as upon the last day of hunting; that we should not attend his majesty till Friday, but that the sentence must be given on Saturday. My answer was publicly, "That there should be no stay in me, and that therefore on the morrow we would sit forenoon and afternoon, if the commissioners so pleased; and if they thought good, I would not refuse to sit until midnight." But in mine own heart I perceived, that all the care was, that the matter might be dispatched before the queen spake with the king, whom they supposed not to wish well to the business. We go to our court, and sir Thomas Lake stayed to hear the information on my lord's part. It was strange to see how my lord of Winchester carried himself that day, partly to play his prizes before sir Thomas Lake, who might make report of it to his fame, and partly to shew his ludimagisterial disposition. He snapped up my lord's counsel, that they could not speak a word, but he caught it before it was out. "I know what you will say," when indeed he knew not, neither was it any such matter as he imagined. God Almighty will tell you a tale for that; "I tell you, Dr. Bennet, I have as much law as you, I am as good a lawyer as you are." He fell divers times on my lord of London personally, and would needs know of him openly, "How many times in a year a man was bound carnally to know his wife?" In a word, with scoffs, and imperious behaviour, he played the advocate all that day, to the great offence of the standers-by, so that it was publicly spoke of in London, which, I think, came to his ears; so that ever afterward he carried himself more tractable. I was forced to bear it, because of avoiding new complaints.

The point most observable that day, was, that both my lord of Winchester, and my lord of Ely, did deny maleficiation, so that by no means they would have this question to proceed in that nature, which I openly did thank them for, and bound it upon them, before all the commissioners and standers-by, telling them, 'That the same was my opinion.' But I asked my lord of Winchester, who sat by me, 'What he then held it to be?' He told me privately, 'That he held it to be a natural impotency, which was before the marriage.' I asked him, 'What that might be, and whence he gathered it?' He answered, 'I have heard divers particulars, which are enough to persuade me, if they be true.' 'Yea, my lord,' said I, 'if they be true, I have heard as many to the contrary. I wish that we might examine whether they be true or no; that were fair proceeding. It is my grief that it is not permitted unto us, to try whether all these matters be so or not. This might satisfy a man's conscience.' So we parted that night.

On the Thursday at ten of the clock, we met in Lambeth-hall, where my lady's counsel took on them to answer some scruples objected by Dr. Ferrand. But Dr. Martin, when nobody spake of it, fell to wipe away that objection, that my lord had not sworn, *cum septima manu*. Upon his speech, the commissioners took hold of it, and it then being urged strongly; my lady's counsel stood at first, as if they had been blasted with lightning. Afterward they grew extreme angry with Dr. Martin, that he had proposed it; but the issue was, there could no answer be given unto it; but in the sight of all the standers-by, this was broke off with shame and confusion of faces. We dined not that day; but about one or two of the clock we withdrew ourselves privately into the parlour. I had thought there to have had Dr. Edwards, and the rest who liked not of the nullity, to propound their doubts, and so in order; and last of all, I would have spoken. But there I found a contrary course resolved, which my lord of Winchester seemed much to dislike. But my lord of Litchfield, sir Julius Cæsar, and sir Daniel Dun, had set the clock, and they must have their will. The six reasons are produced, which sir John Bennet had delivered the day after we came from Windsor, and the copy whereof was by me sent to the king. All these must in their order be debated. One was about the unperfectness of the libel, in which we all received satisfaction, that the libel was well to so much purpose as now they declared they would have it. The other five, my lord of London, sir John Bennet, Dr. James, and Dr. Edwards, maintained: I allowed of three of them absolutely; and the other two, that was inspection of my lord's body, and a time to be assigned by the judge, to try whether they might carnally know one another, I held to be fit, when those reasons were proposed; but now such flames and quarrels were arisen, I thought not amiss now to be forbore. My lord of Litchfield, with a pen, did note what every man resolved, but principally my words, with a purpose to shew them to the king, as I conceived, and afterwards I found it to be so. I was desirous therefore, that his majesty might see I was not obstinate, but settled to yield to reason. And again, I supposed that this candour of mine would make some of them yield to us, where they saw there was unevitable truth. But I found it far otherwise; for our afternoon's work was, that they gave shuffling and shifting answers to the objections, such as themselves had studied all the vacation; but no care was, whether they were true and satisfactory, or not. And to what sir Daniel proposed, all seven of them consented, without sticking or scruple, so that I might imagine it was a set play. Upon the first scruple debating, sir Julius Cæsar finding the difference of opinions, and that our lawyers stuck strongly unto it, 'Let us,' saith he, 'put it to the question, and let the major part of voices determine it.' When I saw this to be the proceeding, the Lord, thought I, deliver

me from such judges! But yet, observing their manner, I possessed my soul in patience. When it grew to be dark, that the king might understand that I was willing to allow time to all that might be said, I remembered sir John Bennet to read the sentence of the Rota Romana, where, in the pope's own consistory, about the year 1585, a judgment was reversed which an archbishop in Spain had given for a nullity, in a case being ours altogether, because, after the triennial cohabitation, he had not assigned a time for the married couple to make trial again, and to use fasting and prayer. This repeal was read at large, and so was another of the Rota, in the same kind. But both these were slighted, as matters of nothing, and so I think had St. Paul been, if he had been there. I urged that of Alexander 3. That even in France itself, no nullity had been allowed; but that it was *Consuetudo generalis Ecclesie Gallicane*; and that *Ecclesia Romana* did know or practise no such thing. This was slighted like the former, and I perceived it was but in vain to speak to them, for they were resolved, and be it good, or be it bad, the matter should be done.

On the Friday morning I went to Whitehall, and looking somewhat heavily, the king cometh to me, and to my lord chanceller, and offereth us both his hand to kiss. He might perceive by my countenance that I was not a little troubled, and that was perceived by divers of the lords, who privately let me know their minds, that we had a foul and strange matter in hand at Lambeth. At last, the king takes me aside, and after propounding three or four businesses, walking, he took me to the window, and asked me, 'How that great cause did go forward?' I told his majesty, 'That I had no liking of it; that I had received a letter and writing from him which very much troubled me, for I knew myself to be his dutiful servant, and had not deserved ill of him; that it was nothing to me whether she remained wife to the earl of Essex, or were married to another man; but that I might not give sentence where I saw no proof; that I had lived 51 years, almost, and had my conscience uncorrupted in judgment; that I knew not how soon I was to be called before God, and I was loath, against that time, to give a wound to mine own soul; that all my grief was, that his majesty's hand was in it; that for other men I cared not; that I chose rather to die an honest man than a wise man; that he must never afterward expect true service of me, for how could I be true to him, who was false unto God? That if he marked it well, this was no time to disgrace his good servants.' I told him, 'That if his majesty pleased to let the matter alone, as he did all other causes, I would make good my part against all England, on the peril of my head.' The king answered, 'That I would have no lawyers.' I replied, 'Yes, enough, there is not an honest lawyer in England that would not be on my side.' His majesty asked me, 'Whether the rest of the commissioners, yes-

terday, did not persuade me?' I told him, 'No; but their dealing rather drove me the contrary way. For (said I) I came thither ingenuously to yield to any truth that should be shewed me; but they, on the contrary part, in a factious course went wholly together, and what one said, another said, be it well, or be it ill, without any scruple.' To my speech, 'That it was an example that never had been in England;' the king said, 'Yes, Bury's case.' I beseeched his majesty, 'That he would not believe that cause to be any such matter; for if he would pardon me, it should not be long before that I would shew, that his separation was for lack of his —s.' In this debating, the king was very desirous to know, what should be the reasons whereupon I stood, that I might have satisfaction. My answer was, 'That when I was in place of judgment, I would not conceal the reasons of my sentence, but it was to no purpose to speak them now; it would but put his majesty to a new trouble to hear them, and then some man must answer them, who looked to his own end, and to make a plausible answer, which would not content me, without ground of truth.' A great part of the time, that I had this speech with the king, my eyes were full of tears, which I saw much moved my gracious master, and especially my earnest desire, 'That I might do my conscience.' I perceived the king was much overcome by this my honest dealing: And then, whilst his majesty went to speak with my lord privy-seal, and my lord chamberlain, who stood all this while at the further end of the gallery; and to whom, I conceived, the king told much of that which I had spoken; I went my ways to Lambeth, to dinner. Now grew I confident to do my conscience right, whatsoever came of it. That day I dined privately; but yet my lord bishop of Bath was with me, whom when I had acquainted with so much of the cause as I thought fit, I received no discouragement from him. My heart was much eased, and now I thought I should no more be troubled. Yet between three and four o'clock, after dinner, my lord of Litchfield cometh to me from the king, and bringeth a written treatise upon the present argument, which was the work of a Scotchman, I know not who. I received it, and promised that night to read it; as indeed I did, riding in my coach to Croydon; for thither I thought fit to withdraw myself, though it were late, for avoiding of more perturbation. This treatise no way pleased me; but I thought it the work of some hungry fellow, who lacked 20s. to buy food to his belly. Here, finding it the day of the end of my quarter, I settled much of my domestic business. I forgot not to commend myself, and the whole cause, to God by prayer. I meditated many things in my bed: in the morning I rose early, and before day, in my study, I set down some heads, what I would speak unto. Then went I early to Lambeth, and there supplied my brief notes, digesting my matter of sentence into order; being resolved to speak large, and home to the cause, without

touch of any person more than I must needs. By this time most of the commissioners were come. I sent for my lord of London, sir John Bennet, Dr. James, and Dr. Edwards, singly and severally into my study: I required them, before God, not to speak any thing for respect to me, but to do that, which in their learning and conscience they thought to be just, and to speak that intrepid, without blemish to any man, but soundly to the matter. I found them all avowing, that in their souls, they found no warrant for the nullity. I then wished severally, Dr. James and Dr. Edwards, to deliver their sentence, with some reasons adjoined, not many, but of the strongest. I told sir John Bennet, that this day I expected he should shew himself a worthy man, that he should deliver his judgment *per extensum*; that they had laboured to blemish his skill, and to slight his learning especially; therefore, both for his conscience and his credit, he should shew what was in him, to maintain an honest cause. If sir Daniel Dun, and sir Julius Cæsar, who came after him, should bespatter him in their choler, or lay any imputation upon him, he should find that some of us would take it off him. To my lord of London, I said, "We have three that speak first, who, I trust, will lay such a foundation in the hearts of the hearers, as shall not be removed. But the other side have this advantage over us, they are seven of them, lawyers and bishops, to answer what our three have said; and, perhaps, with weak men, such a stream of such persons may much prevail: but let not that dismay you, my lord, only take this course: deliver, first, your own meditations; and then, having taken with your pen some of the absurdities, which, in the sentence, some of them will deliver, blast those, and let the auditors see, that by you the stream is turned. Then leave it to me, and I doubt not, in Almighty God, but to batter their nullity to dust: that, though they have it by the major part of voices, yet the world shall see what the cause is, and they shall have little comfort by it. I am very well provided; I am no way afraid; and you shall see I will not be tongue-tied." So confident was I in the honesty of the cause, and in the helps of Almighty God, that I was not now afraid of ten thousands of people; but did long to be at the business, as the Lord truly knoweth.

When now I was alone, revolving my meditations, sir Julius Cæsar cometh into my study to me, telleth me, 'That he wondered that my lord of Winchester was not come; that it was even ten o'clock; that therefore it was fit, that the hour should be continued from ten to twelve.' I assented thereto; and by some of the commissioners the time was prorogued. Then cometh in sir Thomas Lake, with a message from the king, which he must not deliver till all the commissioners were come together. So he was forced to stay. Between ten and eleven cometh in my lord of Winchester; who, as afterwards found, had been all the morning at the court. I told him, 'We had stayed

for him two hours and a half.' His lordship slightly excused it. Then, in the gallery, sir Thomas Lake told us, 'That his majesty had sent him unto us, to deliver two things.' The one was, 'That in our sentence we should take heed of gauling of any person.' My answer was, 'That from the beginning of this process, we had ever been wary not to offend in that kind; and that he should be much to blame, who in the conclusion, would transgress that way.' And so said the rest. The other was, 'That we should not in any long manner, but compendiously, deliver what we had to say.' I prayed sir Thomas Lake to explain that farther, whether we were only to say yea or no, and no more: for I would obey the king's commandment.

'Tu, Regina, jube, mihi jussa capessere fas est.' He answered, 'That he could not say so, but that we were to speak briefly.' 'Yea,' but said sir Julius Cæsar, 'I know the king's mind; for I was yesterday with him, and he told me, that he expected we should go no farther than yea or nay, for of reasons there would be no end. Yea, saith he, the king told me he was promised so much.' 'By whom?' said I. 'I think,' quoth he, 'by your grace.' 'Not so,' said I: but I said, indeed, 'Let every man deliver his own conscience, I will not perturb the sentence. No more indeed will I.' Then he replied, 'I know the king expecteth we should say no more, than I do like this sentence, or, I do not like it. And that you know, sir Daniel Dun, is the manner of the delegates, and not to go farther.' 'It is so,' saith sir Daniel. Upon this the bishops all said, 'We were best to proceed in that fashion.' To which I replied, 'I will not be wilful; but if it be agreed upon, and it be the king's pleasure, I will obey. But look you to it; for if any man give a reason, I am no more bound than he, but that I will return the reason of my opinion and judgment.' They all said, they would be observant of it. Thus sir Thomas Lake was dismissed. Then we called for the sentences on both sides, which the counsel had ready. They disliked that which was absolvatory of the earl of Essex, and we approved it. We found fault with the other sentence, annullatory, both for the whole, and because some parts in it, in our judgment, were apparently false. But they persisted in their intention. So we went into the hall, where myself, my lord of London, sir John Bennet, Dr. James, and Dr. Edwards, freed my lord of Essex. The bishops of Winton, Ely, Litchfield, and Rochester, together with the two chancellors, and sir Daniel Dun, pronounced for the nullity, and subscribed the sentence, my lord of Winton pronouncing it. We perceived that they were afraid we should at large speak our reasons openly, being the last who were to speak.

The three bishops of Winton, Ely, and Litchfield, went immediately to the court, hoping to receive great thanks for their service, but they waited a full hour ere they could speak with the king; however, they sped afterward. And

we were glad that we were freed of the trouble. And now, I, who would not have given the Sentence for all the gold in India, do expect God's pleasure, what will become of this business hereafter, and submit myself to God's providence, who ever preserveth those that trust in him.

“ This narration is wholly written with mine own hand, and was finished the second of October, 1613, being the eighth day after the giving of the sentence. And I protest before Almighty God, that I have not willingly written any untruth therein: but have delivered all things fairly, to the best of my understanding; helping myself with such memorials and notes as I took from time to time, that if there were occasion, I might thus at large set down the truth to posterity, when this case shall be rung from Rome gates, or the fact hereafter be questioned. GEORGE Canterbury.”

Some observable Things, since September 25, 1613, when the Sentence was given in the Cause of the earl of Essex, continued unto the day of the Marriage, December 26, 1613.

THE Sentence being given for the Nullity, the minds of men in their several places were wonderfully distracted, and every one spake according to their fancies. But for the most part there was a detestation of the thing, and a great dislike of those that gave the sentence, which was expressed by all courses that men durst adventure upon. On the other side, there was a strange applauding and commending of those who withstood the separation; and from all parts a testimony came unto them, that they had done like honest men, albeit the only scope which they aimed at, was the discharge of their conscience, and not vain popular applause. The archbishop, the day after the sentence, went to the court, to Whitehall, and waited on the king to chapel, standing also by him in the closet, where he was strangely looked on by the king, as he was also by some of the lords; but nothing being said unto him, he took no notice of it, but bore all patiently. This strangeness of the king held on at Hampton Court, and elsewhere; and it came to the archbishop's ear, that the king spake divers times hardly of him, but much magnified them of the affirmative part, and especially my lord of Winchester, as the worthiest man in the kingdom. Some things were done also in recompence to divers of them; as sir Julius Cæsar's son was made a knight, my lord of Winton's son also had the same reward, which some merry fellow blighted with the name of sir Nullity Bilson; and the bishop of Litchfield must remove to Lincoln; and as for Litchfield, it must be bestowed on Mr. Dean of St. Paul's, that so doctor Cary might be preferred to the deanery of Paul's, for which it was generally supposed he should pay well. But now it run current, that the archbishop must no more have to do with naming any to church-livings, but some lords in court should dispose of all; and

principally it must be provided, that Dr. Abbot must never be preferred, no, not so much as to Litchfield, so far was he from Lincoln, which was formerly promised unto him. These things grew detestable to the people, who feared that even religion would smart for it; but the parties most maligned were silent and patient, expecting God's leisure, and malice enough from some other man. The first thing of bitterness that appeared, was a letter from Royston, under the king's hand and signet, directed to the commissioners in the former sentence, but brought to the archbishop about three weeks after the sentence. This was a most sharp letter, complaining that they of the negative part, for so they were stiled, had hindered the act to be made upon the sentence; had solemnly protested against that which was done; had given unto themselves other titles than were in the king's commission; had glorified themselves in that which was done; by which they laid an imputation upon the king's conscience, who had declared himself for the divorce, and other things of the like nature. This letter being read to the commissioners, the archbishop said, that he knew not what it meant; for he understood of no man that protested, nor knew nothing of any man's arrogating of titles to him, or glorifying himself: and as for the act, he supposed it to be made up in common form, and never heard ought to the contrary, neither meddled with any thing therein, but left it to the Register, and what he had done with it, he could not tell. Furthermore, he asked all the commissioners particularly, if they knew what this meant, or if any of them were able to charge those of the negative with the points quarrelled at; who all, with one consent, denied that they could, and expressly averred, that there was no such thing done at the time of the sentence as had been complained upon. When standing thus in admiration, sir Daniel Dun took upon him to understand the matter, and said, that if the register were called, it would appear there was something in it. Barker, the register, is sent for, and being demanded whether he had made up the act, he said, that he had drawn it up in a form that he liked, but some other of the commissioners did dislike it. And thereupon he shewed two forms, the one more large, the other more brief; but both of them having in it, that the archbishop, and the rest of the negative party, protested against the sentence. Here every man wondered at him, out of what ground he should do this; and all the commissioners, with one consent, very much rebuked him, professing that there was no such protestation used. For the rest of the charge in the king's letter, Barker freed all in all things, save only Dr. Edwards, who was absent by reason of his sore eyes. The archbishop, upon this, desired the commissioners to suspend their judgment touching Dr. Edwards, till he might answer for himself; saying, that honour, justice, and charity, required so much in his behalf; and adding withal, that he doubted not



but it would prove some mistaking of the register's part, to whom it was apparent that small credit was to be given, since he had so grossly set down of them, that they protested, when all the commissioners could witness the contrary. Moreover, he desired Mr. Chancellor of the Exchequer, and sir Daniel Dun, to certify the lord Chamberlain, how free and innocent from those aspersions the rest were found, and that from top to toe it was nothing but misprision. Before this truth was discovered, it was known that a gentleman of the earl of Northampton's had said to sir John Levison, and that, as from his lordship, 'That there was something descried, which would break the archbishop's back:' such account was made of this business.

Thus things passed silently until the next week, when, upon the Thursday, being high commission day, Dr. Edwards being amended, repaired to Lambeth. His coming was watched; and then was delivered to the archbishop a second letter from the king, commending the concurrence of all to the act, to be made up in common form; but requiring the commissioners to convene Dr. Edwards and the register before them, and to charge them with all the fore-remembered matters, and to learn where the fault did lie. It was also commanded that they should require the said doctor and register, to set down in writing what had passed between them; and if it were found that Dr. Edwards were to blame, he should be suspended till the king's pleasure were further known.

These things are fallen upon; and Dr. Edwards shewed that the register had wronged him, and that no part of the accusation was true, *in modo et forma*, appealing to the commissioners, what faith might be given to Barker contesting against him, when it had been manifestly proved, that he had forged the matter of protestation against my lord of Canterbury, my lord of London, and the rest. Time is assigned to them to deliver in their writings; and accordingly, about two days after, Dr. Edwards bringeth to the archbishop his answer, denying the points whereon he was accused. But Barker brought nothing till a fortnight after; and then, by candle-light, when the high commission was risen, and the commissioners were departed, he delivereth a long writing to the archbishop, who could not read it that night; but reproved him for detaining it so long.

On the morrow, my lord of Canterbury perused this declaration: and as he found it to be uncertainly and dissidently set down for some other circumstances, so he discovered there one thing much to be observed, and that was, that Barker delivered, That some few days after the sentence, the lord chamberlain sent for him, finding fault that the act was not made up. And there speech was, That some desired to have their titles put in, as well as the titles of others; and for that, Barker named sir John Bennet. Whereunto the lord chamberlain said, "I know no title that he hath:" "Yes," said Barker, "he is judge of the prerogative court of

Canterbury." But Barker concludeth the narration, That himself finding that he had named sir John Bennet unjustly, therefore was in mind to excuse him, and was about to say, that he had done him wrong; but the lord chamberlain was so angry that he could not bring it forth; but went his way, leaving the lord in that opinion.

By this it was descried, that in the first letter sir John Bennet was aimed at, as well as Dr. Edwards, to put some disgrace upon him, which made men wondrously marvel at the vindicative mind of some men, who sought for an occasion to do other men disgrace. The end of the matter was, That no man could be touched; and therefore the archbishop, taking sir Julius Caesar with him, acquainted the king (who was now returned from Royston) with the state of the whole matter; informing his majesty, that fault fell on no man save the register; and therefore, if his highness were pleased to have him punished, it might be so: But for the thing itself, since the report was more than there was cause, Mr. Chancellor of the Exchequer said, It was better to let it die, and stir in it no further. To this the king assented, being not willing that any punishment should be laid on the register: whereby it appeared, that the intendment was, in the stirring of these coals, to have burnt some greater persons than Barker, the register.

All this while it was confidently given out, That because the sentence had been opposed, there should a book be written in the defence of it; and one while it should be by a divine, and that sometimes was my lord of Winton, and sometimes my lord of Ely: and it was said, they were earnestly about it: Another while, it should be by a Civilian, and then sir Daniel Dun must do it: But at other times it must be by a Scotchman, who had written somewhat of that argument before the sentence; and other while, two Scotchmen must join together about it: And to make the thing the more probable, the lord Felton sent to the archbishop for the copy of the Scotchman's writings, which was sent unto him; and after copying of it out, it was returned to my lord of Canterbury again. This speech of a book continued about nine weeks in all; but at last Dr. Stuart, and Dr. Bird, were sent for to the lord chamberlain, and their judgment was asked concerning that point. Their advice was, That it should by no means be meddling withal, but that things should die of themselves: But no questioning by writing; for so it might go on to the world's end: for one book might breed another: and so, they whom it concerned should never be in rest. This was resolved on; and afterwards there was no more speech of writing, saving only faintly and whisperingly, but nothing to the purpose. It seemed that the commissioners who were for the nullity had enough of it, and desired no more to bring themselves on the stage, being so by all men exclaimed upon for that which they had done.

The bishop of Winton, after the sentence,

went down with great jollity, full of hope and glory; but within a while after he grew much daunted, as some about him, and namely his own daughter, reported; for he heard many ways of the strange detestation which the world had of the deed; and the nick-naming of his son much affected him; But his advertisements from sir Richard Norton, his son in-law, did much trouble him: For sir Richard wrote divers times from London to his wife, That he could come in no place, but his father-in-law was raised upon: That men told him, that he thought he had a wife, but it was no longer than my lord of Winton pleased; for whensoever he offended him, he could make a nullity between them. Besides, the said sir Richard told Mr. John More, of Lincoln's-Inn, divers times, "That it was such a disgrace unto him to hear how the world talked of that sentence, that although my lord of Winton promised to give him, his wife, and family, their diet and entertainment so long as he lived, yet he would get him to his own house, and live there, where he had means sufficient, and not be subject to that perpetual scorn, which would follow him so long as he remained in his father-in-law's company."

By these, and the like passages, it was guessed, that the rest of the commissioners, who were for the sentence, had little comfort in themselves of that which they had done. On the other part, the archbishop, and those who stood with him, had their honesty and justice sounded out every day more and more; and many messages were brought them, and divers letters written unto them, or shewed them by some friends, from sundry of the bishops in the land, from the universities, from many godly preachers out of all parts, which was an exceeding consolation unto them, among the many frowns which they did bear, That there was an universal concurrence of all honest men to approve that which they had done. And the archbishop had privately, from many great ones in court, and nobles and worthy personages elsewhere, such significations of their good acceptance which he did, that it cheered him much inwardly, and he was nothing dismayed.

Now, about the middle of November, the wheel was turned about: For since nothing could be gained by speaking hardly of the negative part, they thought they would make use of them another way, and that should be by making the world believe, that they had now given approbation of the fact. And thereupon it was, in court and London, asseverantly given out, and the fame of it went far and near, That the archbishop, and the rest, after more mature deliberation, had testified their concurrence with the rest of the commissioners, and all now were of one mind. Men did not hastily believe this; but yet divers of good rank came and sent to the archbishop and the rest, to know whether those things were so or no. And when it was found to be but a jargon, it gave a great deal of contentment, and removed away much scandal which formerly was taken. Yet again

VOL. II.

afterward it was bruited, the second time, That my lord of Canterbury had given the king satisfaction in the matter; and my lord of London, on such a Sunday, had come and submitted himself to my lord chamberlain, and the rest had relented. Nay, it went so far, that Yelverton, the king's solicitor, and a great dependent upon the house of Suffolk, told Mr. Pye, the counsellor, and Mr. Cholmely, the earl of Essex's solicitor, coming unto him about books to be drawn up, for passing back the jointure of the lady Frances's part, and the portion of the earl of Essex's part; "That the gainsaying commissioners were now consenting, and the great man beyond the water was come over; which he knew so assuredly, that he had seen it ratified by the subscription of the archbishop and the rest." Yea, further, he added, "That there was great reason, at the first, wherefore my lord of Canterbury, and the others, should stand against the separation; for they had just cause, at the first, to fear that this fact might be drawn into example, and so marriages ordinarily be violated; but now it was resolved that no more such should be permitted, and thereupon they assented." These things were enforced to be endured with silence, for the avoiding of clamour, and making of trouble.

But now behold an admirable device of the bishop of Litchfield, which sheweth what his own opinion was of the validity of the sentence. I will set it down as it came to be acted.

On the 26th of November Searle the proctor cometh to my lord of Canterbury at Lambeth, and bringeth with him a writ of *Certiorari* out of the Chancery, directed to the commissioners in the cause between the lady Frances and the earl of Essex. The archbishop was prayed to open it; and so he did, and there found that four of them, *sub sigillis vestris*, were required to certify *Recordum Sententie* into the Chancery. The archbishop asked Searle, 'If this were an usual thing?' Who answered, 'No, he had not known any such thing before.' It is replied, 'What then should be the reason thereof?' Answer was made, 'That since the matter was controverted in the sentence, lest there should be question of the marriage afterwards, the earl of Somerset would have the sentence lying by him under the great seal of England ratified.' The archbishop thought that to be but a weak hold, yet charged Searle to see such an instrument drawn, and a certificate should accordingly be made. On the Wednesday after, Barker, the register, cometh to Lambeth, and sheweth a form of a draught in paper, how the certificate should be returned in the names of all the commissioners specially put down. The archbishop, in the reading of it, found five or six lines having a black line drawn under them; and there upon the more marking the words contained in them, found that which he liked not. Thereupon he asked Barker, 'Who lined those words?' Barker said, 'He himself did.' The other asked, 'What was the reason of it?' And it was answered, 'Because sir John Bennet, and some

3 H

other of the doctors with him, had disliked that sentence.' Quoth the archbishop, 'And they had reason for it: Who put them first in?' Barker said, 'None but himself.' Quoth the archbishop then, 'May not the certificate stand as well without those words as with them?' To which Barker answered, 'Yes.' Then said the archbishop, 'Let them be stricken out.' Here the register, with somewhat ado, faintly made answer, 'That the commissioners on the other side would by no means have them out.' The archbishop said, 'Then I perceive it is a device to entangle us: I am ready to certify the sentence as the writ requireth, but I will none of this. Barker, I am first in the commission, and for my place sake, I would have looked, that I should have been conferred withal, what had been fit to return, and not to have had this trick put upon me, that either I must certify that which crosseth my judgment at the time of giving the sentence, or I must be forced not to certify at all.' So Barker departed, and all was quiet until the Monday after; at which time the archbishop was early at Whitehall, the council sitting that morning. There, in the waiting-chamber, at the end of the privy-gallery, the bishop of Litchfield cometh to him, and saith, 'My lord, we have received a writ of *Certiorari* out of the Chancery, to certify the sentence for the nullity.' 'Yea,' saith the archbishop, 'and I am ready to certify it.' 'But,' saith the bishop, 'He who framed the writ hath made it *sub sigillis vestris*, and doth not know that there is a seal of office for the delegates; it should have been *sub sigillo communi*.' Before the archbishop could reply, in cometh the lord chancellor, and to him cometh out of the next chamber the lord chamberlain; and then those two lords, together with the bishop of Litchfield, drew themselves to a window, and there had they secret communication about the altering of the form of the writ, as the effect declared; for that afternoon, a cause being to be heard touching alimony, from sir Pexal Brocas to his lady; and the committees in it being the bishop of Litchfield, and Mr. Chancellor of the duchy, and my lord of Canterbury being umpire; before Mr. Chancellor was come, Bembo, deputy to the clerk of the crown, came into the parlour at Lambeth, and had private speech with the bishop of Litchfield. The archbishop going out into the garden, Litchfield followed him, and told him, 'That Mr. Bembo had brought another form of a writ;' and thereupon shewed him the words *sub communi sigillo*. The archbishop bid him do as he thought good, and withdrew himself into the low stone gallery, whither Litchfield followed him, and used these words: 'My lord, here is a form of a certificate, which hath been thought fit to use in the business of my lord chamberlain; and I hear your grace taketh exception to some things in it.' Then he pulled out the very paper which Barker formerly had shewed. The archbishop answered, 'My lord, have I not reason to take exception to

these words, that 'post omnimodam veritatis disquisitionem, post probationes idoneas et de jure requisitas,' we gave such a sentence? For to subscribe this, were to proclaim myself a dishonest man upon record: For if these things be true, why did I deny to join in the sentence?' Quoth Litchfield, 'This here is true; for it cannot be denied, but some 'probationes idoneas et de jure requisitas' were used; and we do not say that all were.' The archbishop answered, 'You shall do well, therefore, to certify 'post probationes aliquas,' and I will join with you; but as it standeth now indefinitely, it will be taken as if all have been used; I pray you therefore to alter the certificate, and make things plain.' 'My lord,' quoth Litchfield, 'I will deal plainly with you: Because the words were in, and doubt was made, whether they should pass or no; the king's majesty hath been acquainted with the business; and he, by a letter from sir Thomas Lake, hath sent word expressly that he will have them in.' The archbishop said, 'Let them then certify, who will avow those words, for I cannot condescend unto them. And hath not that person done a good office, who hath informed the king hereof; that distraction may still be among the commissioners, and there may never be an end of difference?' The bishop said, 'My lord, I could wish that you would yield unto the king, and so give him satisfaction.' The archbishop answered, 'What would you have me do? I gave the sentence as I was persuaded in conscience, and since that time I have been silent, and meddling no way in the matter: I did what I did upon long deliberation; and I may not in private, upon no ground since appearing to me, cross that which I have done in public.' It was further added, 'That there was reason to suspect that they did ill offices who held those things still on foot: That there never was any man, who sought to grace himself by disgracing others, but it met him at the lane's end, at one time or another.' These things passed then; and after the cause heard between sir Pexal Brocas and his wife, the bishop of Litchfield said to the archbishop at his parting, 'My lord, you will give us leave to certify then as we purpose?' To which the archbishop answered, 'Yes, with all my heart.'

The next morning the archbishop remembered, that by the carriage of things in such fashion as was pretended, he might be tricked: For if the names of all the commissioners were put into the certificate, and four of them might certify under a common seal, it should not be known hereafter, but that he and his fellows concurred therein, and that, with the words which were excepted against: He therefore sent for Barker, and in the presence of sir John Bennet, and two servants, being public notaries, he expostulated with Barker, as serving men's turns, rather than caring for peace; and then punctually he delivered these things.

First, 'The writ requireth me to certify the sentence, and I am ready to do it.'—Secondly,

'If the whole process be desired, I am willing to certify that also.'—Thirdly, 'For the words in question, because they were put in without my privy, and they may as well be left out as put in, by your own saying, I pray to be forborn for returning of them.'—Fourthly, 'I require you to conceal these things as much as you may, that the world take no new alarm of any difference between the commissioners.'

The archbishop spake of returning the whole process, because he had heard, that at the first it was meant it should be so; but Dr. Stuart, and perhaps some other of the Civilians, dissuaded that by all means; lest, if the whole were on record in the chancery, every man that list, hereafter might censure that sentence, and sift the grounds whereon the commissioners proceeded; it was good, therefore, to take away that occasion.

When matters were thus resolved, the bishop of Litchfield, who meant to play his prizes in this service, speaketh to Bembo, to draw some preface or conclusion to add to the certificate; that it might not only be signed with the great Seal, as after the form of an *inopsimus*: but that his majesty might add a confirmation to it: and when Mr. Bembo, as unacquainted with this fashion, did not fit the bishop's humour, his lordship took on him to do it himself. He drew up therefore, a strange writing, as was informed by a credible person that saw it, containing barbarous Latin, and no good congruity of sense. But the matter of it was, that his majesty having the authority of the pope now in himself, and in *scrinio pectoris*, having power to ratify, did, *ex plenitudine potestatis*, confirm that divorce to all intents and purposes. In an evening Dr. Martin was sent for to the lord chamberlain, and there was the bishop with his papers. The doctor, as it hath been credibly delivered, being shewed that writing, and his opinion thereupon being asked, did utterly dislike it, and said, "That the king claimed nothing of the pope's power; but took that as his own, which the pope had usurped: that the king had spoke before by his judges delegate, and had nothing more to do: that if the sentence were not good already, no confirmation could make it good." And when the bishop was earnest in defence of his device, there was a little heat stricken between the doctor and him, so that these words passed from the said doctor: "You do, as much as in you lieth, spit in the face of the king our master by laying on him all the matter; whereas the scandal that hath already been is this, that his majesty is said to deal so much in the matter. My lord, you are to blame to enter into these things without advice of men skilful in the law: hath Dr. Stuart or Dr. Bird been acquainted herewithal?" The bishop said, "No; but for this matter, I know as much law as the best of you all." Dr. Martin replied, "No; your lordship thinketh, that because you have read two or three chapters of the canon law about this late business, you know as much as we do, who have spent all our lives in that profession:

I tell your lordship, I have studied the law these two-and-thirty years; and therefore, you shall give me leave to believe, that I know more therein than you can. I am the king's advocate, and therefore may suffer nothing with my consent to pass dishonourable to my master."

Upon these contestations, the lord chamberlain was much troubled, saying, "What a matter is this, that men should be of such contrary opinions! What shall we do?" When the bishop murmured much that his counsel was not followed, Dr. Martin said thus: "My lord, in a business of this importance, I will not wish your lordship to follow my single advice, but let this be done; to-morrow let sir William Button, in your lordship's name, come to Doctor's-Commons; and let him get together sir Daniel Daa, Dr. Stuart, and Dr. Bird, and I will attend them: and then we will consult jointly what is fit to be done."

This advice was much liked; and on the morrow, being Friday, they all assembled, and for two hours all points were debated; but the conclusion was, "That there should be no farther confirmation: for this was to proclaim, that the sentence was defective in itself, which would make a great buzz in the world;" and therefore, the counsel was in general, "That too much had been done, and for the time to come, the care must be, how to lay it asleep fairly."

This resolution being taken, the next knock was, that so many of the commissioners as were for the sentence, should be called together; and they should be made acquainted with this, that the bishop might be fairly put off. On the Saturday night, therefore, in the dark, at sir Julius Cæsar's house in the Strand, met the bishops of Ely, Litchfield, Rochester, the two chancellors of the Exchequer and Dutchy, and sir Daniel Daa, and well near for an hour, they privately debated what they thought fit; but, as it seemeth, resolved as before, and so departed.

A friend being the next day with the lady Cæsar, and knowing of the meeting, asked her, "What about it was?" She answered, "It is something about the late nullity; but what it is, I do not know. It seemeth, that they who were the doers in it, think somewhat is amiss. They suppose all is not well about it, and I for my part think so also."

A man would have supposed, that all these things should have contented the bishop of Litchfield; but he was so far in love with his own invention, that yet he would not be beat off; and therefore, to merit the more, he once again moveth the lord chamberlain to send to sir Francis Bacon and to Mr. Yelverton, being of the king's learned counsel, to know their opinion: which being done; and they two, for the reasons above-named, concurring with the civilians, the bishop, as it hath been credibly related, said of them, together with the rest, "They are all fools." And so ended this stratagem; but the worker thereof was not yet for an end.

From the beginning of this whole question of the nullity, the bishop of Litchfield had carried himself variously, sometimes being vehement in words, publicly against the separation, and other times in deed, giving furtherance to it. Many speeches he had privately with the archbishop, making shew of much honesty and respect to him, which the archbishop ever warily observed; thinking, notwithstanding, that these had been testimonies of the working of his conscience, conflicting in itself, but not resolved what to do. In the mean time, from the court, from London, and out of the country, the archbishop was still called upon by divers worthy friends, "That he should take heed of that bishop: That he was ever, and in all things naught: That he did all the worst offices that possibly he could, and was still stirring the coals, to procure to himself a reputation; that he was zealous of the house of Suffolk." The archbishop forgot not those many warnings, but carried himself very warily towards him: Yet out of charity it still came in his mind, "He is a bishop, I know no evil of him; I ought not to condemn a man upon a generality; I have no particular proof of his misbehaviour in this behalf: Although he dealt ill with the late lord treasurer, and most falsely with the archbishop Bancroft in his life-time, and after his death; and for that cause was detested by both of them; yet an honest man may think, that experience hath reformed him, and now he is amended." Yet it much affected the archbishop, that all men spake so ill of him; and one speech of an old courtier, a very honest knight, entered far with him. For about a fortnight before the marriage, the said courtier speaking privately with the archbishop, among other words, he used this: "I know not what the bishop of Litchfield doth among you; but he hath made a shift to be taken for a knave generally with us in the court." Now, whether the next prank will verify so much or no, let the reader judge. Eight days before the marriage, on a Saturday morning, that bishop cometh to Lambeth, and in private conference with the archbishop, he telleth him, "That out of his love and respect to his grace, he was come voluntarily, as of himself, to know his mind about one matter, and it was this. On St. Stephen's day, said he, the lord chamberlain meaneth to have this great marriage go forward: Now, it may, perhaps, be desired, that a licence should be given by you, that the banes may not be asked; which if you like not to grant, I may be the means to free you from being moved to it." The archbishop said, "What have I to do with granting of a licence? It belongeth not to me: But wherefore should there be any need of a licence? The marriage is intended to be public; masks and shews are made for the same; all England taketh notice of it, and therefore it were good that the banes were openly asked, as the manner is of such marriages as are made in the king's chapel. Yea, the lady Elizabeth herself had her banes asked." "My lord, saith Litchfield, there is

some cause why it should be done without publishing the banes: For, peradventure, somebody may step up, and make a disturbance. You know what a mad, naked fellow came into St. James's, after the death of the prince; if such a one should come in now, what a work would it make?" The archbishop wondered within himself, to hear such a reply, and thought surely, that it was no mad body that they should need to stand in fear of, but they suspected some what else. But his answer was, "My lord, there come no such into the king's chapel; there be doors and officers to keep such out. But if it should be suspected that any would oppose, it is best the banes be asked, for then there will be some warning of the gain-saying; whereas, otherwise, if at the time of the marriage one should suddenly start up, it would make a greater trouble." Notwithstanding the bishop went on, "That a licence would cut off all the doubt." The archbishop answered, "But what have I to do with granting a licence in the king's chapel? It belongeth to the ordinary of the place, and that is my lord of Bath, as dean of the chapel." Litchfield replied, "He never granted any, and he hath no seal for that office." It was answered, "He never granted any, because nobody ever desired it; but the manner was, that the banes were published. But as for the seal of the office, who doth not know that any seal will serve? And none better than this bishop's seal, it being said, 'Datum sub sigillo nostro Episcopali, quo in hoc casu, or hoc tempore, utimur.' King James, at the first, did use the seal of queen Elizabeth, till a new one was made." The bishop proceedeth, "Yet it would be fit that you granted the licence, if it be requested." To this the archbishop said, "I shall do that which never any of my predecessors did." "Yes," quoth Litchfield, "if you would seek your records, you should find some so granted." The archbishop answered, "I have inquired of my officers, and they tell me, That no such thing was heard of, *in omni hominum memoria*. But, my lord, I know that my lord of Bath hath it under the great seal of England exclusively to the archbishop; so that in direct words there is a restraint, that he may not meddle there." "Yea, but," quoth Litchfield, "you have an act of parliament, enabling you to grant dispensations to the king and his children; and therefore it belongeth to you." Said the archbishop, "do not you think that I understand the act of parliament as well as you? My lord, do you think that that statute was made for these ordinary graces and dispensations? Why, is not your lordship able, within your diocese, to grant a licence, that a marriage may be solemnized, and not the banes asked?" "Yes," saith he, "I may: nay, every archdeacon may do it within his jurisdiction." "Then, my lord," quoth the archbishop, "must an act of parliament be made to grant the abb. power to do that which every archdeacon may do within his precinct? There is surely some other matter in it. But I marvel, my lord, that you are now so earnest for the archbishop's

licences, when, as I have heard, in the days of my predecessor, when you were bishop of Rochester, you would not suffer the archbishop's licences to pass within your diocese.' 'No,' saith he, 'it was for Westminster that I did strive, not for the diocese of Rochester. And it is true, that there be records in that church, that the monks did contend with the king about divers questions. I had reason, therefore, to stand for the privileges of my church.' It was answered, 'So hath my lord of Bath to stand for the right of the king's chapel.' The archbishop seeing how earnest the man was, in so unreasonable a thing, said farther 'My lord, you have mine answer; but let me now tell you one thing. It is six weeks ago, that I heard from the court, and many times since I have had it reiterated, that such a trick should be put upon me: that although it needed not, yet I should be moved for granting this licence, because thereby I should be constrained, either to grant it, and so cross my former sentence, and involv'dly give my consent to the nullity, or I should deny it, and so grate once again upon the king's displeasure. You see now I have given you a fair answer, which may free me from both. But, my lord, I pray God you do good offices in this business. I fear you put yourself into many things, which may be better forborn. But let me tell you, there was never any man who sought to raise himself by wronging another, but at one time or other he had enough of it. It is now almost three months since this sentence was given, and since that time, I have not meddled with the matter, for offending the king. I am silent, and no way oppose, and men have their end; yet cannot I be quiet. I would have you know that God beholdeth these things, and remembereth them. And for my part, I am not blind, I see well what is done; and I shall not always be silent. The time will come, that I must speak; and it shall appear I am not tongue-tied.' This made the bishop not so forward as before; but occasion of a farther speech being offered, the archbishop went on, and said, 'The sentence which I gave, was in the fear of God, and according to my conscience: and if that had been done, which was convenient, and we called for, there needed not to have been any division in judgment. For, my lord, you may remember when you came to me at Croydon, and brought these papers from the king, after the reading whereof I slept little that night, how desirous I was to give his majesty satisfaction; and therefore prayed you, fetching out the process unto you, to tell me whereupon I should ground my sentence. You shewed me one article, That he had not known her, nor he thought that he never should. I told you then, Yea, that was for want of love, for he said, When I came out of France, I loved her; I do not so now, neither ever shall I. It is want of love.' To this the bishop said, 'Yea, and the earl added, That he had done his best oftentimes, carnally to know her, but he found an imperfection in himself.' The archbishop replied to this, 'Oh,

my lord! never say so; for his lordship's answers, upon his oath, are to the contrary: He found no defect, or impediment in himself. And if I shall speak my private opinion, although I would not have you believe it, I think the earl as able a man for a woman, as any is in England.' 'And I think to the contrary,' quoth Litchfield. The archbishop went on: 'But, my lord, when your lordship and I had these difficulties in our mind at Croydon, you told me of one thing, which I embraced as an oracle from heaven. And that was, that to rid ourselves of these distractions, we had no other way but to call the earl of Essex again upon his oath, that so giving us a fuller answer, we might either have good ground to pronounce for the nullity, or matter to give reason why we might not condescend unto it. I approved this; and you know how the next day, in public court, it was moved, and my lords of Winchester, Ely, Rochester and yourself, gave very good liking to it; and no man said any thing against it, except Mr. Chancellor of the Exchequer, who softly spake, I know not whether that will be permitted. But you may remember, you were intreated to deliver this to the king at Theobalds, from whom you brought word, That it should not be granted, because the earl of Essex, being partly provoked by his falling out with Mr. Henry Howard, and partly being counselled by the earl of Southampton, would speak all things to hinder the nullity. My answer then was, That he was to speak upon his oath, and we would most strictly examine him. When that was denied, which should have led us to the truth, I must confess I had never any mind to pronounce for the separation.' The bishop seemed to take no great pleasure to hear these things thus repeated, but fared, as if he could have wished, that they had all been forgotten. The conclusion of all was, that the bishop seemed to be well satisfied that no licence was given, and promised the archbishop to take care that he should no farther be troubled with it; assuring him, 'that he did ever good offices to him, whereof the king could give witness, and would; and he would ever make the best of things.' To which the archbishop said, 'If he did, he would take it for a kindness at his hands;' and so he departed.

Accordingly, the next day the banes were asked in the chapel, and there was nothing but fair weather; the archbishop attended the king in the closet. On the Monday the king went to Hampton-Court; and that day the bishop of Bath and Wells came to Lambeth: he told the archbishop, that he had a direct message unto him from the king, and that was, that his majesty did much marvel, that he spake not with him about the sentence: that the king expected satisfaction and submission. His lordship added, that he perceived that the king had some scruple in his mind, which he wished should be removed before his going to the communion on Christmas-Day. The archbishop knew not that the bishop of Litchfield had

dealt any way treacherously with him, and therefore was constrained to answer, in general, that he knew not what to say to his highness. He persuaded himself, that in giving of the sentence he had done his duty, and therefore could not tell how to make a submission where he conceived no fault. If in any circumstance he had erred, he was ready to testify his sorrow for it; but he knew no such thing; yet if his majesty was displeas'd at him, to signify his obedience to his king and sovereign, to whom he was so much bound, he would not refuse, if the king were pleas'd to restrain him of his liberty, and lay him in the Tower all the days of his life, to submit himself unto it patiently, without murmuring.

Furthermore, he pray'd the bishop of Bath (who, on the morrow, was to go to Hampton-Court) to signify humbly to his majesty, that he had nothing in this world more precious than his life; and that he wis'd, that he had given that life as a redemption, that the king's hand had never been in that business. And withal he said, that at the coming of the king, he would attend his majesty.

On Wednesday night, the king came to Whitehall; and on the Thursday, after dinner, my lord of Canterbury went to the court, where they were all busy about plate and jewels against the marriage. Notwithstanding, he had hastily speech of divers matters with the king; and in the end, he said privately unto his highness, 'May it please your majesty, I understand by my lord of Bath and Wells, that your majesty expects that I should give you an account about the matter of the lord of Essex and the lady Frances: I can say nothing more than this, that I was put into the commission as a judge, and at the time of sentence I did my conscience; and since I have not meddled with the matter.' 'Yes,' saith the king, 'I hear you deny'd a licence to be granted, for not asking of the banes; which I wonder you would do, since the sentence was pass'd.' 'No,' said the archbishop, 'I deny'd no licence; but I advis'd, that the best course was, that the banes should be ask'd, according to the custom used in the chapel.'

Secondly, I said, 'That if any licence should be granted, it belonged not to me to give it, but to the ordinary of the place, the dean of the chapel, who hath it under your majesty's great seal, exclusive to the archbishoprick.' 'Yea,' said the king, 'my lord of Bath said so; but I am told it is otherwise.' The archbishop replied, 'Nay, it is so indeed.'

And thirdly, said he, 'My answer was, that never any of my predecessors granted a licence for any thing done in the king's chapel: I have received information so, from my officers. It had then been presumption in me to attempt that which belonged not unto me.' 'This is another matter,' saith the king. 'Were these your answers? I was told otherwise. But I will take some other time to speak with you.' The archbishop, after this, attend'd half an hour, and nothing being said, he departed.

The same night, a friend coming to Lambeth, told my lord, 'That he had been that day with the lord Knowles, where he found, that the bishop of Litchfield had exceedingly wrong'd my lord of Canterbury: for he had reported all the speech about the licence, in a spiteful manner; said, it was absolutely deny'd: that the archbishop gave out, that the earl of Essex was very potent for a woman; and that he intended to question this new marriage, at one time or other, that it should never take effect.'

This, said the gentleman, made a great stir among them; and the archbishop was much blamed, that he would never make an end; but they were much troubled at it, as fearing themselves, that all was not sure. 'But,' quoth he, 'when I had told them, that this was some ill office of the bishop of Litchfield, who had every day new inventions to puzzle them, that he might so much the more indear himself, unto them, by signifying his zeal for them; and that I know how fairly my lord of Canterbury had answer'd him, (for so indeed he did) and that he was so far from disturbing the marriage, that he intended to be present at it; they were not only appeas'd, but seem'd much content that his grace would be there: and this I assure you to be true.'

When the archbishop heard this, he was now satisfied, that the man who had done him all the wrong, was the bishop of Litchfield; from whom he resolv'd afterward to be very wary how he trust'd him. Yet, professing that he forgave him with all his heart, on the Christmas-Day he attend'd the king, and receiv'd the communion with his majesty; and so, coming home to dinner, sir Charles Cornwallis came along with him. This gentleman is one, to whom, for his love, the archbishop was much beholden; and after dinner they grew privately into speech of all these fore-remember'd stirs; where the knight found much fault that so many tricks were put upon the archbishop; blamed infinitely the bishop of Litchfield; promis'd to acquaint some of his great friends with his qualities, and assur'd to make things be rightly understood; and took away with him that report, wherein he seem'd much to joy, that the archbishop would be at the marriage.

On the morrow, being St. Stephen's day, the archbishop went to the court, attending the king to chapel, went down to the marriage, (where, not the king, but the lord Chamberlain gave the bride) had a pair of wedding-gloves, and so came home to dinner; where he sat with much comfort, as being glad, that since things must be so, they were come to an end: and so pray'd God to bless his church, the king and kingdom, and himself; that he might be free from so many vexations, as for a long space undeserv'dly had follow'd him.

The SPEECH intended to be spoken at Lambeth, Sept. 25, 1613, by George, Archbishop of Canterbury, when it came to his turn to declare his mind concerning the Nullity of

Marriage between the Earl of Essex and the Lady Frances Howard.

[Seven of the Commissioners having before declared themselves that they would give Sentence for a Nullity, and great reason being to think, that the bishop of London, sir John Bennet, Dr. James, and Dr. Edwards, would give voices against the Nullity.]

My Lords, and you the rest of the Commissioners; I have had a great contention and deliberation within myself, in what manner I should utter my judgment in this present cause, since, after the speech of those three who first began, so great a stream and concurrence together of the rest (my lord excepted, who spoke last) have given their opinions for the annulling of the marriage. But yet I hold not myself concluded thereby, but that I may declare my judgment, having learned that *suffragia* among wise men are as well *appendenda* and *ponderanda*, as *numeranda*: and it was no shame for Phocion in Athens, upon good ground, to contradict the whole city; neither was Paphnusius in the council of Nice the less respected, when he stood against the whole Synod; nay, it was his honour, that by delivering of his sentence, he altered the resolution which that whole assembly had intended to take, which I freely acknowledge I have no hope to effect at this time. And yet, though I have not that hope, but might very well spare this labour, yet my conscience telleth me, that it becometh me to speak in a matter of this importance, because, not only, *Deum timeo*, I fear God, which I doubt not but all of this company doth; but I am afraid of God, lest he should be angry with me, if in this case I be silent. And I think it is expected of me, since I am here present, that I should not sit as an idol, and only fill a room; for that were to lay an imputation on myself, that I had undertaken a cause, which in public I durst not offer to maintain.

I must acknowledge, that in delivering of my mind in this business of so great weight, I do find two defects, that I cannot so pertinently speak unto the purpose as divers of the judges here: the one is, That I am no lawyer; and the other is, That I am no married man; by both which I am disabled, that I cannot speak with that confidence concerning some particulars, as most of you, the commissioners, are able to do; but in lieu thereof, I have endeavoured to furnish myself some other way concurrent to this purpose: as by reading, by conferring with some whom I do trust, with pondering thereupon, so that it hath lost me much sleep at several times, with frequent prayer unto God, that he would direct me aright; which I have more begged of God in this cause, than ever in any that was before me in judgment. And besides, I bring with me *animus candidum*, a mind devoid of passion, or any perturbation, which inclineth to no part for fear or for favour, for spleen or for hatred: from which, I thank God, in pronouncing of

sentence, I ever have been free, remembering that judges are in the place of God; and as Jehosaphat said, 2 Chron. xix. 'Non hominis judicia exercetis sed Domini, et quicquid judicaveritis in vos redundavit.' He then who sitteth in the place of God, and in pronouncing of sentence will vary from justice, he leaveth God, and sheweth himself worthy to lie in the flames of hell, for abusing of the trust which is committed unto him, which I hope I shall not do. And *e bono*? To what end should I transgress in judgment for either side, when I have no reason to be partial for either, since it is indifferent to me, in any particular, whether this question receive one or other determination?

Where, lest I should be mistaken, I think it not amiss, as publicly I have done divers times before, to let the world know what my judgment is concerning the impotency of a husband towards his wife: that since marriage in young couples is for carnal copulation and procreation thereupon, and that it is the intentment of those which contract matrimony to receive satisfaction in that kind, that if this nobleman be not able to perform those marital rights unto his lady, he doth unto her a very great injustice to retain her as his wife; and we shall perform a great part of injury and cruelty towards her, if we do not free her from this burthen and yoke. We are bound in conscience to do it, since it is in truth no marriage, but a pretended matrimony, that consummation being wanting, which was one of the first things in intention when they two came together: for *impossibilitas officii*, by a received maxim, *solvit vinculum conjugii*. But the point is, that before the separation be pronounced, it must appear unto the church, that there is good cause for the same; which must not be upon light surmises, or questionable suggestions, but upon evident declarations and proofs, which may give full contentment to the conscience of the judge. The marriage was overt and in the face of the church, whereby they were joined into one; let the reason of separation be as clear as that was, if it possibly may be; or let it be so apparent, that the church may well know, that there is ground to stand upon for pronouncing of a Nullity. Now this is it which I doubt will not fall out in this case of my lord of Essex; there is not proof sufficient to inform the minds of the judges that this knot should be dissolved, and themselves set at liberty the one from the other. And then you understand what the general rule is, *Quod dubitas, ne feceris*. And in this controversy there seem in my judgment many reasons of doubting, that the separation desired ought not to be granted. You shall hear some few of them.

1. The first scruple which ariseth in my mind, is from the uncertainty of that proceeding, which we have had in this business. For in the handling of it formerly, we had it propounded, that there must be a Nullity *propter maleficium versus hanc*. That was it which we



debated, and for the which we turned our books; that the counsel for my lady did still insist upon, not naming the words indeed, but by a periphrasis, or circumlocution, describing the same. And it cannot be forgotten, how Dr. Stuart, being told by one or more of the commissioners sitting then in court, that his whole speech did still point out *maleficium*; he answered, It is true, that is it which we intend. The authorities always brought out of the canonists were in direct terms upon *maleficium*, the proofs intended nothing else. And we all understand, that to have an impotency unto a man's own wife, and an ability unto other, and that incurably, and that for some latent reason, which cannot be known, is the case of *maleficium*; and that is the matter alleged in the libel, and whereupon my lord is examined. And yet, now since we sit upon the second commission, *maleficium* is disclaimed. One of my lords (my lord of Winchester) hath avowed it, that he dislikes that *maleficium*; that he hath read Del-Rio, the Jesuit, writing upon that argument, and doth hold him an idle and fabulous fellow; that he rather supposeth it to be God's own handy-work, than any thing from the devil. Another of my lords (my lord of Ely) hath assented thereunto, and *maleficium* must be gone. Now I for my part will not absolutely deny, that witches by God's permission may have a power over men, to hurt all, or part in them, as by God they shall be limited; but how shall it appear that this is such a thing in the person of a man? The question is, *An factum sit*, and how it shall be discovered? But to make it a thing ordinary, as the Romish writers do beyond the seas, I take it to be a fable, acknowledging that for truth, which a bishop well versed in that argument did lately write, that maleficia is the very garbage of popery: a thing so base, that we who have learnt Christ aright, should despise and contemn, allowing it no place amongst us. Which course it were a shame if we should not observe, since the papists themselves grow very weary of it; and that even in France, where there hath been more ado with this maleficia than in any other country; for there the common sort, at the time of their marriages, were wont to be afraid to have the words of conjunction in matrimony to be spoken aloud, 'Quos Deus conjunxit, nemo separet;' or the benediction to be publicly given, lest some witch or sorcerer in the same instant should tie a knot upon a point, or play some other sorcerous trick, whereby the new bridegroom, so long as that knot lasted, should be disabled from actual copulation with her whom he had married. And for avoiding of that hazard, they had therefore their matrimonies celebrated in the night-time, and in some private place, were none came but such friends as they dared to trust. This superstition grew so common, and men were so abused by the fright that came thereof, that the prelates of France, about thirty years since, in a council at Rheims, made this decree against it. \* Peccare graviter admonemus eos, qui

noctu vel clanculum benedictionem nuptialem sibi dari procurant propter metum maleficii: Maleficium enim se vitare posse, credere debent, si eo pietatis affectu ad conjugium accedant, qui prescribitur in sacris literis, videlicet, ut cum timore Domini, et amore filiorum, magis quam libidine impulsu copulentur, devote susceptis prementia et Eucharistia Sacramentis.† And the year after that, another council in that kingdom doth speak yet more plainly. † Et quia Christiano nomine indignus error nostro secula molevit, ut signationibus, consignationibus, vinculis et nexibus matrimonii impediatur:—Hæc Synodus communiione Ecclesie interdicat omnes eos, qui hujusmodi superstitionibus utuntur: monetque fideles, ne hujusmodi commentis fidem habeant, sed in Deo veritatem certam constituent, nec idcirco matrimonia noctu fiant, sed in luce et frequentia hominum. If it be rotten ripe in France; if it be error indignus Christiano nomine; if men must not fidem habere hujusmodi commentis; what do we with it here in England? Let it be cast away as a rotten rag of popery. And yet I do now find, that in the very sentence which is this day to be given, it falleth directly upon the description of maleficium versus hanc. So that what should I think of this case of my lord's, which is built on such a foundation as no man will stand to? We are on it, and off it, and avow it we dare not, yet fly from it we will not. This moveth scruple in me, how I should assent to that whereof I can learn no certainty from the counsel of my lady, nor from you that be the judges, who speak for this nullity: I dare not rest my building on such a sandy foundation.

2. Another matter which troubleth my mind, is the novelty of that which is now set on foot; a thing unheard of in our church, and unknown in our kingdom. We have many stories, old and new, of things done in this land: we have registers extant in every diocese; we have acts and records which specify those accidents which have fallen out in the days of our forefathers, I have caused search in many places to be made, and so I know have some of you, the Commissioners; and I have called upon you for the same, but I can have no precedent of any such example that hath passed in our kingdom. No memory of man can express unto me the name of that person, whose marriage was annulled for impotency towards his wife, when he found an ability of carnal copulation with any other woman. It is this year 1613, that hath set abroad this present imagination, for the former ages knew it not. It is safe walking in the ways which are treaded out unto us. We have great reason for our doings in these human actions, when we do those deeds which formerly were done by our predecessors. I have had many worthy

\* Bochellus in Decret. Eccles. Gallic. lib. 3. tit. 5. cap. 176. anno 1583.

† Idem, lib. 1. tit. 14. cap. 7, ex Concilio Bituricensi, anno 1584.

men, which have gone before me in the place which I now hold, men learned, men judicious, great discoverers of impostures? Men that have done great services for the nation where we live; but of them never any had such a case before them, they never gave sentence for a nullity of marriage upon such an inability. I know not whether it be a happiness, or unhappiness, that I must be the first to sit in a Commission for determining such a controversy.

I know, to meet with this objection, it is whispered sometimes, that there is an example, and that is Bury's case, which is urged as a precedent unto this now in question. But, indeed, that is no pattern of this; the dissimilitude is great between the one case and the other; for Bury had his —s stricken off with an horse, that nothing but a little of one of them remained. I will read you the very case, which if any man doubt of, shall be avowed unto him. Thus then it doth follow:

John Bury, esquire, was lawfully seized in his demesnes as of fee, of, and in divers manors, lands and tenements within the county of Devon. The said John Bury did, the 20th day of November, in the first year of queen Mary, marry one Willimot Gifford, and they lived together three years; and the said Bury could not carnaliter cognoscere dictam Willimotam.

Afterwards, viz. the 17th of May, 1561, the said Willimot called the said Bury before the ecclesiastical judge, and charged him to be 'impotent ad coeundum cum dicta Willimota, propter vitium perpetuum, et incurabile impedimentum ad generationem, et ejus inhabilitatem,' &c. and thereupon desired to be divorced. In the proceeding before the judge, it was proved by divers witnesses, of which two were physicians, that the said Bury had but one little s—e, and that no bigger than a bean. It was also deposed by divers matrons, that the said Willimot Gifford remained a virgin, and incorrupt; and the said Bury confessed no less: upon which proof, and confession of John Bury, the ecclesiastical judge pronounced sentence of divorce, and did thereby separate them.

Afterward the said John Bury took to wife one Philippa Monjoy, his first wife, Willimot Gifford, being then alive; and the said Philippa had a son in the time of their continuing together, John Bury's first wife being alive.

Afterwards, the said Willimot being still living, the said Monjoy, of her own accord, without any sentence of divorce, forsook the said John Bury, and married one Langeden, with whom she continued. The said John Bury, and his first wife, Willimot, died; the said Monjoy and Langeden then living, married together.

The question is, Whether, John Bury being divorced from Willimot Gifford for impotency, the second marriage, solemnized between the said John Bury and Monjoy, during which time the issue male was born, be in law a marriage or not?

It appeareth by the process made in the cause, and the words of the sentence grounded

VOL. II.

upon the same process, that the first marriage was pronounced to be void, 'propter defectum et vitium testicularum,' which made the said John Bury 'impotentem et ineptum ad actum generandi, et coitum conjugalem.' And so in all respects this second marriage with Monjoy is void, and of no effect: for either this cause of the dissolution of the first matrimony is true, which is always to be presumed, until the contrary do appear, and then the same cause doth make the second marriage void also; or else, if it any ways appear, this cause of the dissolution of the first marriage to be false: 'Et ecclesia erat decepta, quia satis potens ad generandum, et quod in ipsa generavit.' And in that case the first marriage is good in law, 'et debet redire ad priora connubia.' And so the second marriage is utterly void.

We are of the opinion above laid down: John Loyde, Henry Jones, John Hone, Nicholas Stuart, Edward Crompton, Robert Fourth, William Farrand.\*

\* In the short case of Mrs. Catharine Weld, (daughter to lord Aston) and Edward Weld, esq. her husband, printed in 1733, the cases of Bury and Essex are thus quoted in pp. 42, 43: "The famous case of John Bury, esq. of the county of Devon, in the reign of queen Elizabeth, is a proper caution in respect to such demands for annulling contracts of marriage, since such nullities often occasion much noise and confusion; and instead of hurting none, as has been asserted on the other side, almost always have stirred up implacable malice in the party declared incapable, and the consequences have not seldom brought a disreputation on the court who pronounced it.—In order to which, let us return a little to the history of Bury's case. His first wife Willimot libelled him for insufficiency as to carnal encounters, and upon inspection it appeared he had but one little testicle, of the size of a small bean. The ecclesiastical court, on this and other corroborating evidence, gave sentence with the libel, and, so far as they were able, annulled the marriage.—Willimot quickly took the advantage of this sentence, and married again. Bury was, it seems, not at all satisfied with this juridical sentiment of his incapacity, but married also a second wife, Philippa, by whom he had a son. This afterwards drew the succession to Bury's estate into question, on the legitimacy of this son. The common lawyers were unanimously of opinion, that the church authority exerted in pronouncing the nullity being plainly deceived in the very ground upon which it went, that sentence was in itself void, and the first marriage between Bury and Willimot remained, notwithstanding it, good.—It is with some reluctance I mention the case of the earl of Essex and lady Frances Howard, the most famous instance in our kingdom of a sentence of this kind, which was given by the majority of a court of delegates, composed of the greatest bishops and men who were skilled in the civil law; yet, notwithstanding, the solemnity of in-

Whether this be true or no, I appeal to Dr. Stuart, who is here in presence, and of counsel for my lady, who, I know, will affirm it, because, not long since, being asked by me of it, he confessed the same. And here is Dr. Farland, now of counsel for my lord, who was used for his advice in this case of Bury; and Dr. Hone is yet living, who can testify the same. For I will suppose, that a man cannot forget such a famous case as that was wherein himself was employed: but if all these were dead, I know where records be, which still will continue. If this then were the matter in question touching Bury 'defectus testicularum,' what is this to the great controversy now depending before us? and if this be the only precedent, that should be the inducement, that the sentence to be given in this cause is not new, but the like hath been heard of before; I am where I was: We are now to act a novelty, a thing strange, and unheard of in the church of England, whereof let other men be the managers, I may have no hand in it.

But perhaps it will be said, that in some other countries, and especially in France, these things are well known; and the examples of one kingdom, especially, being so near unto us, may be an inducement for us to do the like, since the reason is the same. My answer thereunto is, that I that live in England, am to frame myself to those things, which I find in the church of England, whereof I see no reason but there should be as great esteem, as of any church in the world. In the days of our forefathers, as our nation was held a very noble nation, so was the church of England held a very famous church. Ecclesia Anglicana, as might easily be shewed out of Matthew Paris, and by divers things in some later general councils, did carry a greater sway. And why should we at this time, in any thing, yield unto any church in the world, since it is a thing well known, that the knowledge of divinity doth abound here beyond all other nations? and

terrogatories, the earl of Essex's direct answer that she was a virgin for him, the verdict of inspectresses, the pomp of compurgators, and all the other colours which could be invented to gloss their proceeding; yet so scandalous was this decision in the eyes of the world, that it lost the characters of all those judges who concurred in pronouncing sentence, and fastened the nick-name of *ſir Nullity* on one of the sons of a bishop concerned in it, when he was soon after knighted."—And p. 47. "Bury's case was indeed an odd one, but it had no effect when quoted to the bishops and doctors in my lady Essex's case; and though so many hard censures have fallen on those who decided it against the validity of the marriage, yet the event did in some measure justify their opinions; since the lord Essex, though he ventured on a second marriage, yet had not issue by the lady."—Their Case is cited and considered in the *Duchess of Kingston's Case*, A. D. 1776, *infra*.

open of this land have beat down the power of the pope, and made evident divers questions in matters of theology, beyond all the parts of Christendom: but beyond this, I do know, that the customs of churches, even by the determination of the pope himself, ought to be the rule of judgment in this matter. We have a famous place interserted into the body of the law, written by pope Alexander the 3rd, unto the bishop of Amiens in France. It is worth your bearing: "Quod sedem Apostolicam consulisti super his, quæ tibi dubia existunt, gratam gerimus et acceptum, et tua exinde fraternitas non parum commendanda videtur. Ex tua siquidem parte nobis est intimatum, quod quædam mulier tui episcopatus cuidam viro nupsertit, asserens quod ob utriusque inguinis rupturam, genitalia ejus abscissa fuissent, necdum ab eo cognita fuisset, qui utique factus leprosus, se pariter et sua domui reddidit infirmorum. Mulier vero ad domum patris reversa sicut asserit inveniis, alio viro nubere desiderat, et conjugali affectu conjungi. Unde licet Romana Ecclesia non consueverit propter talem infirmitatem, vel propter alia maleficia, legitime conjunctos dividere, si tamen consuetudo generalis Gallicanæ Ecclesiæ habet, ut hujusmodi matrimonium dissolvatur; nos patienter tolerabimus, si secundum eandem consuetudinem, eidem mulieri cui voluerit nubendi in Domino concesseris facultatem." By this we do find, that the church of Rome itself doth grant no separations in matters of matrimony, where the church of France doth; and if the pope permit, in France itself, that a divorce should be made, it is but a toleration, and not this neither, but where it is, consuetudo generalis Ecclesiæ Gallicanæ; which if you will apply unto this cause in question, you must shew me, that in England it hath been a general custom, that a nullity in marriage may be pronounced 'propter impotentiam versus hanc;' which if you cannot shew, as indeed you cannot, nor give any true example that ever hath been of any such separation within this church, I may both in law and conscience conclude, that I dare not introduce any novelty, and so consequently pronounce for the nullity of this marriage. Many things are done in France, whereof if we in England had the examination, we should, peradventure, find the fact different from that which they conceived; or if we agree in the fact, we should give another sentence. It is not unknown how, within the space of one year, there hath been much ado in France about two women, *Magdalen* and *Louyse*, pretended to be possessed with a great many devils, and how *Verrine*, a principal spirit in one of them, hath avowed and maintained the mass, invocation of saints, adoration of images, and a great many other points of the grossness of popery; and a book hereof hath been printed and reprinted in Paris, with the approbation of the state, and allow-

\* De Frigidis et Maleficiis, cap. 2. in supplemento.

ance of learned men; in which the church of England would certainly dissent, and proclaim the whole business to be but an imposture; as the very like was in the days of queen Elizabeth, when the devils of Denham were said to possess Sarah Williams and her sister, and some other persons; and much ado was made of it, and divers fond people believing those knacks, turned papists thereupon; yet the issue of all was, that it proved no better than a shameful delusion, and a great abusing of credulous and light-believing persons.

3. But now to proceed farther; If it shall be said, it is not the novelty, nor the want of custom here in England, which should prejudice the truth; *nuleat veritas* wheresoever or whensoever it appears: The Proofs are evident whereupon we do stand, and that will enforce the sentence. My answer thereunto is, Let that be made manifest, and clear, and perspicuous unto the conscience of an understanding man, and I shall concur with you: But how shall I find this in a matter of this quality? Because it is nothing else but truth which we do aim at, it were fit that all probations, if not which are possibly, yet at the least which reasonably may be had, should be got together to enforce a conclusion of this consequence. My books tell me, 'In valore matrimonii investigando quæcunque probationes possibles adhibendæ sunt, et potius debent esse superflue quàm diminutæ.' It is Solomon's saying, *Prov. xxv.* It is the honour of a king to find out a thing. And wherein can judges bestow their time better in a point of difficulty, than to search and search again, by all honest and good means, to know what is the bottom of that which lieth secret, that they may satisfy their own conscience, and the conscience of others, in the sentence which they give, and leave no kind of scruple, which may trouble their own thoughts; Whether these things have been done in this present case, I appeal to your own consciences; whether the writers do not mention divers things; whether the counsel for my lord have not spoke of sundry matters; whether we that be the judges, have not thought of divers courses convenient to be held; of all which no piece or parcel hath been permitted unto us. The proofs then which we have had, do arise only out of the depositions, and if there be not proof sufficient where shall we seek for it: Let us then consider them. I will tell you my opinion of them. I find nothing in them all, which is not in substance contained in the Answers of my lord of Essex: A noble personage saith, That in the hearing of divers things, the earl hath said, that he was not able to know his lady carnally; the earl thinking this to be true. But this is but a relation of wonder spoken extrajudicially; and therefore, for the understanding of the truth therein, we are to have recourse unto that, which by the said earl is judicially deposed. Divers witnesses do speak, that the earl and the lady have lived and lain together for divers years; my lord doth acknowledge it in his answer; the matrons and

midwives do declare, that in their judgment my lady is a virgin, and therefore, that she was never known carnally by the earl; himself confesseth that he did never know her. So that now, all in substance depending upon his lordships answer, it ought to be our labour to scan that exactly, and to judge of it circumspectly. Doth not he then say, in *responsione ad quartum*, That though divers times, in the first year of their cohabitation, he did attempt to know her, (which divers times may be twice or thrice, and no more) yet in the two latter years he did never attempt it? But doth he not say plainly, *responsione ad tertium*, That since the time of his marriage, he had not, nor hath any sickness or impediment to hinder him, but that he might have had, and may have, carnal knowledge with a woman? This is for the general, that he hath no impediment: But, in *responsione ad quintum*, doth he not descend more particularly unto his own lady: that it is true that he did never carnally know the said lady Frances? Mark now what followeth; but that to the act of carnal copulation he did not find any defect in himself. Indeed he was not able to penetrate into her body; but he layeth the fault of that upon her, as may be seen in his answer unto the 7th article. And it may not be forgotten, that in the end of the answer to the 4th article, he saith, That sometimes she refused him. These things are evident, and cannot be denied. The only matter which maketh shew against this is, that he acknowledgeth that he hath lain by her, and hath had no motion to have carnal knowledge of her; but especially, that in the end of his answer unto the 6th article, "And believeth he never shall." These words are the shield and buckler of the contrary part; but how easily do they vanish away, or fall to the ground! For I appeal unto you all, who were present at the examinations, (and those were ten of us in number, who now sit here present) whether the earl did not openly subjoin that to his answer; "When I came out of France, I did love her; but I do not so now, neither ever shall I." I appeal unto the conscience of you all, except my lord of Winton, and my lord of Rochester, who were not then commissioners; whether this be so or no: Here then is the matter, it is the want of love, which restraineth all motions of carnal concupiscence, and not any impotency; it is *defectus voluntatis*, and not *defectus potestatis*. Let discontentment be removed, and there will be an end of all the inability: Married men best know these things; but out of common reason, there can be no great longing, where there is no great liking: many things they say fall out between man and wife, that for some good space of time there is no carnal conjunction, and yet no impotency concluded thereby may be. The case is famous of Pulcheria, sister unto the emperor Theodosius the younger, who having vowed virginity, was notwithstanding afterward, for great reason of state, thought fit to be married unto Martianus, who thereupon was chosen emperor; she would not

condescend thereunto, till she had promise from him, that her virginity should be preserved, and with such a promise he did marry her; so that they lived together in shew as man and wife, but indeed as a brother and a sister. Our stories do make mention, that he who was called saint Edward in England, I mean king Edward the confessor, did marry a lady, the knowledge of whose body he never had, neither did this wedded couple ever endeavour to break their virginity. The writers do declare no other reason hereof, but that they had an opinion, that to live in virginity was the more meritorious, according to the superstition of those times. Now were it not a strange argument, to conclude in this manner, that because Martianus had not conjugal copulation with Pulcheria, therefore he was a man impotent; or, because king Edward had not carnal knowledge of his wife, therefore he could not know her? I know the circumstances of this present question do differ from those, but the ground of the argument is the same. Want of act, upon private reason, will never enforce a want of power. And this is our case, as I understand it, which maketh me unwilling to consent to this nullity.

4. There followeth now another argument, which I shall deliver briefly. We have always agreed, that the chapter in the law which containeth our case, is the chapter 'Litra de Frigidis et Maleficiatis;' for if it be not there, it is no where to be found. When we have delivered many things appertaining to this cause out of the best writers of the former ages, or of our own time; as that my lord should be inspected, or that physicians should use their art to discern and remove impotency, if any were to be found, or that fasting, prayer, and alms, should be exercised to overcome this evil, and divers other points of like nature; it hath still been answered to us, So say the interpreters, but it is not in the law; or it is in the decrees which bind not, but it is not in the decretals; or it is a counsel and exhortation, but it is no mandate or injunction. I now therefore mention something, which is in the law, and in the very body of this law, and it is the Pope's mandate; and that is, that my lord should have given his *jugamentum cum septima manu*, as well as my lady: for want whereof, the whole proceeding is annulled. This is the pope's commandment, 'Quocirca mandamus;' and it requireth the oath of both, 'ipsis cum septima propinquorum manu firmitibus juramento, se commiseri carnaliter nequivisse,' then 'proferatis divortii sententiam inter eos.' This is a thing so clear, that when on Thursday last, by chance there fell mention of it; the counsel for my lady (Dr. Stuart and Dr. Bird) were so far from giving answer to it, that to speak plainly, they stood as men blasted or blighted with lightning, and knew not which way to turn them: as was manifest not only unto us, but to all the standers-by; which I do not utter to do them any wrong, for they are worthy men, both learned and faithful to the cause which they

undertake; but the note is, that this objection can receive no true answer. I know, that since that time there hath been labour made, to give a salve to this sore, but no man's wit can do it. I said, and say still, that no man's loquence, neither any man's cloquence, can persuade me, that 'ipsis firmitibus juramento' is of the singular number. I know there hath been tumbling and turning of books, to find some shew to meet with this objection; but nothing can be found which will hold out this water. The proceeding therefore doth appear to be imperfect and defective in that, which is mainly required by the law, which makes me to conclude in this fashion against some imperfect speech touching my lord of Essex his affirming or denying of his own inability towards my lady; that either he doth confess it, or deny it: If he do acknowledge it, where is then his oath 'cum septima manu,' which the law imposeth? If he do deny it, where is then your proof of his inability, since you ground the whole substance of the nullity upon his lordship's answer, That he could not know her carnally?

I must yet crave patience to go a little farther. One other exception which I take unto this nullity, is the manner of the sentence, which by us is to be given, which hath ever been resolved should be in general, not expressing any reason particular wherefore we do give it. To say that my lord is 'impotens in genere versus hanc,' and not to tell wherein, is to propound a riddle to the world, which no man understandeth. It were a strange thing in learning to say, that such a creature is animal, and not to tell whether it be a man, or a horse, or a fish, or a bird. And although it hath been said, and strongly maintained (by sir Julius Caesar and sir Daniel Don), 'That it is enough in a sentence to pronounce a thing in general, and that the judge is bound to give no reason of it;' yet I would be glad to know whether, howsoever I will conceal the particular reason from the hearers or standers-by, yet were it not fit, that I who am the judge, and must give the sentence, or at least consent unto it, should know the ground whereupon I do give it? Give me leave to speak my conscience; I think a sentence, 'propter latens aliquod impedimentum,' which is 'perpetuum et incurabile versus hanc,' is nothing but a device to serve a present turn, which we must deliver in such obscure words, to blind posterity that comes after, and to amuse those which will enquire into it, as if we had known something which we held not fit to utter, when in truth we know nothing. I find the texts of the law do still set down the reason, and give a case particular, as frigidity, or section, or unfitness of the generative part, or some such other matter; but for an inability, 'propter latens impedimentum,' my dullness is such, that in the whole book I cannot discover: And it is a mystery that cannot enter into me, how a man should be potent unto other women, and impotent to his wife, if it be not in case of pluresny; which is not 'latens impedimentum,'

and which also findeth ' lucida intervalla.' It was the assertion of him in the law, (Cap. Litteræ) ' That he did not know his wife, but that he had a power to know other women.' But what wise man doth believe him? Or what is there in the text which doth declare it to be true? I will end this point with that of our Saviour in the 29th of St. Matthew, That there are three sorts of Eunuchs, or men unfit to marry; the one is of God's making, the second is of men's making, and the third is of their own making. The first are they that are past from their mother's belly, who either are *frigidi*, or such as have not members fit for generation, or some apparent debility. The second are those who are castrated by men, or by some violence have that hindred in them, whereunto by nature they are fit in respect of procreation. I will not here dispute that idle *maleficium*, because yourselves are flown from it. The third hath no coherence with this nobleman. Let me know then, in which of the former two you do place it. Is he past from his mother's womb? Why then do you give him leave to marry again, that he who hath deluded and frustrated one, may also delude another? If he be in the second rank, why do you not tell us what the violence is which he had sustained from men, or from any other creature? Let us have, I pray you, some kind of satisfaction, and let not this enigma in general blind us, lest the world should say, that wilfully we shut our eyes against the truth.

6. One reason I have more, why I yield not to this nullity, and then I have done. It is drawn from the inconveniences which will follow thereupon, if we dissolve the matrimony in such case as is now desired. I look first on the detriment and harm which will follow, if the marriage do continue in force and in vigour, and I do find, that all the inconvenience doth redound but to one person. Between a lady and her husband there is some discontentment, which time and God's grace may easily remove: There is then an end of that controversy. Or, if the disagreement shall never be appeased, it is no more but one lady doth want that solace which marital conjunction would afford unto her; which many a good woman is enforced to endure, and yet commits no sin, neither labours to violate the laws of the church: For suppose the husband be sick of some long disease, or languishing weakness, must not the wife sustain it with patience and quietness? Suppose the husband be captive in some foreign nation, or prisoner in his own country, whereby occasion of marital connexion is taken from the wife, no divine will pronounce, that a separation is in this case to be sought. Let a woman do that in modesty, which others are enforced to do out of necessity; and let her expect God's leisure, in fasting and in prayer, and in other humiliation. This is all the inconvenience which ariseth to one person, if she have not the performance of conjugal duty.

But look on the other side, what are the incongruities, or other absurdities, which will

easily follow, if such dissolutions of marriages be permitted. I will name only two. The first is the hazard of violating and annulling of marriage by an ordinary practice; for if the gap be open, who will not run in? And the judge must dispense the law indifferently to all, if the proofs be accordingly; for we may not say, that it is for noble personages, and great peers in the state, and not for others of inferior rank. Whatsoever couple therefore have no children, and live discontented, come presently to take part of this general jubilee: And albeit they know in their consciences, that it which they attempt is unlawful; yet, to satisfy their fancy, they will collude the one with the other, and enter a prosecution secretly agreed upon, howsoever in open shew they seem to differ the one from the other: And who can doubt, but for money or favour, they may procure wickednesses, and others who are to be used by the formality of the law, to testify and depose so much as serves the turn? By which means we are at a fair pass, when not only the marriage-bed shall be defiled, and adulteries made frequent, which is against the second table of the law, but perjury shall be committed, and God's name taken in vain, which is repugnant unto the first table.

A second inconvenience is the danger, lest both parties which are freed from their matrimony, should divers years after be returned to it again, when perhaps the husband by a second wife hath children, and the wife by a second husband hath store of issue also; for there is no doubt in the law, but if a man supposed to be *frigidus*, and therefore divorced, shall afterwards marry, and by begetting of children shew himself not to be impotent, but apt for generation, this man is to be taken from his second woman, and returned to his first wife; and the woman for whose marriage a nullity was pronounced in respect of the insufficiency of her mate, must be now taken from her second companion, and returned to the first. Of this the reason is apparent, *quia decepta est ecclesia*; they adjudged him to be impotent upon wrong information, whom experience and truth hath declared to be potent. And what man can foretel, how variety of times may produce other judgments? There may be question of land or inheritance, of legitimation or illegitimation; and a wise man would be unwilling to bring it on the stage when he is dead and gone, and to make it the fable of the world, whether his children be born lawfully, or to be reputed in the rank of bastards. The world is subject to much mutability, and judges of future times may peradventure be led with the power of some great persons, and perhaps may think upon other considerations, that it is but a conceit, that a man should be potent unto another woman, and impotent to his wife; or that the common law doth not know any *maleficium*; or that they do not believe, that there may be ' *latens impedimentum, perpetuum et incurabile versus hanc*,' when they see that the husband is, in shew of the world, a lusty able man, and hath

well proved his potency, by begetting three, or five, or seven, or ten children upon another woman. These are pretty things, if a man do well consider them, and will serve to make distraction between kinsman and kinsman, and make work for the lawyers, and keep the courts at Westminster that they shall not be idle; which if we could not learn otherwise, yet Bury's case before remembered doth teach us, who was divorced from his wife in the third or fourth year of queen Elizabeth; and when his brother had enjoyed his land until the fortieth year of the said queen, then was he thrust out of it, and the questioned son, or his heir, was put into possession of it by trial of law; a great deal of money being spent in that contention, and both civilians and common lawyers in great numbers were entertained of both sides; and yet the controversy was not so appeased, but that of my certain knowledge, within these three years it had been raised again, and a strong device was laid how to bring this about again; only myself withstood it, and would not give way unto it, when I was divers times consulted thereabout; conceiving very well that it would not be long before some prohibition would come out of some of the king's courts, because the common law disliked, that men's inheritance, especially after judgments, should be disturbed, when the parties whom most of all it concerned, are dead long before, and cannot answer for themselves; whereas, peradventure, if themselves had been living, they could have answered that for themselves which other men knew not. And there ought to be a settled course in all things appertaining to inheritance.

By this time, I hope you see, that it is not out of wilfulness, or prejudicate conceit, that I have impugned this nullity, but out of ground of reason, and out of scruple of conscience, which is it that must accuse me, or excuse me before the ever-living God. I know you have heard what other men have said, and they have answered for themselves. Upon all which grounds I make this conclusion, That howsoever this matter of separation with great earnestness hath been pursued, yet it is the surer and the safer way to leave it as we find it, and in no case to dissolve it. I oft remember that saying, which is frequent among the canonists, 'Tolerabilius est aliquos contra statuta hominum dimittere copulatos, quam conjunctos legitime contra statuta Domini separare.' That concerneth us who be the judges; and for the parties themselves, who perhaps can be content to be severed, and to marry elsewhere, let them know this from me, that they may best expect a blessing from God when they live in that state where fewest scruples shall arise in their mind: From which whether they shall be free in leaving their old conjunction, and betaking themselves unto a new, I refer to their wiser thoughts, when in all probability, if any cross or thwart shall arise in their new-intended matrimony, this perplexity and anguish will still follow their souls, that they have done that whercof in their truest meditations they have

no ground of conscience, and therefore that it is the hand of God upon them, who giveth not a blessing unto that which was unduly sought.

You have thus at large heard my opinion against the annulment of this marriage. Now, if you ask me, What would you then have done concerning this couple of noble personages? My answer is, That I would have a reconciliation by all means to be laboured; and although that be difficult to bring about, yet it is the more honour when it is effected. Charity will forgive and forget the highest offences. It is St. Augustine's judgment, "That in the greatest breaches between man and wife, reconciliation is the best; and the worthiest pains that can be bestowed, is to bring that about." There wanteth only one or more good mediators, and then great things will be compassed. The disagreement was unconceivable between God and man, yet Christ, that great mediator, did take it away. The breach was very bitter between England and Spain, yet our most blessed sovereign, as a gracious intercessor, did give an end unto it. Let devices be used now, as much as lawyers have been used heretofore. Take the goodly counsel of the one, which will be given freely, as you have taken the advice of the other with much expence of money. This I wish for, this I pray for; and if my counsel had been used, before things grew to this height, I would have used my best means to have wrought an atonement. But because there is no hope thereof, and this doth expect a legal decision, proceed you that please unto this separation. Give your sentence *in scriptis* as you have declared your opinion *in verbis*. Five might have served the turn by the words of the Commission, if seven had dissented; but you have seven suffrages, and therefore proceed; only this I crave of the register, that he do make his act, that this sentence is given, Joanne Episcopo London.; D. Joanne Bennet milite; D. Francisco James; D. Thomas Edwards; dissentientibus, potissimum verò Georgio Archiepiscopo Cantauriensi renitente.

This is the substance of that matter which the Archbishop of Canterbury, out of certain Notes which he had drawn up, was ready to have uttered, and no one material point is added thereunto, as appeareth unto me, the writer hereof, comparing it with the Notes at such time as I ended the writing of this, which was on the 28th Sept. 1613, three days after the time when it should have been spoken.

#### THE KING'S LETTER to the Archbishop of CANTERBURY.

My Lord; After I had received, and read your papers, which the bishop of Litchfield brought me, I found it very necessary that I should make answer therunto at my first leisure: for whereas, before, at my last meeting with you, ye seemed to me to be only as yet unresolved what sentence to give in this busi-

ness, till you had heard it thoroughly disputed, that by that means ye might be fully informed of the state of the cause; it appears now by these papers, that you have, after your last day's consultation, put on a negative resolution, grounded upon fundamentals of divinity and conscience, as you think, which hath moved me to send you herewith my judgment upon your arguments, in regard that I did ever hold it necessary, that in a matter of this weight all my commissioners should be as near of one mind, as might be; and therefore I would be sorry that your private conceits should so blind your judgment, as to make you and your followers draw the catharrows (perplex or torment) against your yoke-fellows; for that I may now open plainly my heart unto you, at my first reading of your papers from the bishop, I chanced to cast mine eye first upon the paper of your arguments, before I had looked upon your letter, and lighting upon your first words, 'Inasmuch as we do firmly believe, &c.' I protest I thought it had been some strange confession of faith, that you had intercepted amongst some of the sectaries; but when I had read out the rest of that first article, God is my judge, I thought that paper had been some pasquil made against this divorce, which coming to your hands ye had sent me, and therefore without reading any farther therein, I looked upon your letter, which resolved me of all these doubts; but after that I had fully perused, and rightly considered of all your papers, I found your principles so strange, and your doubts so far sought, that I thought it necessary, as I have already said, to set down unto you my observations upon them. But to conclude my letter with that plainness that becometh one of my quality, I must freely confess, that I find the grounds of your opposition so weak, as I have reason to apprehend, that the prejudice you have of the persons is the greatest motive of breeding these doubts into you; which prejudice is the most dangerous thing that can fall in a judge for misleading of his mind. And the reason moving me to this apprehension, is partly grounded upon your

last words to me at your parting from Windsor, and partly upon a line scraped out in your paper of doubts: for I am sure you think me not so blunt a secretary, but that I can read a line so scraped out. In your last speeches with me, you remember you told me what assurance you had of the earl's ability out of his own mouth, which you said you could not but trust, because he was so religious a nobleman. But when I told you of the other party's contrary affirmation, you remember how you used the word of iniquity; and how far your interlined line seems to have a harmony with this word, yourself can best judge. Now then, if I would ask you what proof you have of the one's religion more than the other's, you must answer me, by judging upon the exterior; and how deceivable that guess is, daily experience teaches us.—But with a holy protestation that I never knew any thing but good in the young earl. Was not this the ground of master Robert Bruse's incredulity, because he knew the earl of Gowry to be truly religious; and did not beg a register. See Bothwell in his preface of his book 'De viris illustribus.' And as for your judgment of the other party, Christ's precept is the best answer unto you, 'Nolite judicare.' But if the question were to judge of the earl's inclination, whether is it likely that you or I could best judge of it; I, he having been bred with my late son, and served him so long; or you, that never spoke with him but once or twice in your life, and never knew either good or evil of him but out of his own mouth? I will conclude, therefore, with inverting the argument; that if a judge should have a prejudice in respect of persons, it should become you rather to have a kind of faith implicit in my judgment, as well in respect of some skill I have in divinity, as also that I hope no honest man doubts of the uprightness of my conscience; and the best thankfulness that you that are so far my creature, can use towards me, is, to reverence and follow my judgment, and not to contradict it, except where you may demonstrate unto me that I am mistaken, or wrong informed; and so farewell. JAMES R.

97. The Earl of NORTHAMPTON'S Case: Mich. 10 JAMES I. A. D. 1613. [Coke's Reports, 132.]

THE Attorney-general informed against Tho. Gooderick, gent. sir Richard Cox, kt. Hen. Vernon, gent. Henry Minors, serjeant of the waggons, Tho. Lake, gent. and James Ingram, merchant, *ore tenus* in the Star-chamber, the last day of the Star-chamber, and charged Gooderick that he had spoken and published of the earl of Northampton, one of the grandees and peers of the realm, one of the king's Privy Council, lord Privy Seal, and lord guardian of the Cinque-ports, divers false and horrible scandals, *scil.* that more Jesuits, Papists, &c. have come into England, since the earl of Northamp-

ton was guardian of the Cinque-ports, than before.

2. That the said earl had writ a book openly against Garnet, &c. but secretly he had writ a letter to Bellarmine, intimating that he writ the said book 'ad placandum regem, sive ad 'faciendum [placendum] populum,' and requested that his book might not be answered; and that the archbishop of Canterbury had certified it to the king, and that the said Gooderick did relate it to one Dewsbury, a bachelor in divinity, who had acquainted the said earl with it. Gooderick being examined, confessed



the words spoken; but to extenuate his offence said that he was not the first founder: and he vouched the said sir Richard Cox, who confessed that he related to Gooderick the matter concerning the book of the earl, and his letter to Bellarmine, but not the words concerning the Cinque-ports; and that the archbishop of Canterbury had informed the king of it, to the intent that the earl of Northampton should not be lord treasurer, and to extenuate his offence, he vouched the said Vernon, who upon examination confessed that which Richard Cox had published, but that he was not the first author, but he cited the said Luke, who did likewise confess what Vernon had said, but that he heard it from serjeant Nichols, who being examined confessed it; and with all, that one Speake related it to him, and that he had heard it from one James Ingram, and James Ingram being examined, confessed the words concerning the said book of the earl, and of the letter to Bellarmine; and that in the month of October he heard the said words of two English fugitives at Leghorn, and never did publish them until the death of the earl of Salisbury, treasurer, who died in May last: and all the said defendants confessed at the bar, all that with which they were charged, and at the hearing of this case were eleven judges of law, Fleming justice being absent *propter aegritudinem*.

And so it was resolved, that the publishing of false rumours, either concerning the king, or of the high grandees of the realm, was in some cases punished by the common law: but of this were divers opinions. Yet it was resolved in general:

1. Touching the matter and quality of the words: 2. Touching the persons of whom they are spoke. 3. The manner of contrivance, or publishing of them. 4. Touching the punishment, for which cause divers acts have made declaration, and have put things in certainty.

And first of all, as to the words or rumours themselves.

1. They ought to be false and horrible. 2. Of which discord or slander may arise betwixt the king and his people, or the grandees of the realm, West. 2. cap. 24, or between the lords and commons, 2 R. 2, c. 53, by which great peril and mischief may come to all the realm. *Ib.* The subversion and destruction of the realm. *ibidem*. And for this the said act of 2 R. 2, against rumours, false and horrible messages (*mesoignes*) i. e. lies.\*

2. As to persons, they are declared to be prelates, dukes, earls, barons, and other nobles and grandees of the realm, and also of the chancellor, treasurer, clerk of the privy seal, steward of the household of our sovereign lord the king, justice of the one bench and of the

\* Note, these statutes were occasioned by reason of some scandalous reflections, that had been raised by William Wickham, and the clergy, against John of Gaunt, &c. *et à contré*.

other, or of any the great officers of the realm' at 2 R. 2, c. 5, and the king is contained within the act of West. 1. cap. 34, as appears in Dyer 5. Mar. 155.

3. As to the third point it was resolved, that if one hear such false and horrible rumours, either of the king, or of any of the said grandees, it is not lawful for him to relate to others, that he hath heard J. S. to say such false and horrible words; for if it should be lawful, by this means they may be published generally, &c. And this doth appear by the said statute, viz. that the party shall be imprisoned until he find out the party who spoke them, which proves that it was an offence, or otherwise he should not be punished for it by fine (for this is implied) and imprisonment.

4. It was also resolved, that the offenders at bar, if against them the proceedings had been by indictment upon these statutes, no judgment could be had against them that they should be imprisoned until they found their author: for, for example, Gooderick did not relate to Dewsbury that he heard from sir Richard Cox, but he related the same words as of himself: and for this no judgment can be given against him, that he shall be imprisoned until he find his author; for this that he ought to be indicted for the words which he himself did speak, and then, 'de non apparentibus et non existentibus eadem est ratio.' When the indictment is general without any relation to a certain author, the judgment, which always ought to be given of matter apparent within the record, cannot be that he shall be imprisoned, until he hath found his author.

And it was resolved, that if A. say to B. "did you not hear that C. is guilty of treason," &c. this is tantamount to a scandalous publication: and in a private action for slander of a common person, if J. S. publish that he hath heard J. N. say, that J. G. was a traitor or thief; in an action of the case, if the truth be such, he may justify.

But if J. S. publish that he hath heard generally without a certain author, that J. G. was a traitor or thief, there an action *sur le case* lieth against J. S. for this, that he hath not given to the party grieved any cause of action against any, but against himself who published the words, although that in truth he might hear them; for otherwise this might tend to a great slander of an innocent: for if one who hath *lesam phantasiam*, or who is a drunkard, or of no estimation, speak scandalous words, if it should be lawful for a man of credit to report them generally, that he had heard scandalous words, without mentioning of his author, that would give greater colour and probability that the words were true in respect of the credit of the reporter, than if the author himself should be mentioned, for the reputation and good name of every man is dear and precious to him: and a record was vouched in Mich. 33 and 34 Ed. and in the 30 Ass. pl. 10, and in the exchequer, Mich. 18 E. 1, rot. 4.

Note, that all the Commissions of Oyer and

Terminer give authority to enquire, 'de illicitis verborum prolationibus.' Vide le stat. 5 R. 2, cap. 6, and 17 R. 2, cap. 8, concerning rumours, and in 3 Ed. 2, in the exchequer, Henry Bray spoke of John Foxlee baron of the exchequer: it was resolved, that the judgment in an indictment upon the said statutes, when the words are spoken generally, without relation to a certain author, is, that the offender shall be fined and imprisoned, for this is implied and included in the said statutes, as an incident to the offence, although that it is not expressed. Also the party grieved may have an action 'de scandalo magnatum,' and recover his damages. Also the party grieved, and the king's attorney, if the offenders deny it, may exhibit a bill in the Star-chamber against the offender, in

which the king shall have a fine, and the party shall be imprisoned, and the court of Star-chamber may inflict corporal punishment, as to stand upon the pillory, and to have papers about his head.

And if the offenders confess it, then to proceed *ore tenus* upon their own confession; and for the publication of the said words, all the defendants were punished by all the presence, 'una voce nullo contradicente,' by fines and imprisonments; and Gooderick and Ingram were fined the most, for that Gooderick had no authority for the words concerning the Cinqueports, nor could Ingram find any author for to vouch, that he heard by persons unknown at Leghorn in foreign parts; and therefore it was taken as a fiction of his own.

98. Proceedings against Dr. RICHARD NEILE, Bishop of Lincoln, for Words spoken in the House of Lords: 12 JAMES, A. D. 1614.\* [1 Cobb. Parl. Hist. 1259.]

ON May 28, 1614, a Message from the House of Commons was sent up to the Lords, by sir Edw. Hobby and others, in these words:

"That at such time as the knights, citizens, and burgesses of the Commons House of Parliament sent up to the Lords a Message, praying a Conference with their lordships about Impositions: they hoped that, neither out of the words' nor matter of the Message, it had been possible to have framed any sinister or unworthy construction. That notwithstanding, by public and constant fame, they had heard, to their heart's grief, that one in this place and within these walls, namely, the lord bishop of Lincoln (Richard Neile), in order to dissuade the Lords from a Conference so desired, as aforesaid, did use words to the effect following, or the same words, viz. 'That the matter, whereof conference was by that house desired, is a *noli me tangere*; in conferring, also, that the taking the oaths of allegiance and supremacy is an impediment; so, as whoso

had taken the said oaths might not enter, safely, into conference of the said matter. Affirming farther, That it did strike, not at a branch, but at the root of the prerogative of the imperial crown; and that he doubted lest in such a Conference, as was desired, there would, from some of the committees of that house, proceed some undutiful and seditious speeches, unfit for their lordships to hear, tending to a dangerous rent and distraction of both houses, and to make an alienation between the king and his subjects.' That of such scandal their house is so sensible, that they have sent these messengers to signify their grief, and that they held the Lords so honourable, that they cannot but also take notice thereof. Wherefore, that house did desire that their lordships will join with them in some course to give them satisfaction for so great a wrong done to the Commons; which they have taken so to heart, that they have determined to forbear all parliament matter, until they may

\* The following story, printed in the account of Waller the poet's Life, 1712, and repeated by Harris in his Life of James 1, and also by Hume in his History, and Johnson in his Life of Waller, throws some light on this bishop's character. "Waller frequented the Court of James 1, where he heard a very remarkable conversation, which the writer of the Life prefixed to his Works, who seems to have been well informed of facts, though he may sometimes err in chronology, has delivered as indubitably certain: He found Dr. Andrews, bishop of Winchester, and Dr. Neale, bishop of Durham, standing behind his majesty's chair; and there happened something extraordinary, continues this writer, in the conversation those prelates had with the king, on which Mr. Waller did often reflect. His majesty asked the bishops, 'My lords, cannot I take my subjects' money, when I want it, without all this formality of

parliament?' 'The bishop of Durham readily answered, 'God forbid, sir, but you should: you are the breath of our nostrils.' Whereupon the king turned and said to the bishop of Winchester, 'Well, my lord, what say you?' 'Sir,' replied the bishop, 'I have no skill to judge of parliamentary cases.' The king answered, 'No put-offs, my lord; answer me presently.' 'Then, Sir,' said he, 'I think it is lawful for you to take my brother Neale's money; for he offers it.' Mr. Waller said, the company was pleased with this answer, and the wit of it seemed to affect the king; for a certain lord coming in soon after, his majesty cried out, 'Oh, my lord, they say you lig with my lady —.' 'No, Sir,' says his lordship in confusion; 'but I like her company, because she has so much wit.' 'Why-then,' says the king, 'do you not lig with my lord of Winchester there?'

receive Answer from the Lords; wherein they doubt not but their lordships will deal nobly with them, and they desire it may be speedily."

Sir Edward Hobby being asked by the lord chancellor, Whether he had in writing the Message so delivered, as aforesaid? Answered, He had not. The lords then returned Answer, "That they had taken notice of the Message, and will take the same into further consideration, as the weight thereof requireth: wherein they will have respect both to their honours and the honour of the other house; and will send them further Answer." After this, a short Memorandum is entered on the Journals, intimating, That before the Answer, above specified, was agreed on, the serjeant of the Lower House came to the gentleman usher of the Lords, to learn, Whether their lordships would send Answer to the Message on that day, or not? To which the gentleman usher, with the privacy of the Lords, answered, as from himself, That he knew not.

May 30. The Lord Chancellor moved the house to consider and resolve of an Answer to be sent to the Message or Complaint, which they lately received from the other house, touching the bishop of Lincoln. And, by order, the archbishop of Canterbury produced a copy of one ready drawn, for that purpose, which being read, was to this effect: "That the Lords, having received from the Commons a Complaint against the bishop of Lincoln, have seriously entered into consideration of it, and do now return this Answer, That their lordships would take very tenderly that any unworthy aspersion should be laid on that body, which they so much respect; and with whom they desire to hold all good correspondence and agreement. But forasmuch as the Complaint seemeth to be grounded, not upon direct or certain proof, but only upon common public fame; their lordships do not think that Common Fame only is a sufficient ground, whereon they may proceed as in this cause is required. Nevertheless, their lordships are so respective of any thing that may concern that house, that when they shall be more certainly informed, in direct and express terms, what the words were wherein the lord bishop of Lincoln is to be charged, and how the same are to be proved, they will proceed therein so effectually, according to honour and justice, as it shall thereby well appear how careful they are to give to that house all good satisfaction in this business that may be, and to omit nothing that can be justly or lawfully done in that behalf." This Answer was approved on by the whole house, and sent in writing to the Commons, by messengers of their own; with this instruction, That if they, of the Lower House, should require to have the Paper, then the messengers were authorized to deliver the same, which they did accordingly.

May 31st. Another Message from the commons, brought by sir Roger Owen and others; who, having first repeated the substance of their lordships Answer of yesterday,

acquainted this house: "That though the commons did not take common and public Fame to be a sufficient ground or proof, by a legal and ordinary course of justice, in proceeding against any man; yet they held it enough to induce the lords of that house to take the matter into consideration. And albeit they did not set down the words, in particular; yet was the matter, as they conceive, sufficiently laid down when in effect they said, "That the lord bishop of Lincoln, in this house to dissuade the lords from a Conference with them touching Impositions, termed the prerogative, &c. a *noli me tangere*; insinuating that the taking of the Oath of Supremacy and Allegiance did restrain a man from treating of that business: also he doubted but in the Conference would be used, or spoken, some undutiful and seditious words, not fit for their lordships to hear, or words to the like or worse effect. That now the Commons do desire the Lords, if these words were not spoken, so to signify it to the house; otherwise, if they were used, then they hope their lordships will do as they have promised. Lastly, from the Commons, he said further, That they knew not what other course they could have taken to bring this matter to examination, or otherwise have any undutiful speech which may be moved in either house, called in question."

After sir Roger Owen had delivered his Message, the lord chancellor asked him, If he had it in writing? To which he answered in the negative. The lord chancellor then acquainted him, That the house would take his message into consideration, and send Answer, if they could, before they rise: otherwise, will let them know as much. Accordingly, the same day, the lords sent to acquaint the other house, "That they had considered of their last Message, and, in debating thereupon, the lord bishop of Lincoln had humbly intreated that he might be heard to explain himself; which being granted unto him, he had made a solemn protestation, on his salvation, that he did not speak any thing with any evil intention to the House of Commons, which he doth with all hearty duty and respect highly esteem. Expressing, with many tears, his sorrow that his words were so misconceived and strained further than he ever intended them; and that his speech should occasion so much trouble to their lordships, or that the lower house should take offence at it. Which submissive and ingenuous behaviour of his, had given this satisfaction to their lordships, that, howsoever the words might sound, his intention was not as it hath been taken. And their lordships do assure the Commons, That if they had conceived the said bishop's words to have been spoken or meant to have cast any aspersion of sedition, or undutifulness unto their house, (as it seems, report has carried it to them) their lordships would forthwith have proceeded to the censuring and punishing thereof with all severity. Nevertheless, though their lordships have thought fit to signify their carefulness at this

time to give them contentment, for the better expediting his majesty's great business, and to

\* On this transaction Hume's observations are, "So little fixed at this time were the rules of parliament, that the commons complained to the peers of a speech made in the upper house by the bishop of Lincoln; which it belonged only to that house to censure, and which the other could not regularly be supposed to be acquainted with. These at least are the rules established since the parliament became a real seat of power, and scene of business. Neither the king must take notice of what passes in either house, nor either house of what passes in the other, till regularly informed of it. The

retain all good correspondence with them; yet their lordships are of opinion, That hereafter no member of their house ought to be called in question, when there is no other ground for it, but public and common fame."\*

commons, in their famous protestation 1621, fixed this rule with regard to the king, though at present they would not bind themselves by it. But as liberty was yet new, those maxims which guard and regulate it were unknown and unpractised."—Concerning the sufficiency of Common Fame as a ground for parliamentary proceedings, see the Debates in the House of Commons in 1626 concerning the duke of Buckingham: 2 Cobb. Parl. Hist. 52 et seq.

### 99. The Case of EDMUND PEACHAM, for Treason: 12 JAMES I.\* A. D. 1615. [Croke Car. 125. Bacon's Works.]

THE Report of this Case is so extremely scanty, that it would not be inserted as a distinct article but for the important matters which arose out of the Case, and are here inserted after the Report; which is merely this:

"Edmund Peacham was indicted of Treason for divers treasonable passages in a Sermon which was never preached, nor intended to be preached, but only set down in writings, and found in his study: he was tried and found guilty, but not executed.—Note, That many of the Judges were of opinion, that it was not Treason."

The following passages relating to this Case are extracted from Birch's edition of Bacon's Works, and are all taken from lord Hailes's Memorials, &c. and Rawley's Resuscitatio:

INTERROGATORIES whereupon Peacham is to be examined.

#### Questions in general.

1. Who procured you, moved you, or advised you, to put in writing these traitorous slanders which you have set down against his majesty's person and government, or any of them?

2. Who gave you any advertisement or intelligence touching those particulars which are contained in your writings; as touching the sale of the crown lands, the deceit of the king's officers, the greatness of the king's gifts, his keeping divided courts, and the rest; and who hath conferred with you, or discoursed with you, concerning those points?

3. Whom have you made privy and acquainted with the said writings, or any part of them? and who hath been your helpers or confederates therein?

4. What use mean you to make of the said writings? was it by preaching them in sermon, or by publishing them in treatise? if in sermon, at what time, and in what place meant

you to have preached them? if by treatise, to whom did you intend to dedicate, or exhibit, or deliver such treatise?

5. What was the reason, and to what end did you first set down in scattered papers, and after knit up, in form of a treatise or sermon, such a mass of treasonable slanders against the king, his posterity, and the whole state?

6. What moved you to write, the king might be stricken with death on the sudden, or within eight days, as Ananias or Nabal; do you know of any conspiracy or danger to his person, or have you heard of any such attempt?

7. You have confessed that these things were applied to the king; and that, after the example of preachers and chronicles, kings infirmities are to be laid open: this sheweth plainly your use must be to publish them, shew to whom and in what manner.

8. What was the true time when you wrote the said writings, or any part of them? and what was the last time you looked upon them, or perused them before they were found or taken?

9. What moved you to make doubt whether the people will rise against the king for taxes and oppressions? Do you know, or have you heard, of any likelihood or purpose of any tumults or commotion?

10. What moved you to write, that getting of the crown-land again would cost blood, and bring men to say, This is the heir, let us kill him? Do you know, or have you heard of any conspiracy or danger to the prince, for doubt of calling back the crown land.

11. What moved you to prove, that all the king's officers ought to be put to the sword? Do you know, or have you heard if any petition is intended to be made against the king's council and officers, or any rising of people against them?

12. What moved you to say in your writing, that our king, before his coming to the kingdom, promised mercy and judgment, but we find neither? What promise do you mean of, and wherein hath the king broke the same promise?

\* See Foster's Crown Law, p. 199, 200, and 1 Hawk. ch. 17, s. 32. Carth. 405. 4 Bl. Com. 80.

There follows in the hand-writing of secretary Winwood,

"Upon these Interrogatories, Peacham this day was examined before torture, in torture, between torture, and after torture; notwithstanding, nothing could be drawn from him, he still persisting in his obstinate and insensible denials, and former answers. Raphe Winwood, Jul. Cesar, Fr. Bacon, H. Mountague, Gervase Helwysse, Ran. Crewe, Henry Yelverton, Fr. Cottington. Jan. the 19th 1614." [O. S.]

To the King, concerning Peacham's Cause.

It may please your excellent majesty; It grieveth me exceedingly that your majesty should be so much troubled with this matter of Peacham, whose raging devil seemeth to be turned into a dumb devil. But although we are driven to make our way through questions, which I wish were otherwise, yet, I hope well, the end will be good. But then every man must put to his helping hand; for else I must say to your majesty, in this and the like cases, as St. Paul said to the centurion, when some of the mariners had an eye to the cock-boat, 'Except these stay in the ship ye cannot be safe.' I find in my lords great and worthy care of the business; and for my part, I hold my opinion and am strengthened in it by some records that I have found. God preserve your majesty. Your majesty's most humble and devoted subject and servant, FR. BACON. Jan. 21, 1614. [O. S.]

To the King, touching Peacham's Cause.

It may please your excellent majesty; This day in the afternoon was read your majesty's letters of direction touching Peacham; which because it concerneth properly the duty of my place, I thought it fit for me to give your majesty both a speedy and a private account thereof; that your majesty, knowing things clearly how they pass, may have the true fruit of your own wisdom and clear-seeing judgment in governing the business.

First, for the regularity which your majesty, as a master in business of estate, doth prudently prescribe in examining and taking examinations, I subscribe to it; only I will say for myself, that I was not at this time the principal examiner.

For the course your majesty directeth and commandeth for the feeling of the judges of the King's Bench, the several opinions, by distributing ourselves and enjoining secrecy; we did first find an encounter in the opinion of my lord Coke, who seemed to affirm, that such particular and, as he called it, auricular taking of opinions was not according to the custom of this realm; and seemed to divine, that his brethren would never do it. But when I replied, that it was our duty to pursue your majesty's directions, and it were not amiss for his lordship to leave his brethren to their own answers; it was so concluded: and his lordship did desire that I might confer with himself; and Mr. serjeant Montague was named to speak with justice Crook; Mr. serjeant Crew

with justice Houghton; and Mr. Solicitor with justice Dodderidge. This done, I took my fellows aside, and advised that they should presently speak with the three judges, before I could speak with my lord Coke, for doubt of infusion; and that they should not in any case make any doubt to the judges, as if they mistrusted they would not deliver any opinion apart, but speak resolutely to them, and only make their coming to be, to know what time they would appoint to be attended with the papers. This sorted not amiss; for Mr. Solicitor came to me this evening, and related to me that he had found judge Dodderidge very ready to give opinion in secret; and fell upon the same reason which upon your majesty's first letter I had used to my lord Coke at the council-table; which was, that every judge was bound expressly by his oath, to give your majesty counsel when he was called; and whether he should do it jointly or severally, that rested in your majesty's good pleasure, as you would require it. And though the ordinary course was to assemble them, yet there might intervene cases, wherein the other course was more convenient. The like answer made justice Crook. Justice Houghton, who is a soft man, seemed desirous first to confer; alledging that the other three judges had all served the crown before they were judges, but that he had not been much acquainted with business of this nature.

We purpose therefore forthwith, they shall be made acquainted with the papers; and if that could be done as suddenly as this was, I should make small doubt of their opinions: and howsoever, I hope, force of law and precedent will bind them to the truth; neither am I wholly out of hope, that my lord Coke himself, when I have in some dark manner put him in doubt that he shall be left alone, will not continue singular. Your majesty's most humble and devoted subject and servant, FR. BACON. Jan. 27, 1614. [O. S.]

To the King, touching Peacham's Business, &c.

It may please your excellent majesty; I received this morning, by Mr. Murray, a message from your majesty, of some warrant and confidence that I should advertise your majesty of your business, wherein I had part: wherein I am first humbly to thank your majesty for your good acceptance of my endeavours and service, which I am not able to furnish with any other quality, save faith and diligence. For Peacham's case, I have, since my last letter, been with my lord Coke twice; once before Mr. Secretary's going down to your majesty, and once since, which was yesterday: at the former of which times I delivered him Peacham's papers: and at this latter the precedents, which I had with care gathered and selected: for these degrees and order the business required. At the former I told him that he knew my errand, which stood upon two points; the one to inform him of the particular case of Peacham's treasons, for I never gave it other word to him, the other, to receive his opinion

to myself, and in secret, according to my commission from your majesty. At the former time he fell upon the same allegation which he had begun at the council-table; that judges were not to give opinion by fractions, but entirely according to the vote whereupon they should settle upon conference: and that this auricular taking of opinions, single and apart, was new and dangerous; and other words more vehement than I repeat. I replied in civil and plain terms, that I wished his lordship, in my love to him, to think better of it: for that this, that his lordship was pleased to put into great words, seemed to me and my fellows, when we spake of it amongst ourselves, a reasonable and familiar matter, for a king to consult with his judges, either assembled or selected, or one by one. And then to give him a little out-let to save his first opinion, wherewith he is most commonly in love, I added, that judges sometimes might make a suit to be spared for their opinion, till they had spoken with their brethren; but if the king upon his own princely judgment, for reason of estate, should think it fit to have it otherwise, and should so demand it, there was no declining: nay, that it touched upon a violation of their oath, which was to counsel the king, without distinction whether it were jointly or severally. Thereupon, I put him the case of the privy counsel, as if your majesty should be pleased to command any of them to deliver their opinion apart and in private; whether it were a good answer to deny it, otherwise than if it were propounded at the table. To this he said, that the cases were not alike, because this concerned life. To which I replied, that questions of estate might concern thousands of lives, and many things more precious than the life of a particular: as war and peace, and the like. To conclude, his lordship *tanquam critum querens*, desired me for the time to leave with him the papers, without pressing him to consent to deliver a private opinion till he had perused them. I said I would; and the more willingly, because I thought his lordship, upon due consideration of the papers, would find the case to be so clear a case of treason, as he would make no difficulty to deliver his opinion in private; and so I was persuaded of the rest of the judges of the king's bench, who likewise, as I partly understood, made no scruple to deliver their own opinion in private; whereunto he said, which I noted well, that his brethren were wise men, and that they might make a shew as if they would give an opinion, as was required; but the end would be that it would come to this: they would say, they doubted of it, and so pray advice with the rest. But to this I answered, that I was sorry to hear him say so much, lest, if it came so to pass, some that loved him not might make a construction, that that which he had foretold, he had wrought. Thus your majesty sees, that as Solomon saith, *'gressus volentis tanquam in sepi spinarum'*, it catcheth upon every thing. The latter meeting is yet of more importance; for then, con-

ing armed with divers precedents, I thought to set in with the best strength I could, and said that before I descended to the record, I would break the case to him thus: that it was true we were to proceed upon the ancient statute of king Edward the 3rd, because other temporary statutes were gone; and therefore it must be said in the indictment, *'Imaginatus est et compassavit mortem et finalem destructionem domini regis'*: then must the particular treasons follow in this manner, namely, *'et quod ad perimplendum nefandum propositum suum, composuit et conscripsit quendam detestabilem et venenosum libellum, sive scriptum, in quo, inter alia proditoria, continetur, &c.'* And then the principal passages of treason, taken forth of the papers, are to be entered in *hac verba*; and with a conclusion in the end, *'Ad intentionem quod ligeus populus et veri subditi domini regis cordialem suum amorem à domino rege retraherent, et ipsum dominum regem selinquerent, et guerram et insurrectionem contra eum levarent et facerent, &c.'* I have in this form followed the ancient stile of the indictments for brevity sake, though when we come to the business itself, we shall enlarge it according to the use of the latter times. This I represented to him, being a thing he is well acquainted with, that he might perceive the platform of that was intended, without any mistaking or obscurity. But then I fell to the matter itself, to lock him in as much as I could, namely, That there be four means or manners, whereby the death of the king is compassed and imagined. The first by some particular fact or plot. The second, by disabling his title; as by affirming, that he is not lawful king; or that another ought to be king; or that he is an usurper; or a bastard; or the like. The third, by subjecting his title to the pope; and thereby making him of an absolute king a conditional king. The fourth, by disabling his regiment, and making him appear to be incapable or indigne to reign. These things I relate to your majesty in sum, as is fit: which, when I opened to my lord, I did insist a little more upon, with more efficacy and edge, and authority of law and record, than I can now express. Then I placed Peacham's treason within the last division, agreeable to divers precedents, whereof I had the records ready; and concluded, that your majesty's safety and life and authority was thus by law incompassed and quartered; and that it was in vain to fortify on three of the sides, and so leave you open on the fourth.

It is true, he heard me in a grave fashion more than accustomed, and took a pen and took notes of my divisions; and when he read the precedents and records, would say, this you mean falleth within your first, or your second, division. In the end I expressly demanded his opinion, as that whereto both he and I were enjoined. But he desired me to leave the precedents with him, that he might advise upon them. I told him the rest of my fellows would dispatch their part, and I should be behind

with mine; which I persuaded myself your majesty would impute rather to his backwardness than my negligence. He said, as soon as I should understand that the rest were ready, he would not be long after with his opinion. Your majesty's most humble and devoted subject and servant, FR. BACON. Jan. 31, 1614. [O. S.]

“ For Peacham, the rest of my fellows are ready to make their report to your majesty at such time, and in such manner, as your majesty shall require it. Myself yesterday took my lord Coke aside, after the rest were gone, and told him all the rest were ready, and I was now to require his lordship's opinion, according to my commission. He said, I should have it; and repeated that twice or thrice, as thinking he had gone too far in that kind of negative, to deliver any opinion apart, before; and said, he would tell it me within a very short time, though he were not that instant ready. I have tossed this business in *omnes partes*, whereof I will give your majesty knowledge when time serveth. God preserve your majesty. Your majesty's most humble and devoted subject and servant, FR. BACON. Feb. 11, 1614. [O. S.]

To the KING, about a Certificate of lord chief justice Coke.

It may please your excellent majesty; I send your majesty inclosed my lord Coke's answers; I will not call them rescripts, much less oracles. They are of his own hand, and offered to me as they are in writing; though I am glad of it for mine own discharge. I thought it my duty, as soon as I received them, instantly to send them to your majesty; and forbear, for the present, to speak farther of them. I, for my part, though this Muscovia weather be a little too hard for my constitution, was ready to have waited upon your majesty this day, all respects set aside; but my lord treasurer, in respect of the season and much other business, was willing to save me. I will only conclude touching these papers with a text, divided I cannot say, ‘*Oportet isthæc fieri*,’ but I may say, ‘*Finis autem nondum*.’ God preserve your majesty. Your majesty's most humble and devoted subject and servant, FR. BACON. 14 Feb. 1614. [O. S.]

Sir FRANCIS BACON, to King JAMES.

It may please your excellent majesty; I perceive by the bishop of Bath and Wells, that although it seemeth he hath dealt in an effectual manner with Peacham, yet he prevailleth little hitherto; for he hath gotten of him no new names, neither doth Peacham alter in his tale touching sir John Sydenham.

Peacham standeth off in two material points *de novo*.

The one, he will not yet discover into whose hands he did put his papers touching the consistory villainies. They were not found with the other bundles upon the search; neither did he ever say that he had burned or defaced them. Therefore it is like they are in some persons hands; and it is like again, that that

person that he hath trusted with those papers, he likewise trusted with these others of the treasons, I mean with the sight of them.

The other, that he taketh time to answer, when he is asked, whether he heard not from Mr. Paulet some such words, as he saith, he heard from sir John Sydenham, or in some lighter manner.

I hold it fit, that myself and my fellows, go to the Tower, and so I purpose to examine him upon these points, and some others; at the least, that the world may take notice that the business is followed as heretofore, and that the stay of the trial is upon farther discovery, according to that we give out.

I think also it were not amiss to make a false fire, as if all things were ready for his going down to his trial, and that he were upon the very point of being carried down, to see what that will work with him.

Lastly I do think it most necessary, and a point principally to be regarded, that because we live in an age wherein no counsel is kept, and that it is true there is some bruit abroad, that the judges of the King's Bench do doubt of the case, that it should not be treason; that it be given out constantly, and yet as it were a secret, and so a fame to slide, that the doubt was only upon the publication, in that it was never published, for that (if your majesty marketh it) taketh away, or least qualifies the danger of the example; for that will be no man's case.

This is all I can do to thridd your majesty's business with a continual and settled care, turning and returning, not with any thing in the world, save only the occasions themselves, and your majesty's good pleasure. God preserve your majesty. Your majesty's most humble and devoted subject and servant, FR. BACON. Feb. 28, 1614. [O. S.]

Sir FRANCIS BACON to King JAMES.

May it please your majesty; I send your majesty inclosed a copy of our last examination of Peacham, taken the 10th of this present, whereby your majesty may perceive, that this miscreant wretch goeth back from all, and denieth his hand and all. No doubt, being fully of belief that he shall go presently down to his trial, he meant now to repeat his part which he purposed to play in the country, which was to deny all. But your majesty, in your wisdom, perceiveth, that this denial of his hand, being not possible to be counterfeited, and sworn to by Adams, and so oft by himself formally confessed and admitted, could not mend his case before any jury in the world, but rather aggravateth it by his notorious impudence and falsehood, and will make him more odious. He never deceived me; for when others had hopes of discovery, and thought time well spent that way, I told your majesty, ‘*pereuntibus mille figuræ*,’ and that he did but now turn himself into divers shapes, to save or delay his punishment. And therefore submitting myself to your majesty's high wisdom, I think myself

bound, in conscience, to put your majesty in remembrance, whether sir John Sydenham shall be detained upon this man's impeaching, in whom there is no truth. Notwithstanding that further inquiry be made of this other person, and that information and light be taken from Mr. Paulet and his servants, I hold it, as things are, necessary. God preserve your majesty. Your majesty's most humble and devoted, &c. FR. BACON. March 12, 1614. [O.S.]

The EXAMINATION of Edmund Peacham at the Tower, March 10, 1614.

Being asked, when he was last at London, and where he lodged when he was there; he saith he was last at London after the end of the last parliament, but where he lodged, he knoweth not.

Being asked, with what gentlemen, or others in London, when he was here last, he had conference and speech with? he saith he had speech only with sir Maurice Berkeley, and that about the petitions only, which had been before sent up to him by the people of the country, touching the apparitors and the grievances offered the people by the court of the officials.

Being asked, touching one Peacham, of his name, what knowledge he had of him, and whether he was not the person that did put into his mind divers of those traitorous passages which are both in his loose and contexted papers? he saith this Peacham, of his name, was a divine, a scholar, and a traveller; and that he came to him some years past, the certainty of the time he cannot remember, and lay at this examinee's house a quarter of a year, and took so much upon him, as he had scarce the command of his own house or study; but that he would be writing, sometimes in the church, sometimes in the steeple, sometimes in this examinee's study; and now saith farther, that those papers, as well loose as contexted, which he had formerly confessed to be of his own hand, might be of the writing of the said Peacham; and saith confidently, that none of them are his own hand-writing or inditing; but whatsoever is in his former examinations, as well before his majesty's learned council, as before my lord of Canterbury, and other the lords and others of his majesty's privy-council, was wholly out of fear, and to avoid torture, and not otherwise.

Being required to describe what manner of man the said Peacham that lay at his house was; he saith that he was tall of stature, and can make no other description of him, but saith, as he taketh it, he dwelleth sometimes at Honslow as a minister; for he hath seen his letters of orders and licence under the hand of Mr. D. Chatterton, sometime bishop of Lincoln. He denieth to set his hand to this examination. Examinat' per FR. BACON, GER. HELWYSSE, RAN. CREWE, H. YELVERTON.

The true State of the Question, whether Peacham's Case be Treason or not.

In the hand-writing of king James.

The Indictment is grounded upon the statute

of Edward the Third, that he compassed and imagined the king's death; the indictment then is according to the law, and justly founded. But how is it verified? First, then, I gather this conclusion, that since the indictment is made according to the prescription of law, the process is formal, the law is fulfilled, and the judge and jury are only to hearken to the verification of the hypothesis, and whether the miour be well proved or not.

That his writing of this libel is an overt act, the judges themselves do confess; that it was made fit for publication, the form of it bewrays the self; that he kept not these papers in a secret and safe facon, (manner) but in an open house and lidless cask, both himself and the messenger do confess; nay, himself confesseth, that he wrote them at the desire of another man, to whom he should have shown them when they had been perfected, and who craved an account for them, which though it be denied by the other party, worketh sufficiently against the deponer himself. Nay, he confesses, that in the end he meant to preach it; and though, for diminishing of his fault, he alledges, that he meant first to have taken all the bitterness out of it, that excuse is altogether absurd, for there is no other stuff in, or through it all but bitterness, which being taken out, it must be a quintessence of an alchimy spirit without a body, or popish accidents without a substance; and then to what end would he have published such a ghost, or shadow without substance, *cui bono*; and to what end did he so farce (stuff) it first with venom, only to scrape it out again; but it had been hard making that sermon to have tasted well, that was once so spiced, *quo semel est imbuta recens*, &c. But yet this very excuse is by himself overthrown again, confessing, that he meant to retain some of the most crafty malicious parts in it, as, &c. [So the manuscript.]

The only question that remains then is, whether it may be verified and proved, that, by the publishing of this sermon or rather libel of his he compassed or imagined the king's death: which I prove he did by this reason; had he compiled a sermon upon any other ground, or stuffed the bulk of it with any other matter, and only powdered it here and there, with some passages of reprehension of the king; or had he never so bitterly railed against the king and upbraided him of any two or three, though monstrous vices, it might yet have been some way excusable; or yet had he spued forth all the venom that is in this libel of his, in a railing speech, either in drunkenness, or upon the occasion of any sudden passion or discontentment, it might likewise have been excused in some sort; but upon the one part, to heap up all the injuries that the hearts of men, or malice of the devil, can invent against the king, to disable him utterly, not to be a king, not to be a Christian, not to be a man, or a reasonable creature, not worthy of breath here, nor salvation hereafter; and, upon the other part, not to do this hastily or rashly, but after long premeditation,



first having made collections in scattered papers, and then reduced it to a method, in a formal treatise, a text chosen for the purpose, a prayer premittid, applying all his wits to bring out of that text what he could, in *malam partem*, against the king.

This, I say, is a plain proof that he intended to compass or imagine, by this means, the king's destruction. For, will ye look upon the person or quality of the man, it was the far likeliest means he could use to bring his wicked intention to pass; his person an old, unable and unwieldy man; his quality a minister, a preacher; and that in so remote a part of the country, as he had no more means of access to the king's person than he had ability of body, or resolution of spirit, to act such a desperate attempt with his own hands upon him; and therefore, as every creature is ablest, in their own element, either to defend themselves, or annoy their adversaries, as birds in the air, fishes in the water, and so forth, what so ready and natural means had he whereby to annoy the king as by publishing such a seditious libel? and so, under the specious pretext of conscience, to inflame the hearts of the people against him. Now, here is no illation nor inference made upon the statute, it stands in *puris naturalibus*, but only a just inference and probation of the guilty intention of this party. So the only thing the judges can doubt of, is of the delinquent's intention; and then the question will be, whether if these reasons be stronger to enforce the guiltiness of his intention, or his bare denial to clear him, since nature teaches every man to defend his life as long as he may; and whether, in case there were a doubt herein, the judges should not rather incline to that side wherein all probability lies: but if judges will needs trust better the bare negative of an infa-

mous delinquent, without expressing what other end he could probably have, than all the probabilities, or rather infallible consequences upon the other part, caring more for the safety of such a monster, than the preservation of a crown, in all ages following, whereupon depend the lives of many millions; happy then are all desperate and seditious knaves, but the fortune of this crown is more than miserable. *Quod Deus aréruit.*

Upon the subject of consulting the Judges in Crown Causes before hand, lord Coke, 3 Inst. 29, 30, thus expresses himself on a case in the Year Book, 1 H. 7, 26. "Hussey, chief justice, besought king Henry the 7th, that he would not desire to know their opinions beforehand for Humfrey Stafford, for they thought it should come before them in the kings bench judicially, and then they would do that which of right they ought: and the king accepted of it. And therefore the judges ought not to deliver their opinions before-hand upon a case put, and proofs urged of one side in absence of the party accused; especially in cases of high nature, and which deserve so fatal and extreme punishment. For how can they be indifferent, who have delivered their opinions before-hand without hearing of the party, when a small addition, or subtraction may alter the case: And how doth it stand with their oath, who are sworn, that they should well and lawfully serve our lord the king and his people in the office of a justice? and they should do equal law, and execution of right to all his subjects, &c."—This passage is cited in Mr. Luders's Chapter "On the Station and Character of the Judges in the 16th and 17th centuries," the whole of which is well worth perusal.

100. The Case of JOHN OWEN, otherwise COLLINS, for Treason :  
B. R. Easter, 13 JAMES I. A. D. 1615.\* [1 Rolle's Rep. 185.]

JOHN Owen otherwise Collins, of Godstowe in the county of Oxford, was indicted, for that he intending the death of the king, falsely and maliciously said these words of the king, "The king, being excommunicate by the pope, may be lawfully deposed, and killed by any whatsoever, which killing is not murder: and being demanded by H. White, how he durst utter such a bloody and fearful conclusion, answered, the matter is not so heinous as you suppose; for the king, being the greater: and it is all one as a malefactor, being convicted by a temporal judge, is delivered to execution: so the king, being convicted by the pope, may be lawfully slaughtered by any whatsoever: for this is the execution of the

supreme sentence of the pope, as the other is the execution of the law." Upon this Indictment of Treason, the defendant pleads Not Guilty. Mount. [qu. Mountague?] king's Serjeant, opens the Indictment, and Bacon the king's Attorney then made a speech and produces the Evidence. And Note, that the Solicitor being there does not speak in the matter, and it seems that it is not his business\* for

\* The preaudience of pleaders in courts of justice is stated by Blackstone, Comm. b. 3, c. 3, in a note, "Preaudience in the courts is reckoned of so much consequence, that it may not be amiss to subjoin a short table of the precedence which usually obtains among the practisers. 1. The king's premier serjeant, (so constituted by special patent.) 2. The king's ancient serjeant; or the eldest among the king's

\* Vide 1 Hale's H. P. C. 116.

the cryer in the beginning charges the jury to hear the evidence that should be given by the king's serjeants and the attorney. The Attorney in his speech said, that to compass the king's death is the highest treason that can be, and this appears by 25 Ed. 3, which is but a declaration of the common law, where this is named first: and by the law of nations, if an ambassador \* compass and intend death to the person of the king in whose land he is, he may be condemned and executed for treason; but if he commit any other treason than this, it is otherwise: then he should be sent to his own country. And in this case, though the words are in the future tense, still it is treason before the time or the act done. One \_\_\_\_\_ said, that if Henry 8th would not take back queen Margaret † as his wife, he should not

serjeants. 3. The king's advocate general. 4. The king's attorney general. 5. The king's solicitor general. 6. The king's serjeants. 7. The king's counsel, with the queen's attorney and solicitor. 8. Serjeants at law. 9. The recorder of London. 10. Advocates of the civil law. 11. Barristers. In the court of exchequer two of the most experienced barristers, called the post-man and the tub-man, (from the places in which they sit) have also a precedence in motions.—But as to this matter, a passage in Bulstrode seems to shew that formerly the king's Attorney had no pre-audience for himself, but only in respect of the king's business:

*Bulstrode's Reports, part 3, page 32, Termino Pasche, 13mo Jacobi primi.*

Brownlow, Plaintiff, against Cox and Michil, Defendants.

At the end of the report of this Case in the court of King's-Bench is the following note: "Nota, That sir Francis Bacon, attorney, being to move, a serjeant at law having a short motion, offered to move before him; at which he was much moved, saying, That he marvelled he would offer this to him.—Upon this Coke, chief justice. No serjeant ought to remove before the king's attorney, when he moves for the king: but for other motions any serjeant at law is to move before him. And, when I was the king's attorney, I never offered to move before a serjeant, unless it was for the king."—See also as to pre-audience, Burr. 57, and 2586.

\* As to the liability to punishment of ambassadors commorant or resident in foreign nations, see 1 Hale's Hist. P. C. 95 et seq.; Foster's 1st Discourse, 187, 188: Ward's Inquiry into the Principles and History of the Law of Nations in Europe, chap. 17. and East's chapter of persons capable of committing crimes, referred to in his Pleas of the Crown, chap. 2, s. 4.

† This without doubt should be Catharine. The case I suppose was that of Eliz. Barton, the holy maid or nun of Kent. Bacon states the words to be "die the death of a dog." (8 Birch's Bacon's Works, 65.) He cites the case

VOL. II.

be king, but should die as \_\_\_\_\_, and this was held treason. So the duke of Buckingham said, that if the king should arrest him for treason, he would stab him \* and this was an immediate treason. And one Stanley said that if he knew that Perkin Warbeck was the son of Edward 4th, he would take part with him against E. 6, † and this was an immediate treason, notwithstanding the words are spoken with the word 'if.' And it seems that these words ‡ are treason by the common law.—Note, that upon the evidence it appeared, that the defendant held that it was not lawful to murder the king, because it was not lawful to murder any man, but he held that it was lawful to kill the king being excommunicate by the pope, for this he held lawful, and so thought to escape the former question, Whether it were lawful to murder the king.—After the Indictment had been fully proved, the defendant was found guilty by the jury, and Coke said that he and all his brethren were agreed that this is treason, and he said that he agreed in all that had been said by the Attorney, and said moreover that by these words the defendant gives not only power to the pope to dispose of the king's realm, but he made the king to hold that and his crown only at the will of the pope. And the defendant said that it was lawful to kill the king being excommunicate, and the king had been long excommunicate by the pope, and from thence he concludes that it was lawful to kill the king at this time. And he cites some books where it is said that the pope every Maunday Thursday excommunicates all Calvinists, heretics, schismatics, and all those who have withdrawn their obedience from the pope, and

in his charge against Talbot supra, 778. Carte, vol. 3, p. 123, says, "the death of a villain." See more of her in lord Herbert (2 Kenn. Compl. Hist. 169, 174, 176.) 1 Cobb. Parl. Hist. 521. She and her accomplices were attainted by a special act of parliament, 25 H. 8, c. 12; and lord Coke, P. C. 14, says they could not have been attainted of treason within 25 E. 3.

\* See his case, vol. 1, p. 287 of this collection. The words are stated more fully in p. 295 of that vol. The case is also in the Year-Book 13 H. 8, 11, b. 12, a. from whence it is cited in 1 Hale's Hist. P. C. 117. It is scarcely necessary to mention here, that the words about stabbing by no means constituted the whole of the offence charged upon the duke. For this and the motives of the prosecution of the duke, see his Case in the preceding volume. See also that admirable historian Shakespear, in his play of Henry 8th.

† This should doubtless be Henry 7th. The case apparently was that of sir William Stanley, Lord Chamberlain to Henry 7. See 1 Hale's H. P. C. 113. The words are stated somewhat differently in his case, which is given at p. 277 of vol. 1. of this collection.

‡ Concerning the treason of words, see the case of Williams infra, a. d. 1619; and the cases and other authorities there mentioned.

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the king comes within these; ergo, he is excommunicate. And Faux, who was condemned for the Gunpowder Treason, said that it was lawful to kill the king being excommunicate. And being asked, when the king was excommunicated, answered, That he had been excommunicated on the last Maunday Thursday as aforesaid. The law by which the defendant is to be condemned is the old common law of England. And this is in 25 E. 3, which is but a declaration of the common law. And this law is derived originally from the crown, and not from any other foreign power, of which I will repeat some examples; 16 R. 2, cap. 5, says, That the crown of England had not been subject to any nor is it subject to the pope or to any other. 40 E. 3, Rot. Parliament. Numb. 7. King John being forsaken of God and man, to have relief from the pope did homage to the pope, and acknowledged to hold his crown by (payment of) one thousand marks a year. And afterwards E. 1. was cited to Rome to perform his homage and to pay the thousand marks, which never were paid. And two questions were proposed in parliament: 1. Whether king John could subject the crown to the pope? 2. Whether he ought to be cited to appear at Rome before the pope? And the whole parliament answered that king John did not subject, and could not subject his crown to the pope: and if the pope cites him, they would defend him with their blood. 28 E. 1. Exchequer 12 Feb. Rot. 1200. The pope writes to the king to submit to him the controversy concerning the crown of Scot-

land, but the king disdains to answer this. But the nobles and commons wrote a letter to the pope, in which they write that they had read his letter, in which were *inaudita et admiranda*. but we say that the king ought not to be called before you for his crown or antient possessions, but this is against the laws of England; and if the king be willing, still we will not suffer it, even to death. And we will not suffer any ambassador to be sent to you. Register. 61, b *ad jura regia recurritur* when any one impugns the common law: And it is now necessary to extirpate such locusts as the defendant is, for there are twenty colleges which are popish for Englishmen beyond sea in one country and another. The judgment upon a traitor is, that he shall be drawn to execution, forasmuch as he is not worthy to walk upon the earth: 2. His privy members cut off: 3. His bowels burned, because in them he hatched the treason: 4. Beheaded: 5. Dismembered. And in this judgment are included five punishments: 1. All his goods are forfeited: 2. Life and limb: 3. His honours: 4. His members cut off, which shews that his issue is disinherited with corruption of blood: 5. The dowry of his wife is forfeited: 1. Because he is a traitor to God. 2. To the king who is God's vicegerent upon earth. 3. To the king and realm. 4. To the law; and 5, to his own allegiance. And Judgment was given against the defendant to be drawn and quartered, &c. by Coke, with the assent of the whole court.

101. Proceedings against JOHN OGILVIE, for High Treason, on Tuesday the 28th Day of February, at Glasgow, in Scotland: 13 JAMES I. A. D. 1615.

JOHN Ogilvie, alias Watson, came into Scotland, in 1613; and making his residence for the most part of that winter in the north parts of Scotland; took his journey to England a little before Easter. Where, giving out to some of his countrymen, that he had a supplication for some wrongs to present to his majesty, he attended the court some two months; and falling in acquaintance with a gentleman of the West-country, after his pretended business was done, or the occasion disappointed, he returned into Scotland with the said gentleman in the beginning of June thereafter. Upon this familiarity, and other intelligence given him, he came to Glasgow in August following; and finding a kinder receipt by certain persons in that city, (who have since been justly condemned) he made some haunt and resort thither at sundry times, till at last he was detected, and by the direction of the archbishop of Glasgow, who at that time kept his residence within the city, apprehended and committed to prison on the 4th of October.

In his Examination, which was the next morning, before the archbishop of Glasgow, the

bishop of Argyle, the lords Fleming, Boyde, and Kilsyth, the provost of the city of Glasgow, sir Walter Stewart, and sir George Elphinston, knights, he confessed his true name to be John Ogilvie, that he was born in the north of Scotland, and had been forth of the country twenty-one years; that he lived at Gratz, in a college of the Jesuits, and was received in their order: that he returned into Scotland by the command of his superior, and was to stay there until he was recalled, if no other impediment should offer. Being required to give his oath, that he should declare nothing but truth in such things as he should be demanded; he answered, That he would take his oath, but with some exceptions, namely, if he were demanded any thing that touched his estate and life, or that might endanger these or any of them, he would not answer; likewise if the same tended to the prejudice of others. And when it was replied, that his exceptions being admitted, his oath was as good as no oath, seeing any questions that could be proposed would concern some of these; he was induced at last to give a simple oath, which he did upon his knees; and

rising up from the ground, said, 'I will neither lye nor equivocate, but what I say shall be truth; and what I am asked, if I find it impertinent for me to answer, I will say nothing, or declare plainly I will not tell.'

Then being enquired of his coming into Scotland, the time and business he came to do, answered, his business was to save souls. Touching the time when he came into Scotland, answered in the June before: where he was apprehended to equivocate, notwithstanding of his protestation; for he meant of his last coming, and was asked concerning the first. But the time at that examination was not understood. Being enquired of the places where he had been received, denied to tell; and if he had said mass in any place, he answered, 'he would not say any thing that might work prejudice to himself or others:' and because he had professed, that he would not lye, the reply he commonly made to such question was, 'I will not tell you.'

The lords finding him thus obstinate, returned to a chamber in the castle, which was prepared for him.

The 12th of December, he was presented at Winburgh, before the lords commissioners, appointed by his majesty's missive for his examination and trial: namely, The lord of Binning, secretary, the lord of Kilsyth, sir Gideon Murray, the thesaurer deputy, and sir William Oliphant, his majesty's attorney-general: to whom he answered in all that was proponed, as of before at Glasgow. There the letters intercepted with him were presented, which he acknowledged to be his: yet being demanded touching certain particulars contained in them, he denied to give their lordships any satisfaction. So as their lordships perceiving nothing but a pertinacious refusing in him to answer to points most reasonable, and withal apprehending his stay at court in the last summer, to have been for some worse service than he could speed in, determined, according to the power given them, to extort by torments another confession; which being intimated to him, and he replying that he was ready to suffer what they pleased, it was thought fit to prove him with the easiest form of trial that could be used.

It pleased his majesty in this time, while he was remaining at Glasgow, to send a commission to the archbishop of Glasgow, the lord bishop of Argyle, the lord Fleming, sir George Elphinston, and James Hamilton provost of the city of Glasgow, for trying the said Ogilvie.

His opinion touching his highness's royal power, and the pope's claimed jurisdiction, maintained by Bellarmine, Suarez and others of that sort: The questions were these.—1. "Whether the pope be judge, and have power in *spiritualibus* over his majesty, and whether that power will reach over his majesty, even in *temporalibus*, if it be 'in ordine ad spiritualia,' as Bellarmine affirmeth?—2. Whether the pope have power to excommunicate kings, (especially such as are not of his church) as his ma-

esty?—3. Whether the pope have power to depose kings, by him excommunicated; and in particular, whether he have power to depose the king his majesty?—4. Whether it be no murder to slay his majesty, being so excommunicated and deposed by the pope?—5. Whether the pope have power to assail subjects from the oath of their born and natural allegiance to his majesty?"

Upon the 18th of Jan. the foresaid questions being read distinctly unto him, and he required to declare his opinion thereanent, answered as followeth:

"To the first, that he thought the pope of Rome judge to his majesty, and to have power over him in *spiritualibus*, if the king be a christian: and where it is asked, if that power will reach over his majesty in *temporalibus*, he says, he is not obliged to declare his opinion therein, except to him that is judge in controversies of religion, which he acknowledges to be the pope, or some one having authority from him.—To the second he answered, That the pope hath power to excommunicate his majesty: and where it is said, that the king is not of the pope's church; he saith, that all who are baptized are under the pope's power.—To the third, where it is asked, if the pope have power to depose his majesty, being excommunicated; answered, that he will not declare his mind, except to him that is judge in controversies of religion.—To the fourth, whether it be lawful to slay his majesty, being excommunicated and deposed by the pope: answered *ut supra*.—To the fifth, whether the pope hath power to assail subjects from their born and natural allegiance to his majesty? answered, *ut supra*."

In all these articles he was particularly reasoned with, by the archbishop of Glasgow, Mr. Robert Boyde principal of the college, (a man of rare erudition) and Mr. Robert Scot, one of the ministers of the city; where it was also signified unto him, that it concerned him in no less than his life, what answer he should make; if he should stand obstinate in these he had given, he might know what favour was to be expected for his other crimes. Not the less ratifying all that formerly was said, he added this further, "that he condemned the oaths of supremacy and allegiance proponed to be sworn in England," and would needs have the writer to insert those words, to all which he put his hand, subscribing thus, "JOHANNES OGILVIEUS, Societatis Jesu."

These Answers being sent to his majesty, under the testification of the foresaid commissioners, his highness gave orders to the lords of the privy-council for his trial, which was appointed to be at Glasgow, the last of February. Immediately after, the archbishop of Glasgow directed the provost and bailiffs of the city unto him, to signify, that Tuesday following was appointed for arraignment, and that "he would not be accused for mass-saying, or any thing else that concerned his profession, but for the Answers that he had made to the demands proposed to him by his majesty's commissioners."

They declared also, that if he should upon better resolution recal those Answers, and apply himself to give his majesty satisfaction in other points, which of duty he was obliged unto, the said archbishop would use his credit with his highness, and the lords of the privy-council for

his safety. His answer was, "that he thanked his lordship, for the good will and kindness offered, but he was so little minded to recal any thing he had said, as when he came to the place he would make a commentary upon his answers."

The Arraignment of JOHN OGILVIE, Jesuit, on Tuesday the 28th of February, in the Town-house of Glasgow, before James Hamilton, Provost of Glasgow, James Bell, Colin Campbell, and James Bradwood, Bailiffs of the City, Justices appointed by special Commission for that Business, by the Lords of the Privy-Council.

THE foresaid Judges being assisted by the honourable lords there present :

John, archbishop of Glasgow; James marquis of Hamilton; Robert, earl of Lothian; William, lord Sanquhar; John lord Fleming; Robert, lord Boyde; And sir Walter Stewart, baily-deputy of the regality of Glasgow.

On Tuesday the last of February, a little after eleven of the clock in the forenoon, the court being set, Mr. William Hay, of Baro, commissary of Glasgow, deputed by special commission from sir William Oliphant of Newton, his majesty's Attorney General, produced the Indictment following; together with the citation used against those who were to pass upon the Jury, and the roll of their particular names, subscribed with his hand, according to the custom observed in those cases.

THE INDICTMENT of John Ogilvie, Jesuit, after the form of the law of Scotland.

"JOHN OGILVIE, by your subscription, a priest of the late execrable order of Jesuits, you are indicted and accused, That for as much as God, the author of all righteous government, having established kings and magistrates his lieutenants upon earth, for repressing of violence, oppression, and vice, and the promoting of piety and justice, hath in his particular grace and favour, blessed this country with a more ancient, just and permanent descent of lawful kings than any other nation of the world, and extended our felicity beyond the happiness of our ancestors, by the justice, wisdom and clemency of his majesty's prosperous reign; and hath not only rewarded his majesty's zeal and righteousness with wealth and peace, but also honoured and strengthened him with the accession of the most mighty and flourishing kingdoms of England, France, and Ireland. Which visible favours proceeding directly from God's most bountiful hand, moved the whole estates of this kingdom assembled in the parliament holden at Perth, the 9th of July, 1606, to acknowledge his majesty's sovereign authority, princely power, royal prerogative, and privilege of his crown over all estates, persons and causes whatsoever, within the kingdom: and all in one voice faithfully to promise, maintain, defend, obey and advance the life, safety, honour, dignity, sovereign authority and prerogative royal of his sacred majesty, and privileges of his crown: and to withstand all persons, powers, and estates, who should presume, press,

or intend any ways to impugn, hurt, or impair the same: As also his majesty, with advice of the whole estates of this kingdom, in the parliament holden at Edinburgh, the 22d of May, anno 1584, ratified, approved, and perpetually confirmed, his majesty's royal power and authority over all estates, as well spiritual as temporal, within this realm; and statuted and ordained, that his highness, his heirs and successors by themselves and their counsellors, were, and in all times coming should be, judges, competent; to all persons his highness's subjects, of whatsoever estate, degree, function, or condition, that ever they be of, spiritual or temporal, in all matters wherein they or any of them should be apprehended, summoned, or charged to answer unto such things as should be inquired of them by our said sovereign lord and his council; and that none of them who should be apprehended, called or summoned, to the effect aforesaid, should presume or take in hand to decline the judgment of his highness, his heirs and successors, or their council in the premises, under the pain of treason. And likewise, by the 48th act of king James I, his parliament, and divers other parliaments thereafter, it is ordained that all the king's lieges live and be governed under the king's laws and statutes, and under no laws of other countries and realms, under the pain of treason, and other, particularly expressed in the acts before-mentioned, and other laws of this Kingdom. Notwithstanding whereof, it is of truth and verity, that you having renounced your natural allegiance and duty to your native and righteous king, and cast off all reverence, respect, and obedience to his sovereign authority and laws, and dedicated your mind and actions to the unlawful obedience of foreign powers, adversaries to his majesty: and resolving, so far as in you lieth, to seduce his majesty's subjects from the faith and allegiance due to his majesty, repaired to this country in the month of June last past, or thereabout. And by our conferences, inticements, auricular confessions, mass-sayings and other subtle and crafty means, endeavoured yourself not only to corrupt many of his majesty's lieges in religion; but so to pervert them from their dutiful obedience due to his majesty, till you were discovered and apprehended by the archbishop of Glasgow, who, with divers his majesty's counsellors and others his good subjects, used all christian and charitable means to bring you to the sense of

your heinous offences, and desire of amendment thereof: but they losing all their well-intended labours, were (in respect of your perverse obstinacy) commanded by his majesty to enter to your examination, and the trial of your heinous crimes and transgressions. And especially the said archbishop of Glasgow, and many others of good rank and quality adjoined to him, by his majesty, for your examination, having upon the 18th of January last, called you before them, to examine you upon some particular interrogatories, prescribed by his majesty to be demanded of you; as directly concerning his majesty's most sacred person, life, crown, and estate: And chiefly you being demanded by them, whether the pope hath power to depose kings, being excommunicated? and in particular, if he have power to depose the king's majesty, our sovereign, being excommunicated by him? You answered treasonably, that you would not declare your mind, except to him that is judge in the controversies of religion, whom (by your answer made to the latter part of the first interrogatory, demanded of you that day) you declared to be the pope, or any having authority from him; albeit by the acts of parliament and laws of this realm, made in the years of God 1560 and 1567, it is statuted and ordained, that the bishop of Rome (called the pope) shall have no jurisdiction nor authority within this realm, in any time coming: and thereby not only declining treasonably his majesty's jurisdiction, allowing of the pope's jurisdiction, which is discharged by acts of parliament, as said is; but hath committed most damnable and high-treason, in not acknowledging that the pope hath no power to depose his majesty, who holding his crown and authority absolutely, sovereignly, and immediately of God, may not be deposed by any earthly person, power, or authority. And thereafter you being demanded if it be lawful to slay his majesty, being excommunicated and deposed by the pope? You answered "*ut supra*:" which was, that you would not declare your mind till you were before the pope, or others having authority from him; thereby not only declining treasonably his majesty's jurisdiction and authority royal, but by your not answering clearly, that it is altogether unlawful, damnable, and diabolical, once to think that it is lawful to slay his most sacred majesty, you have committed most heinous, pernicious, and unpardonable treason. And lastly, being demanded, if the pope had power to assail his majesty's born subjects from their natural allegiance? You answered, "*ut supra*:" and thereby both declined treasonably his highness's jurisdiction and authority-royal, in refusing to answer before his majesty's counsellors and commissioners aforesaid, in one matter merely concerning his royal power over his people, and their subjection to his majesty; and also committed wilful and detestable treason, in not acknowledging professedly and presently, that none on earth had power to assail his majesty's subjects from their natural subjection and allegiance to him.

But that it may be known that your treason proceeded of forethought of felony, and obstinate resolution, you freely and unrequiredly did add to your foresaid answers this damnable conclusion, that you condemned the oaths of supremacy and allegiance given to his majesty by his subjects in his dominions: whereby it is apparent, that your errand to this country, hath been to infect his highness's subjects with the poison of your pestilent and treasonable opinion foresaid, to the subversion of religion, overthrow of his majesty's authority and crown, and destruction of his most sacred person. And albeit the course of all his majesty's life and reign hath manifested how unwilling he hath ever been to use the severity of his laws against those who have said and heard mass, and otherwise contravened the acts of parliament made against idolatrous papistry, and practisers thereof within this kingdom, desiring rather to reclaim them by instruction, from their errors, to the knowledge and profession of the truth: and when he found them obdurate, and of desperate resolution, relieving the country of the dangerous progress of their courses, by their imprisonment and banishment, whereof you had such experience in the persons of your own accomplices, condemned for their manifest crimes, as might very probably have made you to have expected the like, if any memory of your native duty and born allegiance had possessed your mind: but you being altogether destitute thereof, by the three last articles of your depositions above written, you have so plainly discovered, that you professedly approve the means, and wish the effect of the overthrow of his majesty's estate, the destruction of his highness's person, and seduction of his native subjects from their subjection and dutiful obedience: that thereby, and by every one of your foresaid answers, you have committed most heinous, detestable, and unpardonable treason, and deservedly incurred the most rigorous pains thereof to be executed upon your body, lands, and goods, with all extremity, to the terror of others."

The Indictment being read, Mr. William Hay, substitute for his majesty's Attorney, opened the same, to the effect following:

Albeit the Indictment of itself be clear enough, and representeth sufficiently to my lords justices, their honourable lordships here assisting, and to yourself John Ogilvie, who stands there accused, the weight and gravity of the crime by you committed, yet I shall resume it to you in few words, that your answers may be the more distinct, and without mistaking.

You are not accused of saying mass, nor of seducing his majesty's subjects to a contrary religion, nor of any point touching you in conscience properly; but for declining his majesty's authority, against the laws and statutes of the land, and for maintaining treasonable opinions: such as we of this realm have not heard by any avowed. The statutes mentioned in your Indictment, make it treason not to answer the king's majesty, or

his council in any matter which shall be demanded; you being examined by my lord archbishop of Glasgow, and other honourable persons adjoined to him by his majesty's special commission, refused to answer to divers interrogatories proponed to you by their lordships, and at the same time professedly avouched the pope of Rome his jurisdiction, which by the laws of the country is many years since plainly discharged: therefore have you incurred the penalty contained in the statutes, and the same ought and should be executed upon you.

It is further laid unto your charge, that you being demanded in the particulars, namely, Whether the pope hath power to depose the king's majesty, our sovereign? 2ndly, Whether it be lawful to slay his majesty, being deposed by the pope? 3rdly, Whether the pope hath power to assoil his majesty's subjects, from their natural allegiance, or not? You denied to give any answer, touching any of these points, except ye were enquired thereof by the pope, or others having authority from him: and so not acknowledging, that his majesty's crown and authority is held immediately and sovereignty of God, the author of all government; that it is detestable once to think, that his sacred majesty may be lawfully killed, and that no man has power to assoil his majesty's subjects from their natural allegiance to his highness: you have in these points, and every one of them, committed most heinous treason; for the which what you say in your own defence I see not. And yet further that it may be seen, how desperate your resolution is in all these points, although you were not required concerning the oaths of supremacy and allegiance given to his majesty, by his subjects, ye freely, and out of your own motives, condemned these oaths as impious and unlawful; thereby hath it appeared what a wicked and treasonable mind you foster against his majesty, our sovereign. If you should deny it, here are your answers subscribed with your own hand, which ye cannot but acknowledge; them I desire to be read, as likewise the several statutes of parliament, which you are alledged to have transgressed, and thereafter, since his majesty is pleased, that the ordinary course of trial be kept unto you; you shall have liberty to say for yourself, either against the relevancy of the Indictment, or verification produced, what you think best.

Then were read the statutes of parliament mentioned in the Indictment, and the said John Ogilvie's Answers to the Demands proponed unto him, which he acknowledged for his own, and the subscription thereto subjoined; after which, having license of the court to say what he could for himself, he spake to this effect:

First under protestation, that I do no way acknowledge this judgment, nor receive you, that have that commission there produced, for my judges, I deny any point laid against me to be treason: for if it were treason, it would be

treason in all places, and in all kingdoms; but that, saith he, is known not to be so. As for your acts of parliament, they are made by a number of partial men, the best of the land not agreeing with them, and of matters not subject to their forum, or judicatory, for which I will not give a rotten fig.

Where I am thought an enemy to the king's majesty's authority, I know no other authority he hath, but that which he received from his predecessors, who acknowledged the pope of Rome's jurisdiction. If the king, saith he, will be to me as his predecessors were to mine, I will obey and acknowledge him for my king; but if he do otherwise, and play the runnagate from God, as he and you all do, I will not acknowledge him more than this old hat.

Here the archbishop of Glasgow interrupted his speech, desiring him to deliver his mind in a greater calm and with more reverend speeches of his majesty (for he uttered those things in a vehement passion, and as one transported with fury). He remembered him, that he was accused upon his life, before judges that were authorized by his majesty's commission: to decline the judgment, or rail against his majesty's authority, was bootless, and in a man of his profession, being an ecclesiastic, very scandalous. He should rather take another course, to amend what he had offended in, and recal his former answers; if they had not proceeded from a deliberate purpose, or if he were resolute to maintain them, to do it with reason, and in a moderate sort; that this were his best, either for justifying himself, and the opinions he held, or for moving the judges, and their lordships that were assisting, to commiserate his case. He advertised him withal to be more temperate in his speeches concerning his majesty, otherwise he would not be licensed thus to offend.

To this Ogilvie made some little answer, That he would take the advertisement, and speak more coolly; howbeit, he would never acknowledge the judgment, nor think they had power to sit on his life; but said, And for the reverence I do you, to stand bare-headed before you, I let you know it is, 'Ad redemptionem vexationis, et non ad agnitionem judicii.'

The Advocate here insisted, that seeing all his answers tended to decline the judgment, and that he brought no reason why the indictment should not go to a trial, that the jury should be chosen and sworn at the bar, according to the custom.

The Names of the Jury: sir George Elphinston, of Blythswood; sir Thomas Boyd, of Boneshaw; sir James Edmeston, of Dunraith, elder; James Murhead, of Lachop; James Robertson, of Ernock; Hugh Crawford, of Jordan-hill; John Carschore, of that ilk; Hugh Kennedy, provost of Aire; William Makarrel of Hill-house; James Blaire, baillie of Aire; James Dunlop, of Powmillne; John Steward, burgess of Aire; John Dumber, burgess there; James Johnston, burgess there; John Cunningham, of Ravess.

It was allowed the prisoner to challenge any of the fore-named persons, and to oppose unto their admission: who said,

He had but one exception for them all: they were either enemies to his cause, or friends: if enemies, they could not be admitted upon his trial; and if they were his friends, they should stand prisoners at the bar with him.

The Jury were instantly sworn and admitted.

Then was the Indictment read again in the hearing of the Jury, and the evidences shewed them for verification thereof, which of before were produced. And the prisoner being of new remembered to say what he would for himself, for the better information of the Jury, spake these things following:

I wish these gentlemen to consider well what they do. I cannot be tried nor judged by them; and whatever I suffer here, it is by way of injury, and not of judgment. *Injuria est, non judicium*. I am accused of treason, but have done none offence, neither will I beg mercy.

*Archbishop*. This is strange, you have done none offence, and yet you are come in his majesty's kingdom, and have laboured to pervert his highness's subjects; both of these are against the law: In this have ye not offended?

*Ogilvie*. I came by commandment, and if I were even now forth of the kingdom, I should return: neither do I repent any thing, but that I have not been so busy as I should, in that which ye call perverting. I hope to come to Glasgow again, and to do more good in it. If all the hairs of mine head were priests, they should all come into the kingdom.

*Archbishop*. And do you not esteem it a fault to go against the king's commandment, especially in this point of discharging you his kingdom? If a king have any power within his kingdom, it seems he may rid himself and his country of those with whom he is offended; and it savours of great rebellion to say otherwise.

*Ogilvie*. I am a subject as free as the king is a king; he cannot discharge me if I be not an offender, which I am not.

And being asked for what offences he might be discharged by the king? answered, in the cases of theft and murder.

*Archbishop*. You come not to answer any thing to the points of your indictment. Why did you decline his majesty's authority, and refused to shew your opinion anent the pope, his power in deposing kings, and loosing subjects from their oath of allegiance? And when it was asked you, if it were lawful to slay the king, being deposed, and excommunicated by the pope, which any loyal-hearted subject will abhor to think of, why did you not simply condemn it as unlawful? For in that you do not condemn it, you shew yourself of the opinion of the rest of your sect, who in their books maintain, that it is both lawful and commendable to slay kings, if the pope's commission go forth once for it.

*Ogilvie*. For the declining of the king's authority, I will do it still in matters of religion; for with such matters he hath nothing to do: neither have I done any other thing, but that which the ministers did at Dundee; they would not acknowledge his majesty's authority in spiritual matters more than I; and the best ministers of the land are still of that mind, and if they be wise, will continue so.

The Archbishop replied, That he was mistaken, both in the place and matter; for it was not at Dundee, but Aberdeen, where eight ministers meeting in a general assembly, contended not against the king's authority, but that the assembly called to that place and time could not be discharged by his majesty's commissioner: neither should the fact of a few, take it at the worst, be esteemed the deed of the whole. These have been punished for their offences, and some of them have confessed their error, and been graciously pardoned by his majesty. All good ministers profess otherwise, and our religion teaches us to acknowledge his majesty our only supreme judge in all causes. The king is keeper of both tables, and his place bears him not only to the ruling of his subjects in justice, and preserving equity amongst them, but even to maintain religion and God's pure worship, of which he should have principal care. Your lord the pope hath not only denied this authority to kings, which God giveth them, but usurpeth to himself a power of deposing and killing when he is displeased; and it were the less to be regarded, if this his usurpation had gone no further than your pens: but you have entered, by this pretended right, the throats of the greatest kings, as your practice upon the two last Henrys of France bears witness. You are not able to lay such imputation upon us, nor our profession, which teaches, that next unto God Almighty, all men are bound to fear, serve, and honour their kings. But what answer you touching these demands? Hath the pope power to depose the king? or is it not murder to kill him, being deposed by the pope?

*Ogilvie*. I refused before to answer such questions, because in answering, I should acknowledge you judges in controversies of religion, which I do not. I will not cast holy things to dogs.

*Archbishop*. Is it a point of faith, that the pope may depose his majesty? or do you think it a controversy in religion, whether his majesty (whom God save) may be lawfully killed, or not?

*Ogilvie*. It is a question amongst the doctors of the church, and many hold the affirmative not improbably. A council hath not yet determined the point: and if it shall be concluded by the church, that the pope hath such power, I will give my life in defence of it; and if I had a thousand lives, I would bestow them that way, if they will make an article of faith of it.

Being urged by the court to declare his own opinion, especially in that point, whether it



were murder to kill his majesty, being deposed by the pope?

*Ogilvie.* I would not say it were unlawful, though I should save my life by it. That if the king offended against the catholic church, the pope might punish him as well as a shepherd, or the poorest fellow in the country. That in abrogating the pope's authority, the estates of parliament had gone beyond their limits, and that the king in usurping the pope's right, had lost his own. 'Nan qui rapit jus alienum, perdit jus ad suum.'

Being asked touching the oath of allegiance, Why he did condemn it? and the same being read unto him; He said, It was a damnable oath against God and his truth, and that it was treason to swear it, because it brought the king's person and state in danger. Since this kingdom, said he, was Christian, the pope's supreme power was always acknowledged: this being cast off (as we see in the act of your parliament) against all reason and conscience, and subjects forced to swear to a matter so unlawful, what marvel that attempts and dangerous courses be taken against him. 'Justissima lex est, ut quæ agit aliquis, talia patiatur.' But would the king leave off his usurping upon the pope, he might live without fear, as well as the king of Spain, or any other Christian prince. Neither bishop, nor minister, nor all the bishops and ministers in his majesty's kingdoms had done, nor could do the like.

The Archbishop of Glasgow did close all to the jury, to this effect:

Gentlemen, and others, who are named upon this assize, though I minded to have said nothing, but sitted here a witness of the proceeding, I have been forced by his proud and impudent speeches, somewhat to reply, and must, with your patience, say a little more. It is this same day, two-and-twenty weeks past, that this prisoner fell into mine hands; since that time he hath had leisure to think enough what course was fittest for himself to take, for satisfying his majesty whom he had offended; neither hath he lacked counsel and advice, the best that we could give him: besides he hath found on our part nothing but courteous dealing, and better entertainment, than I must now say it, he hath deserved. Mine own hopes were, that he would have followed another course than I see he hath taken, and not stand to the answers which he made to those demands which were moved unto him by his majesty's commissioners, and you have seen: but if his answers at the first were treasonable, they are now so little bettered, as in all your hearings, he hath uttered speeches most detestable, made a commentary worse than the text was, and shewed himself to carry the mind of an arrant and desperate traitor. You perceive he obscures not his affection towards the king's majesty, our sovereign, in all his speeches preferring the pope to his majesty: and which is more intolerable, affirmeth the king's majesty to have lost the right of his kingdom by usurping upon the pope. He will not say, it is unlawful to kill his majes-

ty; he saith, it is treason for subjects to swear the oath of allegiance; and meaneth so much in his last words, as the king's majesty's life and estate cannot be assured, except he renders himself the pope's vassal.

Thus hath he left you little to do, except that his majesty's pleasure is, the ordinary form be kept with him, you should never need once to remove: all his speeches have been so stuffed with treason, that I am sure the patience of the noblemen, and others here present, hath been much provoked.

In all that he hath said, I can mark but two things alledged by him for the pope's authority over kings; the words of our Saviour to St. Peter, 'Pasce oves meas,' feed my sheep: and the subjection of kings, especially of our kings, since the kingdom became Christian, to the pope. For the words of our saviour, how little they serve his purpose, I have no need to tell you. To feed the sheep of Christ, is not, I hope, to depose kings from their estates, nor to enflame the hearts of subjects against princes, much less to kill and dispatch them: we are better taught than to be deceived with such glosses. Saint Peter made never that sense of those words, and teacheth us a far other doctrine, in his first epistle, 5th chapter, and second and third verses.

I will not spend time with such purpose; only this I must say, that whatsoever was St. Peter's prerogative, the pope of Rome hath nothing to do with it: for he cannot be St. Peter's successor that hath forsaken his doctrine, and gone against his practice directly, both in that and other points of Christian faith. And for the antiquity of his usurped power, I may justly say, that Mr. Ogilvie is not well seen in antiquity, or then speaketh against his knowledge, when he saith, that this power of the pope was ever acknowledged by Christian kings: the bishops of Rome for many years made no such claim, neither did emperors or kings ever dream of such subjection: long it was ere the pope of Rome came to the height of commanding kings, and not till he had oppressed the church, under the pretext of St. Peter's keys, bearing down all the bishops within Christendom; which having done, then he made his invasion upon princes, and that by degrees. The histories of all ages make this plain, and the resisting he found by kings in their kingdoms, testified that they never acknowledged his superiority. Of our own, howbeit as we lie far from his seat, so had we less business and fewer occasions of contradiction; yet I can make it seen in divers particulars, when any question fell out anent the provision of bishops and archbishops to their places, the bulls of Rome were so little respected, as the king's predecessors have always preferred and borne out their own choice; and the interdictions made upon the realm, by these occasions, not without some imputation of weakness to the see apostolick, have been recalled. The superstitions of Rome were amongst us last embraced, and with the first, by the mercies of God, shaken off.

Whatsoever you brag of your antiquity, it is false both in this and in all the points of your profession else, which I could clear, if this time or place were fitting. But to you of this jury, I have this only more to say, you are to enquire upon the verity of the indictment, whether such and such things as are alledged to be committed by him, have been so or not: you have his subscription, which he acknowledgeth; you hear himself, and how he hath most treasonably disavowed his majesty's authority: it concerns you only to pronounce as you shall find verified by the speeches that you have heard, and the testimonies produced. For the rest, the justices know sufficiently what to do, and will serve God and his majesty, according to the commission given them.

Master William Hay, Advocate for his majesty, asked instruments upon the prisoner's reasonable speeches, uttered in the hearing of the jury, and his ratification of the former answers made to his majesty's commissioners: likewise, for the further clearing of the indictment, repeated the acts of parliament mentioned in the said indictment, with the act of privy-council, made anent his majesty's supremacy and the oath of allegiance. And desired the jury deeply to weigh and consider the perverse and devilish disposition of the party accused; to the effect they might without scruple proceed in his conviction. And according to his place, protested for wilful error, if they should acquit him of any point contained in the said indictment.

The persons named upon the jury, removed to the higher house, which was prepared for them; and having elected sir George Elphinston, chancellor, all in one voice found the prisoner guilty of the whole treasonable crimes contained in the indictment.

Which being reported by the said sir George Elphinston, and confirmed by the whole jury; then returned into the court, judgment was given by direction of the justices, That the said John Ogilvie, for the treasons by him committed, should be hanged and quartered.

The Archbishop of Glasgow demanded if Ogilvie would say any thing else?

Ogilvie answered, No, my lord. But I give your lordship thanks for your kindness, and will desire your hand.

The Archbishop said, If you shall acknowledge your fault done to his majesty, and crave God and his highness's pardon, I will give you both hand and heart; for I wish you to die a good Christian.

Then Ogilvie asked, If he should be licensed to speak unto the people?

The Archbishop answered, If you will declare, that you suffer according to the law, justly for your offence, and crave his majesty's pardon for your treasonable speeches, you shall be licensed to say what you please; otherwise you ought not to be permitted.

Then said he, God have mercy upon me? And cried aloud, If there be here any hidden Catholics, let them pray for me; but the pray-

ers of heretics I will not have.—And so the Court arose.

A true Relation of such things as passed at the EXECUTION of John Ogilvie, upon the last day of February, anno 1615.

AFTER judgment was given, by the space of some three hours, he remained in the place where he was convicted, having leisure granted him to prepare himself for death. He continued a while upon his knees at prayer, with a cold devotion; and when the hour of execution approached, his hands being tied by the executioner, his spirits were perceived much to fail him. In going towards the scaffold, the throng of people was great, and he seemed much amazed; and when he was up, Mr. Robert Scott, and Mr. William Struthers, ministers, very gravely and christianly exhorted him to an humble acknowledgment of his offence, and if any thing troubled his mind, to disburthen his conscience. In matters of religion, they said, they would not then enter, but prayed him to resolve and settle his mind, and seek mercy and grace from God, through Jesus Christ, in whom only salvation is to be found.

Ogilvie answered, That he was prepared and resolved. Once he said, that he died for religion; but uttered this so weakly, as scarce he was heard by them that stood by upon the scaffold. Then addressing himself to execution, he kneeled at the ladder-foot, and prayed; Mr. Robert Scott in that while declaring to the people that his suffering was not for any matter of religion, but for heinous treason against his majesty, which he prayed God to forgive him. Ogilvie hearing this, said, he doth me wrong. One, called John Abircrumie, a man of little wit, replied, No matter, John, the more wrongs the better. This man was seen to attend him carefully, and was ever heard asking of Ogilvie some token before his death; for which and other business he made with him, he was put off the scaffold.

Ogilvie ending his prayer, arose to go up the ladder, but strength and courage, to the admiration of those who had seen him before, did quite forsake him: he trembled and shook, saying, 'he would fall,' and could hardly be helped up on the top of the ladder. He kissed the hangman, and said, 'Maria, mater gratiæ, ora pro me; omnes Angeli, orate pro me; omnes Sancti Sanctæque, orate pro me:' but with so low a voice, that they which stood at the ladder foot had some difficulty to hear him.

The executioner willed him to commend his soul to God, pronouncing these words unto him, 'Say John, Lord, have mercy on me, Lord, receive my soul:' which he did with such feebleness of voice, that scarcely he could be heard. Then was he turned off, (his left foot for a space taking hold of the ladder, as a man unwilling to die) and hung till he was dead. His quartering, according to the judgment given, was, for some respects, not used;

and his body buried in a place that is kept for malefactors.

We have understood, by some persons who visited him at times during his imprisonment, that amongst other his speeches with them, he said this, That if he had escaped his apprehension at this time, and lived till Whitsunday

next, he should have done that which all the bishops and ministers both in England and Scotland, should never have helped. And if he might have lived at liberty unto that time, he would willingly have been drawn in pieces with horses, and have given his body to have been tormented.

102. The Case of Mr. OLIVER ST. JOHN, on an Information *ore tenus*, in the Star-Chamber, 15th April, for writing and publishing a Paper against a Benevolence collected under Letters of the Privy-Council: 13 JAMES I. A. D. 1615.

["All that we have in print of the proceedings on this Case is lord Bacon's Speech as attorney-general and prosecutor. See 2 Bacon's works, last 4to edit. 583. The paper which was the ground of the prosecution is in the Cabala. See page 332, of 2d part, 3d. edit. The Judgment of the court was, that Mr. St. John should pay a fine of 5000*l.* and be imprisoned during the king's pleasure. See the note in 3 Bacon, last 4to edit. 267, and the Introd. to Bas. Lett. by Stevens, p. xxiii. The case appears to have been prosecuted with great anxiety; for, according to a letter from lord Bacon to the king, lord chancellor Egerton, who from the infirmities of age, was then on the point of resigning the great seal, expressed a wish to attend the hearing, and so make it the conclusion of his services. 3 Rac. 264. The grand argument of lord Bacon in favour of the Benevolence was, that it was without compulsion. If in the representation of the conduct of a rival and enemy, lord Bacon can be trusted, lord Coke, then chief justice of the King's-bench, at first gave it as his opinion, that the king could not so much as move any of his subjects for a Benevolence, but afterwards retracted in the Star-Chamber, and there delivered the law in favour of it strongly. Ibid. 483. 274.

"In our introductory note to the Case of Impositions, Benevolences were enumerated as one of the devices of extra-parliamentary taxation. Ante, page 371. As such the statute of 1 R. 3, c. 2, stiles them an unlawful invention, and annuls them for ever. But the Benevolences, mentioned in this statute, are described to have been so in name only, and to have been taken by coercion. Still therefore it was insisted, that gifts to the crown out of parliament, if really voluntary, were lawful. So lord Bacon argued in the following case; so in the same sense lord Coke is stated to have declared the law; so lord Coke himself gives his opinion in his notes on Benevolences in the 12th Report; and so according to him all the judges resolved in the 40th of Elizabeth, 19 Co. 119. Lord Coke lays a stress on the statute of 10 Hen. 7, c. 10, which, after reciting that many of the king's subjects had severally

granted to him diverse sums of money of their free wills and benevolence, and that some of these were in arrear, provides a remedy for compelling the payment. See Rastall's edit. of the Statutes. This statute, it must be confessed, seems to give a legislative sanction to such Benevolences as were really free offerings. But there is a later statute, with words strongly importing, that Benevolences to the crown, though voluntary, cannot regularly be made out of parliament. The statute we mean is the 13 Cha. 2, c. 4, which authorises the king to issue commissions under the great seal, for receiving voluntary subscriptions for the supply of his occasions; but limits commoners to 200*l.* and peers to 400*l.* a-piece, and also the time for subscribing, and concludes with declaring, that no commissions or aids of this nature can be issued out or levied but by authority of parliament. This in effect concurs with lord Coke's first opinion in Mr. St. John's case, as represented by lord Bacon; the aim of the statute being to condemn Benevolences by the solicitation of commissions from the crown, and so to supply the defect of the statute of Richard the Third and of the Petition of Right, both of which point at compulsive Benevolences. The inducement to such a declaration of the law probably was an idea, that a formal solicitation from the crown must necessarily operate, on the minds of those to whom it was addressed, with an influence almost equal to compulsion.—Thus at length it seems to be settled by the legislature, not only that compulsive Benevolences are unlawful, but that all commissions from the crown to solicit and receive voluntary gifts are also unconstitutional." Hargrave.]

LETTER from Mr. Oliver St. John to the Mayor of Marlborough, which was the subject of the Prosecution; taken from the Cabala, 3d edition, part 2; page 332.

ASI think, this kind of benevolence is against law, reason and religion:

1. The law is in the statute called Magna Charta, 9 Hen. 3, cap. 29, that no free-man be any way destroyed, but by laws of the land. Secondly, besides that the said statute of Magna Charta is by all princes since established and

confirmed, it is, in the special case of voluntary or free grants, enacted and decreed 25 E. 1, cap. 5, that no such be drawn into custom: and cap. 6, that henceforth be taken no such aids, tasks, free grants, or prizes, but by assent of all the realm, and for the good of the same. And in primo R. 3, cap. 2, that the subjects and commons in this realm, from henceforth shall in no wise be charged by any charge or imposition called a Benevolence, or any such like charge; and that such exactions, called a Benevolence, shall be damned and annulled for ever.

First, it is not only without, but against reason, that the commons, in their several and particulars, should be relievers or suppliers of his majesty's wants, who neither know his wants, nor the sums that may be raised to supply the same.

Secondly, it is against reason, that the particular and several commons, distracted, should oppose their judgment and discretion to the judgment and discretion of the wisdom of their land assembled in parliament, who have there denied any such aid.

It argueth in us want of love and due respect of our sovereign lord and king, which ought to be in every of us towards each other, which is, to stay every one which we see falling, and reduce the current. What prosperity can be expected to befall either our king or nation, when the king shall, haply out of ignorance, or ('tis I hope) out of forgetfulness or headiness, commit so great a sin against his God, as is the violating of his great and solemn oath taken at his coronation, for the maintaining of his laws, liberties and customs of this noble realm; and his subjects, some for fear, some in pride, some to please others, shall join hands to forward so unhappy an achievement? Can he any way more highly offend the divine majesty (whom he then invocated?) As also, can he then give unto another Hen. 4, (if such a one should rise up, which God forbid) a greater advantage? Let those articles put up against R. 2, be looked on, it will appear, that the breach of laws, infringing the liberties, and failing in this oath, were the main blemishes wherewith he could distain and spot the honour of that good and gentle prince; who indeed was rather by others abused, than of himself mischievously any way disposed.

2. As very irreligiously and uncharitably, we help forward the king's majesty in that grievous sin of perjury; so into what a hellish danger we plunge ourselves, even so many of us as contribute, is to be learned out of the several curses and sentences of excommunication given out against all such givers, and, namely, the two following, viz. the great curse given out, tho 36 Hen. 3, against all breakers of the liberties and customs of the realm of England, with their abettors, counsellors and executioners; wherein, by the sentence of Boniface archbishop of Canterbury, and the chief part of all the bishops of this land, are *ipso facto* excommunicated. And that of 24 Edw. 1,

denounced immediately upon the acts made against such benevolence, free grants and impositions, had, and taken without common assent; which, because it is not so large as that former, I will set down as our books deliver the same.

"In the name of the Father, Son, and Holy Ghost, Amen. Whereas our sovereign lord the king, to the honour of God, and of the holy church, and for the common profit of the realm, hath granted, for him and his heirs for ever, these articles above written: Robert archbishop of Canterbury, primate of all England, admonished all his province, once, twice, and thrice, because that shortness will not suffer so much delay, as to give knowledge to all the people of England of these presents in writing. We, therefore, enjoin all persons, of what estate soever they be, that they, and every of them, as much as in them is, shall uphold and maintain those articles granted by our sovereign lord the king in all points; and all those that, in any point, do resist, or break those ordinances, or go about it by word or deed, openly or privately, by any manner of pretence or colour. We therefore, the said archbishop, by our authority in writing expressed, do excommunicate and accurse, and from the body of our Lord Jesus Christ, and from all the company of Heaven, and from all the sacraments of the holy church, do sequester and exclude."

Sir, hearing that to-morrow the justices will be here about this busy work of Benevolence, wherein you have both sent unto, and talked with me, and thinking that it may be, you would deliver up the names of the non-givers: forasmuch as, I think, I shall scarcely be at home to make my further answer, if I should be called for, I pray you, both hereby to understand my mind yourself, and if cause so require, to let the justices perceive as much. So leaving others to their own consciences, whereby in that last and dreadful day they shall stand or fall before him who will reward every man according to his deeds, I commend you to the grace of the Almighty, and rest your loving neighbour and friend,

OLIVER ST. JOHN.

SPEECH of SIR FRANCIS BACON as Attorney-General, addressed to the Court of Star-Chamber, from his Works, vol. ii. p. 583.

My Lords; I shall inform you *ore tenus*, against this gentleman Mr. I. S. a gentleman, as it seems, of an ancient house and name; but, for the present, I can think of him by no other name, than the name of a great offender. The nature and quality of his offence, in sum, is this. This gentleman hath, upon advice, not suddenly by his pen, nor by the slip of his tongue; not privately, or in a corner, but publicly, as it were, to the face of the king's ministers and justices, slandered and traduced the king our sovereign, the law of the land, the parliament, and infinite particulars of his majesty's worthy and loving subjects. Nay, the slander is of that nature, that it may seem to

interest the people in grief and discontent against the state: whence might have ensued matter of murmur and sedition. So that it is not a simple slander, but a seditious slander, like to that the poet speaketh of, 'calamosque amare veneno.' A venomous dart that hath both iron and poison.—To open to your lordships the true state of this offence, I will set before you, first, the occasion whereupon Mr. I. S. wrought: then the offence itself in his own words: and lastly, the points of his charge.—My lords, you may remember that there was the last parliament an expectation to have had the king supplied with treasure, although the event failed. Herein it is not fit for me to give opinion of an house of parliament, but I will give testimony of truth in all places. I served in the lower house, and I observed somewhat. This I do affirm, that I never could perceive but that there was in that house a general disposition to give, and to give largely. The clocks in the house perchance might differ; some went too fast, some went too slow; but the disposition to give was general: so that I think I may truly say, 'solo tempore lapsus amor.'—This accident happening thus besides expectation, it stirred up and awaked in divers of his majesty's worthy servants and subjects of the clergy, the nobility, the court, and others here near at hand, an affection loving and cheerful, to present the king, some with plate, some with money, as free-will offerings, a thing that God Almighty loves, a cheerful giver: what an evil eye doth I know not. And, my lords, let me speak it plainly unto you: God forbid any body should be so wretched as to think that the obligation of love and duty, from the subject to the king, should be joint and not several. No, my lords, it is both. The subject petitioneth to the king in parliament. He petitioneth likewise out of parliament. The king on the other side gives graces to the subject in parliament: he gives them likewise, and poureth them upon his people out of parliament: and so no doubt the subject may give to the king in parliament, and out of parliament. It is true the parliament is *intercursumagnus*, the great intercourse and main current of graces and donatives from the king to the people, from the people to the king: but parliaments are held but at certain times; whereas the passages are always open for particulars: even as you see great rivers have their tides, but particular springs and fountains run continually. To proceed therefore: as the occasion, which was the failing of supply by parliament, did awake the love and benevolence of those that were at hand to give; so it was apprehended and thought fit by my lords of the council to make a proof whether the occasion and example both, would not awake those in the country of the better sort to follow. Whereupon, their lordships devised and directed letters unto the sheriffs and justices, which declared what was done here above, and wished that the country might be moved, especially men of value.—Now, my lords, I beseech you give

me favour and attention to set forth and observe unto you five points. I will number them, because other men may note them; and I will but touch them, because they shall not be drowned or lost in discourse, which I hold worthy the observation, for the honour of the state and confusion of slanderers; whereby it will appear most evidently what case was taken, that that which was then done might not have the effect, no nor the shew, no nor so much as the shadow of a tax; and that it was so far from breeding or bringing in any ill precedent or example, as contrariwise it is a corrective that doth correct and allay the harshness and danger of former examples.—The first is, that what was done was done immediately after such a parliament, as made general profession to give, and was interrupted by accident: so as you may truly and justly esteem it, 'tanquam posthuma proles parliamenti,' as an after-child of the parliament, and in pursuit, in some small measure, of the firm intent of a parliament past. You may take it also, if you will, as an advance or provisional help until a future parliament; or as a gratification simply without any relation to a parliament; you can no ways take it amiss.—The second is, that it wrought upon example, as a thing not devised or projected, or required; no nor so much as recommended, until many, that were never moved nor dealt with, *ex mero motu*, had freely and frankly sent in their presents. So that the letters were rather like letters of news, what was done at London, than otherwise: and we know 'exempla ducunt, non trahunt;' examples they do but lead, they do not draw nor drive.—The third is, that it was not done by commission under the great seal; a thing warranted by a multitude of precedents, both ancient, and of late time, as you shall hear anon, and no doubt warranted by law: so that the commissions be of that stile and tenour, as that they be to move and not to levy: but this was done by letters of the council, and no higher hand or form.—The fourth is, that these letters had no manner of shew of any binding act of state: for they contain not any special frame or direction how the business should be managed; but were written as upon trust, leaving the matter wholly to the industry and confidence of those in the country; so that it was an *absque compoto*; such a form of letters as no man could fitly be called to account upon.—The fifth and last point is, that the whole carriage of the business had no circumstance compulsory. There was no proportion or rate set down, not so much as by way of a wish; there was no menace of any that should deny; no reproof of any that did deny; no certifying of the names of any that had denied. Indeed, if men could not content themselves to deny, but that they must censure and inveigh, nor to excuse themselves, but they must accuse the state, that is another case. But I say, for denying, no man was apprehended, no nor noted. So that I verily think, that there is none so subtle a disputer in the controversy of libe-

*rum arbitrium*, that can with all his distinctions fasten or carp upon the act, but that there was free-will in it.—I conclude therefore, my lords, that this was a true and pure benevolence; not an imposition called a benevolence, which the statute speaks of; as you shall hear by one of my fellows. There is a great difference, I tell you, though Pilate would not see it, between '*rex Judæorum*,' and '*se dicens regem Judæorum*.' And there is a great difference between a benevolence and an exaction called a benevolence, which the duke of Buckingham speaks of in his oration to the city; and defineth it to be not what the subject of his good-will would give, but what the king of his good-will would take. But this, I say, was a benevolence wherein every man had a prince's prerogative, a negative voice; and this word, *excuse moy*, was a plea peremptory. And therefore I do wonder how Mr. I. S. could foul or trouble so clear a fountain. Certainly it was but his own bitterness and unsound humours.—Now to the particular charge. Amongst other countries, these letters of the lords came to the justices of D—shire, who signified the contents thereof, and gave directions and appointments for meetings concerning the business, to several towns and places within that county: and amongst the rest, notice was given unto the town of A. The mayor of A. conceiving that this Mr. I. S. being a principal person, and a dweller in that town, was a man likely to give both money and good example, dealt with him to know his mind. He intending, as it seems, to play prizes, would give no answer to the mayor in private, but would take time. The next day then being an appointment of the justices to meet, he takes occasion, or pretends occasion to be absent, because he would bring his papers upon the stage: and thereupon takes pen in hand, and instead of excusing himself, sits down and contriveth a seditious and libellous accusation against the king and state, which your lordships shall now hear, and sends it to the mayor: and withal, because the feather of his quill might fly abroad, he gives authority to the mayor to impart it to the justices, if he so thought good. And now, my lords, because I will not mistake or mis-repeat, you shall hear the Seditious Libel in the proper terms and words thereof.—[Here the papers were read.]—My lords, I know this paper offends your ears much, and the ears of any good subject; and sorry I am that the times should produce offences of this nature: but since they do, I would be more sorry they should be passed without severe punishment: '*non tradite factum*,' as the verse says, altered a little, '*aut si tradatis, facti quoque tradite penam*.' If any man have a mind to discourse of the fact, let him likewise discourse of the punishment of the fact.—In this writing, my lords, there appears a monster with four heads, of the progeny of him that is the father of lyes, and takes his name from slander. The first is a wicked and seditious slander: or, if I shall use the scripture

phrase, a blaspheming of the king himself; setting him forth for a prince perjured in the great and solemn oath of his coronation, which is as it were the knot of the diadem; a prince that should be a violator and infringer of the liberties, laws, and customs of the kingdom; a mark for an Henry the 4th; a match for a Richard the 2d. The second is a slander and falsification, and wresting of the law of the land gross and palpable: it is truly said by a civilian, *tortura legum pessima*, the torture of laws is more than the torture of men. The third is a slander and false charge of the parliament, that they had denied to give to the king; a point of notorious untruth. And the last is a slander and taunting of an infinite number of the king's loving subjects, that have given towards this benevolence and free contribution; charging them as accessory and co-adjutors to the king's perjury. Nay you leave us not there, but you take upon you a pontifical habit, and couple your slander with a curse; but thanks be to God we have learned sufficiently out of the scripture, that as the bird flies away, so the causeless curse shall not come. For the first of these, which concerns the king, I have taken to myself the opening and aggravation thereof; the other three I have distributed to my fellows. My lords, I cannot but enter into this part with some wonder and astonishment, how it should come into the heart of a subject of England to vapour forth such a wicked and venomous slander against the king, whose goodness and grace is comparable, if not incomparable, unto any of the kings his progenitors. This therefore gives me a just and necessary occasion to do two things: the one, to make some representation of his majesty; such as truly he is found to be in his government, which Mr. I. S. chargeth with violation of laws and liberties: the other, to search and open the depth of Mr. I. S. his offence. Both which I will do briefly; because the one, I cannot express sufficiently; and the other, I will not press too far. My lords, I mean to make no panegyric or laudative; the king delights not in it, neither am I fit for it: but if it were but a counsellor or nobleman, whose name had suffered, and were to receive some kind of reparation in this high court, I would do him that duty as not to pass his merits and just attributes, especially such as are limited with the present case, in silence: for it is fit to burn incense where evil odours have been cast and raised. Is it so that king James shall be said to be a violator of the liberties, laws, and customs of his kingdoms? Or is he not rather a noble and constant protector and conservator of them all? I conceive this consisteth in maintaining religion and the true church; in maintaining the laws of the kingdom, which is the subject's birth-right; in temperate use of the prerogative; in due and free administration of justice, and conservation of the peace of the land. For religion, we must ever acknowledge in the first place, that we have a king that is the principal conservator of true religion through

the christian world. He hath maintained it not only with sceptre and sword, but likewise by his pen; wherein also he is potent. He hath awaked and re-authorized the whole party of the reformed religion throughout Europe; which through the insolency and divers artifices and enchantments of the adverse part, was grown a little dull and dejected: he hath summoned the fraternity of kings to enfranchise themselves from the usurpation of the see of Rome: he hath made himself a mark of contradiction for it. Neither can I omit, when I speak of religion, to remember that excellent act of his majesty, which though it were done in a foreign country, yet the church of God is one, and the contagion of these things will soon pass seas and lands: I mean, in his constant and holy proceeding against the heretic Vorstius, whom, being ready to enter into the chair and there to have authorized one of the most pestilent and heathenish heresies that ever was begun, his majesty by his constant opposition dismantled and pulled down. And I am persuaded there sits in this court one whom God doth the rather bless for being his majesty's instrument in that service. I cannot remember religion and the church, but I must think of the seed-plots of the same, which are the universities. His majesty, as for learning amongst kings he is incomparable in his person; so likewise hath he been in his government a benign or benevolent planet towards learning: by whose influence those nurseries and gardens of learning, the universities, were never more in flower nor fruit. For the maintaining of the laws, which is the hedge and fence about the liberty of the subject, I may truly affirm it was never in better repair. He doth concur with the votes of the nobles, 'nolumus leges Angliæ mutare.' He is an enemy of innovation. Neither doth the universality of his own knowledge carry him to neglect or pass over the very forms of the laws of the land. Neither was there ever king, I am persuaded, that did consult so oft with his judges, as my lords that sit here know well. The judges are a kind of council of the king's by oath and ancient institution; but he useth them so indeed; he confers regularly with them upon their returns from their visitations and circuits: he gives them liberty both to inform him, and to debate matters with him; and in the fall and conclusion commonly relies on their opinions. As for the use of the prerogative, it runs within the ancient channels and banks. Some things that were conceived to be in some proclamations, commissions, and patents, as overflows, have been by his wisdom and care reduced; whereby, no doubt, the main channel of his prerogative is so much the stronger. For evermore overflows do hurt the channel. As for administration of justice between party and party, I pray observe these points. There is no news of great seal or signet that flies abroad for countenance or delay of causes; protections rarely granted, and only upon great ground, or by consent. My lords here of the council

and the king himself meddle not, as hath been used in former times, with matters of *meum* and *tuum*, except they have apparent mixture with matters of estate, but leave them to the king's courts of law or equity. And for mercy and grace, without which there is no standing before justice, we see, the king now hath reigned twelve years in his white robe, without almost any aspersion of the crimson dye of blood. There sits my lord Hobart, that served attorney seven years. I served with him. We were so happy, as there passed not through our hands any one arraignment for treason; and but one for any capital offence, which was that of the lord Sanquhar; the noblest piece of justice, one of them, that ever came forth in any king's time. As for penal laws, which lie as snares upon the subjects, and which were as a *nemo scit* to king Henry 7; it yields a revenue that will scarce pay for the parohment of the king's records at Westminster. And lastly for peace, we see manifestly his majesty bears some resemblance of that great name, a prince of peace: he hath preserved his subjects during his reign in peace, both within and without. For the peace with states abroad, we have it *usque ad satietatem*: and for peace in the lawyers phrase, which count trespasses, and forces, and riots, to be *contra pacem*; let me give your lordships this token or taste, that this court, where they should appear, had never less to do. And certainly there is no better sign of *omnia bene*, than when this court is in a still. But, my lords, this is a sea of matter; and therefore I must give it over, and conclude, that there was never king reigned in this nation that did better keep covenant in preserving the liberties and procuring the good of his people: so that I must needs say for the subjects of England,

'O fortunatos nimium sua si bona norint;' as no doubt they do both know and acknowledge it; whatsoever a few turbulent discourses may, through the lenity of the time, take boldness to speak. And as for this particular, touching the Benevolence, wherein Mr. I. S. doth assign this breach of covenant, I leave it to others to tell you what the king may do, or what other kings have done; but I have told you what our king and my lords have done: which, I say and say again, is so far from introducing a new precedent, as it doth rather correct, and mollify, and qualify former precedents. Now, Mr. I. S. let me tell you your fault in few words: for that I am persuaded you see it already, though I woo no man's repentance; but I shall, as much as in me is, cherish it where I find it. Your offence hath three parts knit together: your slander, your menace, and your comparison. For your slander, it is no less than that the king is perjured in his coronation oath. No greater offence than perjury; no greater oath than that of a coronation. I leave it; it is too great to aggravate. Your menace, that if there were a Bullingbroke, or I cannot tell what, there were matter for him, is a very seditious passage. You know well, that how-

soever Henry 4's act, by a secret providence of God, prevailed, yet it was but an usurpation; and if it were possible for such a one to be this day, wherewith it seems your dreams are troubled, I do not doubt, his end would be upon the block; and that he would sooner have the ravens sit upon his head at London-bridge, than the crown at Westminster. And it is not your interlacing of your 'God forbid,' that will save these seditious speeches: neither could it be a forewarning, because the matter was past and not revocable, but a very stirring up and incensing of the people. If I should say to you, for example, 'if these times were like some former times, of king Henry 8, or some other times which God forbid, Mr. I. S. it would cost you your life;' I am sure you would not think this to be a gentle warning, but rather that I incensed the court against you. And for your comparison with Richard 2, I see, you follow the example of them that brought him upon the stage, and into print, in queen Elizabeth's time, a most prudent and admirable queen. But let me intreat you, that when you will speak of queen Elizabeth or king James, you would compare them to king Henry 7, or king Edward 1, or some other parallels, to which they are alike. And thus I would wish both you and all to take heed of, how you speak seditious matter in parables, or by tropes or examples. There is a thing in an indictment called an *inuendo*; you must beware how you beckon or make signs upon the king in a dangerous sense. But I will contain myself and press this no farther. I may hold you for turbulent or presumptuous; but I hope you are not disloyal: you are graciously and mercifully dealt with. And therefore having now opened to my lords, and, as I think, to your own heart and conscience, the principal part of your offence, which concerns the king, I leave the rest, which concerns the law, parliament, and the subjects that have given, to Mr. Serjeant and Mr. Solicitor.

The following passages relating to this case are extracted from lord Bacon's works, Birch's edition.

To the King, reporting the state of lord chancellor Ellesmere's health.

I found him [the lord Chancellor] in bed, but his spirits fresh and good, speaking stoutly, and without being spent or weary; and both willing and beginning of himself to speak, but wholly of your majesty's business: wherein I cannot forget to relate this particular; that he wished that his sentencing of O. S. at the day appointed might be his last work, to conclude his services, and express his affection towards your majesty. I told him, I knew your majesty would be very desirous of his presence that day, so it might be without prejudice: but otherwise your majesty esteemed a servant more than a service; especially such a servant. Jan. 29, 1614. Old Style.

To the King touching Peacham's business, &c.

For Mr. St. John, your majesty knoweth, the

day draweth on; and my lord chancellor's recovery, the season, and his age, promising not to be too hasty. I spake with him on Sunday at what time I found him in bed, but his spirits strong, and not spent or wearied, and spake wholly of your business, leading me from one matter to another; and wished and seemed to hope, that he might attend the day for O. S. and it were, as he said, to be his last work to conclude his services, and express his affection towards your majesty. I presumed to say to him, that I knew your majesty would be exceeding desirous of his being present that day, so as that it might be without prejudice to his continuance; but that otherwise your majesty esteemed a servant more than a service, especially such a servant. Surely in mine opinion your majesty were better put off the day than want his presence, considering the cause of the putting off is so notorious; and then the capital and the criminal may come together the next term. FR. BACON. Jan. 31, 1614. O. S.

To the King, touching my Lord Chancellor's amendment, &c.

He [the Lord Chancellor] had sent also to my lord treasurer, to desire him to come to him about that time. His lordship came; and, not to trouble your majesty with circumstances, both their lordships concluded, myself present and concurring, that it could be no prejudice to your majesty's service to put off the day for Mr. St. John till the next term: the rather, because there are seven of your privy-council, which are at least *numerus* and part of the court, which are by infirmity like to be absent; that is, my lord chancellor, my lord admiral, my lord of Shrewsbury, my lord of Exeter, my lord Zouch, my lord Stanhope, and Mr. chancellor of the dutchy; wherefore they agreed to hold a council to-morrow in the afternoon for that purpose. It is true, that I was always of opinion that it was no time lost; and I do think so the rather, because I could be content, that the matter of Peacham were first settled and put to a point. For there be perchance that would make the example upon Mr. St. John to stand for all. FR. BACON. Feb. 7, 1614. O. S.

To the King.

It may please your excellent majesty; Mr. St. John his day is past, and well past. I hold it to be *Janus bifrons*; it hath a good aspect to that which is past, and to the future, and doth both satisfy and prepare. All did well: my lord chief justice delivered the law for the Benevolence strongly; I would he had done it timely. Mr. chancellor of the exchequer spake finely, somewhat after the manner of my late lord privy seal; not all out so sharply, but as elegantly. Sir Thomas Lake, who is also new in that court, did very well, familiarly and counsellor-like. My lord of Pembroke, who is likewise a stranger there, did extraordinary well, and became himself well, and had an evident applause. I meant well also; and because my information was the ground; having



spoken out of a few beads which I had gathered, for I seldom do more, I set down as soon as I came home, cursorily, a frame of that I had said; though I persuade myself I spake it with more life. I have sent it to Mr. Mur-

ray, sealed: if your majesty have so much idle time to look upon it, it may give some light of the day's work: but I most humbly pray your majesty to pardon the errors. God preserve you ever. FR. BACON. April 29th, 1615.

103. The Trial of RICHARD WESTON,\* at the Guild-hall of London, for the Murder of Sir Thomas Overbury,† 19 Oct. 13 JAMES I. A. D. 1615.

THE Commissioners were, the Lord Mayor, Hayes; the Lord Chief Justice of England, Coke; Justice Crook; Justice Doderidge; Justice Haughton; Serjeant Crew; and sir Henry Montague, Recorder.

The Court being set, and the king's special commission read, the Lord Chief Justice gave the Charge; the effect whereof was,

First, To express the king's pious inclinations and command unto just proceedings against all such as should be any way proved to be guilty of the murdering and poisoning † of sir T. Overbury, his majesty's prisoner in the Tower.

Secondly, To aggravate the manner and quality of the murdering, in shewing the baseness of poisoning above all other kinds of murder, declaring the vengeance of God, and his justness in punishing offenders: He alledged 9 Gen. 6. 'Quicumque effuderit humanum sanguinem, effundetur sanguis illius; ad imaginem Dei quippe factus est homo.' He also took the example of Uriah by David; he therein observed how adultery is most often the begetter of that sin.

Then he declared, That of all felonies, murder is the most horrible; of all murders, poisoning the most detestable; and of all poisoning, the lingering poisoning.

He shewed how that by an act of parliament, 22 H. 8, cap. 9, it was made treason, and that wilful poisoners should be boiled to

death; rehearsing the example of one Richard Rowse, that had poisoned a man and woman, and was therefore scalded to death.

Then he laid open to the jury the baseness and cowardliness of poisoners, who attempt that secretly, against which there is no means of preservation or defence for a man's life; and how rare it was to hear of poisoning in England, so detestable it was to our nation: But that since the devil had taught divers to be cunning in it, so that they can poison in what distance of space they please, by consuming the *nativum calidum* or *humidum radicale* in one mouth, two, or three or more, as they list; which they four manner of ways do execute, 1. *gustu*, 2. *haustu*, 3. *odore*, 4. *contactu*.

He finished his charge with serious exhortations to the jury to do justice in presenting the truth, notwithstanding the greatness of any that upon their evidence should appear to be guilty of the same offence: comforting both judges and jury with the scripture, Psal. 5, v. ultimo, 'For thou, Lord, wilt bless the righteous; with favour wilt thou compass them as with a shield.'

The charge being ended, the jury, consisting of 14 persons, did for the space of an hour, depart the court into a private room, where they received their evidence from Mr. Fenshaw, his majesty's Coroner, and his highness's counsel prepared and instructed for that purpose, with the examinations and confessions as well of the prisoner himself, as of divers other witnesses, before that time taken by the lord chief justice of England, and others the lords of his majesty's council.

In the mean time, Mr. William Goare, sheriff of London, was commanded to fetch his prisoner, remaining at his house, to be ready in court for his arraignment.

So a certain space after, the Grand Jury returned to the bar, and delivered in their bill of indictment, signed *Billa Vera*. Whereupon the prisoner was set up to the bar, and the Indictment read by Mr. Fenshaw, which contained in effect as followeth:

That Richard Weston, being about the age of sixty years, not having the fear of God before his eyes, but instigated and seduced by the devil, devised and contrived not only to bring upon the body of sir Thomas Overbury, knight, great sickness and diseases, but also to deprive him of his life: and to bring the same to pass,

but these two murderers." Weldon's Court and Character of king James, 76.

\* He had been an apothecary's man, but was now made under-keeper to the new lieutenant of the Tower, sir Jervis Elwes.

† He was son to sir Nicholas Overbury of Burton-upon-the-hill in Gloucestershire, educated at Queen's-College in Oxford, and at the Middle-Temple, of which his father was a benchler. See a full relation of the manner of his death, Bacon's Works, vol. 1. p. 77, 79, and its discovery, *ibid.* p. 80.

‡ "Franklyn and Weston came into Overbury's chamber, and found him in infinite torment, with contention between the strength of nature, and the working of the poison, and it being very like nature had gotten the better in that contention, by the thrusting out of boils, blotches, and blains: they fearing it might come to light upon the judgment of physicians that foul play had been offered him, consented to stifle him with the bed-cloaths, which accordingly was performed, and so ended his miserable life, with the assurance of the conspirators that he died by poison, none thinking otherwise

9 Maii 1613, 11 Jacobi, &c. at the Tower of London, in the parish of Allhallows Barking, did obtain and get into his hand certain poison of green and yellow colour, called Rosalgar, (knowing the same to be deadly poison) and the same did maliciously and feloniously mingle and compound in a kind of broth poured out into a certain dish; and the same broth so infected and poisoned, did give and deliver to the said sir Thomas Overbury as wholesome and good broth, to the intent therewith to kill and poison the said sir Thomas, which broth he took and did eat.

Also the said Weston upon the first of July, 11 Jacobi, as aforesaid, did in like manner get another poison or poisons compounded, called White Arsenick, and (knowing the same to be deadly poison) did give unto the said sir Thomas Overbury, as good and wholesome to eat, who took and did eat.

Also that Weston, upon the said 19th of July following, did get another poison called Mercury Sublimate, (knowing the same to be mortal poison) and put and mingled the same in tarts and jellies, and gave the same unto sir Thomas Overbury, as good and wholesome to eat, which he in like manner took and did eat.

Also the said Weston, and another man being an apothecary, afterwards, upon the 14th of September, feloniously did get a poison, called Mercury Sublimate, (knowing the same to be deadly poison) and put the same into a clyster mingled with the said poison: and the said clyster the said apothecary, for the reward of 20*l.* promised unto him, did put and minister (as good and wholesome) into the guts of said sir T.; and that Weston was present and aiding to the said apothecary in ministering and infusing the said clyster; and that immediately after, as well the taking of the said poisoned meats, and ministering the said clyster, the said sir T. did languish, and fell into diseases and distempers; and from the aforesaid times of taking and eating the said poisoned meats, and ministering the said clyster, he died: and so the jury gave their verdict, That Weston in this manner had killed, poisoned, and murdered the said sir T. against the king's peace and dignity.

Which Indictment being read, he was demanded if he were guilty of the felony, murdering, and poisoning, as aforesaid, yea or no. To which he answered, doubling his speech, 'Lord have mercy upon me! Lord have mercy upon me!' But being again demanded, he answered, Not Guilty. And being then demanded how he would be tried, he answered, he referred himself to God, and would be tried by God; refusing to put himself and his cause upon the jury or country, according to the law or custom.

Hereupon the lord chief justice, and all other in their order, spent the space of an hour in persuading him to put himself upon the trial of the law; declaring unto him the danger and mischief he ran into by resisting his ordinary course of trial, being the means ordained by God for his deliverance, if he were innocent; and how by this means he would make himself

the author of his own death, even as if he should with a knife or dagger kill or stab himself, exhorting him very earnestly either with repentance to confess his fault, or else with humility and duty to submit himself to his ordinary trial. Whereupon he stubbornly answered, Welcome by the grace of God; and he referred himself to God. And so when no persuasions could prevail, the lord chief justice plainly delivered his opinion\*, That he was persuaded that Weston had been dealt withal by some great ones, guilty of the same fact, as accessory, to stand mute, whereby they might escape their punishment: and therefore he commanded (for satisfaction of the world) that the queen's attorney there present should declare, and set forth the whole evidence, without any fear or partiality: and yet notwithstanding, he once more used much persuasion to the prisoner to consider what destruction he brought upon himself by his contempt; and declaring unto him how his offence of contempt was, in refusing his trial, and how the laws of the land had provided a sharper and more severe punishment to such offenders than unto those that were guilty of high treason: and so he repeated the form of judgment† given against such, the extremity and rigour whereof was expressed in these words, *onerè, frigore et fame*. For the first, he was to receive his punishment by the law, to be extended, and then to have weights laid upon him, no more than he was able to bear, which were by little and little to be increased.

For the second, that he was to be exposed in an open place, near to the prison, in the open air, being naked.

And lastly, that he was to be preserved with the coarsest bread that could be got, and water out of the next sink or puddle to the place of execution, and that day he had water he should have no bread, and that day he had bread he should have no water; and in this torment he was to linger as long as nature could linger out, so that oftentimes men lived in that extremity eight or nine days: adding further, that as life left him, so judgment should find him. And therefore he required him, upon consideration of these reasons, to advise himself to plead to the country, who notwithstanding absolutely refused.

\* The chief justice had intelligence underhand, that Yelverton, an obliged servant to the house of the Howards, had advised this counsel for Weston, in order to prevent the prosecution from reaching any farther: Yelverton was at this time Solicitor-general, but does not appear to have had any share in any of the trials for the murder of sir Thomas Overbury, though the Attorney and other counsel of the king had their parts in them.

† Concerning *standing mute* and the punishment of *penance* or *peine fort et dure*, See 2 Hale's P. C. c. 43, but now by st. 12 G. 3, c. 30, *standing mute* shall have the same judgment and all other consequences as a conviction by verdict or confession.

Hereupon the lord chief justice willed sir Lawrence Hyde, the queen's attorney, and there of counsel for the king, to manifest unto the audience the guiltiness of the said Weston by his own confession, signed with his own hand; and if in the declaration thereof they may meet with any great persons whatsoever, as certainly there were great-ones confederate in that fact, he should boldly and faithfully open whatsoever was necessary, and he could prove against them. Whereupon Mr. Attorney began his accusation:

First, he charged the countess of Somerset and the earl to be principal movers unto this unhappy conclusion, Mrs. Turner to be of the confederacy, and the pay-mistress of the prisoner's reward; in which the Attorney's boldness was very observable, in terming the countess a dead and rotten branch, which being lopt off, the noble tree, meaning that noble family, would prosper the better.

Secondly, he proceeded to the cause, which he affirmed to be the malice of the countess; and the ground of this malice he alledged, and by many inducements he evidently affirmed, that sir Thomas Overbury had dissuaded the viscount Rochester from that adulterate marriage with the countess of Somerset, then countess of Essex. And for this he alledged as followeth:

Sir T. Overbury having divers times dissuaded the earl, then viscount Rochester, from seeking by any means to procure marriage with the countess of Essex, to which he saw the earl too much inclined; and having very earnest conference with the earl one night in private in the gallery at White-Hall concerning his intentment, perceiving the earl too much at that time to desire that unlawful communication; in the ardency of his fervent affection unto the earl, and great presence of the future misery it would inevitably bring unto him, (his well-beloved lord and friend) used speeches to this effect:

'Well, my Lord, if you do marry that filthy base woman, you will utterly ruin your honour and yourself; you shall never do it by my advice or consent; and if you do, you had best look to stand fast.'

My lord replied, bewitched with the love of the said countess, moved with sir T. Overbury for so slighting her, answered, 'my own legs are straight and strong enough to bear me up; but, in faith, I will be even with you for this:' and so parted from him in a great rage.

This conference was over-heard by some in an adjoining room, and their depositions for the truth thereof were read in court.

Although this conference moved the earl to such a sudden choler, yet it seemed sir T. Overbury conceived it no otherwise than a sudden extreme distemperature or passion, and not a final conclusion of their bosom-friend as before, in which the earl seemed reciprocal: howsoever, in his double-dealing it seemed to be clearly otherwise.

For upon this the earl moved the king to

appoint sir T. Overbury ambassador for Russia. The king, willing to prefer sir T. Overbury, as one whose worth and valour was not unknown to his majesty, accordingly adjoined him that service; the which sir T. was most willing to accept of, as a gracious aspect of the king towards him: which willingness of his was proved by the deposition of two or three several witnesses read in court, and by the oath of sir Dudley Diggs, who voluntarily, at the arraignment in open court, upon his oath, witnessed how sir Thomas had imparted to him his readiness to be employed on an embassy.

The earl as well abusing the king's favours, in moving to shew favour where he meant the party should take no benefit, as bearing dishonest friendship, in conference with sir Thomas concerning that employment, persuaded him to refuse to serve ambassador, where (quoth he) I shall not be able to perform such kindness to your advantage, as having you with me: and (quoth he) if you be blamed or committed for it, care not, I will quickly free you from all harm. Sir Thomas, thus betrayed by a friend, refused to serve in that nature; whereupon he was committed to the Tower.

Being thus committed, he was presently committed close prisoner, and a keeper he must have; and who must that be but this Weston, who was commended by the countess of Essex to sir T. Monson, to be by him recommended over unto the lieutenant of the Tower, to be keeper to sir T. Overbury. Sir T. Monson, according to the countess's request, commended the said Weston to sir Jervis Elwes; whereupon the said lieutenant entertained the said Weston, and appointed him to keep sir T. Overbury. The said Weston, upon his own confession read in court, signed with his mark, had during the time that she was countess of Essex, been a procurer and pandar to the said earl, then viscount Rochester, and the countess of Essex, for the conveying and effecting of their adulterate desires, which they did divers times consummate, meeting in Mrs. Turner's house once between the hours of eleven and twelve, and at Hammersmith, and at divers times elsewhere, for that purpose; that now, by the procurement of the countess, (who hated sir T. Overbury, for being a good means to keep them from contaminating themselves with such lustful embracements, and from the purposed marriage they mutually laboured to compass) her pandar was become his keeper, a fit agent for lust and murder.

Weston now being become sir T. Overbury's keeper, kept him so close, that he scarce had the comfort of the day's brightness; neither suffered he any one to visit him, father, brother, his best friends, his nearest kindred were strangers to him from the beginning of his imprisonment unto the end.

Mrs. Turner, upon the first day's keeping, promised to give him a contenting reward, if he should administer such things to sir T. Overbury as should be sent unto him, thinking him a fit instrument to compass black murder, that

was so well acquainted with foul lust; and so indeed they found him, for he agreed and did promise to administer whatsoever she would send him. Mrs. Turner, upon this murderous promise, the very same day that Weston became sir T. Overbury's keeper, being the 6th day of May, 1613, sent unto him the said Weston certain yellow poison, called Rosalgar, in a vial.

Weston having received that poison, the aforesaid 6th of May at night, bringing sir T. Overbury's supper in one hand, and the vial of poison in the other, meets with the lieutenant, and asks him in these terms, 'Sir, shall I give it him now?' Upon this word 'now,' the lord chief justice demurs, to aggravate the maliciousness; affirming that this particle 'now,' shewed a resolution to poison him. 'What shall you give him?' replies the lieutenant. Weston replies, 'as if you did not know, sir.' The lieutenant blaming him, he carries the poison into an inner room, which Weston, the 9th of May, did administer to sir T. Overbury in broth. This was proved both by Weston and the lieutenant's confession.

Weston having given this poison, which wrought very vehemently with him by vomits and extreme purging, he presently demands his reward of Mrs. Turner, who replies, 'That the man is not yet dead: perfect your work, and you shall have your hire.' This was also confessed by Weston under his marks.

Sir T. Overbury, by his close imprisonment, growing sick, and daily languishing, after three or four weeks space (considering he had not got his freedom and release, having no friends suffered to come unto him, but only such as the earl sent to comfort him, of his own followers) writ to the earl to remember his imprisonment; who received answer, 'The time would not suffer, but so soon as possible might be, he would hasten his delivery;' so indeed it seems he intended to do, but not so as sir T. Overbury conceived, whose true affection would not admit his judgment to debate the strangeness of his imprisonment, which he might well think the earl might easily have relieved.

The 5th of June, viscount Rochester sent a letter to sir T. Overbury; in the letter he sent him a white powder, willing sir T. to take it: 'It will,' quoth he, 'make you more sick; but fear not, I will make this a means for your delivery, and for the recovery of your health.' Sir T. Overbury never dreaming of base treachery, but conceiving it as a friendly policy, received the said powder, which wrought upon him more vehemently; whereupon his sickness grew more vehement or violent, and his languishment increased: which white powder, upon Weston's confession, was poison.

Sir T. Overbury's sickness increasing, and with it his wondering that he could not in two months space be released, after his physick taking, he thus writes to the earl, lamenting his own estate; for his faith being thus shaken with the earl's unkindness, gave way for his judgment to scan those actions, rather like an un-

derstanding man, than like a loving friend, as appeareth by his letter sent to viscount Rochester, the effect whereof was thus, as it is avowed by the deposition of sir T. Overbury's servants, who saw the letter.

*Sir Thomas Overbury's Letter to the Viscount Rochester.*

"Sir; I wonder you have not yet found means to effect my delivery; but I remember you said, you would be even with me [not suspecting, as it seemeth, any poisoning, but an unkind forgetfulness of my lord of Rochester] and so indeed you are; but assure yourself, my lord, if you do not release me, but suffer me thus to die, my blood will be required at your hands."

My lord comforts him, and excuses, that it cannot yet be compassed: Sir Thomas, after the powder taken, languisheth deadly; and to comfort him, some followers of my lord of Rochester's are sent to him daily, in the name of my lord, by the appointment and procurement too of the lady of Essex (as Weston confessed) to visit and comfort him, and to intreat him if he desired any meat, that he should speak, and it might be better perhaps provided for him, than he should have in the Tower: this was about three months after his imprisonment.—He, as men sick desire luscious meats, desired tarts and jellies, which were provided by Mrs. Turner, with the knowledge of the said countess, and sent unto him, of which he did eat; the which tarts were poisoned with Mercury Sublimatè, not being so well coloured as other tarts are, and Weston confessed that he was straitly charged not to taste thereof.

Sir T. thus continuing languishing with the extremity of sickness, until the 6th of Sep. when the aforesaid Mrs. Turner did procure an apothecary's boy for twenty pounds to poison a clyster, which was by the boy and Weston afterwards administered as good physick, upon the 7th day of October; after the receipt of the clyster, he fell into a great extremity of vomiting, and other purging, which left him not, till it caused his soul to leave his poisoned body: this Weston confessed and signed.—Being thus dead, he was presently and very unreverently buried in a pit, digged in a very mean place; on his body thus venomously infected, appeared divers blains and blisters: whereupon they, to take away as well his good name, as his life, did slanderously report, that he died of the French pox; but this report was cleared in court, by the depositions of his servants, and other men of worth there read.—That before his imprisonment, he had a clean and sound body, only he had an issue in his left arm, purposely made for the benefit of his nature, for the avoiding of rheum and ill humours, which, with continual sitting at his study, he had subjected himself unto.—He further observed the confession of the Lieutenant to be, that if any prisoner died there, his body was to be viewed, and inquisition to be taken by the coroner.

But sir T. Overbury's friends and others by

no means might be suffered to see his body; and although it was reported, that there was an inquisition taken, yet it could by no means be found.

After Mr. Attorney had ended his speech, Mr. Warr, also of counsel for the king, declared to the court what familiarity he had with sir T. being both of the Temple together, much commending his singular honest and virtuous conversation; affirming, That he was addicted to no dishonest actions: and from this he proceeded to urge his sad usage in the Tower, where he might have no company, but the apothecary and the Walloon; and repeating the sending of the tartis and jellies in my lord of Somerset's name, he ended his speech with this saying, 'Pereat unus, ne pereant omnes; pereat peccans, ne pereat Respub.' Then, by the commandment of the court, were read by Mr. Fenshaw the Examinations of divers witnesses taken before my lord chief justice and others, which in effect were as follows:

**Laurence Davies, servant to sir T. Overbury, examined the 15th of October, before the Lord Chief Justice.**

He saith, That he had served sir T. Overbury eight or nine years; in all which time he was very healthful, and never kept his bed for any sickness, only he was sometimes troubled with the spleen, for ease whereof, he had by the advice of his physician an issue made in his left arm; but before his imprisonment, he had no sores, blisters, or other defects in all his body.—Also he saith, sir T. would have gone over upon the embassage, but was dissuaded by Somerset, who promised to bear him out: he complained, he needed not to be prisoner if Somerset would; and that if he died, his blood would be required at his hands.—That Somerset was as good as his word, who told him at Newmarket, he would be even with sir T. Overbury.

**Henry Payton, another servant of sir T. Overbury's, examined the 15th of October, 1615.**

He affirmeth, that sir T. was of a very good constitution of body; that he used sometimes to run, to play at foils, and such like; that he was of a moderate diet, never had any sores, saving the issue in his arm. That sir T. wrote letters to Somerset, signifying that he needed not to lie in prison if Somerset would, and if he died, his blood should be required at his hands.—That sir T. at one of the clock at night, meeting Somerset in the gallery at Whitehall, had speeches with him touching the countess, whom he called base woman, and told Somerset, he would overthrow all the king's favours and honours; and upon displeasure between them at this conference, sir T. Overbury desired Somerset that he might have his portion due, and he would shift for himself. Whereunto Somerset answered, And my legs are straight enough to carry me; and so flung away in anger. All which this examine heard, being in a chamber next to the gallery.

Sir Dudley Diggs being present in court, and

sworn, declared *vixs voce*, that he was sent by a privy-counsellor, a great man, to sir T. Overbury, to bring him to this great man, which he did; and coming back together over the water in a boat, sir T. was much discontented; the reason whereof he said was, That he was persuaded by the great man to withdraw himself from the court for some reasons which he disclosed not: And sir Dudley afterwards being sent by the lords, to know the resolution of sir T. touching the embassage, he found him to rely upon the lord of Somerset, saying, My precious chief knows the king's mind better than any, and I the mind of my precious chief.

**Richard Weston, the prisoner, examined, the 6th of October, 1615, coram Coke & Crew.**

He affirmeth, That before sir T. Overbury was in the Tower, he, this examinant, carried three letters to Somerset, from the lady Essex, to Royston, Newmarket, and Hampton-court, and he delivered answer to Mrs. Turner; and that upon the letter to Hampton-court, he had answer only by word of mouth, That his lordship would come: And that coming back, he met with the countess and Mrs. Turner half way, in the coach, whom he told, that the lord only answered so; whereupon the countess strook out of the way into a farmer's house hard by, whither within a little space Somerset came, and that afterwards they met in the night at Mrs. Turner's house in Paternoster Row. And he confesseth, that of a year before sir T.'s imprisonment, no man carried letters between them but he.

**Sir Thomas Monson examined the 5th of October, coram Coke & Crew.**

He saith, that he never knew Weston until sir T. Overbury was prisoner in the Tower; and that he preferred him to the Lieutenant, to be keeper of sir T. Overbury, at the request of the countess.

**Anne Turner, widow, examined the 11th of October, 1615, coram Coke & Crew.**

She saith, That Weston was an antient servant, and her husband's bailiff in the country: She denieth to have any thing to do in placing him in the Tower; but saith, that the countess of Essex did effect it, and used the help of sir Thomas Monson therein.

**Sir Jervis Elves examined the 3d of October, 1615, coram Coke & Crew.**

He saith, He had a letter from sir T. Monson, requesting him, that Weston might be keeper of sir T. Overbury, and that he did perform it; and afterwards having conference with sir T. Monson, he told him, That his keeper was not to suffer any letters or tokens, or any things to be delivered unto him.

**Richard Weston the prisoner examined again,**

He confesseth, He shewed him the glass that was delivered him by his son from the countess to the Lieutenant, and told him, that it came from the countess of Essex, and that he persuaded him not to give it to sir Thomas.

He saith, That he had divers tarts from the countess, to give to sir T. with caveats that he himself should not taste of them; and confesseth, that he thought they were poisoned.

He saith, Mrs. Turner appointed him to come to White-hall, and that she dealt with him to give sir T. Overbury the water, and told him, he should not drink thereof; and was promised a great reward, and he suspected it was poison. His son afterwards delivered him the glass, which he shewed to the Lieutenant, who rebuked him, and so he set the glass in a study near to sir T.'s chamber, but gave it him not; although he told Mrs. Turner, the next day, he had given the water, which made sir T. to vomit often, and to be exceeding sick.

He saith, Mr. James and Mrs. Rawlins, servants to the countess, came often to know of the examinant, how sir T. Overbury did, and what he would eat; and they delivered him jellies and tarts, which he gave sir T. who did eat thereof.

He saith, he demanded of Mrs. Turner his reward, who answered, he was to have no reward until sir T. was dead, and he was promised a pursuivant's place; but confesseth, that afterwards, at two several times, he received secretly after the death of sir T. for a reward of Mrs. Turner from the countess, 160*l*.

Wm. Weston, son to the prisoner, examined.

He confesseth, he received a glass from the countess, by her servant, two inches long, being wrapped in paper, which he delivered to his father in the Tower.

Then was read the Confession of the Lieutenant to the King.

He saith, That Weston met him, carrying sir T.'s supper in the one hand, and the glass in the other, and demanded of the Lieutenant this, 'Sir, shall I give it him now?' Whereat the Lieutenant stepped to him, and asked him, 'What?' To which Weston said, 'Why, sir, know you not what is to be done?' And so the Lieutenant having made him to confess the matter, dissuaded him, and he seemed to be resolved not to do it; and afterwards this Weston confessed, that an apothecary had 20*l*. for administering a clyster to sir T. Overbury.

Weston, the prisoner, examined before the lord Zouch and others;

Confesseth, That sir T. had a clyster which gave him sixty stools and a vomit; also being confronted with the writings of sir Jervis Elwes, and charged therewith, he confesseth the same to be true.

Simon Marson, musician, examined;

Saith, He served sir T. Monson six years, and is preferred by him to the king's service, but waiteth sometimes upon sir T. Monson; he saith, That he received divers tarts and jellies from the countess of Essex, to be carried to the Lieutenant of the Tower for sir T. Overbury.

Paul de la Bell, examined;

Saith, That on the 3d of July, he made sir

T. Overbury a bath by Dr. Micham's advice, to cool his body, and that he saw his body very exceeding fair and clear; and again, he saw his body, being dead, full of blisters, and so consumed away, as he never saw the like body. George Rawlins, a kinsman to sir T. Overbury, examined;

Saith, That upon the bruit of the murder of sir T. he was taxed by some, why he made no prosecution; he thereupon made a petition, and delivered it to the king, that the examination of the cause might be referred to law, and denieth that he was persuaded by any to the contrary: he saith, that he coming often to the Tower to see sir T. could not be suffered to see him so much as out at the windows; and Weston told him, it was the commandment of the council, and of the Lieutenant.

The Lieutenant of the Tower examined, coram Coke & Crew.

He saith, That after the death of sir T. Weston came to him, and told him he was much neglected and slighted by the countess, and could receive no reward; but afterwards he confessed he had received 100*l*. and should receive more: and the Lieutenant also saith, that sir T. Overbury was very angry with his apothecary at certain vomits which he had, and also at the tarts and jellies he had, which would be found within a day or two standing, ill-coloured, and that nobody did eat thereof but sir T.; and Weston confessed unto him, that the apothecary had 20*l*. for administering the clyster.

These Examinations being read, and applied to the purpose, the Lord Chief Justice said, he would discharge his duty, first to God, in giving all glory, for the bringing to light of so horrible and wicked a fact; and next to the king his great master, who as in case of the like nature, as in the case of Sanquer and Turner, so especially in this, hath given straight charge of just and due examination to be had without any manner of partiality or fear in the world; to the intent, that as well the innocent might be freed, as the nocent and guilty severally punished.

And for this purpose, his majesty hath with his own hand written two sheets of paper on both sides, concerning justice to be administered to all parties which were to be examined; which writing the Lord Chief Justice shewed to the Lord Mayor, and the rest of the commissioners; and then he declared the king's justice, who, albeit the many favours and honours which his majesty had bestowed on the lord Somerset, and his nearness to his person, by reason of his office, yet he had committed him prisoner to the dean of Westminster's house, under the custody of sir Oliver St. John, and also had committed his lady. So having last of all, again, demanded of the prisoner, if he would put himself to be tried by the country? which he refused;

The court was adjourned until Monday following, at two of the clock in the afternoon.

On Monday the 25<sup>d</sup> of Oct. 1615, to which day the court was adjourned by the said commissioners, after proclamation made, the jury of life and death called, the prisoner Weston was set to the bar, and Mr. Fenshaw, Clerk of the Crown, declared unto him, that he had been formerly arraigned, and had pleaded Not Guilty; so he demanded of him, how he would be tried: whereupon the prisoner answered, By God and his country. And thereupon the jury being sworn, and the indictment being read as before, sir Lawrence Hyde, the queen's Attorney, being of counsel with the king, having briefly rehearsed the effect of the indictment, shewed how that he must necessarily mention others that were guilty of the same fact, wherein if any other man or woman were touched, the cause it was, and not he that touched them.

And therefore Weston being but a stranger to sir T. Overbury, and one, who by himself could reap no benefit by his death, it was against all reason that he would do it of himself, therefore, said he, I must needs open the whole plot; and he first declared the worth and honesty of sir T. Overbury, shewed his familiarity with Rochester, and how often he would him to forbear the company of the lady Essex, terming her a vile and base woman, which stirred up the anger and malice of the countess against him.

And that afterwards, the king intended, for the honour and preferment of sir T. Overbury, to send him upon an embassy; whereunto he was willing, but was dealt with and persuaded by the lord Rochester, to disobey the king's direction and counsel, with promises that he would bear him out; by which contempt sir T. was committed to the Tower the 22<sup>d</sup> of April, 1613, Sir W. Wade being Lieutenant of the Tower: the 6<sup>th</sup> of May following, sir W. was removed, and sir J. Elwes put in his place. And the next day after, Weston, by the procurement of the countess, was preferred to the service of the Lieutenant, and to be keeper of sir Thomas; which Weston had been servant to Mrs. Turner, and the only agent in conveying letters and messages between Rochester and the countess; and he, whose office should have been to save and keep, was now appointed to kill and murder him. He shewed how the very same day of his entertainment at the Tower, he was sent for to the countess, who persuaded him, that if he would give sir T. a water that should be delivered him, he should be well rewarded, and she bid him not taste of it himself. And that on the 9<sup>th</sup> of the same month of May, the said water was secretly sent from the countess to Weston by his son; and the same night Weston meeting with the Lieutenant, and having sir T.'s supper in one hand, and the said glass in the other, he demanded of the Lieutenant, 'Sir, shall I give it him now?' Whereupon the Lieutenant took him aside, and dissuaded him so far forth, that he confessed, he thanked God upon his knees, that he had met with him.

But Mr. Attorney observed this notwithstanding that the Lieutenant did let him go away with the poison; and albeit he now denieth he ever gave the poison, yet said he delivered it: he confessed to Mrs. Turner he had done it, saying, it made him very sick, and to vomit often, demanding of her his reward; to which she answered, He was not to have his reward until sir T. were dead. Then he shewed how the last of June following, a certain powder was sent in a letter to sir T. Overbury from Rochester, persued him not to fear though it made him sick, for that should be his reason to move the king for his enlargement. And that the 14<sup>th</sup> of Sept. Weston and the apothecary ministered the clyster to sir T. which gave him sixty stools and vomits, and that he died the next day; he remembered the strangeness of the blatches and blisters on his body, being dead; he shewed how Weston came to Mrs. Turner for his reward, which was deferred till his death; and that he had received in secret from the countess by Mrs. Turner at several times for his reward 180*l.*, and that the apothecary had for his reward 20*l.* All which Weston had confessed to be true. Then remembering how ignominiously they buried him, not suffering any to see him, for fear he should be digged up again, and without any coroner's inquest that should be found; and thus he ended his speech.

And to all this opened and set forth by Mr. Attorney, Mr. Warr only added thus much, which he desired the Jury to consider. That Weston was servant to Mrs. Turner when sir T. was committed, and then he was entertained and made keeper to sir T. Overbury; and having dispatched his business (sir T. being dead and poisoned), he stayed no longer at the Tower, but returns again to Mrs. Turner.

Then the lord chief justice exhorted the jury to take God before their eyes, and with equal balance to weigh as well the answer of the prisoner, as the proofs and examinations against him; declaring unto them how quietly and freely he had examined him from time to time, without menacing or rough usage, which the prisoner confessed: and my lord, for matter of law, satisfied the Jury, That albeit the poisoning in the indictment be said to be with Rosinagar, White Arsenick, and Mercury Sublimate, yet the Jury were not to expect precise proof in that point, shewing how impossible it were to convict a poisoner who useth not to take any witnesses to the composing of his siber sauces: wherefore he declared the law in the like case; as if a man be indicted for murdering a man with a dagger, and it fall out upon evidence to have been done with a sword or with a rapier, or with neither, but with a staff; in this case the instrument skilleth not, so that the Jury find the murder. And so in this prisoner's case, if they would be satisfied of the poisoning, it skilleth not with what; therefore he requirith them to attend the proof. [3 Co. Inst. 49. 135.]

Then were read first the Examinations of Laurence Davier, as at the first Arraignment;

then of Henry Payton, both servants to sir T. Overbury; then of Weston himself formerly read.

Then the Examination of sir David Wood, taken the 21st of October 1615, since the first Arraignment.

He saith, He had obtained the king's consent to a suit, for which he was a petitioner, and that he was crossed by the lord Rochester and sir T. Overbury: that for certain words he had received from sir T. Overbury, he intended to bastinado him; that his suit would have been worth 2200*l.* and that Rochester would not let it pass, unless he might have 1200*l.*

That the lady Essex sent for this examinant upon the day that the king and queen went to Rochester with the lady Elizabeth, and told him, she understood that he had received much wrong from sir T. Overbury, and that he was a gentleman that could revenge himself; and that sir T. had much wronged her; and sir David answered, That sir T. had refused him the field; she persuaded him to kill him, and promised him 1000*l.* for his reward, and protection from his enemies; which he refused, saying, He would be loth to hazard going to Tyburn upon a woman's word; but she still persuaded him he might easily do it, as he returned late home from sir Charles Wilnot's in his coach.

Then were read the Examinations of sir T. Monson, and Mrs. Turner, as at the first Arraignment.

Next, the examination of Weston before the lord Zouch and sir Ralph Windwood, sir T. Parry, and sir Foulke Grevill, at the Duchy-house, the 29th of Sept. 1615, where Weston did confess, that he was preferred to the keeping of sir T. Overbury by Mrs. Turner, upon the means and request of sir T. Monson to the Lieutenant; and that she told him, If he would give sir T. Overbury a water which the countess would send him, he should be well rewarded; and being confronted with a relation in writing, which sir J. Elves had made to the king, as touching sir T. Overbury, he confessed the same to be all true.

The Examination of the Lieutenant, taken the 5th of October, 1615.

He saith, That having conferred with his servants about the time of Weston's coming to the Tower, he found it to be the very next day after himself was made Lieutenant, and had the possession of the Tower; and that he had letters from sir Thomas Monson, that Weston might be keeper to sir T. Overbury; which letters he had lost. Sir Thomas Monson told him the chief purpose of Weston's keeping of sir T. Overbury, was, to suffer no letters or other messengers to pass to or from him, and to that purpose he advised the Lieutenant.

Weston's Examination the 5th of Oct. 1615.

He confesseth, That the next day he was preferred to the Tower, he had the keeping of sir

T. Overbury, and soon after he received the glass by his son secretly from the countess; and that the Lieutenant told him, all the tarts came likewise from her: and he confesseth, the countess willed him to give them to sir T. but not to taste of them himself.

Weston's Examination the 1st of Oct. 1615.

Confesseth, That Mrs. Turner appointed him to come to Whitehall to the countess, the next day that he was at the Tower; and that he went, and the countess did request him to give to sir T. Overbury a water, which she would deliver him, but not to drink of it himself; she promised to give him a good reward, and he suspected it was poison: he received the glass by his son, and told the Lieutenant of it, who did rebuke him, and he set the glass into a little study. He confesseth, he told Mrs. Turner he had given it him, and demanded his reward; that Mr. James and Mr. Rawlins, my lord of Somerset's men, came often to know of him what tarts, jellies, or wine sir T. would have, and that they brought divers times tarts and jellies, whereof he did eat.

He confesseth to have received of the countess in rewards, after sir T. Overbury's death, by Mrs. Turner secretly, in all 180*l.*

The Confession of the Lieutenant to his majesty.

After Weston was placed in the Tower, he met with me with sir Thomas's supper, and the glass, and asked me, 'Sir, shall I give it him now?' wherein I protest unto your majesty my ignorance, as I would also be glad to protest the same to the world: so I privately conferred with Weston, and by this means made him assured unto me, and knew all, but dissuaded him; and Weston has since the death of sir T. Overbury, confessed to me, that the clyster was his overthrow, and the apothecary had 2*q*l. for administering it. Your majesty's servant, sir JERVIS ELVES.

Here the lord chief justice observed by this question of Weston to the lieutenant, 'Shall I give it him now?' that it was certainly agreed and plotted before what should be done, and that nothing more was doubted on but the time when it should be done.

The Testimony of Lawrence Davies, taken upon Oath before Coke and Crew.

He affirmeth, that Weston delivered him a letter from sir Thomas Overbury to Rochester, the effect whereof was, that he would do his endeavour in being a means of friendship between Rochester and some others; but as touching the marriage with the countess of Essex, he would never give his consent: and also bringing a letter from Rochester to sir T. Overbury, he delivered it to Weston, and a paper of white powder fell out, which Rochester persuaded sir T. to eat, and not to fear, though it made him sick, for that should be a means for his enlargement; so they put the powder into the letter again. He saith, that he saw some part of the powder in Weston's hands after the death of sir T. Overbury.



Then were read the Examinations of William Weston and Paul de la Bell, as at the first Arraignment.

The Examination of George Rawlins.

George Rawlins, esq. the 15th of October, 1615, saith, That upon the bruit of poisoning of sir T. Overbury, being taxed of divers, for that he stirred not in the matter, sir T. being his kinsman and means of his preferment; he did of himself prefer a petition to the king, that the cause might be referred to the judges of the law, for ordinary course of justice, rather than to the lords of the council, by them to be examined; of which he had a gracious answer: and saith, that of fourteen days before the death of sir T. Overbury, he could never be suffered to see him, either in his chamber, or at the window; which, Weston said, was the commandment of the lords and the Lieutenant.

And here the Lord Chief Justice declared what a scandal they put upon his majesty and the state, that a gentleman and a freeman, being only committed upon contempt, should be more straightly and closely kept than a traitor or a bond slave, so that neither his father, brother, nor friend might possibly see him. And to that point, Mr. Overbury, father to sir T., swore, being present in court; who said, That his son being prisoner in the Tower, and himself not being suffered to have access unto him, found at last, that Rochester was the man that withstood it.

The Lieutenant examined the 5th of October.

Saith, That after the death of sir T. Overbury, Weston told him, that he was neglected by the countess, and demanded his reward: Mrs. Turner told him, the countess had not money; but afterwards he confessed, he had received some, and should have more; and that Mr. James told him, my lord of Somerset would reward him for the pains he took with sir T. Overbury. He saith, That the tarts were sent from the countess to sir T. which looked ill-favouredly, and that the jellies with a little standing would be furred, and thinketh they were poisoned: also Weston told him, that the apothecary had 20*l.* for giving the clyster, and that he was poisoned with that clyster.

Here was well observed by the court, as by the queen's attorney, That Weston was not single in his Confession, but whensoever he had confessed any thing in any of his Examinations, it was likewise confirmed by the Examinations of others, as the Lieutenant, his son, &c.

The EXAMINATION of William Goare, one of the Sheriffs of London.

Saith, Weston being in his custody, he often persuaded him to put himself to be tried by his country, telling him, he would first kill himself, and ask God forgiveness afterwards: and Weston answered, He hoped he would not make a net to catch little birds, and let the great ones go.

Then Mr. Warr craving leave of the court to speak, protested, in his experience he never found a business so prosecuted with degrees of

malice, which was the ground of sir T. Overbury's overthrow: he urged the evidence in the examination of sir David Wood, and shewed the reasons of the malice against him to be, for that he was so great an impediment to affections. Then he made the dependency Mrs. Turner had to the lady, and Weston to Mrs. Turner, and how they all concluded to kill sir T. Overbury, the like whereof he said our fathers never saw before us; and he lamented the place from whence the poison came, should be from the court, the place (said he) from whence all men expect their safeties and protection.

Lastly, he observed the finger of God, even in this, that the poison had been scarcely suspected at all, or enquired after, had it not been for the extraordinary strange things appearing after his death, which was the first only cause of suspicion and muttering.

The evidence being given, Weston was demanded what he could say for himself? Who, although he had before confessed all his examinations to be true, yet he seemed to excuse himself in a kind of ignorance or unawares: he said, he received the said glass, and thought it was not good, but desired the giving of it to sir Thomas; being demanded, why he had formerly accused one Franklin, for delivering him the said glass from the countess? (from whom indeed it was sent;) he confessed it was to save his child, and finally could say nothing that had any colour of material or substantial point to excuse or argue innocency in him. So the court referred him to the jury; who went together, and within a short space returned, being agreed upon their verdict, and there at the bar gave in, that Weston was guilty of the felonious murdering and poisoning of sir T. Overbury. And then the clerk of the crown demanded of Weston, what he could say for himself, why judgment should not be pronounced against him according to law? To which he answered, He referred himself to my lord, and to the country. And then the lord chief justice, before he pronounced sentence of death, spake to this effect, that for the duty of the place, he must say somewhat; and that to two several persons: First, to the auditory: and, secondly, to the prisoner.

And that which he spake to the auditory, he divided into four parts: 1st, The manifestation of the glory of God, and honour of the king. 2dly, The preventing of other damned crimes of poisoning. 3dly, An Answer to certain objections. 4thly, That there is no practice of conspiracy in prosecuting of the business.

For the 1st, he observed the finger of God in the manifestation and bringing to light of this matter, having slept two years, being shadowed with greatness, which cannot overcome the cry of the people.

He observed also the providence and goodness of God, who put into the hearts of himself and the rest of the judges, the day of the prisoner's last arraignment, when he stood mute, not to give judgment against him for that time, but defer it till now; and how in the mean time

it pleased his majesty out of his gracious care and pity, to send to the prisoner first the bishop of London, next the bishop of Ely, to admonish and persuade him for the saving of his soul; who, after each of them had spent two hours with him, it pleased God (when they had left him) to move his heart, so that now he did put himself to be tried by the country; by which means (using Weston's own words) he said, the great flies shall not escape, but receive their punishment. For conclusion of his first point he lastly observed, 'Divinum quiddam in vulgi opinione,' that notwithstanding so many uncertain rumours touching this case, at last it proved to be true.

2dly, He declared, how for prevention of this damned crime of poisoning, justice was the golden mean, and declared his majesty's resolution straightly to execute justice for that treason; and he used this saying, 'Nemo prudens,' &c. and desired God that this precedent of Overbury might be an example and terror against this horrible crime, and therefore it might be called, 'The great Oyer of poisoning.'

3dly, He said, that at the arraignment there were certain criticks, who had given out, the prisoner should deny his examinations; and found much fault, for that the examinations were read, the prisoner standing mute. But for the first, how untrue it was, all the world saw, the prisoner here confessing them all, being read and shewed unto him: and for the second, besides that it was exceeding discreet and convenient the world should receive some satisfaction in a cause of that nature, he cited and shewed, that by the laws of the land they ought and were bound to do so, notwithstanding the greatness of any, who might thereby be impeached; of whom he said, although this was 'unum crimen,' yet it was not 'unicum crimen.'

4thly, As touching the supposed practice or conspiracy, he solemnly protested to God, he knew of none, nor of any semblance or colour thereof; and therefore he much inveighed against the baseness and unworthiness of such as went about so untruly and wickedly to slander the course of justice. And so he came,

last of all, to that which he had to speak of Weston the prisoner.

First, touching the wickedness of his fact, he very seriously exhorted him to an unfeigned confession and contrition for the same, declaring unto him, how that his confession would be a satisfaction to God and the world, and that by his faith and true repentance he would lay hold upon the merits of his Saviour.

He persuaded him, that no vain hope (which is a witch) should keep him back from giving satisfaction to the world, by discovering the guiltiness of the great-ones; assuring him, that after this life, as death left him, so judgment should find him.

And lastly, taking occasion there to remember this poisoning to have been a popish trick, which he instanced by examples of one Gurnandus de Birlanus; mentioned 22 Edw. 1. Squier, that attempted to poison queen Elizabeth's saddle; Lopez, and Mrs. Turner: he then proceeded to give judgment, which was,

That the prisoner should be carried from thence to the place from whence he came, and from thence to Tyburn, and there to be hanged by the neck till he was dead.

Judgment being given, the lord chief justice commanded, that the prisoner might have convenient respite, and the company of some godly learned men to instruct him for his soul's health.

He was afterwards executed at Tyburn, pursuant to the sentence. At the time of his execution, sir John Hollis (afterwards earl of Clare) and sir John Wentworth, out of friendship to the earl of Somerset, rode to Tyburn, and urged Weston to deny all that he had before confessed: but Weston being prepared for death, resisted their temptations, sealing penitently the truth of his confessions with his last gasp; and sir John Hollis, sir John Wentworth, together with Mr. Lumsden, who had published a relation of the proceedings against Weston at his arraignment, were afterwards prosecuted in the Star-Chamber, for traducing the king's justice in those proceedings.\*

\* Bacon's Works, fol. edit. vol. 1. p. 80—86. vol. iv. p. 282.

#### 104. The Trial of ANNE TURNER,\* Widow, at the King's-Bench, the 7th of November, for the Murder of Sir Thomas Overbury, Mich. 13 JAMES I. A. D. 1615.

THE indictment whereupon Richard Weston took his trial being repeated *verbatim*, she was

\* "And now poor Mrs. Turner, Weston and Franklyn, began the tragedy. Mrs. Turner's day of mourning being better than the day of her birth, for she died very penitently, and shewed much modesty in her last act, which is to be hoped was accepted with God; after that died Weston, and then was Franklyn arraigned, who confessed that Overbury was smothered to

indicted for comforting, aiding and assisting the said Weston, in the poisoning to death sir

death, not poisoned to death, though he had poison given him. Here was Coke glad how to cast about to bring both ends together, Mrs. Turner and Weston being already hanged for killing Overbury with poison, but he, being the very quintessence of law, presently informs the jury, that if a man be done to death with pistols, poniards, swords, halter, poison, &c. so he

T. Overbury; to which she pleaded Not Guilty, putting herself upon God and the country.\* Whereupon a sufficient Jury of two knights, and the rest esquires and freeholders of Middlesex, were sworn and impanelled for the trial, whereof sir T. Fowler was foreman.

Sir Ed. Coke, lord chief justice, told her, that women must be covered in the church, but not when they are arraigned, and so caused her to put off her hat; which done, she covered her hair with her handkerchief, being before dressed in her hair, and her hat over it.

Sir Laurence Hyde, the queen's attorney, opened the matter much to the effect as he did at Weston's Arraignment, shewing the wickedness and heinousness of poisoning: he shewed further, that there was one Dr. Forman, dwelling in Lambeth, who died very suddenly, and a little before his death desired that he might be buried very deep in the ground, or else (saith he) I shall fear you all.—To him, in his life-time, often resorted the countess of Essex and Mrs. Turner, calling him father:† their cause of coming to him was, that by force of magick, he should procure the now earl of Somerset, then viscount Rochester, to love her, and sir Arthur Manwaring to love Mrs. Turner, by whom, as it was there related, she had three children. About this business, the countess of Essex wrote two Letters, one to Mrs. Turner, another to Dr. Forman, as followeth:

The Countess's LETTER to Mrs. Turner.

[Burn this Letter.]

"Sweet Turner; I am out of all hope of any good in this world, for my father, my mother, and my brother said, I should lie with him; and my brother Howard was here, and said, he would not come from this place all winter; so that all comfort is gone; and which is worst of all, my lord hath complained, that he hath not lain with me, and I would not suffer him to use me. My father and mother are angry, but I had rather die a thousand times over; for besides the sufferings, I shall lose his love if I lie with him. I will never desire to see his face, if my lord do that unto me. My lord is very well as ever he was, so as you may see in what a miserable case I am. You may send the party word of all; he sent me word all should be well, but I shall not be so happy as the lord to love me. As you have taken pains all this while for me, so now do all you can, for never so unhappy as now; for I am not able to endure the miseries that are coming on me, but I cannot be happy so long as this man liveth: therefore pray for me, for I have

be done to death, the indictment is good, if but indicted for any of those ways: but the good lawyers of those times were not of that opinion, but did believe that Mrs. Turner was directly murdered by lord Coke's law as Overbury was without any law." Sir A. Wedon's Court and Character of king James, p. 108.

\* 3 Co. Inst. 49. 133.

† Complete Hist. of England, vol. iii. p. 693.

need, but I should be better if I had your company to ease my mind. Let him know this ill news: if I can get this done, you shall have as much money as you can demand, this is fair play.—Your sister, FRANCES ESSEX."

A LETTER from the Countess to Dr. Forman.

"Sweet Father; I must still crave your love, although I hope I have it, and shall deserve it better hereafter: remember the galls, for I fear though I have yet no cause but to be confident, in you, yet I desire to have it as it is yet remaining well; so continue it still, if it be possible, and if you can you must send me some good fortune, alas! I have need of it. Keep the lord still to me, for that I desire; and be careful you name me not to any body, for we have so many spies, that you must use all your wits, and all little enough, for the world is against me, and the heavens favour me not, only happy in your love; I hope you will do me good, and if I be ingrateful, let all mischief come unto me. My lord is lusty and merry, and drinketh with his men; and all the content he gives me, is to abuse me, and use me as doggedly as before: I think I shall never be happy in this world, because he hinders my good, and will ever, I think so; remember, I beg for God's sake, and get me from this vile place.—Your affectionate, loving daughter, FRANCES ESSEX.—Give Turner warning of all things, but not the lord: I would not have any thing come out for fear of the Lord Treasurer, for so they may tell my father and mother, and fill their ears full of toys."

There was also shewed in court certain pictures of a man and woman in copulation, made in lead, as also the mould of brass, wherein they were cast, a black scarf also full of white crosses, which Mrs. Turner had in her custody. At the shewing of these, and enchanted papers and other pictures in court, there was heard a crack from the scaffolds, which caused great fear, tumult and confusion among the spectators, and throughout the hall, every one fearing hurt, as if the devil had been present, and grown angry to have his workmanship shewed, by such as were not his own scholars: and this terror continuing about a quarter of an hour, after silence proclaimed, the rest of the cunning tricks were likewise shewed.

Dr. Forman's wife being administratrix of her husband, found Letters in packets, by which much was discovered; she was in court, and deposed that Mrs. Turner came to her house immediately after her husband's death, and did demand certain pictures which were in her husband's study; namely, one picture in wax, very sumptuously apparelled in silks and satins, as also one other sitting in form of a naked woman, spreading and laying forth her hair in a looking-glass, which Mrs. Turner did confidently affirm to be in a box, and that she knew in what part or room of the study they were.—Mrs. Forman further deposeth, that Mrs. Turner and her husband would be sometimes three or four hours locked up in his study together.

She did depose further, that her husband had a ring would open like a watch.

There was also a Note shewed in the court, made by Dr. Forman, and written in parchment, signifying what ladies loved what lords in the court; but the Lord Chief Justice would not suffer it to be read openly in the court.—

Mr. Turner sent Margaret her maid to Mrs. Forman, and wished that all such Letters and Papers as concerned the earl of Somerset, or the countess of Essex, or any other great personages, should be burnt; telling her, that the Council's Warrant should come to search the study, and that all his goods might be seized: whereupon she and her maid Margaret, with the consent of Mrs. Forman, burnt divers Letters and Papers; but yet she kept some without their privity.—There was also enchantments shewed in court, written in parchment, wherein were contained all the names of the blessed Trinity, mentioned in the scriptures; and in another parchment, + B. + C. + D. + E. and in a third likewise in parchment, were written all the names of the Holy Trinity, as also a figure, in which was written this word Corpus; and upon the parchment was fastened a little piece of the skin of a man.—In some of these parchments, were the devils particular names, who were conjured to torment the lord Somerset and sir Arthur Manwaring, if their loves should not continue, the one to the countess, the other to Mrs. Turner.

Mrs. Turner also confessed, that Dr. Savories was used in succession after Forman, and practised many sorceries upon the earl of Essex's person.—Mrs. Turner being in a manner kept close prisoner in one of the sheriff's houses in London, before she was brought to the bar, knew not that Weston was executed; but by the proceedings, having understanding thereof, and hearing divers Examinations read, it so much dejected her, that in a manner she spake nothing for herself. Also Examinations and Witnesses, *visa voce*, that were produced at Weston's Arraignment, and divers others, were now read again, as the Examinations of one Edward Pain, John Wright, and Robert Freeman.

Symcots, Rawlins, Payte, and Williams, at one of these examinations, gave evidence, that one Franklin, being an apothecary and druggist, was the provider of all the poisons given to sir Thomas Overbury.—A Chirurgeon there deposed, that he cured Franklin of the pox, and that at several times he demanded of this Chirurgeon, what was the strongest poison? The Chirurgeon demanding of him what he would do with it, Franklin replies, Nothing but for his experience, and to try conclusions. Another Examination of one Mercer, who had conference with the said Franklin, calling him cousin, who demanded of this examinant, What news? He answered, I hear ill news, I am sorry that my old lord and master's son is found insufficient, and not able to content the lady.—Franklin replies, I have a hand in that business; I have a great friend of my lady of Essex, she

allows me 2s. 6d. a-day for my boat-hire, and 10s. a-week for my diet, I could have any money I would. Mercer replies, But, cousin, how can God bless you in this business? Franklin answers, Let them talk of God that have to do with him, my lord of Somerset and the countess will bear me out in any thing I do; if you have any suit, wherein you may do yourself any good, and I may gain by it, I will warrant you I will get it.—Frances deposes, that Franklin married his sister, and that he thinketh in his conscience she was poisoned; and that upon some discontent, he heard him say, He would be hanged never a whore or quean of them all.

The Lord Chief Justice made a Speech upon divers Examinations there read, That the earl of Somerset gave directions, that of the powder he sent to Overbury, that which should be left, should be brought back again: his pretext was, that it should make him sick: which should be the ground to make the king grant his liberty, saying further, It would do Overbury good: and he had tarts and jellies likewise sent him by the countess, with express commandment, that none must eat of them but sir Thomas, saying, they will do him no harm.—At another time, the countess sent tarts, jellies and wine, with directions, that those which had been formerly sent, should be brought back again: and those last brought, should be given him at supper, and then all should be well: but directions given, that neither the Lieutenant nor his wife might eat of them, but they might drink of the wine, for in the tarts and jellies there might be *letters*, but in the wine there might be none. And afterwards it was openly related, and proved by divers Witnesses, that those words *letters* were private tokens between the countess, and the Lieutenant, and Weston, to give notice what things were poisoned, and what not.—In the examinations that were of Weston, it was related, that Mr. James told him, that the earl his master would pay him for his pains about sir T. Overbury.

Then the Lord Chief Justice gave in charge to the jury, concerning the Evidence they had formerly heard, and told them, That Weston at his Examination, had confessed that all he had said formerly was true.—He further related, what a great vexation and grief it was to the king, that Somerset only by making use of his favour and love, so foul a fact was done; as, 1st, To be the occasion to put sir T. Overbury to employment for the embassage at Russia; and, 2dly, to make him refuse the same, and to give right cause for his commitment: 3dly, To bear him in hand, that he would work his liberty, but still aggravated and laboured the contrary, and gave directions to the Lieutenant of the Tower, to look surely to him, and to keep him close prisoner, and that he should send to none of his friends, or they to him, urging great matters against him.—Sir Thomas Monson was often employed to give directions to the Lieutenant therein; which was a most barbarous course to be so dealt

withal, only for a contempt: concluding, that Overbury was a close prisoner to all his friends, but open to all his enemies, such as Somerset would have or send unto him.

Then the Lord Chief Justice told Mrs. Turner, that she had the seven deadly sins: viz. a whore, a bawd, a sorcerer, a witch, a papist, a felon, and a murderer, the daughter of the devil Forman; wishing her to repent, and to become a servant of Jesus Christ, and to pray to him to cast out of her those seven devils.

She desired the Lord Chief Justice to be good unto her, saying, she was ever brought up with the countess of Somerset, and had been of a long time her servant, and knew not that there was poison in any of those things sent to sir T. Overbury.

Then the Jury went forth, and not long after returned, finding her Guilty. — Who being asked, what she had to say for herself why Judgment should not be pronounced against her? she only desired favour, but could not speak any thing for weeping.

Then Judge Crook made another grave Speech exhorting her to repentance, and to prepare herself ready for death; and that the little time which should be assigned her to live,

she should not spend it either in hope or in imagination to get life, for that hope was but a witch. Upon conclusion of which Speech, he gave Judgment, and told her she had had a very honourable Trial, by such men as he had not seen for one of her rank and quality; and so was delivered to the sheriffs.

Upon the Wednesday following, she was brought from the sheriff's in a coach to Newgate, and was there put into a cart; and casting money often among the people as she went she was carried to Tyburn, where she was executed, and whither many men and women of fashion came in coaches to see her die: to whom she made a speech, desiring them not to rejoice at her fall, but to take example by her; she exhorting them to serve God, and abandon pride, and all other sins; relating her breeding with the countess of Somerset, having had no other means to maintain her and her children, but what came from the countess: and said farther, that when her hand was once in this business, she knew the revealing of it would be her overthrow. The which, with other like speeches, and great penitency there shewed, moved the spectators to great pity and grief for her.

### 105. The Trial of Sir JERVIS ELWES, knt. Lieutenant of the Tower, at the Guildhall of London, the 16th of November, for the Murder of Sir Thomas Overbury: 13 JAMES I. A. D. 1615.

THE form of the Indictment was the malicious aiding, comforting, and abetting of Weston in the poisoning and murdering of Overbury, whereupon it was laid against him as follows;\*

1st, When Weston received the vial of poison of two inches long, to give sir T. he having the glass in one hand, and broth for sir T. in the other hand, meeting the Lieutenant, asked him thus, 'Sir, shall I give it him now?' The Lieutenant reproved him; yet that night he gave it him in his broth: *Ergo*, the Lieutenant knew of the practice and poisoning of sir T. Overbury, 'et qui non propulsat injuriam cum posuit,' infert. Cicero.—After this was known to be poison, yet he kept Weston still: he favoured, countenanced, and graced him, and one time sent him a cup of sack, and bid his man tell him, that he loved him as well as ever he did: all this while he paid him no wages, and as soon as Overbury died, Weston was removed.—The countess wrote a letter to the Lieutenant; with the letter she sent poisoned tarts to Overbury, and wine to the Lieutenant's wife; and bade him give the tarts to Overbury, for there were letters in them, but his wife and children might drink the wine, for she was sure there were no letters in it.—The earl of Northampton writ a letter to the Lieutenant concerning the imprisonment of Overbury; the

said earl writ two Letters to Rochester containing these words:

The Earl of Northampton's LETTER to Rochester.

"Sweet lord; Think not I find pain in that which gives me sweetest pleasure, which is any thing that falls from your pen; three things concur to my exceeding joy in your worthy letters, proof of your love, comfort in your words, and judgment in your writing; you may believe the words of him that will rather die than flatter you; my heart is full of the love of you; your characters are no more pain for me to peruse, being as well acquainted with your hand as my own, the pain is no more than the cracking of a nut for the sweet kernel, or my niece's pain, in the silver-dropping stream of your pen.— [There the Lord Chief-Justice left off reading for the bawdiness of it; then after in the Letter followed] I spent two hours yesterday, prompting the Lieutenant with cautions and considerations; observing with whom he is to deal, that he might the better act his part, for the adventure in which he dealeth.—H. NORTHAMPTON."

Another LETTER to Rochester.

"Sweet lord; I cannot deliver unto you with what caution and consideration, &c. and the Lieutenant looking to his business, which concerns no more than text affords, that march-

\* Co. Inst. 49, 135.

ed in his affairs, I shall hold him discreet, and love him better whilst I live, for this his conclusion: For this Negro can no more change his skin than a Leopard his spots. HENRY NORTHAMPTON."

Another LETTER to Rochester.

"Sweet lord; Overbury being viewed, there was found in his arm an issue, and on his belly twelve kernels likely to break to issue, each as big as three-pence; one issue on his back, with a tawny plaister on it; this was strange and ugly. He stunk intolerably, in so much that he was cast into the coffin with a loose sheet over him. God is gracious in cutting off ill instruments from off the factious crew: If he had come forth, they would have made use of him. Thus, sweet lord, wishing you all increase of happiness and honour, I end, Your lordship's more than any man, HENRY NORTHAMPTON."

The Lieutenant writ a Letter \* to the earl of Northampton, certifying him, That he undertook sir T. Overbury according to his instructions: That as soon as he came to the place, sir T. protested his innocency upon the bible; and then (quoth he) he asked me what they meant to do with him? I answered, 'They mean to refine you, that your pureness may appear a little better.' After I walked with him in his chamber, and advised him to give way to the match between Rochester and the countess; but then he grew hot against your lordship and the countess of Suffolk, saying, 'If he were the countess of Suffolk's prisoner,' (as he thought he was) 'then' (said he) 'let her know that I care as little to die as she to be cruel.' The countess of Suffolk I find to be joined with you

\* The effect of this letter is given more at large, in an old book called "Truth brought to Light by Time, or the Hist. of the first 14 years of King James 1." p. 58, thus:

"My special good lord; Having undertaken my prisoner according to your instructions, after long silence, as standing betwixt hope and fear, he takes his bible, and after he had read upon it, laid it by and protested his innocency, afterward upon further conference concerning the countess, he said that he had justified her already, and that he can do no more than what he had done already. But for myself, alas, (quoth he) what will they do with me, I answered, so reason [q. refine] you as you shall make no question hereafter of your pureness. And I left him in some sense to work upon him; as I was going, he concluded, That in the generality she was so worthy that she might be a wife in particular for my lord of Rochester, he would not say it, lest my lord should condemn him for weighing his worth. At my next coming to him, I found him, not in sense, but in fury, he let fly at you, but was respectful to my lord of Rochester whose part he took altogether; I see the event, I desire it may be safely carried, what my service may do in this or any thing else, I will be faithful to your lordship, and so I rest, Yours, JERVIS ELVES."

in this plot, though the chamberlain knows not of it, nor any one else. But Rochester's part I shall much fear, until I see the event to be clearly conveyed. And so he concluded his letter. JERVIS ELVES.

The ANSWER of sir Jervis Elwes to the Points proposed.

"My lord; Before I answer to the matter of charge against me, let me remember your lordship of one speech which I learned from your mouth: I have heard you speak it at the council-table, and you have delivered it at the assizes in the country, That when a prisoner stands at the bar for his life, comfortless, allowed no counsel, but strong counsel against him, perchance affrighted with the fear of death, his wife and children to be cast forth out of doors, and made to seek their bread; you have always pitied the cause of such a one: You have protested you had rather hang in hell for mercy to such a one, than for judgment.—My lord, you have not observed your own rule in my cause; you have paraphrased upon every examination, you have aggravated every evidence, and applied it to me, so that I stand clearly condemned before I be found guilty: If I be so vile a man as your lordship conceives me, I were unworthy of any favour; but I hope your lordship shall not find it.—So I will deny nothing that hath evidence of truth against me, I will not tell a lye to save my life, and I beseech your lordship so to conceive of me, move your charity towards me."

Then desired he the court, that the heads of the Accusations might be collected by the counsel for the king, which were the same which were mentioned before; to which he severally answered, &c.

"To the first, Shall I give it him now? He answered, that when Weston asked him the question, he saw no poison in his hand, and therefore, said he, in Weston's and mine examination, the question was, Shall I give it him now? not, Shall I give him this now? for there is a great difference between *hoc* and *id* in matter of prevention.—But further, when Weston had told me that it was poison which he meant to give, I reprov'd and beat him down with God's judgment; nay, I humbled him so, that upon his knees he thanked God and me, and told me, that he and his had cause to bless God for me, for that I withheld him from doing that act; and if you call this comforting and abetting, to terrify a man for his sins, and to make him so confess his faults to God, and to abhor and detest the act, then was I an abettor and comforter of Weston.

"To the second, after I had thus terrified Weston with God's judgments, and saw him cast down for his offence; I could do him no better office than of charity, to raise him up, who was thus down, and therefore favoured him; I shewed him kindness, I drank to him, to the intent I might encourage the intentions of his mind, which I found then resolved in abhorring the fact: and that I gave him no

wages, it is true, I took him from the commendations of my lord of Northampton, and sir Thomas Monson, whom I took to be my friends, and thought they would commend no man to be a keeper, which might any way endanger me.

"To the third, I never knew any other meaning to the countess's words in her letters, but the bare literal meaning; and sure (quoth he) after I had received the tarts, and they had stood a-while in my kitchen, I saw them so black and foul, and of such strange colours, that I did cause my cook to throw them away, and to make other tarts and jellies for him.

"To the fourth, he said, the earl of Northampton's letter to me, was not any thing touching the poisoning of Overbury, but for a close restraint; to the end, that Overbury might agree to their purposes concerning the marriage to be had between Rochester and the countess: if the earl of Northampton had any other plot to take away his life, I was not any thing of his council, or had knowledge therein.

"To the fifth, whereas it is said, I received him according to my instructions, I meant none other thing than I have delivered before, which was concerning the closeness of his imprisonment."

But being asked what he meant by these words; 'Rochester's part I shall greatly fear, 'ntil I see the event to be clearly carried;' in this, he staggered, and wavered much, and gave his answer: "It was long since I wrote this letter, and for the particular circumstances that induced me to this speech, I cannot now call to memory; but sure I am, that at that time, knowing myself to be innocent, I could the better have satisfied my remembrance, so that I meant nothing the taking away of his life: but because I was a stranger to Rochester, and had heard and known of that great league that was between them; I might well think, suspect, and fear, whether he would always countenance these projects for his restraint."

These were the Answers he made to his Accusations, and after he had made many protestations between God and his soul, of his innocency of this malicious plotting and abetting of Overbury's death, he applied himself to the Jury, and told them thus:

"I will prove unto you by many infallible and unanswerable reasons, that I could not be aider and comploter with Weston in this poisoning. First, I made a free and voluntary discovery of it myself, I was not compelled: will any man imagine, that I would discover a thing, whereof I could not clear myself? Nature is more kind than to be its own accuser. Besides, that my clearness might more appear, and remain in the world without any suspicion, I proceeded and accused the murderer Weston: it had been a senseless thing, and absurd in me, if I had not thought myself clear, to have accused him, who might have done as much for me. Nay, Weston himself proved me to be an honest man before the chancellor of the exchequer; for he confessed to him and others being

present, that he thought that the Lieutenant knew not of the poison: and in his examination before the lord chief justice and serjeant Crew, being asked the meaning of these words, Shall I give it him now? he answers, that he thought that those which had set him on work, had acquainted the Lieutenant with their plot. Also I was so confident in my own innocency, that I told my lord chief justice, and my lord Zouch, the way to make Weston confess, and to discover all; which was by fair and gentle intreaty of him, and so by this means they might search the bottom of his heart: in this the lord chief justice witnessed with him. And after sir T. Overbury was dead, Weston and Mrs. Turner were sent to know of me whether I had any inkling of the death of sir Thomas? What need they have made this question, if I had known any thing thereof? Also that which I do know concerning the poisoning of sir T. was after his death, by relation of Weston; and here I am indicted as accessory before the fact, when I knew nothing till after the fact."

After that he had confirmed these reasons by sundry proofs and witnesses, he went further in his own defence: "If I be in the plot, the lord treasurer is, I have his letter to shew, in it: he called me to his lodging, and said, The plots you know them as well as I, the plots were only to repair her honour: my wife hath the letters from my lord treasurer and Monson; for these plots I will run willingly to my death, if circumstances be knit with any manner of fact."

He proceeded further and told the lord chief justice, that he spake not this to justify himself, so that no blemish or stain might cleave unto him: "for," said he, "this visitation is sent me from God; and whether I live or die, it is the happiest affliction to my soul, that I ever received, I have laid open my whole heart for blood-guiltiness: I have not repeated me other than of errors of my judgment, in not detecting what I suspected, and yet I do ask God forgiveness daily for lesser sins; but of this I know no other, but the gross error of my judgment, in not preventing it, when I saw such intentment and imagination against him."

Then he put to my lord chief justice this case: "If one that knoweth not of any plot to poison a man, but only suspecteth, is no actor or contriver himself, only imagineth such a thing, Whether such a one be accessory to the murder; for the words of the indictment are, abetting and comforting with malice: Now if there be any man that charges me expressly, or in direct terms, that I was an abettor, or if the court shall think in this case which I have put that such a concealing without malice, is an abetting, I refuse not to die, I am guilty." This was the sum of his speech.

Then the Lord Chief Justice replied; That to his knowledge, he spake no more concerning the evidence than he could in conscience justify, which was only to express the evidence of things, and not wresting any thing in prejudice of his life. But further he said

him, That two days before sir T. Overbury died, you wished his man to bring his best suit of hangings to hang his chamber, which you knew were your fees. And after he told him, that his accusation of the lord treasurer was very malicious; for in the examinations he had taken, and in all the exact speech he could work for the finding out of the truth, he saw not that honourable gentleman any way touched. In conclusion he told him, It is not your deep protestations, nor your appealing to God, that can sway a Jury from their evidence, which is not yet answered unto. But to leave you without excuse, and to make the matter as clear as may be, here is the Confession of Franklin, (which he then drew out of his bosom) saying, This poor man, not knowing sir Jervis should come to his trial, this morning he came unto me at five o'clock, and told me, That he was much troubled in his conscience, and could not rest all that night until he had made his confession; and it is such a one (these were his words) as the eye of England never saw, nor the ear of Christendom never heard.

**The Confession of James Franklin, the 16th of Nov. 1615.**

"Mrs. Turner came to me from the countess, and wished me from her to get the strongest poison I could for sir T. Overbury. Accordingly I bought seven, viz. aquafortis, white arsenick, mercury, powder of diamonds, lapis costitus, great spiders, and cantharides: All these were given to sir T. Overbury at several times. And further confesseth, that the Lieutenant knew of these poisons; for that appeared, said he, by many letters which he writ to the countess of Essex, which I saw, and thereby knew that he knew of this matter; One of these letters I read for the countess, because she could not read it herself, in which the Lieutenant used this speech; 'Madam, the scab is like the fox, the more he is cursed, the better he fareth;' and many other speeches. Sir T. never eat white salt, but there was white arsenick put into it: Once he desired pig, and Mrs. Turner put into it lapis costitus.—The white powder that was sent to sir T. in a letter he knew to be white arsenick.—At another time he had two partridges sent him from the court; and water and onions being the sauce, Mrs. Turner put in cantharides instead of pepper; so that there was scarce any thing that he did eat, but there was some poison mixed. For these poisons the countess sent me rewards: She sent many times gold by Mrs. Turner.—She afterwards wrote unto me to buy her more poisons. I went unto her, and told her I was weary of it; and I besought her upon my knees, that she would use me no more in those matters: But she importuned me, bad me go, and enticed me with fair speeches and rewards; so she overcame me, and did bewitch me.—The cause of this poisoning, as the countess told him, was, Because sir T. Overbury would pry so far into their suit, as he would put them down. He did also

say that the toothless maid, trusty Margaret, was acquainted with the poisoning; so was Mrs. Turner's man Stephen; so also Mrs. Horne, the countess's own hand-maid.—He saith, On the marriage-day of the countess with Somerset she sent him 20*l.* by Mrs. Turner; and he was to have been paid by the countess 200*l.* per annum during his life.—That he was urged and haunted two hundred several times, at least, by the countess to do it against his conscience. He saith, she was able to bewitch any man; and then he wrought the love between Rochester and her; and that he had 12 several letters from her to prosecute it, and was to have 200*l.* to continue their loves until the marriage; and that all things were burnt since the first discovery."

Those were all the materials in Franklin's Confession. To this sir Jervis Elwes knew not what to answer, or to make of his own letters.

Then presently the Jury departed from the bar, and shortly after returned, and found him guilty; and the Lord Chief Justice gave judgment of death against him.

On Monday the 20th of November, 1615, he was executed at Tower-hill, upon a gibbet there set of purpose, about six o'clock in the morning. He came on foot to the gibbet from Sheriff Goare's house, between Dr. Whytting and Dr. Felton, two of his majesty's chaplains; and coming to the ladder's foot, he talked a word or two to the executioner.—Then he went up the ladder four or five steps, the executioner sitting over his head, upon the top of the gibbet: Sir Jervis finding the ladder to stand too upright for his ease, spake to have it amended, which forthwith, he coming down, was done, being fastened in the ground; and then he went up again six steps, where after a while, sitting easily, he said:

"Nobles, right worshipful, and others, I am here come, as well to shew, explain, and unfold that which, at the time of my arraignment, so many of you as were present expected; as also to shew that then I perceived I had lost the good opinion of many, in standing so long upon my innocency, which was my fault, I confess, hoping now to recover the same, and your good charitable opinions of me; which fault I then saw not, being blinded with mine errors, which made me account it no sin.—But since my condemnation, by means and help of these two gentlemen here present (the two Doctors) I was persuaded of the greatness of my sin, and that it was so much the greater, by how much the more I did conceal it; which by God's mercy I perceiving, consulted not with flesh and blood, but thought, in this my condemnation, my best way for my soul's health, to reveal to the omnipotent and all-seeing God, the most secret and inward intentions and thoughts of my deceitful heart, not once suspecting the pains or dispraises of the world, which I regard not at all.—It may be some will say, that this place was most unfit for my execution, appointed to terrify and daunt me



so much the more; but alas! I fear not death, place, nor any such like thing, for I account it the king's and council's special favour that I die here; for that I requesting the same, it was granted; whereby I see now this Tower, wherein of late I have been called to the state business, and still might, if I had performed a more loyal service to my king and country than I did.—Next, that I was not appointed to Tyburn, a place of more public reproach than now I am brought, being worthy to die by due and lawful justice, in prosecuting this bloody and enormous act against a kind gentleman, who deserved not ill at my hands, nor at any man's else for aught I know.—But were it I had not trusted him, who was a most perfidious wretch, I had not fallen into this same; which may warn all here present to take heed whom they trust in a bad matter, and to admonish you that are trusted never to break honest and just fidelity.—I was by divers tricks drawn into this action, which I received from the earl of Northampton, sir Thomas Monson, and none other: but had I remembered the 119th Psal. 115th verse, and said with that holy prophet, 'Away from me, ye wicked, for I will keep the commandments of my God;' then had I refused such like tricks. Alas! now too late; there was my fault, that I did not refuse them, and cast myself upon God's providence, without any dependency on man, though never so honourable. Was ever any deceived that did trust in God? There was never any.—Therefore I admonish you all; let none, how honourable soever he be, or the king himself, move you to any thing not agreeable to God's word, do it not, reject it; for this was my fault, that I had not at the first opened this plot to his majesty, who no doubt would most justly and righteously have punished the same.—You nobles, worshipful, and others, let my example teach you thus much, That you prophane not the holy sabbath of the Lord, nor his good creatures, nor that you turn, by a lascivious course, nights into days and days into nights, as I have done; and that in serving God, you must not only read the scriptures, but join practice therewith: for what good else will the same effect, if the heart be foul, bloody, and impure?—Some here knew my forwardness therein; but I plead not innocency that way, but cast it off, and confess, that of this great assembly I am the most wretched sinner.—You expect speeches from me of some concealed matters, and upon some of my speeches used at the closing up of my arraignment; but I stand here '*loco peccatoris, non oratoris*;' yet I will shew you that I have opened to my Lord Chief Justice of England, since my arraignment, that which to the uttermost of my power I was able to verify, upon which then I took the body and blood of Jesus Christ; and in further testimony thereof, I will now seal it with my last and dearest breath.

"Nobles and others, to see your faces it rejoiceth me, whereby you manifest your love in granting my request, to be witnesses of my

death; I see a number of my friends, there, there, [pointing as he spake] whom, out of their loves, I entreat to beseech God to strengthen me in death; though ignominious to some, yet to me, a bitter cup, mingled to me with God's mercy, a special favour this way to call me home, whereas he might have taken away my life by shooting the bridge, or some fall, or otherwise; and then this unrepented sin, which I accounted no sin (such was my blindness) had been damnation to me; for God is just, and the unrepented sinner shall have no salvation.—There is none of you present here, that knows how or in what sort he shall die, it may be in his bed, it may be otherwise (God knows); I protest before you all, I never came over this hill, in the chiefest of all my prosperity, with more joy than now I have at this present; for I now know that presently I shall behold the glorious face and sight of my Creator.—Take heed, and let my example incite you to serve God truly and uprightly, better than I have done, lest a shameful death overtake you, as it doth me, who am unworthy of my parents care in bringing me up.—It may be some will say I have a flinty heart, because I shed no tears; my heart is flesh as any others, and I am as faint-hearted to look death in the face as any others: but because my use hath been not to shed tears, I cannot now easily, except it be for the loss of some great friend; albeit now my heart beginneth to melt within me, being wounded [with that the tears stood in his eyes] to see the faces of some there present, whom I most earnestly love, and now must depart from with shame: for worldly regard I respect not, for well Mr. Sheriff knows, that (to shame this my sinful flesh the more) I wish (if he had pleased) to have been brought from Westminster through the city, to have warned all spectators how they should not escape without judgment for blood; for God is just.—I had almost forgotten to shew you a strange thing, which God brought to my memory the last night, which was this: I confess I have been a great gamester, and especially on the other side, have wasted and played many sums of money, which exhausted a great part of my means; which I perceiving, vowed seriously (not slightly or unadvisedly) to the Lord in my vows and prayers, 'Lord, let me be hanged if ever I play any more!' which not long after is most justly come upon me, whereof you are all eye-witnesses, because a thousand times since I brake this my vow."

Then he espied one sir Maximilian Dallison standing near the gibbet on horseback, and said unto him: "You know, sir Maximilian, what gaming we have had, and how we have turned days into nights, and nights into days; I pray you in time to leave it off, and dishonour God no more by breaking his sabbaths, for he hath always enough to punish, as you now see me, who little thought to die thus."

To which sir Maximilian answered him: "sir Jervis, I am much grieved for you, and I shall never forget what you have here said;"

whereunto sir Jervis said, "Look to it, do then." —Further, he continued his speech, saying, "Let no man boast of the abilities and gifts of nature, which God giveth him; for therein I displeas'd God, being transported with over-much pride of my pen; which obsequious quill of mine procured my just overthrow, upon the knitting of my Lord Chief Justice's speech at my arraignment, by reason of two or three passages at the bottom of my letter, subscribed with my own hand, which I utterly had forgotten, because I felt not any sin; which when I heard, I saw none other but the finger of God could thus point to this fact; by this means I do protest before God, and confess before you all, that I was so far overtaken by this bloody fact, that for satisfaction of the same, I willingly yield my dearest blood, to the shame of this my carcass, not being so much grieved for the same as for others, that I wish I had hanged in chains perpetually, so that I had revealed at first the heinous plot.—Then should I have saved the lives of some already dead, some in the Tower, some in the city, some over seas; so should I have prevented many from being widows, some from being fatherless, and some from being childless, among whom mine own wife for one, and eight fatherless children of mine, which I leave now behind me, and God knows how many be guilty of this fact, and when it will be ended.—The Lord Chief Justice upon closing up of my speeches at my arraignment, said I was an Anabaptist: I would to God I were as clear from all other sins, as from that, for I always detested that condition.—As for my wife, some say she is a papist; but true it is, she comes so short from a sincere protestant, (I mean in that respect) that when she is among papists she cannot well forbear them."

Then he spake to the Sheriff, saying, "If it may be permitted without offence, I have somewhat to say, and that is this, Is it lawful for any one here to demand of me any questions?" To which the Sheriff answered, "It is not lawful;

\* His Prayer is thus given in "Truth brought to Light," p. 90. "O Eternal, Omnipotent and Omniscient God, the Creator of heaven and earth, and of me a most miserable and horrible wretch, by reason of my unmeasurable sins and transgressions, whereof I am wholly guilty, take pity on me, who have so many ponderous sins, that without especial favour and mercy, they will be ready to press me into perpetual destruction; thy full and free pardon in Jesus Christ, I humbly crave, with this assurance, that immediately my soul shall be translated hence into those inestimable joys, which the heart of man is unable to conceive, the tongue to utter, or the ear to hear. Hear then, Lord, the petition of me, a most intolerable wretch, according to thy promise made to the repentant sinner; my sins yet unknown and unrepented, which are my secret sins, Lord, call not to account; disburthen me, O Lord, of my unknown sins, I desire to give a true sigh for them all; my sins of youth and

VOL. II.

wherefore, good sir Jervis," (quoth he) "forbear." Sir Jervis thereunto said, with doubling his words, "It is enough, it is enough." —"I have here," quoth he, "one that holdeth my cloak, may I bestow somewhat on him?" The Sheriff answered, "That you may, sir;" whereupon he called the young man to him by his name, who stood waiting at the ladder's foot, and gave him out of his pocket some pieces of gold, or silver, "Here, take this, spend it;" which he with bitter tears thankfully accepted. Dr. Whyting and Dr. Felton strained courtesy, which of them should begin a publick prayer, fitting for this party's condition; one of them willed the other: but at last Dr. Whyting said, "If you, sir Jervis, can perform it yourself, you of all men are the fittest to do it, with efficacy both of soul and spirit:" whereupon he said, "I shall do my best then; but my hearers, I crave your charitable construction, if with half words, and imperfect speeches, I chatter like a crane."\*

His prayer being ended, he asked if he might pray privately; the doctor said, "Yes, sir." —Then made he a short prayer to himself; with his face covered; and after he uncovered it, and said, "Now I have prayed, now I must pay, I mean, do the last office to justice." With that Dr. Whyting said, "Sir Jervis, you may stand one step lower on the ladder: "To whom the sheriff answered, "It is better for him, Mr. Doctor, to be where he is." "Stay," quoth the doctor to the executioner, "for he hath given a watch-word, he is in private prayer again." "Yea," quoth he, "I know that, for he hath given me a watch-word, when I shall perform my office to him."—He uncovered his face after his second short prayer, and first took his leave of all the assembly, saying, with a chearful voice and countenance, "I pray you pray for me, who shall never more behold your faces." Then he said with a great fervency of spirit, "Lord, I desire at thy hands this bitter cup of death, as the patient receiveth

riper years, Lord call not to account; thou, O Lord, knowest how many they are: let the misty clouds of all my sins whatsoever, be so scattered by the bright beams of thy mercies to me in Christ Jesus, that those my weak and poor prayers may be available in thy sight: this comfort, this I have, that I am thine, for were I not thine, then out of the root of me could not the buds of repentance appear; by which I know thou lovest me: it is not I, but thou, Lord, hast drawn me to thee, for thine own mercies sake, on which mercy and thy promises made to the true repentant sinner, once again I rely, for if thou killest me by this or any other ignominious death, yet will I trust in thee, and crave thine assistance: protect my soul from that great adversary of mine, Satan, who with pale death and the infirmities of the flesh, do bandon them as balls together, then especially at the last gasp, in which great conflict, Lord, strengthen me, that they may not overcome, but be overcome. Amen."

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a bitter potion, not once demanding what is in the cup, but takes and drinks it off, be it never so bitter."—As soon then as he had audibly said, "Lord Jesus, receive my soul;" which, it seems, was the executioner's watch-word, he presently turned him off the ladder; and being off, the executioner's man caught hold of one of his feet, his own man on the other foot, whereby they suddenly weighed his life; where hanging a small distance of time, his body not once stirred, only his hands a little stirred and moved, being tied with a little black ribband, which a

little before he had reached to the executioner, putting up his hands to him for that purpose. All which being ended, both corpse and high gibbet were from thence removed.

\* "My Lord (William) of Pembroke did a most noble act, like himself, for the king having given him all sir Gervas Elwes's estate, which came to above 1000*l.* per ann. he freely bestowed it on the widow and her children." Howell to his father, March 1st, 1618. Letters B. 1. § 1. § 2.

106. The Trial of JAMES FRANKLIN, at the King's Bench, 27th of November, for the Murder of Sir Thomas Overbury: Mich. 19 JAMES I. A. D. 1615.

AFTER he had put himself for his trial upon the country, a Jury of esquires and gentlemen was impannelled to pass upon his life. Then Weston's Indictment was read, and Franklin accused as accessory to the poisoning of sir T. Overbury, and in his Examination formerly taken were these words: \*

JAMES FRANKLIN'S CONFESSION.

He confesseth, That in a house near to Doctors-Commons, Mrs. Turner did first come unto him about the poisoning of sir T. Overbury, and prayed him to provide that which should not kill a man presently, but lie in his body for a certain time, wherewith he might languish away by little and little; at the same time she gave him four angels, wherewith he bought a water called aqua fortis, and sent it to Mrs. Turner, who, to try the operation thereof, gave it to a cat, wherewith the cat languished, and pitifully cried for the space of two days, and then died.

Afterwards Mrs. Turner sent for Franklin to come to the countess, who told him, that aqua fortis was too violent a water; but what think you (quoth she) of white arsenick? He told her, it was too violent. What say you (quoth she) to powder of diamonds? He answers, I know not the nature of that. She said, then he was a fool; and gave him pieces of gold, and bade him buy some of that powder for her. Franklin demands of the countess, what was the reason she would poison sir T. Overbury? She told him, He would pry so far into their estate, that he would overthrow them all.

A little before sir T. Overbury's death, the countess sent for Franklin, and shewed him a letter written from the lord of Rochester, wherein he read these words: "I marvel at these delays, that the business is not yet dispatched." Whereby Franklin thinketh in his conscience, was meant the poisoning of sir T. Overbury. And in another letter from the lord of Rochester was written that sir Thomas

was to come out of the Tower within two days, and they all should be undone: whereupon the countess sent for Weston, and was very angry with him that he had not dispatched sir T. Overbury. Weston told her, that he had given him a thing that would have killed twenty men.

Also a fortnight after Weston's apprehension, the countess sent for Franklin to her house at St. James's park, where he found the earl and the countess walking together; and as soon as he came, the earl went apart into a chamber. Then she told him, Weston had been sent for by a pursuivant, and had confessed all, and we shall all be hanged: but on your life (quoth she) do not you confess that you brought any poison to me, or to Mrs. Turner: for if you do, you shall be hanged, for I will not hang for you; and, says Mrs. Turner, I will not hang for you both. The countess told him, That the lord who was to examine him would promise him a pardon to confess; but believe him not, for they will hang thee when all is done. Weston comes to Franklin's house, and told him, Now the countess's turn is served, she used him unkindly, and they should be poisoned, and that two were set of purpose to poison him.

Franklin having confessed his former Examinations under his own hand, being permitted to speak for himself, said, That at the entreaty of the countess and Mrs. Turner, he did buy these poisons, but protested his ignorance what they meant to do with them; and for the rest, he referred himself to the conscience of the Jury: who went from the bar, and within a quarter of an hour, did return, and pronounced him Guilty.

Then Judge Crook, after a brief exhortation, gave the sentence of death upon him.

The Lord Chief Justice made a short exhortation also, with addition of these words: That knowing as much as he knew, if this had not been found out, neither the court, city, nor any particular family had escaped the malice of this wicked cruelty.

He was afterwards executed according to the Sentence.

\* See this Confession in the Trial of sir Jervis Elwes, p. 941.

107. The Arraignment of Sir THOMAS MONSON, knt. at the Guildhall of London, 4th December, for the Murder of Sir Thomas Overbury: 12 JAMES I. A. D. 1615.

WHEN he came to the bar, he made a motion to the Lord Chief Justice; That, whereas he had written unto his lordship to ask the lord treasurer two questions, which my lord would do; he desired then an answer, and that sir Robert Cotton might be present.

After the questions were read, he was indicted for conspiring with Weston to poison sir T. Overbury; to which he pleaded, Not Guilty, and would be tried by God and his country.

The Lord Chief Justice broke up the proceedings, and made a speech to this effect, viz. He saw a great assembly, and though it had been shewed them often, yet it could not be said too often, that the city was much bound to God, and to his deputy on earth the king, his master, for their great deliverance, and exact justice; for God was always just; and for the king, though they were never so high in place, nor so dear to him, though his own creatures, yet his justice is dearer to him, for which we are upon our knees to give him thanks; as also for so mild a proceeding in so great an affair: for neither the great man's house in the Tower, nor his lady's house nor this prisoner's house (to my knowledge) have been searched, neither hath this prisoner been committed to the sheriff, but to an alderman, a man who of all others might be most kind to him; for, as I take it least I should be mistaken, sir Francis Anderson married sir Stephen Some's daughter, and sir Thomas Monson married sir Francis Anderson's sister; I never knew the like favour, nor do I like it so well, but do declare it as a gentle proceeding from the king. For other things, I dare not discover secrets; but though there was no house searched, yet such letters were produced, which make our deliverance as great, as any that happened to the children of Israel. For Weston and Mrs. Turner, they died penitently, as is worthy to be written in letters of gold; and for the Lieutenant, though with great imprecations, and a high hand he denied, yet for the great glory of the king's justice, he died most penitently and resolutely: this is spoken to the praise of God that hath crowned these just proceedings, though not having need of it, "Justitia confirmata non eget autoritate;" wherein we may see the great hand of God; for that morning the Lieutenant was arraigned, Franklin came to me as one afflicted in conscience, not knowing of his arraignment, with evidence, against him: which being delivered to the Jury, one of them heard him say, "Then Lord have mercy on me." But for this present, "Non est cunctatio longa de vita hominis:" therefore he must be conveyed to the Tower as a safer place, till further order be taken.—Then the Lord Chief Justice addressed his speech to sir Thomas Monson, saying, Whereas you name my Lord-Treasurer, every man's fame is dear

unto him, and he hath ever been honourable, you shall hear what he hath answered to my Letter.—"After my hearty commendations, I have heard that sir Thomas Monson thinks I can clear him, but I know nothing of him to accuse or excuse him; but I hope he is not guilty of so foul a crime."—You hear (quoth he) that he will neither accuse you, nor excuse you.

*Monson.* I do not accuse the Lord-Treasurer, nor calumniate him, for I know he is very honourable, but I desire to have an answer to my two questions.

*L. C. J.* You shall hear more of that when the time serveth; do you as a Christian, and as Joshua bad Achan, "My son, acknowledge thy sin, and give glory to God."

*Monson.* If I be guilty, I renounce the king's mercy and God's; I am innocent.

*L. C. J.* There is more against you than you know of.

*Monson.* If I be guilty, it is of that I know not.

*L. C. J.* You are popish, that pulpit was the pulpit where Garnet died, and the Lieutenant as firmly; I am not superstitious, but we will have another pulpit.

*Doderidge.* It is an atheist's word to renounce God's mercy; you must think the change of your lodging means somewhat.

*Hyde.* I have looked into this business, and I protest, my lord, he is as guilty as the guiltiest.

*Monson.* There was never man more innocent than I; in this I will die innocent.

After this speech, certain yeomen of his majesty's guard, attending for that purpose, conducted him to the Tower, where between the yeomen and the warders, there was some contention about his entertainment.

The Lord Chief Justice having at this Trial let drop some insinuations\* that Overbury's

\* See the passage in Weldon cited in the note to the Earl of Somerset's Case, p. 966. Wilson says, "Sir Tho. Monson, another of the countess's agents in this poisoning contrivance, had past one day's trial at Guildhall. But the lord chief justice Coke, in his rhetorical flourishes at his arraignment, vented some expressions (which he either deduced from Northampton's assuring the Lieutenant of the Tower, that the making away of sir T. Overbury would be acceptable to the king; or from some other secret hint received) as if he could discover more than the death of a private person; intimating, though not plainly, that Overbury's untimely remove had something in it of retaliation, as if he had been guilty of the same crime against prince Henry; blessing himself with admiration at the horror of such actions. In which he flew so high a pitch, that he was taken down by a

death had somewhat in it of retaliation, as if he had been guilty of the same crime against

court lure; sir Thomas Monson's trial laid aside, and he soon after set at liberty; and the lord chief justice's wings were clipped for it ever after."

prince Henry, sir Thomas Monson's Trial was laid aside, and himself soon after set at liberty, and the lord chief justice was rebuked for his indiscretion, and before the next year expired, removed from his post.\*

\* Bacon's Works, vol. 1. p. 87.

108. The Trial of the Lady FRANCES Countess of SOMERSET,\* the 24th of May, for the Murder of Sir Thomas Overbury: 14 JAMES I. A. D. 1616.

The SUMMONS of the Peers to the Trial.

AFTER our hearty commendations to your lordship; whereas the king's majesty has resolved, that the earl of Somerset, and the countess his wife, lately indicted of felony, for the murder and poisoning of sir Thomas Overbury, then his majesty's prisoner in the Tower, shall now receive their lawful and public Trial, by their peers, immediately after the end of this present Easter term; at the Trial of which noble personages your lordship's presence, as being a peer of the realm, and one of approved wisdom and integrity, is requisite to pass upon them: These are to let your lordship understand, that his majesty's pleasure is, and commandeth by these our Letters, that your lord-

\* "In the next place comes the countess to her Trial, at whose Arraignment, as also at Mrs. Turner's before, were shewed many pictures, puppets, with some exorcism and magic spells, which made them appear more odious as being known to converse with witches and wizards, and amongst the tricks Forman's book was shewed; this Forman was a fellow dwelt in Lambeth, a very silly fellow, yet had wit enough to cheat ladies and other women by pretending skill in telling their fortunes. As whether they should bury their husbands, and what second husbands they should have, and whether they should enjoy their loves, or whether maids should get husbands, or enjoy their servants to themselves without corivals; but before he would tell any thing they must write their names to his alphabetical book, with their own handwriting. By this trick he kept them in awe if they should complain of his abusing them; as in truth he did nothing else; besides it was believed some meetings were at his house, and that the art of bawd was more beneficial to him than that of a conjuror, and that he was a better artist in the one than in the other, and that you may know his skill, he was himself a cuckold; having a very pretty wench to his wife, which would say, she did it to try his skill, but it fared with him as with astrologers, that cannot foresee their own destiny. I well remember there was much mirth made in the court upon the shewing this book, for it was reported the first leaf my lord Coke lighted on, he found his own wife's name." Sir Anthony Weldon, Court and Character of king James, p. 111.

ship make your repair to the city of London, by the 11th day of the month of May following, being some few days before the intended Trial; at which time your lordship shall understand more of his majesty's pleasure. So not doubting of your lordship's care to observe his majesty's directions, we commit you to God.—Your lordship's very loving friend, G. Cant.; T. Ellesmere, Canc.; Fenton; E. Watton; Tho. Lake; Lord Darcy, of the South; C. Edmunds; E. Worcester; Lenox; P. Herbert; Ralph Winwood; Fulke Grevyl; Jul. Cæsar.

From Whitehall this 24th April 1616.

The Names of the Peers.

Earl of Worcester, Lord Privy-Seal.—Earl of Pembroke, Lord Chamberlain.—The Earls of Rutland, Sussex, Montgomery, and Hertford.—Lord Visc. Lisle.—Lord Zouch, Warden of the Cinque Ports.—Lord Willoughby of Eresby.—Lord Delaware.—Lord Dacres, of the South.—Lord Mounteagle; who being sick, went away before judgment.—Lord Wentworth.—Lord Rich.—Lord Willoughby of Parham.—Lord Hunsdon.—Lord Russel; the second day was not there.—Lord Compton.—Lord Norris.—Lord Gerrard.—Lord Cavendish.—Lord Dormer.

Thomas lord Ellesmere, Chancellor of England, lord high-steward *hac vice*.

His Assistants in the Commission there present.

Sir Edw. Coke, L. C. Justice of England.—Sir H. Hubbart, L. C. Justice of the Common-Pleas.—Sir L. Tanfield, L. C. Baron of the Exchequer.—Judge Altham, one of the Barons of the Exchequer.—Judge Croke, one of the Judges of the King's Bench.—Judge Doderidge, one of the Judges of the King's Bench.—Judge Houghton, one of the Judges of the King's Bench.—Judge Nicholls, one of the Judges of the Common-Pleas.

The Counsel that were there the first day.

Sir F. Bacon, the king's attorney-general; serj. Montague; serj. Crew; sir Henry Yelverton, the king's solicitor; Francis Moor, the queen's serjeant; sir Lawrence Hyde, the queen's attorney; Mosley, attorney of the dutchy; sir John Davis, the king's serjeant; Mr. Walter, the prince's attorney; Mr. Finch, keeper of the records of attainders. More the second day.—Serj. Tho. Moor; serj. Finch.

The peers above-named were all that appeared at any time at the trial, though there were six others summoned, but why they absented themselves is not known; and those were, the duke of Lenox, lord steward of the household; earl of Huntingdon; lord Darcy of Menell; lord Eure; lord Hunsdon; lord Darcy of Chiche;

The Form of their Sitting, and their Ceremonies.

When my Lord Chancellor, who for this time was High-Steward of England, came into the court, there came before him six serjeants at arms, with their maces; sir Geo. Coppin with his patent; sir Rd. Coningsby with his white staff; Mr. Manwaring with the great seal; he himself, at the upper end of the court, sitting under a cloth of estate; on both hands of him the peers, under them the judges; at the farther end the king's counsel, below the judges; on one side Finch, keeper of the records of attainders; the clerk of the crown and his deputy, in the midst of the court, the serjeant-crier standing by him; sir Rd. Coningsby, sir Geo. Coppin, the seal-bearer, &c. at my Lord Steward's feet. The Prisoner at the Bar behind the king's counsel; the Lieutenant of the Tower in a little place adjoining to the Bar.

All being silent, sir Geo. Coppin rises and delivers the patent to the Lord High Steward, upon his knee; he receives it and kisses it, then redelivers it to Mr. Fenshaw, who takes it kneeling. Then the serjeant-crier makes a proclamation in the Lord High-Steward's name, to keep silence; then Mr. Fenshaw reads the commission,\* which bears date the 10th of May: then there is another O-yes, to certify my Lord Steward, whether Weston were convicted as principal, for the murder of sir T. Overbury. Then the Lord Chief Justice delivers a Schedule indorsed with a Certificate of four judges of the King's-Bench, and others the Commissioners. This Fenshaw, turning to my Lord Steward, reads. A third O-yes, for certifying of other indictments: my lord Coke delivers another schedule indorsed with the Certificate of my lady Somerset's indictment; which Fenshaw, as before, read. A fourth O-yes, for Walter Lee, serjeant at arms, to return the Precept for the peers of Frances countess of Somerset; which accordingly, after his three reverences to the Lord High-Steward, he delivered to Mr. Fenshaw: he reads the indorsement. A fifth O-yes, to call the lords summoned by the command of the Lord High-Steward, to answer to their names, which they accordingly did, beginning at the first; and as every one was named they put off their hats, and stood up till the next was named. A sixth O-yes to the Lieutenant of the Tower, to return his Precept, and bring the Prisoner to the Bar;

\* See the Commission in Rym. Fœd. vol. xvi. p. 781.

† 3 Co. Inst. 135, 136.

which he did, and gave his Precept to the serjeant, who gave it to Mr. Fenshaw, and he, as before, read the indorsement. The Prisoner made three reverences to his grace and the peers; she was in black tammell, a cypress chaperon, a cobweb lawn ruff and cuffs.

L. H. S. My lords, the reason why you be called hither this day, is to sit as peers of Frances countess of Somerset.

Mr. Fenshaw, Clerk of the Crown. Frances countess of Somerset, hold up thy hand.

She does so, and held it up till Mr. Lieutenant told her she might put it down; and then he read the Indictment, containing Weston's accounts, in the poisoning of sir T. Overbury, and her abetting of him, the 8th of May, 1613.—The countess of Somerset, all the while the indictment was reading, stood, looking pale, trembled, and shed some few tears; and at the first naming of Weston in the indictment, put her fan before her face, and there held it half covered till the indictment was read.

Mr. Fenshaw. Frances countess of Somerset, what sayest thou? Art thou guilty of this felony and murder, or not guilty?

The lady Somerset making an obeisance to the Lord High Steward, answered Guilty, with a low voice, but wonderful fearful.

My lady, upon her Arraignment, having pleaded Guilty,\* the proceeding after was thus:

Mr. Attorney. May it please your grace, my Lord High Steward of England, I am glad to hear this lady's so free acknowledgment, for confession is noble. Those that have been formerly indicted, at their Arraignment persisted in denial, as Weston, Elwes, Franklin and Turner; but you see this lady's humility and repentance by so pleading; and certainly she cannot but be a spectacle of much commiseration, if you either respect the sex, a woman, or her parentage, honourable; but this day and to-morrow is to crown justice: the mercy-seat is the inner part of the temple, the throne publick, and therefore I shall now only pray a record of the confession and judgment: but since the peers are met, for honour's sake it is good to declare the king's justice. This is the second time since the king's coming, these thirteen years, that any peers have been arraigned, and both these times your grace had the place of High-Steward; the first were Grey and Cobham, and though they were convicted, yet execution followed not. No noble blood hath yet been spilt since his majesty's reign. The first was revenge of treason amongst malecontents; and this of a particular offence to a private subject, against those that have been so high in the king's grace and favour, and therefore deserve to be written in a sun-beam. But his being the best master in the world, hinders him not from being the best king; for he can as well plane a hill, as raise a valley: a good lesson to put to my lords the peers; he is lieutenant to him that is

\* 3 Co. Inst. 50, Bacon's Works, vol. 1. p. 87.

no respecter of persons. This that I should now speak of, may be reduced to that which was acted in the vault, and since upon the stage: the first I will not now enter into, because I will neither grieve a lady that is present, nor touch a lord that is absent; my duty requires it not, and my humanity forbids it. For that which hath been upon the stage, which is the theatre of God's justice, you shall understand that which hath been worthily acted by the king, in this noble work of justice, and right well by his ministers. Overbury died poisoned the 15th of Sept. 1613, in the Tower of London: he was no sooner dead, but there was a certain rumour and muttering, that was *vox populi*, that Overbury came strangely to his death: and in that time, on the contrary hand, there was another rumour, but that was *vox diaboli*, that he died of a foul disease, so foul a one as is not fit for me to name. But for two years after this, though Overbury's blood cried for revenge, *vox Dei* was not heard. 'Gloria Dei celare, regis perscrutare rem:' It is the glory of God to conceal a thing, of a king to find it out; yet all the while God so dazzled the eyes of these two great procurers, and their instruments, that the first looked not about them, the other fled not. About the beginning of the last progress it first brake forth; and as all murders are strange in their discovery, so this was miraculous, for it came out in a compliment thus: my lord of Shrewsbury, who is now with God, commended sir J. Elwes to a counsellor of estate; and it was by him that sir J. in respect of the good report he had heard made of his honour and worth, desired to be made known unto him. That counsellor answered, That he took it for a favour from him; but withal added, there lies a kind of heavy imputation on him, about Overbury's death: I could wish he would clear himself, and give some satisfaction in the point. This my lord Shrewsbury related back, and presently Elwes was struck with it, and makes a kind of discovery, that some attempts were undertaken against Overbury, but took no effect, as checked by him. Though the truth be, he lacked rather fortitude in the repulse, than honesty. This counsellor weighing well this narration from Elwes, acquainted the king with the adventure; who commanded presently that Elwes should set down his knowledge in writing, which accordingly he did, but still reserving himself within his own compass, not to touch himself, endeavouring rather to discover others than any else should undertake that office, and so accuse him. The king still endeavours to search the truth of this business, gives direction for the examination of the truth of it, commits it to certain counsellors; they pick something out of Weston; then the further enquiry is delivered over to my lord Coke, who in this cause was very painful, took two or three hundred examinations: but when he found it might touch upon greater persons, then he desired some others might be joined with him, which was accordingly granted; namely, the

Lord Chancellor, Lord Steward, the lord Zouch. But then there were no practices left untried for the suppression of the discovery; Weston was solicited to stand mute, but at last this dumb devil was cast out. Then follows Elwes, Turner, Franklin, all of which were actors in this tragedy, without malice, but no authors. Now when this lady comes to her part, she meets justice in the way, by confession, which is the corner-stone either of mercy or judgment; yet it is said, that mercy and truth be met together. Truth you have in her confession, and that may be a degree to mercy, which we must leave to him in whose power it resides; in the mean time this day must be reserved for judgment. Now to conclude, and give you an account of the often procrastinations in this business; the first was due to humanity, her child-birth; the second was for reason of state; and the last had a grave and weighty cause. Those directions the king at the first gave written with his own hand, for the examination of his business, I desire may be read.

The King's Instructions read.

There be two things in this cause to be tried, and the verity can be but in one of them; first, Whether my lord of Somerset and my lady were the procurers of Overbury's death; or, that this imputation hath been by some practised to cast an aspersion upon them. I would first have you diligently enquire of the first; and if you find them clear, then I would have you as carefully look after the other, to the intent such practices may be discovered, and not suffered to pass with impunity.

Mr. Att. There be other directions in these instructions, by way of interrogatories, that are not now necessary to be read.

L. H. S. Let the lords the peers view these directions from the king.

Lord Coke. None of these interrogatories, which the king desired there should be examinations upon, came away empty; and whatsoever whisperings there be abroad of the death of Weston, they all (some before the hour of their death) confessed the fact; and died penitent; and if need should require, I have brought their confessor along (namely, Dr. Whyting).

L. H. S. My lords, you see, and have heard those directions under the king's hand; give the glory to God, and honour to the king.

Mr. Att. May it please your grace, &c. whereas Frances countess of Somerset hath been indicted as accessory before the fact, of the wilful poisoning and murder of sir T. Overbury; upon her Indictment, she hath been arraigned; upon her Arraignment, pleaded Guilty: I desire that her Confession may be recorded, and Judgment given against the Prisoner.

Fenshaw. Frances countess of Somerset, hold up thine hand: Whereas thou hast been indicted, arraigned, and pleaded Guilty, as accessory before the fact, of the wilful poisoning

and murder of sir T. Overbury; what canst thou now say for thyself, why Judgment of Death should not be pronounced against thee?

*C. of Som.* I can much aggravate, but nothing extenuate my fault; I desire mercy, and that the lords will intercede for me to the king. (This she spake humbly, fearfully, and so low, the Lord Steward could not hear it, but Mr. Attorney related it.)

*Mr. Att.* The lady is so touched with remorse and sense of her fault, that grief surprizes her from expressing of herself; but that which she hath confusedly said, is to this effect, That she cannot excuse herself, but desires mercy.

Sir R. Coningsby sitting before the Lord High Steward, rises, and upon his knee delivers him the white staff.

*L. H. S.* Frances countess of Somerset, whereas thou hast been indicted, arraigned, pleaded Guilty, and that thou hast nothing to say for thyself, it is now my part to pronounce Judgment; only thus much before, since my lords have heard with what humility and grief you have confessed the fact, I do not doubt they will signify so much to the king, and mediate for his grace towards you: but in the mean time, according to the law, the sentence must be this, That thou shalt be carried from hence to the Tower of London, and from thence to the place of execution, where you are to be hanged by the neck till you be dead; and the Lord have mercy upon your soul.

The following articles are extracted from Birch's 4to ed. of Bacon's works, vol. 3. p. 493:

The CHARGE of the Attorney General, sir Francis Bacon, against Frances, countess of Somerset, intended to have been spoken by him at her Arraignment, on Friday, May 24, 1616, in case she had pleaded Not Guilty.

Ir may please your grace, my Lord High Steward of England, and you my lords the peers;—You have heard the Indictment against this lady well opened; and likewise the point in law, that might make some doubt, declared and solved; wherein certainly the policy of the law of England is much to be esteemed, which requireth and respecteth form in the Indictment, and substance in the proof.—This scruple it may be hath moved this lady to plead not guilty, though for the proof I shall not need much more than her own confession, which she hath formerly made, free and voluntary, and therein given glory to God and justice. And certainly confession, as it is the strongest foundation of justice, so it is a kind of corner-stone, whereupon justice and mercy may meet.—The proofs, which I shall read in the end for the ground of your verdict and sentence, will be very short; and, as much as may, serve to satisfy your honours and consciences for the conviction of this lady, without wasting of time in a case clear and confessed; or ripping up guiltiness against one, that hath prostrated herself by confession; or preventing or deflowering too much of the evidence. And therefore the

occasion itself doth admonish me to spend this day rather in declaration, than in evidence, giving God and the king the honour, and your lordships and the hearers the contentment, to set before you the proceeding of this excellent work of the king's justice, from the beginning to the end; and so to conclude with the reading the confessions and proofs.—My lords, this is now the second time within the space of 13 years reign of our happy sovereign, that this high tribunal seat of justice, ordained for the trial by peers, hath been opened and erected; and that, with a rare event, supplied and exercised by one and the same person; which is a great honour to you, my Lord Steward.—In all this mean time, the king hath reigned in his white robe, not sprinkled with any drop of blood of any of his nobles of this kingdom. Nay, such hath been the depths of his mercy, as even those noblemen's bloods, (against whom the proceeding was at Winchester,) Cobham and Grey, were attainted and corrupted, but not spilt or taken away; but that they remained rather spectacles of justice in their continual imprisonment, than monuments of justice in the memory of their suffering.—It is true, that the objects of his justice then and now were very differing. For then, it was the revenge of an offence against his own person and crown, and upon persons, that were malcontents, and contraries to the state and government. But now, it is the revenge of the blood and death of a particular subject, and the cry of a prisoner. It is upon persons, that were highly in his favour; whereby his majesty, to his great honour, hath shewed to the world, as if it were written in a sun-beam, that he is truly the lieutenant of him, with whom there is no respect of persons; that his affections royal are above his affections private: that his favours and nearness about him are not like popish sanctuaries to privilege malefactors: and that his being the best master of the world doth not let him from being the best king of the world. His people, on the other side, may say to themselves, 'I will lie down in peace; for God and the king and the law protect me against great and small.' It may be a discipline also to great men, especially such as are swoln in fortunes from small beginnings, that the king is as well able to level mountains, as to fill vallies, if such be their desert.—But to come to the present case; the great frame of justice, my lords, in this present action, hath a vault, and it hath a stage: a vault, wherein these works of darkness were contrived; and a stage with steps, by which they were brought to light. And therefore I will bring this work of justice to the period of this day; and then go on with this day's work.—Sir T. Overbury was murdered by poison in the 15th of September, 1613, 11 Reg. This foul and cruel murder did, for a time, cry secretly in the ears of God; but God gave no answer to it, otherwise than by that voice, which sometimes he useth, which is *vox populi*, the speech of the people. For there went then a murmur, that Overbury was poisoned: and



yet this same submiss and soft voice of God, the speech of the vulgar people, was not without a counter-tenor, or counter-blast of the devil, who is the common author both of murder and slander: for it was given out, that Overbury was dead of a foul disease, and his body, which they had made a *corpus judaicum* with their poisons, so as it had no whole part, must be said to be leproisous with vice, and so his name poisoned as well as his body. For as to dissoluteness, I never heard the gentleman noted with it: his faults were insolency, and turbulency, and the like of that kind: the other part of the soul, not the voluptuous.—Meantime, there was some industry used, of which I will not now speak, to lull asleep those that were the revengers of blood; the father and the brother of the murdered. And in these terms things stood by the space almost of two years; during which time, God so blinded the two great procurers, and dazzled them with their own greatness, and bind and nail fast the actors and instruments, with security upon their protection, as neither the one looked about them, nor the other stirred or fled, nor were conveyed away: but remained here still, as under a privy arrest of God's judgments; insomuch as Franklin, that should have been sent over to the Pala-grave with good store of money, was, by God's providence, and the accident of a marriage of his, diverted and stayed.—But about the beginning of the progress last summer, God's judgments began to come out of their depths: and as the revealing of murders is commonly such, as a man may say, *a Domino hoc factum est*; it is God's work, and it is marvellous in our eyes; so in this particular it was most admirable; for it came forth by a compliment and matter of courtesy.—My lord of Shrewsbury, that is now with God, recommended to a counsellor of state, of especial trust by his place, the late lieutenant Helwisse, only for acquaintance as an honest worthy gentleman; and desired him to know him, and to be acquainted with him. That counsellor answered him civilly, that my lord did him a favour; and that he should embrace it willingly: but he must let his lordship know, that there did lie a heavy imputation upon that gentleman, Helwisse; for that sir T. Overbury, his prisoner, was thought to have come to a violent and untimely death. When this speech was reported back by my lord of Shrewsbury to Helwisse, *perculit illico animum*, he was stricken with it; and being a politic man, and of likeliho of doubting, that the matter would break forth at one time or other, and that others might have the start of him, and thinking to make his own case by his own tale, resolved with himself, upon this occasion, to discover to my lord of Shrewsbury and that counsellor, that there was an attempt, whereto he was privy, to have poisoned Overbury by the hands of his under keeper, Weston; but that he checked it, and put it by, and dissuaded it, and related so much to him in deed: but then he left it thus, that was but an attempt, or untimely birth, never executed; and, as if his own

fault had been no more, but that he was honest in forbidding, but fearful of revealing and impeaching or accusing great persons; and so with this fine point thought to save himself.—But that great counsellor of state wisely considering, that by the lieutenant's own tale it could not be simply a permission or weakness; for that Weston was never displaced by the lieutenant, notwithstanding that attempt: and coupling the sequel by the beginning, thought it matter fit to be brought before his majesty, by whose appointment Helwisse set down the like declaration in writing.—Upon this ground, the king playeth Solomon's part, *gloria Dei celare rem; et gloria regis investigare rem*; and sets down certain papers of his own hand, which I might term to be *claves justitie*, keys of justice; and may serve for a precedent both for princes to imitate, and for a direction for judges to follow; and his majesty carried the balance with a constant and steady hand, evenly and without prejudice, whether it were a true accusation of the one part, or a practice and factious device of the other: which writing, because I am not able to express according to the worth thereof, I will desire your lordship anon to hear read.—This excellent foundation of justice being laid by his majesty's own hand, it was referred unto some counsellors to examine farther, who gained some degrees of light from Weston, but yet left it imperfect.—After it was referred to sir Edward Coke, chief justice of the King's-bench, as a person best practised in legal examinations, who took a great deal of indefatigable pains in it, without intermission, having, as I have heard him say, taken at least three hundred examinations in this business.—But these things were not done in a corner. I need not speak of them. It is true, that my lord chief justice, in the dawning and opening of the light, finding that the matter touched upon these great persons, very discreetly became suitor to the king to have greater persons than his own rank joined with him. Whereupon your lordship, my lord high steward of England, to whom the king commonly resorteth in *arduis*, and my lord steward of the king's house, and my lord Zouch, were joined with him.—Neither wanted there this while practice to suppress testimony, to deface writings, to weaken the king's resolution, to slander the justice, and the like. Nay, when it came to the first solemn act of justice, which was the arraignment of Weston, he had his lesson to stand mute: which had arrested the wheel of justice. But this duab devil, by the means of some discreet divines, and the potent charm of justice, together, was cast out. Neither did this poisonous adder stop his ear to these charms, but relented, and yielded to his trial.—Then follow the proceedings of justice against the other offenders, Turner, Helwisse, Franklin.—But all these being but the organs and instruments of this fact, the actors and not the authors, justice could not have been crowned without this last act against these great persons. Else Weston's censure or prediction might have been verified,

when he said, he hoped the small flies should not be caught, and the great escape. Wherein the king being in great straits, between the defacing of his honour and of his creature, hath, according as he useth to do, chosen the better part, reserving always mercy to himself.—The time also of this justice hath had its true motions. The time until this lady's deliverance was due unto honour, Christianity, and humanity, in respect of her great belly. The time since was due to another kind of deliverance too; which was, that some causes of estate, that were in the womb, might likewise be brought forth, not for matter of justice, but for reason of state. Likewise this last procrastination of days had the like weighty grounds and causes. And this is the true and brief representation of this extreme work of the king's justice.—Now for the evidence against this lady, I am sorry I must rip it up. I shall first shew you the purveyance or provisions of the poisons; that they were seven in number brought to this lady, and by her billeted and laid up till they might be used: and this done with an oath or vow of secrecy, which is like the Egyptian darkness, a gross and palpable darkness, that may be felt.—Secondly, I shall shew you the exhibiting and sorting of this same pumber or volley of poisons: white arsenic was fit for salt, because it is of like body and colour. The poison of great spiders, and of the venomous fly cantharides, was fit for pigs sauce, or partridge sauce, because it resembled pepper. As for mercury-water, and other poisons, they might be fit for tarts, which is a kind of hotch-pot, wherein no one colour is so proper: and some of these were delivered by the hands of this lady, and some by her direction.—Thirdly, I shall prove and observe unto you, the cautions of these poisons; that they might not be too swift, lest the world should startle at it by the suddenness of the dispatch: but they must abide long in the body, and work by degrees: and for this purpose there must be essays of them upon poor beasts, &c. And lastly I shall shew you the rewards of this impoisonment, first demanded by Weston, and denied, because the deed was not done; but after the deed done and perpetrated, that Overbury was dead, then performed and paid to the value of 180*l*.—And so without farther aggravation of that, which in itself bears its own tragedy, I will conclude with the confessions of this lady herself, which is the strongest support of justice; and yet is the foot-stool of mercy. For, as the scripture says, mercy and truth have kissed each other; there is no meeting or greeting of mercy, till there be a confession, or trial of truth. For these read, Franklin, Nov. 16, Franklin, Nov. 17, Rich. Weston, Oct. 1, Rich. Weston, Oct. 2, Will. Weston, Oct. 2, Rich. Weston, Oct. 3, Helwisse, Oct. 2, The Countess's letter without date, The Countess's confession Jan; 8.

Questions legal for the Judges in the Case of the Earl and Countess of Somerset.

Whether the ax is to be carried before the prisoner, being in the case of felony?

Whether, if the lady make any digression to clear his lordship, she is not by the Lord Steward to be interrupted and silenced?

Whether, if my lord of Somerset should break forth into any speech of taxing the king, he be not presently by the Lord Steward to be interrupted and silenced; and, if he persist, he be not to be told, that if he take that course, he is to be withdrawn, and evidence to be given in his absence? And whether that may be; and what else to be done?

Whether if there should be twelve votes to condemn, and twelve or thirteen to acquit, it be not a verdict for the king?

Questions of Convenience, whereupon his majesty may confer with some of his Council.

Whether, if Somerset confess at any time before his trial, his majesty shall stay trial in respect of farther examination concerning practice of treason, as the death of the late prince, the conveying into Spain of the now prince, or the like; for till he confess the less crime, there is [no] likelihood of confessing the greater?

Whether, if the trial upon that reason shall be put off, it shall be discharged privately by dissolving the commission, or discharging the summons? Or whether it shall not be done in open court, the peers being met, and the solemnity and celebrity preserved; and that with some declaration of the cause of putting off the farther proceeding?

Whether the days of her trial and his shall be immediate, as it is now appointed; or a day between, to see, if, after condemnation, the lady will confess of this lord; which done, there is no doubt but he will confess of himself?

Whether his trial shall not be set first, and hers after, because then any conceit, which may be wrought by her clearing of him, may be prevented; and it may be he will be in the better temper, hoping of his own clearing, and of her respiting?

What shall be the days; for Thursday and Friday can hardly hold in respect of the summons; and it may be as well Friday and Saturday, or Monday and Tuesday, as London makes it already?

A particular Remembrance for his Majesty.

It were good, that after he is come into the hall, so that he may perceive he must go to trial, and shall be retired into the place appointed, till the court call for him, then the lieutenant should tell him roundly, that if in his speeches he shall tax the king, that the justice of England is, that he shall be taken away, and the evidence shall go on without him; and then all the people will cry away with him; and then it shall not be in the king's will to save his life, the people will be so set on fire.

Indorsed.—Memorial touching the course to be had in my lord of Somerset's arraignment.

The Heads of the Charge against Robert Earl of Somerset.

First it is meant that Somerset shall not be charged with any thing by way of aggravation, otherwise than as conduceth to the proof of the imposition.

For the proofs themselves, they are distributed into four :

The first to prove the malice, which Somerset bore to Overbury, which was the motive and ground of the imposition.

The second is to prove the preparations unto the imposition, by plotting his imprisonment, placing his keepers, stopping access of friends, &c.

The third is the acts of the imprisonments themselves.

And the fourth is acts subsequent, which do vehemently argue him to be guilty of the imposition.—[*Apostyle of the king.* 'Ye will doe well to remember lykeways in your præmble, that insigne, that the only zeal to justice maketh me take this course. I have comandit you not to expatiate, nor digresse upon any other points, that may not serve clearlie for probation or inducement of that point, quhair of he is accused.']

For the first two heads, upon conference, whereunto I called serjeant Montagu and serjeant Crew, I have taken them two heads to myself; the third I have allotted to serjeant Montagu; and the fourth to serjeant Crew.

In the first of these, to my understanding, is the only tenderness: for on the one side, it is most necessary to lay a foundation, that the malice was a deep malice, mixed with fear, and not only matter of revenge upon his lordship's quarrel: for *periculum periculo vincitur*; and the malice must have a proportion to the effect of it, which was the imposition: so that, if this foundation be not laid, all the evidence is weakened.

On the other side, if I charge him, or could charge him, by way of aggravation, with matters tending to disloyalty or treason, then he is like to grow desperate.

Therefore I shall now set down perspicuously what course I mean to hold, that your majesty may be pleased to direct and correct it, preserving the strength of the evidence: and this I shall now do, but shortly and without ornament.

First, I shall read some passages of Overbury's letters, namely these: "Is this the fruit of nine years love, common secrets, and common dangers?" In another letter; "Do not drive me to extremity to do that, which you and I should be sorry for?" In another letter; "Can you forget him, between whom such secrets of all kinds have passed? &c."

Then will I produce Suncock, who deposeth from Weston's speech, that Somerset told Weston, that, if ever Overbury came out of prison, one of them must die for it.

Then I will say what these secrets were. I mean not to enter into particulars, nor to charge him with disloyalty, because he stands to be tried for his life upon another crime. But yet by some taste, that I shall give to the peers in general, they may conceive of what nature those secrets may be. Wherein I will take it for a thing notorious, that Overbury was a man, that always carried himself insolently, both towards the queen, and towards the late prince: that he was a man, that carried Somerset on in courses separate and opposite to the privy council: that he was a man of nature fit to be an incendiary of a state; full of bitterness and wildness of speech and project: that he was thought also lately to govern Somerset, inso-much that in his own letters he vaunted, that from him proceeded Somerset's fortune, credit, and understanding.

This course I mean to run in a kind of generality, putting the imputations rather upon Overbury than Somerset; and applying it, that such a nature was like to hatch dangerous secrets and practices. I mean to shew likewise that jargons there were and ciphers between them, which are great badges of secrets of estate, and used either by princes and their ministers of state, or by such as practise against princes. That your majesty was called Julius in respect of your empire; the queen, Agrippina, though Somerset now saith it was Livia, and that my lady of Suffolk was Agrippina; the bishop of Canterbury, Unctius; Northampton, Dominic; Suffolk, first Lerma, after Wolsey; and many others; so as it appears they made a play both of your court and kingdom; and that their imaginations wrought upon the greatest men and matters.

Neither will I omit Somerset's breach of trust to your majesty, in trusting Overbury with all the dispatches, things, wherewith your council of estate itself was not many times privy or acquainted: and yet this man must be admitted to them, not cursorily, or by glimpses, but to have them by him, to copy them, to register them, to table them, &c.

I shall also give in evidence, in this place, the slight account of that letter, which was brought to Somerset by Ashton, being found in the fields soon after the late prince's death, and was directed to Antwerp, containing these words, that "the first branch was cut from the tree; and that he should, ere long, send happier and joyfuller news."

Which is a matter I would not use, but that my lord Coke, who hath filled this part with many frivolous things, would think all lost, except he hear somewhat of this kind. But this it is to come to the leavings of a business.

—[*Apostyle of the king.* 'This evidence cannot be given in without making me his accuser, and that upon a very slight ground. As for all the subsequent evidences, they are all so little evident, as *una litura* may serve to shame all.']

And for the rest of that kind, as to speak of that particular, that Mrs. Turner did at White-

hall shew to Franklin the man, who, as she said, poisoned the prince, which, he says, was a physician with a red beard.—[*Ap. &c.* ‘Nothing to Somerset, and declared by Franklin after condemnation.’]

That there was a little picture of a young man in white wax, left by Mrs. Turner with Forman the conjurer, which my lord Coke doubted was the prince.—[*Ap. &c.* ‘Nothing to Somerset, and a loose conjecture.’]

That the viceroy of the Indies at Goa reported to an English factor, that prince Henry came to an untimely death by a mistress of his.—[*Ap. &c.* ‘No better than a gazette, or passage of Gallo Belgicus.’]

That Somerset, with others, would have preferred Lowbell the apothecary to prince Charles.—[*Ap. &c.* ‘Nothing yet proved against Lowbell.’]

That the countess laboured Forman and Gresham, the conjurers, to enforce the queen by witchcraft to favour the countess.—[*Ap. &c.* ‘Nothing to Somerset.’]

That the countess told Franklin, that when the queen died, Somerset should have Somerset-house.—[*Ap. &c.* ‘Declared by Franklin after condemnation.’]

That Northampton said, the prince, if ever he came to reign, would prove a tyrant.—[*Ap. &c.* ‘Nothing to Somerset.’]

That Franklin was moved by the countess to go to the Palgrave, and should be furnished

with money.—[*Ap. &c.* ‘Nothing to Somerset.’]

The particular reasons, why I omit them, I have [inserted between crotchets]; but the general is partly to do a kind of right to justice, and such a solemn trial, in not giving that in evidence, which touches not the delinquent, or is not of weight; and partly to observe your majesty’s direction, to give Somerset no just occasion of despair or flushes.

But I pray your majesty to pardon me, that I have troubled your majesty with repeating them, lest you shall hear hereafter, that Mr. Attorney hath omitted divers material parts of the evidence. Indorsed,

“Somerset’s Business and Charge, with his majesty’s Postiles.”

Some curious particulars, concerning the proceedings against the Somersets, are to be found in Bacon’s Correspondence as given in the late editions of his works.

The earl and his lady were released from their confinement in the Tower in January 1621-2, the latter dying August 23, 1632, leaving one daughter Anne, then sixteen years of age, afterwards married to William lord Russel, afterwards earl, and at last duke of Bedford. The earl of Somerset-survived his lady several years, and died in July 1645, being interred on the 17th of that month in the church of St. Paul’s Covent-Garden.

### 109. The Trial of ROBERT CARR\* Earl of Somerset, † May 25, for the Murder of Sir Thomas Overbury: 14 JAMES I. A. D. 1616.

*Ser. Cryer.* O YES, my Lord High Steward of England purposes this day to proceed to the Trial of Robert earl of Somerset. O yes, Whosoever have any Indictments touching this cause, publicly give them in.

\* Co. Inst. 50. Bacon’s Works, vol. i. p. 87.

† “And now begins the game to be played, in which Somerset must be the loser, the cards being shuffled, cut, and dealt between the king and sir Edward Coke, chief justice, whose daughter Purbeck Villers had married or was to marry, and therefore a fit instrument to ruin Somerset and secretary Winwood; these all played the stake; Somerset’s life and his lady’s, and their fortunes, and the family of Suffolk: some of them played booty, and in truth the game was not played above-board. The day the king went from Whitehall to Theobald’s, and so to Royston, the king sent for all the Judges (his lords and servants encircling him) where kneeling down in the midst, he used these words: “My Lords the Judges; It is lately come to my hearing that you have now in examination a business of poisoning: Lord, in what a most miserable condition shall this kingdom be (the only famous nation for hospitality in the world), if our tables should become such

My lord Coke delivers in the Indictment of my lord of Somerset to Mr. Fenshaw indorsed.

*Ser. Cryer.* O yes, Walter Lee, Serjeant at Arms, return the Precept for the lords, which thou hast warned to be here this day. O yes.

a snare as none could eat without danger of life, and that Italian custom should be introduced amongst us; therefore my lords I charge you, as you will answer it at that great and dreadful Day of Judgment, that you examine it strictly without favour, affection, or partiality; and if you shall spare any guilty of this crime, God’s curse light on you and your posterity; and if I spare any that are guilty, God’s curse light on me and my posterity for ever.”—But how this dreadful thunder, curse or imprecation was performed, shall be shewed hereafter; and I may pray God the effect be not felt amongst us, even at this day, as it hath been, I fear, on that virtuous lady Elizabeth and her children; for God treasures up such imprecations and deprecations, and pours them out when a nation least dreams, even when they cry, Peace, peace to their souls; and it may well be (at this time our sins concurring) pouring out upon king, judges, and the whole state.—It appears how unwilling the king was to ruin Somerset,

[He calls every lord by his name, and they stand up as they be called.]—My Lord High Steward excuses the lords Mounteagle and Russel of their absence, in respect of their sickness.

*Ser. Cryer.* O yes, Lieutenant of the Tower, return thy Precept, and bring the Prisoner to the Bar.—Which he did, and my lord makes three reverences to the Lord High Steward and the lords.

*Mr. Fenshaw.* Rob. earl of Somerset, hold up thy hand.

He holds it up so long, until Mr. Lieutenant had him hold it down. The Indictment is read, containing Weston's actions in the poisoning of sir T. Overbury, and his abetting of him, the 8th of May 1613.—My lord of Somerset was apparelled in a plain black sattin suit, laid with two sattin laces in a seam; a gown of unrent velvet lined with unshorn: all the sleeves laid with sattin lace; a pair of gloves with sattin tops, his george about his neck, his hair curled, his visage pale, his beard long, his eyes sunk in his head. Whilst his Indictment was

a creature of his own making, 'sed immedicabile vulnus, ense rescindendum est.' Grace was offered by the king, had he had grace to have apprehended it. The king with this, took his farewell for a time of London, and was accompanied with Somerset to Royston, where, no sooner he brought him, but instantly took leave, little imagining what viper lay amongst the herbs; nor must I forget to let you know how perfect the king was in the art of dissimulation, or, to give it his own phrase, king-craft. The earl of Somerset never parted from him with more seeming affection than at this time: when he knew Somerset should never see him more, and had you seen that seeming affection, as the author himself did, you would rather believe he was in his rising than setting. The earl when he kissed his hand, the king about his neck, slabbering his cheeks, saying, 'for God's sake when shall I see thee again? on my soul I shall neither eat nor sleep until you come again;' the earl told him, on Monday (this being on the Friday). 'For God's sake let me,' said the king, 'shall I? shall I?' Then lolled about his neck; then 'for God's sake give thy lady this kiss for me;' in the same manner at the stairs-head, at the middle of the stairs, and at the stairs foot. The earl was not in his coach, when the king used these very words (in the hearing of four servants, of whom one was Somerset's great creature, and of the bed-chamber, who reported it instantly to the author of this History) 'I shall never see his face more.'—I appeal to the reader, whether this motto of 'Qui nescit dissimulare nescit regnare,' was not as well performed in this passage as his *Beati Pacifici*, in the whole course of his life; and his love to the latter, made him to be beaten with his own weapon in the other, by all princes and states that had to do with him." *Weldon's Court and Character of King James*, p. 99.

reading, he three or four times whispered to the Lieutenant.

*Mr. Fenshaw.* Robert earl of Somerset, What sayest thou, art thou Guilty of this felony and murder whereof thou standest indicted, or Not Guilty?

My lord of Somerset making an obeisance to the Lord High Steward, answered, Not Guilty.

*Mr. Fenshaw.* How wilt thou be tried?

*Ld. Som.* By God and the country; but presently recalling himself, said, By God and my peers.

*Ser. Cryer.* O yes, All you that be to give in evidence against Robert earl of Somerset, who stands now at the bar upon his deliverance, make your appearance, and you shall be heard what you have to say against him.

My lord of Somerset, upon his arraignment, having pleaded Not Guilty, the proceeding after was thus:

*Lord High Steward.* [Ellesmere, Lord Chancellor.] Robert earl of Somerset, you have been arraigned, and pleaded Not Guilty; now I must tell you, whatsoever you have to say in your own defence, say it boldly, without fear; and though it be not the ordinary custom, you shall have pen and ink to help your memory: but remember that God is the God of truth; a fault defend'd is a double crime; hide not the verity, nor affirm an untruth; for, to deny that which is true, increases the offence; take heed lest your wilfulness cause the gates of mercy to be shut upon you. Now for you, my lords the peers, you are to give diligent attention to that which shall be said; and you must not rest alone upon one piece of evidence, but ground your judgment upon the whole. This moreover I would have you remember, that though you be not sworn as common juries, upon a book, yet that you are tied in as great a bond, your own honour and fidelity, and allegiance to the king; and thus I leave the whole proceeding to your censures. And for you that be of the king's counsel, free your discourse from all partiality, but let truth prevail, and endeavour to make it appear.

*Sej. Montague.* My Lord High Steward of England, and you my lords, this cannot but be a heavy spectacle unto you, to see that man that not long since in great place, with a white staff, went before the king, now at this bar hold up his hand for blood; but this is the change of fortune, nay, I might better say, the hand of God, and work of justice, which is the king's honour.—But now to the fact; Robert earl of Somerset stands indicted as accessory before the fact, of the wilful murder and poisoning of sir T. Overbury, done by Weston, but procured by him; this, my lord, is your charge. The Indictment hath been found by men of good quality, seventeen knights and esquires of the best rank and reputation, some of whose names I will be hold to read unto you; sir T. Fowler, sir W. Slingsby, and fifteen more; these have returned *billā vera*. Now an Indictment is but an accusation of record in form thus: Weston,

at four several times, gave Overbury four several poisons, the first May 9th, 1613, that was rosalgar, carrying this poison in one hand, and his both in the other; the second was June following, and that was arsenick; the third was July the 10th following, and that was mercury sublimate in tarts; the fourth was Sept. 14th following, and that was mercury sublimate in a clyster, given by Weston and an apothecary yet unknown, and that killed him. Of these four several poisons ministered by Weston, and procured by you, the 15th of Sept. 1615, Overbury died, and the author is ever worse than the actor. The first poison laid in the Indictment, that Weston gave sir T. Overbury, was the 9th of May; and therefore we say, That the lord Somerset, the 8th of May, hired, counselled and abetted Weston to this fact: and as this day, my lord, I do charge you for a king, so heretofore king David was charged in the like case, for the murder of Uriah; and though David was under his pavilion, and Uriah in the army, yet David was the cause of his murder: so though you were in the king's chamber, and Overbury in the Tower, yet it was you that killed him. It was a stronger hand than Weston's that wrought this. The proof, Mr. Attorney, will follow; and I will now conclude with two desires to the peers: first, That they will not expect visible proofs in the work of darkness. The second is, That whereas in an Indictment there be many things laid only for form, you are not to look that the proof should follow that, but only that which is substantial; and the substance must be this, Whether my lord of Somerset procured or caused the poisoning of sir T. Overbury, or no?

L. H. S. That indeed, my lords, is that which you are to look after, Whether my lord of Somerset was the cause of his poisoning, or not?

Lord Coke. This was very well moved by Mr. Recorder, and the law is clear in this point, that the proof must follow the substance,\* not the form.

The Judges all rising, affirmed this to be true.

Att. Gen. (sir Francis Bacon). May it please your grace, my Lord High Steward of England, and you my lords the peers, you have here before you Robert earl of Somerset to be tried for his life, concerning the procuring and consenting to the poisoning of sir T. Overbury, then the king's prisoner in the Tower of London, as an accessory before the fact.—I know your honours cannot behold this noble man, but you must remember the great favours which the king hath conferred on him, and must be sensible, that he is yet a member of your body, and a peer, as you are; so that you cannot cut him off from your body, but with grief: and therefore you will expect from us that give in the king's evidence, sound and sufficient matter

of proof to satisfy your honours consciences.—As for the manner of the evidence, the king our master, who, amongst other his virtues, excelleth in that virtue of the imperial throne, which is justice, hath given us command, that we should not expatiate nor make invectives, but materially pursue the evidence, as it conduceth to the point in question.—A matter, that, though we are glad of so good a warrant, yet we should have done of ourselves: for far be it from us by any strains of wit or arts, to seek to play prizes, or to blazon our names in blood, or to carry the day otherwise than upon sure grounds; we shall carry the lantern of justice (which is the evidence) before your eyes upright, and so be able to save it from being put out with any ground of evasion or vain defence, not doubting at all, but that the evidence itself will carry that force, as it shall need no advantage or aggravation.—First, my lords, the course that I will hold in delivering of that which I shall say, for I love order, is this: 1st, I will speak somewhat of the nature and greatness of the offence, which is now to be tried, not to weigh down my lord with the greatness of it, but rather contrarywise to shew, that a great offence needs a good proof. And that the king, howsoever he might esteem this gentleman heretofore as the signet upon his finger (to use the Scripture phrase), yet in such a case as this, he was to put it off.—2dly, I will use some few words touching the nature of the proofs, which in such a case are competent.—3dly, I will state the proofs.—And, lastly, I will produce the proofs, either out of examination and matters of writing, or witnesses *in voce*.

For the offence itself, it is of crimes, next unto High-treason, the greatest; it is the foulest of felonies. It hath three degrees; First, It is murder by imposition: Secondly, It is murder committed upon the king's prisoner in the Tower: Thirdly, I might say, That it is murder under the colour of friendship; but that is a circumstance moral, and therefore I leave that to the evidence itself. For murder, my lords, the first record of justice which was in the world, was judgment upon a murderer, in the person of Adam's first-born Cain: and though it was not punished by death, but banishment, and marks of ignominy, in respect of the population of the world; yet there was a severe charge given, that it should not go unpunished. So it appeareth likewise in Scripture, that the murder of Abner by Joab, though it were by David respited in respect of great services past, or reason of state, yet it was not forgotten. But of this I will say no more, because I will not discourse; it was ever admitted and ranked in God's own tables, that murder is, of offences between man and man, next unto High-Treason, and disobedience to authority, (which sometimes have been referred to the first table, because of the lieutenantancy of God in princes) the greatest.—For imposition, I am sorry it should be heard of in our kingdom; it is not 'nostri generis, nec sanguis

\* Qu. If this be what Weldon means in the passage cited from him in the note to Anne Turner's case, *supra*, p. 999.

'nis peccatum;' it is an Italian comfit for the court of Rome, where that person that intoxicateth the kings of the earth is many times really intoxicated and poisoned himself. But it hath three circumstances which make it grievous beyond other matters.—The first is, that it takes a man away in full peace, in God's and the king's peace, that thinks no harm, but is comforting of nature with refection and food: so that, as the Scripture saith, 'his table is made a snare.'—The second is, that it is easily committed, and easily concealed; and on the other side, hardly prevented, and hardly discovered: For murder by violence, princes have guards, and private men have houses, attendants and arms: neither can such murder be committed, but *cum sonitu*, with some overt and apparent acts, that may discover and trace the offenders: but for poison, the cup itself of princes will scarce serve in regard of many poisons that neither discolour nor distaste; it comes upon a man when he is careless, and without suspicion, and every day a man is within the gates of death.—And the last is, because it concerneth not only the destruction of the maliced man, but of every man, 'Quis modo tutus erit?' For many times the poison is prepared for one, and is taken by another, so that men die other men's deaths, 'concidit infelix alieno vulnere;' and it is as the Psalmist calleth it, 'sagitta nocte volans,' the arrow that flieth by night, that hath no aim nor certainty. And therefore if any man shall say to himself, here is great talk of imposition, but I am sure I am safe, for I have no enemies, neither have I any thing another man should long for: Why, that is all one, he may sit next him at the table, that is meant to be poisoned, and pledge him of his cup: As we may see in the example of 21 Hen. 8. That where the purpose was to poison one man, there was poison put into barm or yeast, and with that barm, pottage or greuel was made, whereby sixteen of the bishop of Rochester's servants were poisoned; nay, it went into the alms-basket likewise, and the poor at the gate were poisoned. And therefore with great judgment did the statute made that year, touching this accident, make imposition High-Treason, because it tends to the dissolving of human society; for whatsoever offence doth so, is in the nature thereof High-Treason.—Now for the third degree of this particular offence, which is, that it is committed upon the king's prisoner, who was out of his own defence, and wholly in the king's protection, and for whom the king and the state were a kind of respondent: it is a thing that aggravates the fault much, for certainly (my lord of Somerset) let me tell you this, that sir T. Overbury is the first man that was murdered in the Tower of London, save the murder of the two young princes, by the appointment of Richard 3.

Thus much of the offence; now to the proofs.—For the matter of proofs, you may consider that imposition, of all offences, is most secret, even so secret, that if in all cases

of imposition you should require testimony, you should as good proclaim impunity.—Who could have impeached Livia by testimony, for the poisoning of her figs upon the tree, which her husband was wont to gather with his own hands? Who could have impeached Parasctis for the poisoning of the one side of the knife she carried with her, and keeping the other side clean, so that herself did eat of the same piece of meat that they did whom she did poison? These cases are infinite, and need not to be spoken of the secrecy of imposition; but wise men must take upon them, in these secret cases, Solomon's spirit, that when there could be no witnesses, collected the act by the affection: but yet we are not at our cause, for that which your lordships are to try, is not the act of imposition, for that is done to your hands; all the world, by law, is concluded to say, that Overbury was poisoned by Weston: but the question before you is, of the procurement only, and, as the law, termeth it, as accessory before the fact; which abetting is no more, but to do or use any act or means which may aid or conduce to the imposition.—So that it is not the buying, nor the making of the poison, nor the preparing, nor confecting, nor commixing of it, nor the giving or sending, or laying of the poison, that are the only acts that do amount unto the abetment: but if there be any other act or means done, or used to give opportunity of imposition, or to facilitate the execution of it, or to stop or divert any impediments that might hinder it, and that it be with an intention to accomplish and achieve the imposition; all these are abetments and accessories before the fact. As for example, if there be a conspiracy to murder a man, as he journeyeth on the way, by invitation, or by colour of some business; and another taketh upon him to dissuade some friend of his company, that he is not strong enough to make his defence; and another hath a part to hold him in talk till the first blow be given: all these, my lords, without scruple, are accessories to the murder, although none of them give the blow, nor assist to give the blow.—My lords, he is not the hunter alone, that lets slip the dog upon the deer, but he that lodgeth him and hunts him out, or sets a train or trap for him, that he cannot escape, or the like. But this, my lords, little needeth in this case; for such a chain of acts of impositions as this, I think, was never heard nor seen. And thus much of the nature of the proofs.

To descend to the proofs themselves, I shall keep this course: First, I will make a narration of the fact itself. Secondly, I will break and distribute the proofs, as they concern the prisoner. And, thirdly, according to the distribution, I will produce them, and read them, to use them. So that there is nothing that I shall say, but your lordship shall have three thoughts or cogitations to answer it.—1st. When I open it, you may take your aim. 2dly, When I distribute it, you may prepare your Answers without confusion. And, 3dly, When I pro-

duce the witnesses, or the examinations themselves, you may again ruminate, and re-advise to make your defence.—And this I do, because your memory and understanding may not be oppressed or overladen with length of evidence, or with confusion of order; nay more, when your lordship shall make your Answer in your time, I will put you in mind, where cause shall be of your omission.

First, therefore, sir T. Overbury, for a time, was known to have great interest and strait friendship with my lord of Somerset, both in his meaner fortunes, and after; insomuch that he was a kind of oracle of direction unto him, and if you will believe his own vaunt (being indeed of an insolent and thronical disposition) he took upon him that the fortunes, reputation and understanding of this gentleman (who is well known to have an able teacher) proceeded from his company and counsel: and this friendship rested not only in conversation and business at court, but likewise in communication of secrets of state: for my lord of Somerset exercising at that time by his majesty's special favour and trust, the office of secretary, did not forbear to acquaint Overbury with the king's packets and dispatches from all parts of Spain, France, and the Low-Countries; and this then not by glimpses, or now and then rounding in the ear for a favour, but in a settled manner; packets were sent, sometimes opened by my lord, sometimes unbroken unto Overbury, who perused them, copied them, registered them, made table-talk of them, as they thought good. So I will undertake the time was, when Overbury knew more of the secrets of state, than the council-table did; nay, they were grown to such inwardness, as they made a play of all the world besides themselves, so as they had ciphers and jargons for the king and queen, and great men of the realm; things seldom used, but either by princes to their confederates, or at the least, by such as practise and work against, or at the least, upon princes.—But understand me, my lord, I shall not charge you with disloyalty at this day; and I lay this for a foundation, that there was great communication of secrets between you and sir T. Overbury, and that it had relation to matters of state, and the great causes of this kingdom.—But, my lords, as it is a principle in nature, that the best things are, in their corruption, the worst, and the sweetest wine maketh the sourest vinegar; so it fell out with them, that this excess, as I may say, of friendship, ended in mortal hatred on my lord of Somerset's part. I have heard my Lord Steward say sometimes in the chaucery, that frost and fraud end foul; and I may add a third, and that is, the friendship of ill men, which is truly said to be conspiracy and not friendship. For it fell out some twelve months or more before Overbury's imprisonment in the Tower, that the earl of Somerset fell into an unlawful love towards that unfortunate lady the countess of Essex, and to proceed to a marriage with her; this marriage and purpose did Overbury mainly

impugn, under pretence to do the true part of a friend, for that he accounted her an unworthy woman. But the truth was, Overbury, who (to speak plainly) had little that was solid for religion, or moral virtue, but was wholly possessed with ambition and vain-glory, was loth to have any partners in the favour of my lord of Somerset; and especially not any of the house of the Howards, against whom he had always professed hatred and opposition.—And, my lords, that this is no sinister construction, will appear to you, when you shall hear that Overbury made his brags, that he had won him the love of the lady, by his letters and industry; so far was he from cases of conscience in this point.—And certainly, my lords, howsoever the tragical misery of this poor gentleman, Overbury, might somewhat obliterate his faults, yet, because we are not upon point of civility, but to discover the face of truth, before the face of justice, for that it is material to the true understanding of the state of this cause, Overbury was naught and corrupt; the ballads must be mended for that point.—But to proceed: when Overbury saw that he was like to be possessor of my lord's grace, which he had possessed so long, and by whose greatness he had promised himself to do wonders, and being a man of an unbounded and impudent spirit, he began not only to dissuade, but to deter him from the love of that lady; and finding him fixed, thought to find a strong remedy: and supposing that he had my lord's head under his girdle, in respect of communication of secrets of state, as he calls them himself secrets of nature; and therefore dealt violently with him, to make him desist with menaces of discovery and the like: hereupon grew two streams of hatred upon Overbury, the one from the lady, in respect that he crossed her love, and abused her name (which are furies in women); the other of a more deep nature from my lord of Somerset himself, who was afraid of Overbury's nature, and if he did break from him and fly out, he would wind into him, and trouble his whole fortunes. I might add a third stream of the earl of Northampton's ambition, who desires to be first in favour with my lord of Somerset; and knowing Overbury's malice to himself, and to his house, thought that man must be removed and cut off, so as certainly it was resolved and decreed, that Overbury must die.—That was too weak, and they were so far from giving way to it, as they crossed it; there rested but two ways of quarrel, assault and poison. For that of assault, after some proposition and attempt, they passed from it, as a thing too open and subject to more variety of shame; that of poison likewise was an hazardous thing, and subject to many preventions and caution, especially to such a working and jealous brain as Overbury had, except he was first fast in their hands: therefore the way was first to get him into a trap, and lay him up, and then they could not miss the mark. And therefore in execution of this plot, it was concluded, that he should be designed to some honourable employment in



foreign parts, and should underhand, by my lord of Somerset, be encouraged to refuse it; and so, upon contempt, he should be laid prisoner in the Tower, and then they thought he should be close enough, and death should be his bail. Yet they were not at their end, for they considered, that if there were not a fit Lieutenant of the Tower for their purpose, and likewise a fit Under-keeper of Overbury; 1st, they should meet with many impediments in the giving and exhibiting of the poison; secondly, they should be exposed to note and observation, that might discover them; and, thirdly, Overbury, in the mean time, might write clamorous and furious letters to his friends, and so all might be disappointed. And therefore, the next link of the chain was to displace the then Lieutenant Wade, and to place Elwes, a principal abettor to the imposition; to displace Cary, that was Under-keeper in Wade's time, and to place Weston, that was the actor in the imposition; and this was done in such a while, that it may appear to be done as it were in a breath.—Then when they had this poor gentleman in the Tower, close prisoner, where he could not escape, nor stir; where he could not feed, but by their hands; where he could not speak or write, but through their trunks; then was the time to act the last day of his tragedy.—Then must Franklin, the purveyor of the poisons, procure five, six, seven several poisons, to be sure to hit his complexion; then must Mrs. Turner, the lay-mistress of the poisons, advise what works at present, and what at distance: then must Weston be the tormenter, and chase him with poison after poison, poison in salt-meats, poison in sweet-meats, poison in medicines and vomits, until at last his body was almost come by use of poisons to the state of Mithridates's body, by the use of treacle and preservatives, that the force of the poisons was blunted upon him; Weston confessing, when he was chid for not dispatching him, that he had given him enough to poison twenty men.—And, lastly, because all this asked time, courses were taken by Somerset, both to divert all the true means of Overbury's delivery, and to entertain him with continual letters, partly with hopes and protestations for his delivery, and partly with other fables and negotiations, somewhat like some kind of persons which keep in a tale of fortune-telling, when they have a felonious intent to pick pockets and purses. And this is the true narration of this act, which I have summarily recited.

Now, for the distribution of the proofs, there are four heads to prove you guilty, whereof two are precedent to the imposition, the third is present, and the fourth is following or subsequent: for it is in proofs, as it is in lights, there is a direct light, and there is a reflexion of light, and a double light.—The first head or proof is, That there was a root of bitterness, a mortal malice or hatred, mixed with a deep and bottomless mischief, that you had to sir T. Overbury.—The second is, That you were the

principal actor, and had your hand in all those acts, which did conduce to the imposition, and gave opportunity to effect it, without which the imposition could never have been, and which could seem to tend to no other end, but to the imposition.—The third is, That your hand was in the very imposition itself, that you did direct poison, and that you did deliver poison, and that you did continually hearken to the success of the imposition, and that you spurred it on, and called for dispatch, when you thought it lingered.—And lastly, That you did all things after the imposition, which may detect a guilty conscience, for the smothering of it, and the avoiding of punishment for it; which can be but of three kinds.—That you suppressed, as much as in you was, testimony; that you did deface, destroy, clip and misdire all writings that might give light to the imposition; and you did fly to the altar of guiltiness, which is a pardon of murder, and a pardon for yourself, and not for yourself.

In this, my lord, I convert my speech unto you, because I would have you alter the points of your charge, and so make your defence the better. And two of these heads I have taken to myself, and left the other to the king's two serjeants.—For the first main part, which is the mortal malice coupled with fear, that was in you to sir T. Overbury, although you did palliate it with a great deal of hypocrisy and dissimulation, even to the very end; I will prove it, my Lord Steward, the root of his hate was that which cost many a man's life, that is, fear of discovering secrets; I say, of secrets of a dangerous and high nature: wherein after the course that I will hold, shall be this. I will shew that a breach and malice was betwixt my lord and Overbury, and that it burst forth into violent threats and menaces, on both sides. Secondly, That these secrets were not of a light, but of an high nature. I will give you the elevation of the pole: they were such, as my lord of Somerset had made a vow, that Overbury should neither live in court, nor country; that he had likewise opened himself so far, that 'either he or himself must die for it:' and of Overbury's part, he had threatened my lord, 'that whether he did live or die, my lord's shame should never die,' but that, 'he would leave him the most odious man in the world.' And farther, that my lord was like enough to repent where Overbury wrote, which was in the Tower of London; he was a prophet in that: so there is the highest of the secret. Thirdly, I will shew you that all the king's business was, by my lord, put into Overbury's hands, so as there is work enough for secrets whatsoever; they write them, and like princes they had confederates, their ciphers, and their jargons.—And, lastly, I will shew you that it was but a toy, to say the malice was only in respect he spake dishonourably of the lady, or for doubt of breaking the marriage, for that Overbury was coadjutor to that love, and the lord of Somerset was as deep in speaking ill of the lady as Overbury: and again, it was too

late for that matter, for the bargain of the match was then made and past; and if it had been no more than to remove Overbury for disturbing the match, it had been an easy matter to have lunded over Overbury, for which they had a fair way, but that would not serve. And, lastly, 'Periculum periculo vincitur:' to go so far as an imprisonment, must have a deeper malice than flashes, for the cause must have a proportion in the effect.

For the next general head or proof, which consists in the acts preparatory, or middle acts, they are in eight several points of the compass, as I may term them.

1st, There were divers devices and projects to set Overbury's head on work, to dispatch him, and overthrow him, plotted between the countess of Essex, and the earl of Somerset, and the earl of Northampton, before they fell upon the imprisonment; for always before men fix upon a course of mischief, there will be some reflection: but die he must one way or other. 2dly, That my lord of Somerset was principal practiser, I must speak it, in a most perfidious manner; to set a trap and train for Overbury, to get him into the Tower, without which they durst not attempt the imprisonment. 3dly, That the placing of the Lieutenant Elwes, one of the imprisoners, was done by my lord of Somerset. 4thly, That the placing of Weston the Under-keeper, who was the principal imprisoner, and displacing of Cary, and the doing all this within the space of fifteen days after Overbury's commitment, was by the means and countenance of my lord of Somerset: and these were the active instruments of the imprisonment, and this was a business the lady's power could not reach unto. 5thly, That because there must be a cause of this tragedy to be acted, and chiefly because they would not have the poisons work upon the sudden, and for that the strength of Overbury's nature, on the very custom of receiving the poisons into his body, did overcome the poisons that they wrought not so fast; therefore Overbury must be held in the Tower, as well as he was laid in: and as my lord of Somerset got him into the trap, so he keeps him in, and amuseth him with continual hope of liberty, but diverted all the true and effectual means of his liberty, and makes light of his sickness and extremities. 6thly, That not only the plot of getting Overbury into the Tower, and the devices to hold and keep him there, but the strange manner of the close keeping of him, being in but for a contempt, was by the device and means of my lord of Somerset, who denied his father to see him, denied his servants that offered to be shut up close prisoners with him, and in effect handled it so, that he made him close prisoner to all his friends, and exposed to all his enemies. 7thly, That all the advertisement the lady received from time to time, from the Lieutenant or Weston, touching Overbury's state of body and health, were ever sent nigh to the court, though it were in progress, and that from my

VOL. II.

lady; such a thirst and listening he had to hear that he was dispatched. Lastly, That there was a continual negotiation to set Overbury's head on work, that he should make some offer to clear the honour of the lady, and that he should be a good instrument towards her and her friends; all which was but entertainment: For your lordship shall see divers of my lord of Northampton's letters, (whose hand was deep in this business) written I must say in dark words and clauses, that there was one thing pretended, and another thing intended; that there was a real charge, and somewhat not real; a main drift and dissimulation. Nay, farther, there be some passages which the peers, in their wisdoms, will discern to point directly at the imprisonment.

And now for producing of my proofs, I will use this course: Those examinations that have been taken upon oath, shall be here read; and the witnesses also I have caused to be here, that they may be sworn, and to justify or deny what they hear read, and to diminish or add to their examinations; and besides that, my lord of Somerset, and you my lords the peers, may ask them what farther questions you please.

H. PAYTON, servant of sir T. Overbury, now of his father, examined before the Lord Chief Justice.

He saw a letter of his master's, whose hand he knew, to my lord of Somerset, wherein were these words, 'If I die, my blood lie upon you.' And in that or another letter there was this clause, 'My lord, you are now as good as your word, you have kept your vow to me.' Moreover, that in the privy-gallery at White-hall, my lord of Somerset coming late to his chamber, met there sir T. Overbury; 'How now,' said my lord, 'are you up yet?' 'Nay,' answers sir T. Overbury, 'what do you here at this time of night? Will you never leave the company of that base woman? And seeing you do so neglect my advice, I desire that to-morrow morning we may part; and that you will let me have that portion you know is due to me; and then I will leave you free to yourself, to stand on your own legs.' My lord of Somerset answered, 'His legs were strong enough to bear himself;' and so departed in great displeasure. And to his certain knowledge, they were never perfectly reconciled again. And being asked how he heard this discourse, he said, it was in the dead of the night, and he, being in a room within the gallery, heard all that passed.

H. Payton. I acknowledge every part of this examination to be true: And more, That my master being in the Tower, he sent a letter by Weston to me, to carry to my lord; and withal, to deliver my lord this message, That that powder he had sent him had made him very sick, and given him in one night 60 stools besides vomits. This latter I carried to the court, and delivered to Mr. Pawlins to carry to my lord, who was then in his chamber. My lord presently came out; asked me how

my master did. I told him very sick; and withal, this message how the physic had wrought with him. My lord smiled, and cried pish; and so turned him away.

L. DAVIS, sometime servant of sir T. Overbury, now of sir H. May, his Examination before the lord Coke.

Smith, that he hath heard his master say, That he would have gone ambassador, but that my lord of Rochester dissuaded him. He hath seen some letters of sir T. Overbury's, wherein he writ that the lord of Rochester was even with him: But he thinks he (i. e. the lord Rochester) never saw those passages.

Lord of *Som.* I pray you, my lords, note he says, I never saw those passages.

Mr. *Att.* It is true: For those letters were lost; but after found by him, who knew them to be his master sir T. Overbury's hand.

Sir Thomas Overbury's first Letter to my lord Somerset.

"Is this the fruit of my care and love to you? Be these the fruits of common secrets, common dangers? As a man, you cannot suffer me to lie in this misery; yet your behaviour betrays you. All I intreat of you is, that you will free me from this place, and that we may part friends. Drive me not to extremities, lest I should say something that you and I both repent. And I pray God that you may not repent the omission of this my counsel, in this place, whence I now write this letter."

L. *Wentworth.* How did you know these letters were sent from him to my lord of Somerset?

L. *Coke.* They were found in a cabinet, among some other things, left in trust by my lord of Somerset with sir R. Cotton: And thus they were discovered; sir R. Cotton, fearing searches, delivers them to a friend of his in Holborn, one Mrs. Farnesforth; she, to the intent they might be safely kept, sent them to a merchant's house in Cheapside, where some nine months before she had lodged, and desired that they might safely be kept for her, pretending they were some writings that concerned her jointure. On St. Thomas's day she herself comes to have them again, saying, she must carry them to her counsel to peruse. He said, 'If you will suffer me to open it before you, and that there be nothing else, you shall have them.' But she by no means would consent to the breaking of it open. Then he answered, 'It is a troublesome time; I will go to my Lord Chief Justice, and if he find no other writings than such as concern you, you shall have them again.' So coming to my chamber, and not finding me within, (for I was gone to St. Paul's to the sermon) he went to my lord Zouch, one of the appointed commissioners for this cause; who himself alone would not break it up, but came to St. Paul's to me; where in a by-room we broke it up, and in it found these letters, and divers from my lord of Northampton, besides many other papers.

L. *Zouch.* I affirm this relation of my lord Coke's to be true.

Sir Thomas Overbury's second Letter to my lord Somerset.

"This comes under seal; and therefore shall be bold. You told my brother Lidcote, that unreverend style might make you neglect me. With what face could you do this, who know you owe me for all the fortune, wit, and understanding that you have?" [Here were inserted some borrowed names.]

Mr. *Att.* Under these false names they meant great persons; Julius, the king, Dominic, my lord of Northampton, Unclius, my lord of Canterbury.

The rest of the Letter.

"And yet pretend the reason why you seek not my liberty, to be my unreverend style; whilst, in the mean time, you sacrifice me to your woman, still holding friendship with those that brought me hither. You bade my brother Lidcote keep my desire of liberty secret: Yet this shall not serve your turn; for you and I, ere it be long, will come to a public trial of another nature. I upon the rack, and you at your ease: and yet I must say nothing! when I heard (notwithstanding my misery) how you went to your woman, curled your hair, preferred Gibbe into the bed-chamber, and in the mean time send me nineteen projects, how I should cast about for my liberty; and give me a long account of the pains you have taken, and then go out of town. I wonder to see how you should neglect him, to whom such secrets of all kinds have passed: and suffer my mother and sisters to lie here in town, expecting my liberty; my brother Lidcote to be in a manner quite overthrown, in respect of my imprisonment; and yet you stand stupid: Nor have neither servant nor friend suffered to come to me. Well, all this vacation I have written the story betwixt you and me: How I have lost my friends for your sake; what hazard I have run; what secrets have passed betwixt us; how after you had won that woman by my letters, and then you concealed all your after-proceedings from me; and how upon this there came many breaches betwixt us; of the vow you made to be even with me, and sending for me twice that day that I was caught in the trap, persuading me that it was a plot of mine enemies to send me beyond sea; and urging me not to accept it, assuring me to free me from any long trouble. On Tuesday I made an end of this, and on Friday sent it to a friend of mine under eight seals; and if you persist still to use me thus, assure yourself it shall be published. Whether I live or die, your shame shall never die, but ever remain to the world, to make you the most odious man living."

H. *Payton* and L. *Davis.* We both, upon our oaths, know this to be sir T. Overbury's hand.

SIMCOCKS'S Examination before my lord Coke, writ with his own hand.

He says that Weston many times, when sir T.

Overbury was in the Tower, told him, That my lord of Somerset charged him to look to Overbury well; for if ever he came out, one of us two must die.

L. Som. I would fain know whether Weston were examined, or no.

L. Wentworth. How long is it since this familiar acquaintance betwixt Simcocks and Weston?

Simcocks. He and I were of antient and familiar acquaintance long since.

Mr. Attorney. Weston had continually access to my lord, had rewards from him: My lord charged him to look to Overbury well. It could not be his marriage that made him so much fear; but what the secrets were that caused it, it is not the work of this day. Now to shew that the greatest matters of state were communicated to him, read Davis.

L. Davis examined. There was a packet of letters, and sealed, which as he takes, came from sir J. Digby, directed to the king; and his master sir T. Overbury opened it, took brief notes for my lord of Somerset, and sealing it again, sent both the notes and packets to him. Another of this he saw his master had at Newmarket from sir Thomas Edmundes to the king, out of which, after he had taken extracts, he sealed it up again, and sent both back by this examinant to my lord Somerset.

Mr. Attorney. I will not now, my lords, endeavour to press the greatness of this offence: But I urge it thus, That you may see there were no mean secrets betwixt my lord and sir T. Overbury, that might rather cause him to fear him, than the hindrance of his marriage: If that had been it alone, his going beyond sea would have served the turn.

L. of Som. exam. says, That amongst many other characters for names, that passed between sir T. Overbury and him, Simonist was for sir H. Nevil, Wolfy for the now lord treasurer, Ductius for my lord of Canterbury.

Mr. Attorney. In good faith, these two made plays of all the world besides themselves; but though it were a play then, it hath proved tragical since.

A LETTER of my lord of Northampton to my lord of Somerset.

"Now all is concluded about the form of the non-ality, I doubt not but God will bless the next bargain. I hope hereafter to find better pen and ink in this lady's chamber. Be st. ll happy. Underneath subscribed H. Northampton, and I am witness to this bargain. Fra. Howard."

This Letter was shewed my lord of Somerset, and he confessed the hand.

Mr. Attorney. For the second branch that I mean to follow; and that is, That you used the means to expose him to the Tower, and there to keep him close prisoner. It is a chain of eight links, and shall be shewed you upon eight points of the compass. But before we come to these, it is to be considered, that as no consultation is ripe in an hour, so no more

was theirs: for they purposed at first to have taken away his life by assault. And Franklin tells you the cause of this malice.

FRANKLIN examined before my lord Coke, but not upon oath.

He saith, That my lady Somerset said the cause of this hatred of sir T. Overbury was, that he would pry so far into my lord of Somerset, that he would put him down.

Sir D. WOODES examined before lord Coke.

He saith, My lady Somerset knowing there was some discontent betwixt Overbury and him, in respect of a suit that he crossed him in, told him, that if he would kill sir T. Overbury he should have 1000*l.* and besides, she would make his greatest enemy to become his greatest friend: and he knew no enemy he had in court but my lord of Rochester. He answered, That if my lord of Rochester would give him his hand, or but pass his word, if he did it, that he should escape, and have his pardon, he would do it. Upon this she paused, and desired some time to give her answer; and when he came again to her, she told him that could not be: but promised all favour possible unto him, and warranted him to go on upon her life.

L. of Som. exam. saith, It was once resolved somebody in court should fall out with Overbury, and offer him some affront; but that was not followed.

Mr. Attorney. Note, my lords, he does not say it was disliked. And now to the puddle of blood: the first link of which is, that the means to entrap Overbury for the Tower, was by the means of my lord of Somerset.

Sir DUDLEY DIGGS sworn.

Sir T. Overbury once told me, that he went to undertake the employment offered him to go beyond sea; but afterwards he sent me word by sir R. Mansel, that he had changed his mind. And sir R. Mansel told me farther, that he saw a letter from the lord of Somerset to Overbury, that dissuaded him from that course. Seeing Mr. Attorney hath called me so far out of the country for this small testimony, I wish sir R. Mansel were here to justify it.

My lord of Somerset's DECLARATION in writing to the king.

Being told by my Lord Chief-Justice that I was indicted, and was shortly to expect my Arraignment, I did not then believe him; for I did not look for that way. Your majesty hath three kingdoms, wherein to exercise the prerogative of your power, and but few that taste of the first of your favours; in which number I did think myself, if not the first, yet inferior to very few. And having committed no offence against your person, nor the state, I hope your majesty will not for this bring me to a public trial, which for my reputation's cause, I humbly desire to avoid. Grace truly given may be a benefit; for it is not enough to give life, and not to save reputation. But if I must come to my trial, knowing the presumptions may be strong against me, in respect I consented to,

and endeavoured the imprisonment of sir T. Overbury (though I designed it for his reformation, not his ruin), I therefore desire your majesty's mercy, and that you will be pleased to give me leave to dispose of my lands and goods to my wife and child, and graciously to pardon her, having confessed the fact. For myself, being uncertain how I shall be judged upon presumptions, I humbly desire that in the mean time you will be pleased to give my lord Hays and sir Robert Carr leave to come to me.

*Mr. Attorney.* The second link is, how that Elwes came to be Lieutenant of the Tower by your means: and yet that must have a colour; my lord of Shrewsbury and lord chamberlain must prefer him to you as their friend, though it was resolved before he should have the place.

*Sir J. Elwes* examined, but not on oath. He saith, sir T. Monson told him that Wade was to be removed; and that if he succeeded sir W. Wade, he must bleed, that is, give 2000*l.* And ten days after Wade was removed he came into the place, and paid 1400*l.* of the money at his uncle alderman Elwes's house to Dr. Campian.

*Mr. Attorney.* You may see they had ciphers for money. He must bleed; a strange pre-*stage!* And as it is impossible to serve God and man, so in that kind it is hard to serve a king.

*Sir Thomas Monson* examined, but not on oath, saith, my lord of Northampton, upon the displacing of Wade, moved the king for sir J. Elwes; and that he directed sir J. Elwes to go to the lords of Shrewsbury and Pembroke, to move my lord of Somerset to speak for him to the king.

*Sir Jervis Elwes's* examinat. When it was resolved Wade should be removed, and he to succeed him, then he was advised to desire my lord of Somerset to move for him; which he did accordingly: but took that only to be but for a colour, because it was resolved before.

*Mr. Attorney.* Now the third link concerns the placing of Weston for his keeper.

*Sir Thomas Monson* exam. Saith, he recommended Weston to the service of sir J. Elwes, and to keep sir T. Overbury, upon the countess of Somerset's entreaty: and farther saith, that my lord of Northampton was acquainted with the placing of him.

*R. Weston* exam. My lord and lady Somerset gave good words of him to the lieutenant.

*L. of Som.* exam. He denies the knowledge of Weston, either before his coming into the Tower, or since.

*Simcocks* exam. Weston, during the time sir T. Overbury was in his keeping, came often to my lord, had much money of him, and wondered sir T. Overbury had so good an opinion of my lord; and thought he had not so much wit as the world esteemed, for there was no man hindered his liberty but he: and whenever he came to my lord, he might use such means as Rawlins his man must not know.

[In this interim a scaffold broke, and there

was a great noise and confusion; but after silence was proclaimed, all hushed and quiet.]

*Mr. Attorney.* All the confessions of Weston were taken before conviction: and these two last witnesses are merely to his denying the knowledge of Weston. Now for the fourth link, which is the placing and displacing officers.

*Sir Jervis Elwes* exam. Saith, that Overbury was committed April 30th, and May 6th himself came to be Lieutenant of the Tower; and that Weston was preferred to be sir T. Overbury's keeper May 7th; and that all this time he served, he never had wages from him.

*Mr. Attorney.* Now the fifth link or point of the compass I promised to shew you, was, that this must not be done suddenly, but by degrees; and so he must be poisoned leisurely, to avoid suspicion. And in the mean space you entertained his father and mother with frivolous hopes; and yet indeed hindered and made opposition (but underhand) to all the means that were used for his delivery.

*Mr. Overbury* the father sworn. After my son was committed, I heard that he was very sick; I went to the court, and delivered a petition to the king: the effect whereof was, that in respect of my son's sickness some physicians might have access unto him. The king answered, that his own physician should go to him: and then instantly sent him word by sir W. Button, that his physician should presently go. Upon this I only addressed myself to my lord of Somerset, and none else; who said my son should be presently delivered, but dissuaded me from preferring any more petitions to the king: which notwithstanding, I (seeing his freedom still delayed) did deliver a petition to the king to that purpose; who said I should have a present answer. And my lord of Somerset told me, he should be suddenly relieved; but with this, that neither I nor my wife must press to see him, because that might protract his delivery; nor deliver any more petitions to the king, because that might stir his enemies up against him. And then he wrote a letter to my wife, to dissuade her from any longer stay in London.

My Lord of Somerset's LETTER to Mrs. Overbury.

"Mrs. Overbury; Your stay here in town can nothing avail your son's delivery; therefore I would advise you to retire into the country, and doubt not before your coming home you shall hear he is a freeman."

*Mr. Overbury.* Then after my son's death, he writ another letter to me.

My Lord of Somerset's LETTER to Mr. Overbury.

"Sir; Your son's love to me got him the malice of many, and they cast those knots on his fortune that have cost him his life; so, in a kind, there is none guilty of his death but I: and you can have no more cause to commiserate the death of a son, than I of a friend. But though he be dead, you shall find me as ready as ever I was to do all the courtesies that

possibly I can to you and your wife, or your children. In the mean time, I desire pardon from you and your wife for your lost son, though I esteem my loss the greater. And for his brother that is in France, I desire his return, that he may succeed his brother in my love."

*Mr. Attorney.* By this you see my lord's dissimulation. And I think he was a piece of a lawyer, by his insinuating with his next kindred, for fear of appeals. Now to come to the sixth link, which shews how light my lord of Somerset made both of sir T. Overbury's fortunes and sickness, read Simcocks.

*Simcocks exam.* Saith, That Weston told him he wondered sir T. Overbury should have so great confidence in my lord of Somerset, and think that he loved him so well; for he knew that he could not abide him, and thought of nothing less than his liberty.

*Sir John Lidcote sworn.* Saith, he desired my lord of Somerset that either he or sir R. Killigrew might have leave to see sir Thomas Overbury in his sickness, which my lord obtained from the king. And so they had a warrant from my lord of Northampton, and some other counsellors, to see him; and found him very sick in his bed, his hand dry, his speech hollow. And at this time he desired me to write his will; I proposed to come to him again the next day. Now being ready to depart, the Lieutenant going out before, Overbury asked me softly this question, Whether Somerset juggled with him, or not? But I then told him, as I believed, that I thought not. But the Lieutenant looking back, and perceiving that some whispering had passed, swore that I had done more than I could justify. But afterwards, coming to press my lord of Somerset about sir T. Overbury, I perceived he dealt not plainly with him. And once speaking with my lord about him, he gave a counterfeit sigh, (as this deponent conceived) for at that instant he smiled in my face.

*Mr. Attorney.* The seventh link is to shew you the manner of his keeping; which was close prisoner in the Tower, his offence being only a contempt: And who was the author of this, read sir Thomas Monson.

*Sir Thomas Monson* examined, but not upon oath, saith, My lord of Northampton and my lord of Somerset gave directions to the Lieutenant of the Tower to keep him close prisoner.

*L. Davis exam.* Saith, That he was a suitor to my lord of Somerset, that he might wait upon his master sir T. Overbury in the Tower, though he were shut up with him. But my lord answered, He shortly purposed to procure his total liberty, and this might hinder it.

*Mr. Attorney.* Now the eighth and last link is, in the interim that Overbury in the Tower was plyed with poisons, my lord thirsted after the news, to know what became of him, and continual posts went between him and my lady; and all this while bore him in hand with other pretences.

*Franklin* (but not upon oath) saith, That

being with my lady Essex, she told him that she had that day received a letter from my lord of Rochester, wherein he writ, That if Weston did not presently dispatch, sir T. Overbury would be out.

*Sir Jervis Elwes exam.* Saith, He received divers letters from my lady Essex, wherein she desired to know how Overbury did, that she might certify to the court.

*Lord of Som. exam.* Saith, That there passed many letters betwixt my lady and him, but not concerning Overbury. But then desired that this point might be altered; for it might be that some letters concerning Overbury might have then past betwixt them.

*Mr. Attorney.* My lord knew not whether any of these letters were extant, and therefore desired that this might be altered.

*Loubell*, an apothecary, a Frenchman, saith, That coming to my lord of Somerset, he asked him of Overbury, and how he did? and he said, ill. Another time also he sent for him to enquire about Overbury; and then he answered him, That he was ill, but hoped he might recover. What, says my lord, do you think he would recover if he were at liberty? And he answered, yes. Agam, my lord sent for him a third time; and carrying him into the gallery at Whitehall, asked him how Overbury did. He answered, He was very sick: And farther added, He found him ill before the 25th of June, that he came to him.

*L. of Som. exam.* Denies that ever he saw Loubell but once at Theobalds.

*Mr. Attorney.* Here again you see my lord falsified: But it seems, imagining or not knowing that Loubell could say more against him than he hath done, he denied the knowledge of him, as he did of Weston.

*L. Coke.* It was doubted Loubell might be a delinquent; and therefore I durst not examine him upon oath, no more than I did Franklin. But when in their testimony they accuse themselves, it is as strong as if upon oath.

*Mr. Attorney.* Now in respect Overbury had a working brain, my lord of Northampton must in shew negotiate about his delivery, and the terms of his coming out, whilst they intended his poisoning: That was real, and the other but in pretence.

My lord of Northampton's First LETTER to my Lord of Somerset.

"In this business concerning Overbury there must be a main drift, and a real charge: You may imagine the meaning."

My Lord of Northampton's Second LETTER to my Lord of Somerset.

"I yesterday spent two hours in prompting the Lieutenant, with as great caution as I could, and find him to be very perfect in his part. And I long exceedingly to hear his report of this adventure."

My Lord of Northampton's Third LETTER to my Lord of Somerset.

"You need not use many instruments, so long as I am in town, with the Lieutenant."

My Lord of Northampton's Fourth LETTER to my Lord of Somerset.

"I cannot deliver with what caution and discretion the Lieutenant hath undertaken Overbury. But for his conclusion, I do and ever will love him the better; which was this, That either Overbury shall recover, and do good offices betwixt my lord of Suffolk and you; which if he do not, you shall have reason to count him a knave: or else, that he shall not recover at all, which he thinks the most sure and happy change of all; for he finds sometimes from Overbury many flashes of a strong affection to some enemies of his."

*L. of Som.* I acknowledge these Letters to be my Lord of Northampton's; and all those that I sent to him were delivered me after his death by sir R. Cotton: all which the evening before my commitment to the dean of Westminster's, I burnt.

*Mr. Attorney.* These Letters of Northampton were found in the box sir R. Cotton gave Mrs. Farnforth. And here my part ends: and that that rests behind, I leave to the two Sergeants.

*L. H. S.* My lord, you have heard what hath been urged against you, and may imagine that there rests much behind: And therefore you had best confess the truth; otherwise you will but more and more wind in yourself.

*L. of Som.* My lord, I came with a resolution to defend myself.

After this my Lord High-Steward and the rest of the lords retired themselves.

*Serj. Montague.* May it please your grace, my Lord High-Steward of England, it falls to my part to discover those secrets that were concurrent and present with the murder of sir T. Overbury. And there be three things that make evidently that my lord of Somerset was the principal procurer: 1. A powder that was sent sir T. from your own hand, which was poison, and taken by him. 2. Poison in tarts, which you occasioned to be sent. 3. That you thirsted after the success, and wondered that he was no sooner dispatched. How the first general light of this poisoning came out, Mr. Attorney yesterday excellently observed that it was by a compliment; so now I shall shew how out of the compunction of an offender's heart these came to be discovered: Franklin confesses the poisons he bought for this purpose, and the trial that he made of them before they were sent.

And 1. For the powder, it was sent in a letter written with my lord's own hand to Overbury: And you writ that it would make him a little sick (which it did in a high degree;) and that upon this you would take occasion to speak for him to the king. And this letter, with the powder, you sent to him by Davis; and the powder was poison. 2. For the poisoned tarts: At first you sent them good, to disguise the bad; but after came the poisoned tarts which you sent him. And to make this appear that they came from you, continual posts ran between you and my lady; and she writes to the Lieutenant, "I was bid to tell you, That in the

tarts and jellies there are letters; but in the wine none: And of that you may take yourself, and give your wife and children: but of the other, not. Give him these tarts and jelly this night, and all shall be well." And it appears that the letters did signify poison. 3. The third charge that I lay upon you, is, That you writ to my lady that you wondered these things were not dispatched. She presently sent for Franklin, and shewed him your letters; which he read, and remembers the words. She then also sent for Weston to dispatch him quickly: who answered, That he had already given him as much as would poison twenty men. And in all these things, my lord, I shall prove you as guilty as any who-soever hath been formerly arraigned: And Weston, upon his Arraignment, affirmed all these things to be true. Now to the proof: He sends a petition to the lord Coke, to desire to speak with him, the very night before Elwes's arraignment, he knowing nothing of it; and says, That his conscience troubles him so, that he cannot sleep, and therefore desires to reveal something to him; and that until he had done it, he could never be at quiet.

*Franklin's exam.* Mrs. Turner desired him to buy some of the strongest poisons he could get; which he did, and brought them to Mrs. Turner and my lady, and at that time they both swore him to secrecy. And afterwards he perceived that these poisons were sent to the Tower; and amongst the rest a kind of white powder called arsenick, which she told him was sent Overbury in a letter; and after shewed him, and told him of many more poisons that were sent, and to be sent by Weston to Overbury. And those poisons which my lady shewed him, were wrapped in a paper, written with a Roman hand. And they tried some of the poisons upon a cat, or a dog, which was wonderfully tormented, and died.

*Weston's exam.* My lady told him that he should be well rewarded; but before she could procure that, the fact must be done: And that he had already given him as many poisons as would poison twelve men.

*Ld. of Som. exam.* Saith, That he caused a vomit to be sent him at his own request, which was a white powder; and it was the same that he had had before of sir R. Killegrew, and sent by Rawlins; and it may be that this second sent by Davis was in a letter.

*L. Davis exam.* Saith, That three weeks after sir Jervis Elwes came to be Lieutenant of the Tower, my lord sent, in a letter by him, a white powder to sir T. Overbury; and that it would make him a little sick, so he might have the better opportunity to speak for him to the king; and he saw this letter. Next day Weston told him how sick Overbury had been, and shewed him what loathsome stuff he had vomitted, which he would have had to have carried to the lord Somerset; but Weston would not let him, saying, It was an unfit sight to shew him.

*H. Payton exam.* Saith, That this powder

gave sir Thomas fifty or sixty stools and vomits for four or five days.

*Serj. Mont.* Four several juries have found that this powder was poison, and of this poison sir T. Overbury died; now for the proof of the poisoned tarts.

*La. of Som. exam.* She saith, She knoweth of no tarts were sent sir T. Overbury, but either from herself or my lord.

*Sir Jervis Elwes exam.* Saith, By letters my lady meant poison, but the word was then used to clear his eyes.

The Lady Somerset's Letter to Sir Jervis Elwes.

"I was bid to bid you say, that these tarts came not from me; and again, I was bid to tell you, that you must take heed of the tarts, because there be letters in them, and therefore neither give your wife nor children of them, but of the wine you may, for there are no letters in it; sir T. Monson will come from the court this day, and then we shall have other news."

*La. of Som. exam.* Saith, That by letters she meant poison.

*Serj. Mont.* Now for my lord's haste to spur this on, (and here I end) read Franklin's Examination.

*Franklin exam.* Saith, in a letter which my lady told him was sent her from my lord, there were these words, 'That he wondered things were not yet dispatched,' and that he thinks was meant about Overbury, by reason of her then speeches to him, and present sending for Weston.

*Serj. Crew.* My part is now to discover those acts that succeeded the fact, and then my lord begins to sew fig-leaves: 1. Practices to suppress all testimonies. 2. To surprize all letters. 3. To get a pardon, and desires a pattern of the most large pardon. Now for your practice to suppress the testimony of Franklin; you come from court and tell my lady, that Weston was apprehended; then Mrs. Turner sends to Franklin to come to my lady at one o'clock at night. Then my lady tells him that Weston had confessed all, and that we shall all be hanged; and at that time did again give him another oath for secrecy. And during this dialogue, she went into an inner room, to speak with one (whom he took to be my lord of Somerset); when she came out, then she instructs Franklin what to say, if he were examined, but by no means to confess the knowledge of her, or of Mrs. Turner: That the lords will promise him, upon his confession, hope of a pardon, but that by no means he should believe their fair words; for if he did, then they should all be hanged. Now for the course you took in suppressing of letters: Lawrence Davis, after his master's death, made suit to serve my lord, then his suit was rejected; but last summer, fearing this might break out, sends Rawlins to him, proffers him all courtesy, and desires that he would send to him all those letters and copies of letters, which

had past between sir T. Overbury and him. Davis did so; and upon this my lord gave him 30*l.* After Weston and Mrs. Turner were committed, there was a trunk, wherein were many letters: This trunk stood at the house of Weston's son's master. For this trunk, my lord (after he was commanded to forbear the court) makes a warrant to the constable to break it open, and to send unto him those bundles of writings that were in it; pretending they were certain bonds and writings belonging to Mrs. Hide, a sister of Mrs. Turner's. According to this direction, those letters that were in the trunk were brought unto him. Now for those letters that passed betwixt my lord of Northampton and you; thirty of those you had sent him, were delivered you after his death by sir R. Cotton; and all these the night before your commitment to the dean of Westminster you burnt. For those letters of Overbury's that you had, sir R. Cotton advised you not to burn, but keep them: And all of them being without dates, Cotton told you there might be such dates given them as would be much to your advantage: So you gave him order for that purpose, to give dates to those letters. According to your directions he did so; but not till after Weston's Arraignment: And then understanding at what time the poisons in the indictment were said to be delivered, he dated some of them with a purpose to cross the indictment: and some of the letters he razes, some pastes, some pares, as they were advantageous or disadvantageous to him; and all this to obscure the fact. My next aggravation is, that my lord went about to get a pardon: and that precedents should be sought of the largest that ever were granted; and they were brought him. Why should he seek this, but to be freed from this murder? And in the precedent of Henry 8th's pardon to cardinal Wolsey, after many offences were forgiven, both in the beginning and ending, then in the midst come in all treasons and murders. Lastly, now I urge this declaration you sent to the king; wherein you seemed to doubt yourself, because that you endeavoured and consented to the punishment of sir T. Overbury: and in respect you had formerly been so much in the king's favour, thought you might expect mercy: and seeing you had never done any offence against the king, nor the state, hoped that you should never be called in question for this; But if you should, then you implored grace for your wife: but you never sought a pardon for her, as you did for yourself. And then, lastly, you desire to have leave to dispose of your lands to your wife and child. Now for the proofs of all this that I have said, first read Franklin, for the suppression of his testimony.

*Franklin's exam.* When my lord of Somerset came to town, after Weston's apprehension, he (Franklin) was sent for to the Cock-Pit; and there my lady swore him again to secrecy, told him Weston was taken, and that it was likely he should be so shortly, and that they should all be hanged. Then retiring into an inner-



room, to speak with one, (whom he verily believes to be my lord of Somerset) she came again, and told him, that the lords, if they examined him, would put him in hope of a pardon upon confession: But, said she, believe them not; for when they have got out of you what they would, we shall all be hanged. Nay, saith, Mrs. Turner, madam, I will not be hanged for you both.

**MARY ERWIN'S Examination, (not upon oath)**  
Mrs. Turner's maid.

Mrs. Turner sent her for Franklin, to bring him to the Cock-pit, at ten o'clock at night; and is sure that night my lord of Somerset came from court, and was at the Cock-pit when she came.

**Lady Som. exam.** She confesseth all that Franklin said concerning her discourse with him; and that my lord was with her that night in the Cock-pit.

**Mr. Serj. Crew.** Next follows the proof for surprizing letters.

**L. Davis exam.** Saith, that in summer last my lord sent Rawlins to him, to desire that if he had any letters, either from my lord to sir T., or from him to my lord, that he would send them by him; which he did: And for this my lord did afterwards send him by Rawlins 30*l*.

**GEORGE ERRAT the Constable's Examination.**

Saith, that Poulter, a messenger, brought him a warrant from my lord of Somerset, to break open and search a house for certain writings, which were pretended to be one Mrs. Hide's, a sister of Mrs. Turner's; and that he shewed him a part of the warrant only, but not all; so that for that cause he would not execute it. Whereupon, Poulter got sinths himself to break open the house and doors, and found in the cellar a box and bag of writings, where he saw the name of Mrs. Turner; and those were carried to my lord.

**L. of Som.** For these letters, sir R. Cotton delivered them me back after my lord of Northampton's death; and concerning the dates, you need not trouble yourself, for it now grows late, and I shall have very little time to answer for myself. I confess, sir R. Cotton delivered me back those letters I had sent my lord of Northampton, and that I burnt them; and that some parts were cut off as impertinent.

**Sir R. Cotton exam.** Saith, my lord delivered into his hands many of sir T. Overbury's letters; and that he cut and dated them by my lord's direction; and that he put in dates the next day to some of the letters, after Weston's arraignment.

**Mr. Serj. Crew.** I desire my lord will be pleased to look upon this book of Overbury's letters. And now for the copy of the largest pardon:

**Sir R. Cotton** saith, that at my lord of Somerset's intreaty, a little before Michaelmas last, he got him a draught of the largest pardon, and the precedent was of one that king Henry 8th granted to cardinal Wolsey; and if

he desired such a one, I told him the best way was to follow precedents.—The pardon was read; wherein, amongst other offences, before and after, of small account, treason and murder be foisted in.

**Mr. Serj. Crew.** And this was it that made Weston fear that the net was for the little fishes, and that the great ones could break through.

**Alderman Bowles exam.** Saith, that after he had persuaded Weston from standing mute, he told him, That he feared the net was laid for the little fishes, and that the great ones would break through.

**Mr. Serj. Crew.** The last thing I urge, is my lord's Declaration to the king, which I desire should be read.—The same that were noted before, after he understood by my lord Coke that he was to be arraigned, &c.

**Mr. Attorney.** You see, my lords, in this Declaration of my lord Somerset there is a brink of confession; I would to God it had a bottom. He urges that in respect he hath formerly been so great in the king's favour, and had never committed any treason, neither against his person nor state, that he should never have been called to an account for this fault, though he had been guilty: That grace timely given is a benefit; and that it is not only enough to give life, but to save reputation. But if he must be urged, then he desires his wife might be pardoned, having confessed the fact: And that if he must be put upon the hazard of a trial, the king will before give him leave to dispose of his lands and goods to the use of his wife and child; and that in the mean time he will give my lord Hay and sir R. Carr leave to come to him.

**Mr. Serj. Crew.** This declaration is an implicative confession.

**Mr. Attorney.** I think there is none here but wonders, seeing that all poisons be works of darkness, how this should so clearly appear: But it seems, his greatness in fortune caused this grossness in offending.

**L. H. S.** My lord of Somerset hath behaved himself modestly in the bearing: And only this, (before you speak for yourself) by way of advice, I will say unto you, in giving you two examples: Your wife, that yesterday confessed the fact; and there is great hope of the king's mercy, if you now mar not that which she made. On the contrary, Byron, who when the king of France used all the means he possibly could, to bring him to the acknowledgment of his offence, which if he had done, there was no question to be made of the king's grace. And I think there never was, nor is, a more gracious and merciful king than our master. But Byron still persisting in the denial of his fact, you know his end.

**L. of Som.** I am confident in mine own cause, and am come hither to defend it. And in respect the king's counsel have been so long in speaking against me, that neither my memory nor notes will give me leave to answer every particular in order, I will begin with

some of the last things that they seemed most to urge against me, and so answer the rest that I think do any thing at all touch me. For the powder that was sent Overbury to make him sick, that so I might have the better occasion to speak for him to the king for that purpose, he himself desired it, and upon his letter I sent it. And though it be true that I consented to his imprisonment, to the end he should make no impediment in my marriage; yet I had a care of his lodgings, that they should be where he might have the best air, and windows both to the water and within the Tower, so that he might have liberty to speak with whom he would. So you see it was against my intention to have him close prisoner.—Whereas the breach of friendship betwixt Overbury and me is used for an aggravation against me; it is no great wonder for friends sometimes to fall out, and least of all with him; for I think he had never a friend in his life that he would not sometimes fall out with, and give offence unto: And this they termed insolence in him; but I give it a better name.—For the great trust and communication of secrets between Overbury and me, and for the extracts that he took of ambassadors' letters, I confess this; I knew his ability, and what I did was by the king's commission. For other secrets, there were never any betwixt us.—And for his fashion of braving both in words and writing, there was none that knew it better, nor feared it less than myself. At that time he was in disgrace with the queen, and for that cause was enforced for a time to absent himself from court, and this was for some particular miscarriage of his towards her majesty; and though I laboured his reconciliation and return, yet he with main violent terms laid the cause of his disgrace upon me. And another time my lord of Salisbury sent for him, and told him, That if he would depend upon his favour, he would presently help him with a suit that should benefit him 2000*l.*—which presently Overbury, coming to me, told me of: To which I answered, He did not need to rely upon any body but me; and that, if he would, he might command my purse, and presently have more than that; and so he had. And yet afterwards, upon some causeless discontent, in a great passion he said, That his love to me had put him out of my lord of Salisbury's favour, and made him lose 2000*l.* Whereas it was urged that I caused him to refuse the employment that was imposed upon him; it is not so; for I was very willing he should have undertaken it, but he not. My lord of Canterbury moved him to it, but not without my privy; for I should have been glad to have removed him, both in respect of my marriage and his insolence. But Overbury came to me, and said, I will tell sir Dudley Diggs I will undertake this embassy, that he may so return answer to my lord of Canterbury; but then you must write to me not to do so, and so take it upon you. Whereas it is pretended that I should cause poisoned tarts to be sent him to the Tower; my wife in her

VOL. II.

confession saith, That there were none sent but either by me or her; and some were wholesome, and some not: Then it must needs follow, that the good ones were those which I sent, and the bad hers.

L. *Liste*. If you had sent him good tarts, you should have seen them conveyed by a trusty messenger.

L. *Compton*. My lady, in her letter to the Lieutenant, writes, I was bid to bid you do this. Who should bid her?

Mr. Serj. *Montague*. The continual letters between my lord and her argues that.

L. of *Som*. If Franklin knew me so well, and that I was privy to the plot, why should then my wife and I (as he pretends) when he was there, speak so closely, and always out of his hearing and sight? But for Overbury, my furthest intent in his imprisonment was, that he should be no impediment to my marriage; and this I communicated to my lord of Northampton and Elwes.

Serj. *Montague*. You could not couple yourself worse than with them two.

L. of *Som*. Whereas Simcocks says, from the relation of Weston, That he so often came to me; I protest I never saw him till after Overbury's death, and then Rawlins brought him to me.

Serj. *Crew*. Sir Jervis Elwes in his examination saith, that Weston many times told him, that my lord of Somerset many times sent for him; And for this purpose you shall have Weston's examination.

Weston's examin. Saith, That my lord of Somerset many times sent him directions, before Overbury's going to the Tower, to appoint meetings betwixt him and my lady.

L. of *Som*. This may hold, and yet that I never spake to him: So for those messages he spoke of, he might receive directions from me by a third person. And for that which Payton alledges about the powder which I sent, and made sir T. Overbury so sick; that powder I sent was one of them which I received from sir R. Killegrew.

Serj. *Crew*. But this, my lord, was none of the powders you received from sir R. Killegrew, for you had three from him: The first was lost; the second you sent him by Rawlins; and the third yourself took at Buly: Now a fourth, which was sent by Davis, was that that made him so sick, and gave him so many stools; and that was poison, and sent three weeks after that that Rawlins carried.

Sir R. *Killegrew* saith, That my lord desired him to give him powders, which he himself sometimes used to take for a vomit; but he thought it had been only for himself, not that he had had a purpose to send it to sir T. Overbury; and that my lord never had of this powder of him but thrice.

Mr. *Rawlins*, exam. Saith, That the first vomit sir R. Killegrew gave my lord, was laid upon a tester of a bed, and lost; and that then upon that he got another, which my lord sent to sir T. Overbury by him; and afterwards a

3 s

third, which my lord took at Boly: But he never heard that sir T. Overbury desired my lord to send him any.

*Franklin* exam. Saith, That he provided a white powder, which was poison, for my lady called it arsenick; which, as my lady did afterwards tell him, was sent to sir T. Overbury in a letter.

*L. of Som.* I do not think you can take Franklin for a good witness. Now for the antedates which are used as a circumstance against me; Sir R. Cotton moved me to it, saying, That the dates might prove useful to me at this time. Whereas my lord of Northampton writes in one of his letters, that he had prompted the Lieutenant: I conceive his meaning to be, That he should endeavour to make Overbury be a good instrument betwixt my lord of Suffolk and me; and to that end, those whom he thought to be his principal enemies should be the only causers of his freedom. And what I understand by Elwes's conclusion, which my lord of Northampton relates in the end of one of his letters to me. That death is the best way; I wish that my answers to those letters were now to be seen: and if I had ever thought that those letters of my lord of Northampton's would be dangerous to me, it is likely I would never have kept them. For the warrant I made, my wife desired me to do it for Mrs. Turner's sake: Packer forged it; and told me, I might do it as a counsellor alone, without other hands; for I would have had at that time my lord Knowles to have joined with me, but that he was at council. And when this warrant was sent, I was not commanded from court, as is pretended.

*L. H. S.* All the council together could not justify the making of such a warrant.

*L. of Som.* For my endeavouring to get a pardon; having had many things of trust under the king, and the custody of both the seals, without particular warrant, I desired by this means to be exonerated. And for all general words, the lawyers put them in without my privacy. And for the precedent of the largest pardon, which I had from sir R. Cotton, it was upon this occasion: Sir R. Cotton said, In respect you have received some disgrace in the opinion of the world, in having past that pardon which the last summer you desired, especially seeing there be many precedents of larger; I would have you now get one after the largest precedent, that so by that addition you might recover your honour. And upon this I had him search for the largest.

*Serj. Mont.* Sir R. Cotton says otherwise.

*Sir R. Cotton's* exam. Saith, My lord desired to seek precedents of the largest pardons.

*L. of Som.* For the Declaration which I lately sent to the king, and particularly the word [mercy], which is now so much urged against me, it was the Lieutenant's; for I would have used another, but he said it could be nothing prejudicial unto me: But when I writ it, I did not think thus to be sifted in this Declaration; for I in that, in all humility, did so

far endeavour to humble and yield myself, that the king might the better express his grace. And for the words, [That I did consent to and endeavour the imprisonment of sir T. Overbury] it is true, for the reason there alledged.

*Mr. Attorney.* May it please your grace, my lord here hath had a most gracious hearing, and hath behaved himself modestly and wittily.

*L. H. S.* If you have any more to say, my lord, you shall be heard at length; we will not straiten you in time.

*L. of Som.* For Loubell, I never saw him but twice: he affirms the contrary, I deny it; and there is none else that proves it but himself. For sir R. Cotton, I could wish that he were here to clear many things that now be obscure.

*Mr. Attorney.* If he were here he could not be sworn for reason of state, being held for a delinquent.

*L. of Som.* For sir D. Wood, there was a suit wherein he might have benefited himself 1200*l.* which I was willing to further him in, conditionally, that Overbury should have been a sharer: But for the not effecting of it, it seems, he took some dislike of sir T. Overbury. The money that is said sir J. Elwes gave for his place, I had no part of it. Whereas the shifting of offices is urged against me, to make the more easy way for Elwes's entrance; it is well known, the reason of Wade's displacing was in respect of his carelessness, in suffering the lady Arabella to have a key, by which she might have conveyed herself out of prison. More I cannot call to mind; but desire favour.

*Mr. Attorney.* It hath, my lord, formerly at arraignments, been a custom, after the king's counsel and the prisoner's defence hath been heard, briefly to sum up what hath been said: But in this we have been so formal in the distribution, that I do not think it necessary: And therefore now there is no more to be done, but that the peers will be pleased to confer, and the prisoner to withdraw until the censures be past.

*E. of Som.* My lords, before you go together, I beseech you give me leave to recommend myself and cause unto you: As the king hath raised me to your degree, so he hath now disposed me to your censures. This may be any of your own cases, and therefore I assure myself you will not take circumstances for evidence; for if you should, the condition of a man's life were nothing. In the mean time, you may see the excellence of the king's justice; which makes no distinction, putting me into your hands for a just and equal censure. For my part, I protest before God I was neither guilty of, nor privy to, any wrong that Overbury suffered in this kind. A man sensible of his own preservation, had need to express himself.

So he being withdrawn from the bar, my Lord High Steward briefly reported to the lord the proofs against my lord of Somerset. Then the lords by themselves (and my Lord Steward for his case, but returning before the

rest) staid some time together; in which interim they sent for the two chief justices. Being returned, the serjeant-cryer, Mr. Fenshaw, called every lord by his name, Robert lord Dormer, and so to the rest, before my Lord High Steward spake.

*L. H. S.* Robert lord Dormer, how say you? Whether is Robert earl of Somerset Guilty of the felony, as accessory before the fact, of the wilful poisoning and murder of sir T. Overbury, whereof he hath been indicted and arraigned, or Not Guilty? And so particularly to every lord, one by one.

*L. Dormer.* Guilty, my lord: (Standing up, and bare-headed; then sitting again.) My lord Norris, when it came to him, said, Guilty of Murder: But being told by my Lord High-Steward, that he must say either Guilty, or Not Guilty, to the indictment, he said, Guilty. Then Mr. Lieutenant brought the Prisoner again to the Bar: But he had before taken off his George himself.

*Mr. Attorney.* My Lord High-Steward, Robert earl of Somerset hath been indicted and arraigned, and put himself upon his peers, who all, without the difference of one voice, have found him Guilty; I pray Judgment.

*Mr. Fenshaw.* Robert earl of Somerset, hold up thy hand. Whereas thou hast been indicted, arraigned, and pleaded Not Guilty, as accessory before the fact, to the wilful poisoning and murder of sir T. Overbury, and hast put thyself, upon thy peers, who have found thee Guilty, what hast thou to say for thyself, why Sentence of Death should not be pronounced against thee?

*L. of Som.* The sentence that is past upon me must be just: I only desire a death according to my degree. For that Simcocks said —

*L. H. S.* My lord, you are not now to speak any more in your defence: but why Judgment of Death should not be pronounced.

*L. of Som.* Then I have no more to say; but humbly beseech you my Lord High-Steward and the rest of the lords to be intercessors to the king for his mercy towards me, if it be necessary.

My Lord High-Steward, taking the white-staff from sir R. Coningsby, pronounced sentence.

*L. H. S.* Robert earl of Somerset, whereas thou hast been indicted, arraigned, and found Guilty, as accessory before the fact, of the wilful poisoning and murder of sir T. Overbury; you are therefore to be carried from hence to the Tower, and from thence to the place of execution, where you are to be hanged till you be dead: And the Lord have mercy upon you.

*L. of Som.* My lords the peers, I beseech you, as you have been the judges of this day, so you will be my intercessors.

Then my Lord Steward broke his staff, the court dissolved, and the prisoner was carried away.

Afterwards the Earl and his countess received

several reprieves, during which he wrote to the king the following obscure Letter\*.

“ May it please your majesty; By this gentleman, your majesty's Lieutenant, I under-

\* It is not improbable that some expressions in this letter may have relation to a report spread about at that time, of Somerset's threatening message sent to king James by the Lieutenant of the Tower, that if he had not his pardon, he would discover an important secret, which it was the king's interest to have concealed.

The following passage in Weldon throws some light on this matter; “ And now for the last act enters Sotherset himself on the stage, who being told as the manner is by the Lieutenant, that he must provide to go next day to his Trial, did absolutely refuse it, and said they should carry him in his bed: that the king had assured him, he should not come to any trial, neither durst the king to bring him to trial; this was in an high strain, and in a language not well understood by George Moore, Lieutenant in Elwes his room) that made Moore quiver and shake, and however he was accounted a wise man yet was he near at his wits end; yet away goes Moore to Greenwich, as late as it was, being 12 at night, bounceth at the back stairs as if mad, to whom came Jo. Loveston, one of the grooms, out of his bed, enquires the reason of that distemper at so late a season; Moore tells him, he must speak with the king; Loveston replies, he is quiet, which, in the Scottish dialect, is fast asleep; Moore says, you must awake him; Moore was called in (the chamber left to the king and Moore); he tells the king those passages, and desired to be directed by the king, for he was gone beyond his own reason to hear such bold and undutiful expressions, from a faulty subject against a just sovereign: the king falls into a passion of tears. ‘ On my soul, Moore, I wot not what to do, thou art a wise man, help me in this great straight, and thou shalt find thou dost it for a thankful master,’ with other sad expressions; Moore leaves the king in that passion, but assures him he will prove the utmost of his wit to serve his majesty, and was really rewarded with a suit worth to him 1500*l.* (although Anandale, his great friend, did cheat him of one half) so there was friendship in friendship.—Sir George Moore returns to Somerset, about three o'clock next morning of that day he was to come to trial, enters Somerset's chamber, tells him he had been with the king, found him a most affectionate master unto him, and full of grace in his intentions towards him, but said he, to satisfy justice you must appear, although return instantly again without any further proceeding, only you shall know your enemies and their malice, though they shall have no power over you: With this trick of wit he allayed his fury, and got him quietly, about eight in the morning, to the Hall, yet feared his former bold language might revert again, and being brought by this trick into the toil, might have more enraged

tand of some halt you made, and the cause of it, at such time as he offered to your majesty my letters; but soon after your majesty could resolve yourself, and behold me nothing so diffident of you, but in humble language petitioning your favour; for I am in hope that my condition is not capable of so much more misery, as I need to make my passage to you by such way of intercession.—This which follows after, I offer your majesty, though not as to yourself, for upon less motive you can find favour for me.—Now I need only move, not plead before your majesty, as my case doth stand; for what I seek to have done, follows upon what you have already done, as a consequence and succeeding growth of your own act.—But to the intent that your majesty may see that there is enough to answer those (if

him to fly out into some strange discovery, that he had two servants placed on each side of him, with a cloak on their arms, giving them a peremptory order, if that Somerset did anyway fly out on the king they should instantly hoodwink him with that cloak, take him violently from the bar, and carry him away; for which he would secure them from any danger, and they should not want also a bountiful reward. But the earl finding himself over-reached recollected a better temper, and went on calmly in his trial, where he held the company until seven at night. But who had seen the king's restless motion all that day, sending to every boat he see landing at the bridge, cursing all that came without tidings, would have easily judged all was not right, and there had been some grounds for his fear of Somerset's boldness; but at last one bringing him word he was condemned, and the passages, all was quiet. This is the very relation from Moore's own mouth, and this told to two gentlemen, of which the author was one, that had no assurance of their honesty, but though he failed in his evidence, or rather doted at this instant, yet they never failed not in that worth, inherent in every noble spirit, never speaking of it till the king's death, both the gentlemen being now alive, and had this verbatim from Moore in Wanstead Park.—And there were strong inducements to believe Somerset knew that by him, he desired none other in the world should be partaker of, and all that was not peace within the peacemaker himself: for he ever courted Somerset to his dying day, and gave him 4000*l.* per ann. for fee farm rents, after he was condemned, which he took in his servants names, not his own (as then being condemned not capable of) and he then resolved never to have pardon. I have heard it credibly reported, he was told by a wizard, that could he but come to see the king's face again, he should be reinvested in his former dearness: this had been no hard experiment, but belike he had too much religion to trust to wizards: or else some friends of his had trusted them, and been deceived by them, and he had little reason to put confidence in them.—Many believe him guilty

any such there be) as do go about to pervert the exercise of your power, and to turn it from its own clear excellency, for to minister unto their passions; I have presumed to this end to awake your majesty's own conceit upon this subject, which can gather to itself better and more able defences in my behalf upon this view. For though the acts of your mercy which are not communicable, nor the causes of them with others; as derived from those secret motives which are only sensible and privy to your own heart, and admit of no search or discovery to any general satisfaction; and that under this protection I might guard my particular sufficiently; yet my case need not hide itself, but attend the dispute with any, that would put upon it a monstrous and heavy shape: though that I must acknowledge, that both life and

of Overbury's death, but the most thought him guilty only of the breach of friendship (and that in a high point) by suffering his imprisonment, which was the high way to his murder; and this conjecture I take to be of the soundest opinion; for by keeping him out of the action (if it were discovered) his greatness fortified with innocence, would carry their nocencies through all dangers. For the gentleman himself, he had misfortune to marry such a woman in such a family, which first undermined his honour, afterwards his life (at least to be dead in law): nor did any thing reflect upon him in all his time of favourite, but in, and by that family, first in his adulterous marriage, then in so hated a family, and the bringing in Cranfield and Ingram, as projectors, all by his wife and friends means; otherwise he had been the bravest favorite of our time, full of majesty, employing his time like a statesman, and the king kept correspondency with him by letters almost weekly to his dying day. And here have we brought this great man to his end with his countess, Mrs. Turner, Weston, Franklyn, and Elwes died in the Tower, and here died this great business, Weston ever saying it never troubled him to die with so many blue ribbands: and it is verily believed, when the king made those terrible imprecations on himself, deprecations of the judges, it was intended the law should run in its proper channel, but was stopt and put out of course, by the folly of that great clerk sir Edward Coke, though no wise man, who in a vain-glorious speech to shew his vigilancy, enters into a rapture as he sate on the bench, saying "God knows what became of that sweet babe prince Henry" (but I know somewhat) and surely in searching the cabinets he lighted on some papers that spake plain in that which was ever whispered, which had he gone on in a gentle way, would have fallen in of themselves, not to have been prevented; but this folly of his tongue stopt the breath of that discovery of that so foul a murder, which, I fear, cries still for vengeance." Weldon, Court and Character of king James, 115.

It does appear that there was in Somerset's

estate are forfeited to you by law; yet so forfeited, that the same law gives you the same power to preserve, as it doth to punish, whereby your majesty's higher prerogative doth not wrestle with it, nor do you infringe those grounds by which you have ever governed, so as the resistance is not great, that your majesty hath for to give life, and which is less in the gift of estate, for that the law casts wholly upon yourself, and yields it as fit matter for exercise of your goodness.—Once it was your majesty's gift to me, so it may be better not taken, for to avoid to take that, which hath been once their own; and I may say farther, that the law hath not been severe upon the ruin of innocent posterity, nor yet cancelled nor cut off the merits of ancestors, before the politick hand of state had contrived it into these several forms,

keeping an important secret of which the king dreaded a discovery. "Some," says Harris, "have thought the discovery dreaded was the manner of prince Henry's death, which was believed to have been by poison; but if I may be allowed to offer a conjecture, it was the revealing of that [most unnatural] vice to which James seems to have been addicted, that was the object of his fear." See Harris's Historical Account of James 1st, 69, 205, and Osborn, Weldon, and Peyton, as quoted in pp. 70, 71, of that work.

It is certain a suspicion extensively prevailed that prince Henry was killed by poison. The following Report of the state of his body after death is extracted from "Truth brought to light by Time, &c."

Dissecto illustrissimi Principis corpore hæc à nobis notata sunt inspectione.

"Primo, animadvertimus ipsius jecur colore pallidius quibusdam in locis sublividam, cistam autem fellis a bile vacuam, flatu vero turgidam.—Secundo, Lienem habuit variis in locis præter naturam nigram.—Tertio, Ventriculum nulla ex parte læsum.—Quarto, Diaphragma multis in locis demigratum.—Quinto, Pulmones nigros varie maculatos et ichore multo repletos.—Venas habuit in posteriore cerebri parte pleniores; ventriculos autem aqua limpida plenos.

In quorum fidem præsentem relationem manu propria subsignavimus die 7 Novembris, 1612. Dr. Mayerne; Dr. Atkins; Dr. Hammond; Dr. Palmer; Dr. Gifford; Dr. Butler.

Mortuus est illustrissimus Princeps sexto die Novembr. 1612, tempore vespertino: ejusque funus celebratum septimo die Decembris proxime sequentis."

The Dissection of the Body of prince Henry.

"1st, We found his liver paler than ordinary, in certain places somewhat wan, his gall without any choler in it, and distended with wind.—2dly, his spleen was in divers places more than ordinarily black.—3dly, his stomach was in no part offended.—4thly, his midriff was in divers places black.—5thly, his lungs were very black, and in divers places spotted, and full of a thin watery blood.—Lastly, the veins

as fitted to their ends of government.—To this I may add, that whereupon I was judged, even the crime itself might have been none, if your majesty's hand had not once touched upon it, by which all access unto your favour was quite taken from me. Yet as it did at length appear, I fell rather for want of well defending, than by the violence or force of any proofs; for I so far forsook myself, and my cause, as that it may be a question whether I was more condemned for that, or for the matter itself, which was the subject of that day's controversy.—Then thus far nothing hath appeared, wherein your majesty hath extended for me your power, beyond the reasonable bound; neither doth any thing stand so in the way of your future proceedings, but rather make easy your majesty's favour for my relief.—What may then be

in the hinder part of his head were fuller than ordinary, but the ventricles and hollowness of the brain were full of clear water.

In witness whereof, with our own hands we have subscribed this present relation, the 7th day of November, 1612.—Mayerne; Atkins; Hammond; Palmer; Gifford; Butler."

In 2 Kennett's Compl. Hist. 689, is the following note on Wilson's intimations that the prince's death was caused by poison. "How well or ill grounded our author's conjectures were about the death of prince Henry, I shall not take upon me to determine; since few princes of so great hopes die an untimely death, but the world is apt to attribute it to foul play.

—This is certain, the court was full of suspicions about it; and it was whispered about, that the prince having entertained a mortal prejudice to the favourite Carr, he was taken off to prevent the effects of it. These surmises came likewise to be insinuated in the pulpit; and we have yet extant in print, a sermon preached at St. James's upon the dissolution of his family, wherein the preacher that had been his domestic chaplain made such broad hints about the manner of his death, that melted the auditory into a flood of tears, and occasioned his being dismissed the court.—Some years after, when the murder of sir Tho. Overbury came upon the stage, at one of the trials before the Lord Chief Justice Coke, there escaped him some words in heat, that plainly imported his suspicion that Overbury had been poisoned, to prevent the discovery of another crime of the same nature committed upon one of the highest rank, whom he termed a sweet prince, which was taken to be meant prince Henry; for which rashness the Lord Chief Justice lost the king's favour, and some time afterwards his place."

Mr. Fox writing to Lord Lauderdale says "I recollect that the impression upon my mind was, that there was more reason than is generally allowed for suspecting that prince Henry was poisoned by Somerset, and that the king knew of it after the fact." See lord Holland's preface to Fox's History of the early part of the Reign of James the Second.

the cause that malice can pitch upon, wherefore your majesty should not proceed to accomplish your own work? aspersions are taken away by your majesty's letting me loose to the utmost power of law, with the lives of so many offenders, which yieldeth the world subjects of sorrow rather than appetite to more blood. But truth and innocency protect themselves in poor men, much more in kings, neither was there such aspersion (God knows) in any possibility towards your majesty, but among those who would create these pretences to mislead your majesty, and thereby make me miserable; if not this (whereof the virtue and use was in the former time, and is now determined) there is not any but your pleasure.—It is true, I am forfeited to your majesty, but not against you by any treasonable or unfaithful act; besides, there is to be yielded a distinction of men, as in faults; in which I am of both under the nearest degrees of exception.—Yet your majesty hath pardoned life and estate to traitors and strangers, sometimes the one, sometimes the other; nay, to some concerned in this business, wherein I suffer, you have pardoned more unto them, than I desire, who (as it is reputed) if they had come to the test, had proved copper, and should have drunk of the bitter cup as well as others.—But I do not by this envy your favours to any persons, nor seek I to draw them into the yoke with myself, but applaud your majesty's goodness, being in that respect in a near possibility to come at me; besides this, to Elwes your majesty has given an estate, (which is a greater gift than life, because it extends to posterity) who was the worst deserver in this business, an unoffended instrument, who might have prevented all after-mischief, but for his own ends suffered it, and by the like arts afterwards betrayed it.—To this I may add Tresham in the Powder-treason, upon whose successors I do not cast any of his infamy, yet he preserved himself to posterity; so as what he, or others such as he, have defrauded by the arts of law, and whom their own unfaithfulness made safe; I have much ado to hold my ingenuity and confidence, how it may be, because I distrusted not your majesty, or because it returned in your power from whom I had it. Is it in danger to be broken or dismembered? Let me hope that there is nothing, which by favour may be excused, or by industry might have been avoided, that will fail me, where your majesty is to determine. It is not I, that put your majesty in mind opportunely, it is he, that was your creature; it is Somerset, with all your honours and envious greatness, that is now in question. Kings themselves are protected from the breach of law, by being favourites and God's anointed; which gives your majesty like privilege over yours, as I took from Dr. Donne his sermon, That the goodness of God is not so much acknowledged by us in being our Creator, as in being our Redeemer: nor in that he hath chosen us, as that nothing can take us out of his hand; which in your majesty's remembrance let me challenge and

hope for: for the first accesses of favour, they may be ascribed unto one's own pleasing themselves, but that appears to be for our sakes, and for our good, when the same forsakes not our civil desires.—This redemption I crave, not as to my own person, but with your benefits once given; nor do I assume them very deep, for I have voluntarily departed from the hopes of my pension, place, office, I only cleave to that which is so little, as that it will suffer no parting or diminution.—And as in my former letters, so by this, I humbly crave of your majesty not to let the practices of court work upon your son the prince, not fearing the sufferings of my loss in that particular so much (for I cannot lose it but willingly all with it), as for to take off the stage, that which in the attempt may prove inconvenient.—But if your majesty have any respects to move you to suspend your goodness towards me, let that which is mine rest in your own hands, till that you find all opposite humours conformed to your purpose.—I have done wrong to myself, thus to entertain such a doubt of your majesty; but the unrelenting of adversaries, which, when you will have them, will soon alter; and that all this while I have received nothing of present notice for direction, or to comfort me from your majesty, hath made me to expostulate with myself thus hardly: for God is my judge, sir, I can never be worthy of it, if I have these marks put upon me of a traitor, as that tumbling and disordering of that estate, would declare. The divorce from your presence, lays too much upon me, and this would upon both.—I will say no further, neither in that which your majesty doubted my aptness to fall into: for my cause nor my confidence is not in that distress, as for to use that mean of intercession or any thing besides; but to remember your majesty that I am the workmanship of your hands, and bear your stamp deeply imprinted in all the characters of favour; that I was the first plant ingrafted by your majesty's hand in this place, therefore not to be unrooted by the same hand, lest it should taint all the same kind with the touch of that fatalness; and that I was even the son of a father, whose services are registered in the first honours and impressions I took of your majesty's favour, and laid there as a foundation stone of that building.—These and your majesty's goodness for to receive them, is what I rely upon, praying for your majesty's prosperity; I am in all humbleness, your majesty's loyal servant and creature, R. SOMERSET."

On the 18th of January, 1621, the king by order of council granted them the liberty of retiring to a country house.

*At Whitehall, Jan. 18th, 1621.*

Present, L. Keeper; L. Treasurer; L. President; L. M. Hamilton; Earl Marshal; L. Vis. Falkland; L. Digby; L. Brooke; Mr. Treasurer; Mr. Secretary Calvert; Mr. Chancellor of the Exchequer; Master of the Rolls.

"Whereas his majesty is graciously pleased to enlarge and set at liberty the earl of Somers-

set and his lady, now prisoners in the Tower of London; and that nevertheless it is thought fit that both the said earl and his lady be confined to some convenient place: it is therefore, according to his majesty's gracious pleasure and command, ordered, That the earl of Somerset and his lady do repair either to Grays or Cowsham, the lord Wallingford's houses, in the county of Oxon, and remain confined to one or either of the said houses, and within three miles compass of either of the same, until farther order be given by his majesty."

At last in the year 1624, about four months before the death of the king, they obtained their Pardons; notwithstanding the king had formerly made a solemn declaration,\* that he would never pardon any person who should appear to have been concerned in this murder.

#### The Countess of Somerset's PARDON.

Jacobus Rex; Rex omnibus ad quos, &c; salutem. Cum tam justic. quam misericord. fontes a solio Regis promanare consueverint et debeant ex quibus prior ille justitiæ in memorabili casu mortis et interfectionis Thomæ Overbury mil. cursu constanti, et recto a nobis, et cura nostra regia fluxit, et derivatus est, in nostram et subditorum satisfactionem plenariam: Cumque divers' et multiplices caus' et motiva clementiæ nost' occurrant, quæ misericordiam nost. regiam erga Franciscam Carr nuper Comitiss. Somerset promovere possint, præsertim cæde illa tot' et tal' exemplis justitiæ jam autea expiata, præcipue vero duæ, quarum prima ad patrem ejus et amicos spectat, familiamque et prosperam prænobilit. altera ad eam ipsam, quod lib. et spontanèe delictum suum confessa sit, se submitiendo et prosternendo ad misericordiam nost. altare, non solum durante tempore incarcerationis suæ, verum etiam publice et in judicio. Cumque Tho. Dominus Ellesmere Cancellar. nr' Angliæ, et magnus Senescallus nr' Angliæ ea vice existens, necnon omnes pares ejus per quonum judicium convicta fuit ad humil. Petitionem ejusdem Franciscæ publice fact' promisso suo ad intercedend. pro misericordia nostra regia erga eam solenniter se obstrinxerint. Imprimis autem nobiscum perpendentes natur' delicti ejus unde ipsa indictat' arraignat' convict' et condemnat' sit (viz.) quod non fuer' process. et judicium tanquam de principal. sed de accessoria ante fact' eaque ipsa procuratio ex conscelerata instigatione hominum quorundam ignobilium originem suscepisse videtur. Sciatis quod nos pietate moti de gratia nostra speciali ac certa scienc' et mero motu nost' pardonavimus, remisimus, et relaxavimus, ac per præsentés pro nob' hæred' et succ' nostris

\* At the time when this prosecution was first set on foot, the king gave a strict charge to the judges to make a diligent search and inquiry into the truth, and told them, If ever he spared any that were guilty, he wished the curse of God might light on him, and his posterity. See the Note at the beginning of the earl of Somerset's Case, p. 966.

pardonamus, remittimus, et relaxamus præfat' Franciscæ Carr nuper Comitiss. Somerset, seu quocunque alio nomine, cognomine sive additione nominis vel cognominis, dignitatis, loci vel locorum eadem Franciscæ sciatur, censeatur, vocetur, sive nuncupetur, aut nuper sciebatur, censebatur, vocabatur, sive nuncupabatur, occisionem, necem, venenationem, intoxicationem, mortem, feloniam, et feloniam interfectionem præd. Thomæ Overbury mil. seu quocunque alio nomine, cognomine, sive additione nominis vel cognominis loci vel locor' idem Thomas Overbury mil. sciatur, censeatur, vocetur sive nuncupetur, aut nuper sciebatur, censebatur, vocabatur, sive nuncupabatur, per ipsam Franciscam per se solam sive cum aliqua alia persona sive aliquibus al' personis quibuscunque, quomodocunque, qualitercunque, quandocunque, seu ubicunque fact' commiss. sive perpetrat' ac omnes et omnimodas conspirationes, felonias, abettationes, procurationes, incitationes, confortation' manutention' auxiliations, conductiones, mandat' consilia, crimina, transgressiones, malefacta, offens. et delict' quæcunque præd. mortem, occisionem, necem, venenationem, intoxicationem, feloniam et feloniam interfectionem præd. Thomæ Overbury mil. in aliquo tangen. sive concern. ac accessar. eorundem tam ante factum, quam post factum, ac fugam, et fugas superinde fact. licet eadem Franciscæ de permiss. vel aliquo præmissor. indictata impetit. appellat. recitat. vocat. waviat. convict. condemnat. attingit. sive adjudicat. per judicium parium suorum coram præd. magno Senescallo nostro Angl. vel alr. quomodocunque existit vel non existit, aut indictari, impetiri, appellari, rectari, vocari, waviari, convinci, condemnari, attingi, sive adjudicari contigerit in futur. ac omnia et singula indictamenta, judicis, condemnationes, executiones, pœnas, mortis pœnas, corporal. punitiones, ac omnes al. pœnas, et pœnalitat. quascunque de pro sive concern. mortem, occisionem, necem, venenationem, intoxicationem, feloniam, et feloniam interfectionem præd. Thomæ Overbury mil. in sup. vel versus ipsam Franciscam hab. fact. reddit. sive adjudicat. aut imposter. habend. fiend. reddend. sive adjudicand. aut quæ nos versus ipsam Franciscæ pro præmiss. vel aliquo præmissor. habuim' habem' seu imposter. habere poterimus, aut hæred. seu suc. habere poterint in futur. (Imprisonament. ad arbitrium nr' regium aut restric. ullo modo ad locum certum Anglicè confining. tantum except.) Pardonamus insuper ac per præsent' pro nob. hæred. et succ. nr' remitt. et relax. præfat. Franciscæ omn. et singul. utlagar. si quæ versus ipsam Franciscæ. ratione, sive occasione præmissor. seu eor. alicujus promulgat. fuer. sive imposter. erunt promulgand. ac omn. et omnimod. sect. querel. impetitiones, et demand. quæcunque, quæ nos versus ipsam Franciscam pro præmiss. vel aliquo præmissor. habuimus, habem. seu in futur. habere poterimus, Sectamque pacis nostræ, quæ ad nos versus ipsam Franciscæ. pertinet, seu pertinere poterit ratione præmissor. seu eor. alicujus, et firmam pacem nr' eidem Franciscæ inde damus et



concedimus per præsentis: Nolentes, quod eadem Franc. per Just. Vic. Escaetor. Ballivos, seu aliquos Ministr' n'r' occasionibus præd. seu eor. aliquo molestetur, perturbetur, seu in aliquo gravetur; ita tamen quod stet rect. in cur. n'r' si quis versus eam loqui voluerit de præmissis vel aliquo præmissor'. Licet eadem Francisca bonam et sufficient. securitat. non inveniat secundum formam et effectum cujusdam Actus Parliament. Domini Edwardi nuper Regis Angliæ tertii, progenitor. n'r. anno regni sui decimo apud Westm. tent. edit. de se bene gerend. ex nunc erga nos hæred. ad succ. n'r' et cunctum populum n'r' Et ulterius pro nobis hæred. et succ. nostris de ampliori gratia nostra speciali, ac ex certa scienc. et mero motu nostris volumus et concedimus per præsentis, quod hæ litt. nræ. paten. pardonationis, ac omnia et singula in eisdem content. bone, firme, valide sufficient. et effectual. in lege stabunt, et existent, et dehinc nullo modo vacuæ devenient; Quodque imposter. eadem Francisca ullo modo non indicietur, arrectetur, impetatur, vexetur, seu gravetur de pro vel concernend. mort. occisionem, necem, venenationem, intoxicationem, feloniam aut feloniam interfectionem præd. Thomæ Overbury mil. qualitercunque seu quocunque modo idem Thomas Overbury mil. ad mortem suam devenit. Statut. in Parliament. Domini Richardi nuper Regis Angliæ secundi, anno regni sui decimo tertio tent. edit. aut aliquo alio statut. actu, ordination. provisione, sive restrictione in contrar. inde non obstan. In cuius rei, &c. Teste, &c. Ex per F. BACON.

"May it please your excellent majesty: This Bill containeth your majesty's gracious pardon unto the lady Frances late countess of Somerset, for being accessory before the fact, of the death and imposition of sir T. Overbury.—It hath inserted, as motives to your majesty's mercy, four respects; that is to say: The respect of her father, friends and family.—Her voluntary confession, both when she was prisoner, and at the bar.—The promise made publicly by the Lord High Steward, and her peers, to intercede for your majesty's mercy.—And that the crime was not of a principal, but of an accessory, before the fact, by the instigation of base persons.—The like pardon formerly passed your majesty's signature, and is now amended by your majesty's special direction from your royal mouth, in two points: The one is, That imprisonment in the Tower, or other confining at your majesty's pleasure, is not pardoned. The other, that the solemn promise made at her arraignment by the Lord Steward and the peers to intercede to your majesty for your mercy, is inserted. FRANCIS BACON."

The aforesaid BILL translated into English.

"JAMES Rex; The king to whom, &c. greeting. Whereas the fountains, as well of mercy as justice, are wont and ought to flow from the king's throne; of which the former of justice in the memorable case of the death and murder of sir T. Overbury, in a constant and right

course, hath flowed and is derived from us and our royal court, for the full satisfaction of ourself and subjects. And whereas divers and manifold causes of our clemency occur, which may move our regal mercy towards Frances Carr, late countess of Somerset; chiefly, that murder, with so many and such examples of justice, before this time expiated; especially two, whereof the first respecteth her father, and friends, and family, and noble progeny; the other hath respect to herself, because she freely and willingly confessed her offence, submitting and prostrating herself at the altar of our mercy, not only during the time of her imprisonment, but also publicly, and in her trial. And forasmuch as T. lord Ellesmere our Chancellor of England, and being our High Steward of England in that behalf, and all her peers, by whose judgment she was convicted, at the humble petition of the said Frances publicly made, solemnly bound themselves by their promise, to intercede for our royal mercy towards her: And first weighing with ourselves the nature of her offence, upon which she was indicted, arraigned, convicted and condemned, viz. That the process and judgment were not as of a principal, but as of an accessory before the fact, and that she seemed to have begun by the procurement and wicked instigation of certain base persons: Know ye, that we, moved with pity, of our special grace, and of our certain knowledge, and our mere motion, have pardoned, remitted and remised, and by these presents for us, our heirs and successors, do pardon, remise, and release to the aforesaid Frances Carr, late countess of Somerset, or by whatsoever other name, or surname, or addition of name, or of her surname of dignity, place, or places, the same Frances may be known, esteemed, called, or named, or lately was known, esteemed, called or named, the slaughter, killing, poisoning, bewitching, death, felony and felonious murdering of the aforesaid sir T. Overbury; or by whatsoever other name, surname, or addition of name or surname, of place or places, the said sir T. Overbury may be known, esteemed, called or named, by the said Frances, by herself alone, or with any other person, or any other persons whatsoever, howsoever, in what manner soever, whensoever, or wheresoever done, committed, or perpetrated; and all, and all manner of conspiracies, felonies, abetments, procurements, incitations, partnerships, maintainances, helps, hirings, commands, counsels, crimes, transgressions, wrongs, offences and faults whatsoever, the aforesaid death, slaughter, killing, poisoning, bewitching, felony and felonious murdering of the aforesaid sir T. Overbury, in any wise touching or concerning. And the accessory of them, as before the fact, as after the fact, and flight and flights made thereupon, although the said Frances of the said premises, or any of the premises stand, or not stand indicted, impeached, *appellat. vocat. reat. wariat.* convicted, condemned, attainted, or adjudged by the judgment of her peers, before the aforesaid High Steward of

England, or otherwise howsoever, or thence in time to come shall appear to be indicted, impeached, *appellar, rectori, vocari, wariari*, convicted, condemned, attainted or adjudged. And all and singular indictments, judgments, condemnations, executions, pains of death, pains of corporal punishments, and all other pains and penalties whatsoever of, for, or concerning the death, slaughter, killing, poisoning, bewitching, felonies, and felonious murdering of the aforesaid sir T. Overbury, in, upon, or against the same Frances, had, made, returned, or adjudged; or hereafter to be had, made, returned, or adjudged, or which we against the said Frances may have in time to come (imprisonment at our royal pleasure, or restraint, confining to a certain place, only excepted). Moreover, we do pardon, and by these presents for us, our heirs and successors, remit and remise to the aforesaid Frances, all and every outlawries which against the same Frances, by reason or occasion of the premises, or any of them, have been proclaimed, or hereafter shall be proclaimed; and all, and all manner of suits, complaints, impeachments, and demands whatsoever, which we against the same Frances, for the premises, or any of the premises, have had, have, or in time to come shall have; and the suit of our peace which appertained to us against the same Frances, or may appertain by reason of the premises, or any of them. And by these presents, We do give and grant our firm peace to the same Frances, willing that the same Frances, by the justices, sheriffs, escheators, bailiffs, or any other our ministers, by the occasions aforesaid, or any of them, be not molested, troubled, or in any manner vexed; so as nevertheless she stand right in our court: if any towards her should speak concerning the premises, or any of the premises, although the said Frances do not find good and sufficient security, according to the form of a certain act of parliament, of the sovereign lord Edward 3, late king of England, our progenitor, held at Westminster, in the tenth year of his reign, for her good behaviour from henceforth toward us, our heirs and successors, and all our people. And farther, for us, our heirs, and successors, of our more ample special grace, and out of our certain knowledge, and our mere motion, we will and grant by these presents, That these our letters-patent of pardon, and all and singular the things contained in the same, shall stand, and be good, firm, valid, sufficient and effectual in the law, and from henceforth shall by no means become void. And that in time to come, the said Frances, by any means, shall not be indicted, arrested, accused, vexed or troubled of, for, or concerning the death, murder, slaughter, poisoning, bewitching, felony, or felonious killing of the aforesaid sir T. Overbury, howsoever, or by whatsoever means the said sir T. Overbury came to his end: The statute of the sovereign lord Richard 2, late king of England, in the 13th year of his reign, or any other statute, act, ordinance, provision, or restriction to the contrary thereof notwithstanding.

VOL. II.

standing. In testimony whereof, &c. Witness, &c.

Ex. per FRANCIS BACON.

De Pardonatione speciali pro Roberto Kart, nuper Comiti Somers-et.\*

“ Rex omnibus ad quos, &c. salutem. Cum per quandam inquisitionem captum apud civitatem Westm. in comitatu Middlesexie, in magna aula placitorum ibidem, die Veneris decimo nono die Januarii, anno regni nostri Angliæ, Franciæ et Hiberniæ tertio decimo, et Scotiæ quadragesimo-nono, coram: Edwardo Coke, milite, capitali justiciario nostro ad placita coram nobis tenenda assignato, uno de privato concilio nostro: Julio Cæsar, milite, magistro rotulorum cancellariæ nostræ, altero de privato concilio nostro: Henrico Hobar e. milite, capitali justiciario nostro de banco: Laurentio Tanfield, milite, capitali barone scaccarii nostri: Jacobi Altham, milite, uno baronum scaccarii nostri: Johanne Croke, milite, uno justiciariorum nostrorum ad placita coram nobis tenenda assignato: Johanne Dodderidge, milite, altero justiciario ad placita coram nobis tenenda assignato: Roberto Houghton, milite, altero justiciario nostro ad placita coram nobis tenenda assignato: Rogero Wilbraham, milite, supervisore curiæ nostræ wardorum et liberationum: Daniele Dunn, milite, uno magistrorum curiæ nostræ requisitionum: Jacobo Ley, milite, attorney nostro curiæ nostræ wardorum et liberationum: Et Edwardo Moseley, milite, attorney curiæ ducatus nostri Lancastriæ: Ad tunc justiciariis nostris, per literas patentes nostras eis, et quibuscunque quatuor vel pluribus eorum, inde confectas; ad inquirendum per sacramentum proborum et legalium hominum de comitatu Middlesexie, ac aliis viis, modis et mediis quibus melius sciverint aut poterint, tam infra libertatis quam extra, per quos rei veritas melius sciri poterit, de quibuscunque proditiionibus, misprisionibus proditiionum, insurrectionibus, rebellionibus, contrafacturis, tensoris, lo-turis, falsis fabricationibus, et aliis falsitatibus monetæ hujus regni nostri Angliæ et aliorum regnorum sive dominiorum nostrorum quorumcunque; ac de quibuscunque murdris, felonis, homicidis, interfectionibus, burglariis, raptibus mulierum, coneregationibus et conventiculis illicitis, verborum prolationibus, coadunationibus, misprisionibus, confederationibus, falsis allegationibus, transgressionibus, riotis, routis, retentionibus, escapis, contemptibus, falsitatibus, negligentis, concealamentis, manutentiis, oppressionibus, cambipartiis, deceptionibus, et aliis malefactis, offensis et injuriis quibuscunque; nec non accessariis eorundem infra comitatum prædictum, tam infra libertates quam extra, per quoscunque et qualitercunque factis, habitis, perpetratis sive commissis, et per quos vel per quem, cui vel quibus, quando, qualiter et quomodo; ac de aliis articulis et circumstantiis præmissa, et eorum quodlibet, sive eorum aliquod vel aliqua qualitercunque con-

\* 22 Jac. 1. A. D. 1624. Rymer's Fœdera, vol. xvii. p. 625, et seq. edit. 1717.

cernentibus plenius veritatem; et ad easdem prodiones, et alia præmissa audiendi et terminandi, secundum legem et consuetudines regni nostri Angliæ assignatis, recitantes quod cum Ricardus Weston, nuper de London, yeoman, Deum præ oculis suis non habens, nec acerbissimas pœnas et punitiones contra malefactores per leges et statuta hujus regni Angliæ edita et provisã, atque quotidie in exemplum et terrorem eorumdem in executionem posita, aliquantulum verens; sed instigatione diabolica motus et seductus, machinans et intendens quendam Thomam Overbury militem, non solum in gravissimos, odiosissimos et periculosissimos morbos inducere, verum etiam præfatum Thomam Overbury de vitã sua felonice et voluntarie deprivare atque spoliare, et nequissimam intentionem illam atque animi sui impium propositum prædictum efficere; nono die Maij anno regni nostri Angliæ, Franciæ, et Hiberniæ undecimo, et Scotiæ quadragesimo-sexto, apud Turrim London, in parochiã Omnium Sanctorum Barking, in warda Turris London, ex malitia sua præcogitata, quoddam venenum coloris subviridis et subflavi (Anglicè 'of a greenish and yellowish colour') vocatum Roseacre, in manus suas obtinuerit et acquisiverit: Ac prædictus Ricardus Weston, eisdem die et anno apud Turrim London prædictam in parochiã et warda prædictis, sciens prædictum venenum, vocatum Roseacre fore venenum mortale, idem Ricardus Weston venenum prædictum vocatum Roseacre, cum quodam genere jusculi, Anglicè *broth*) in quodam disculo per ipsum Ricardum Weston ad tunc apud Turrim London prædictum, in parochiã et warda prædictis, composuit et miscuit, et jusculum prædictum cum veneno prædicto, vocato Roseacre, ad tunc apud Turrim London prædictam in parochiã et warda prædictis, vitaverit et infecerit eã intentione, ut idem Ricardus Weston præfatum Thomam Overbury cum veneno prædicto, sic, ut præfertur, composito et mixto, interficeret et murraret. Et prædictus Ricardus Weston, jusculum prædictum sic per ipsum Ricardum Weston, ut præfertur, vitiatum et infectum et cum veneno prædicto compositum et mixtum, præfate Thomæ Overbury, ad tunc apud Turrim London prædictam, in parochiã et warda prædictis, felonice, voluntarie et ex malitia sua præcogitata, tanquam salubre jusculum ad edendum præbuerit et dedit: Super quo prædictus Thomas Overbury credens prædictum jusculum, sic, ut præfertur, cum veneno prædicto per præfatum Ricardum Weston compositum, mixtum, vitiatum et infectum, fore salubre, idem Thomas Overbury postea, scilicet, eisdem die et anno apud Turrim London prædictam, in parochiã et warda prædictis, prædictum jusculum sic, ut præfertur, per præfatum Ricardum Weston, cum veneno prædicto compositum, mixtum, vitiatum et infectum, ad tunc apud Turrim London, in parochiã et warda prædictis, cepit et comederit.

“Cumque etiam prædictis Ricardus Weston postea, scilicet, primo die Junii annis undecimo et quadragesimo-sexto supradictis, in parochiã

et warda prædictis, ex malitia, sua præcogitata, quoddam aliud venenum in pulvere vocatum white Arsenick, in manus suas obtinuerit et acquisiverit, et prædictus Ricardus Weston ad tunc, scilicet, prædicto primo die Junii annis supradictis, sciens prædictum pulverem, vocatum white Arsenick, fore mortale venenum, idem Ricardus Weston, eã intentione ut idem Ricardus Weston cum veneno prædicto, vocato white Arsenick, præfatum Thomam Overbury magis celeriter interficeret et murraret, venenum illud, vocatum white Arsenick, tanquam salubre pulverem, ad edendum præfate Thomæ Overbury ad tunc, scilicet, prædicto primo die Junii annis supradictis, apud Turrim London prædictam, in parochiã et warda prædictis, felonice, voluntarie ex malitia sua præcogitata, præbuerit et dedit: super quo prædictus Thomas Overbury, credens prædictum pulverem, vocatum white Arsenick, fore salubre pulverem, idem Thomas Overbury pulverem prædictum vocatum white Arsenick, ad tunc, scilicet, prædicto primo die Junii annis supradictis, apud Turrim London prædictam, in parochiã et warda prædictis, sumpserit et comederit.

“Cumque etiam prædictus Ricardus Weston postea, scilicet, decimo die Julii annis undecimo et quadragesimo-sexto supradictis, apud Turrim London prædictam, in parochiã et warda prædictis, ex malitia sua præcogitata, quoddam aliud venenum, vocatum Mercury sublimate, in manus suas obtinuerit et acquisiverit, ac prædictus Ricardus Weston ad tunc, scilicet, prædicto decimo die Julii annis supradictis, apud Turrim London prædictam, in parochiã et warda prædictis sciens venenum prædictum, vocatum Mercury sublimate, fore mortale venenum, idem Ricardus Weston postea, scilicet, prædicto decimo die Julii annis supradictis, apud Turrim London prædictam, in parochiã et warda prædictis, venenum prædictum, vocatum Mercury sublimate in placentis, Anglicè *tarts*, posuerit; et venenum prædictum, vocatum Mercury sublimate cum placentis illis ad tunc, scilicet, prædicto decimo die Julii annis supradictis, apud Turrim London prædictam in parochiã et warda prædictis, miscuerit; et placentas prædictas cum veneno prædicto, vocato Mercury sublimate ad tunc, scilicet, prædicto decimo die Julii annis supradictis, apud Turrim London prædictam in parochiã et warda prædictis, vitaverit et infecerit, eã intentione ut idem Ricardus Weston præfatum Tho. Overbury cum veneno prædicto, vocato Mercury sublimate sic, ut præfertur, per præfatum Ricard. Weston in placentis prædictis posito, et cum placentis prædictis sic, ut præfertur, mixto, magis celeriter interficeret et murraret. Et prædictus Ricardus Weston prædictas placentas sic, ut præfertur, per præfatum Ricardum Weston cum veneno prædicto, vocato Mercury sublimate mixtas, vitatas et infectas, postea, scilicet, prædicto decimo die Julii, annis undecimo et quadragesimo sexto prædictis apud Turrim London prædictam, in parochiã et warda prædictis, felonice, voluntarie et ex malitia sua præcogitata tanquam salubrem placentam præ-

fato Thomæ Overbury ad edendum præberit et dederit; super quo prædictus Thomas Overbury, credens prædictas placentas sic, ut præfertur, per præfatum Ricardum Weston cum veneno prædicto, vocato Mercury sublimate, mixtas, vitiatas et infectas, fore salubres placentas; idem Thomas Overbury postea, scilicet, prædicto decimo die Julii, annis undecimo et quadragesimo-sexto supradictis, apud Turrim London prædictam, in parochia et warda prædictis, placentas prædictas sic, ut præfertur, per præfatum Ricardum Weston, cum veneno prædicto, vocato Mercury sublimate, mixtas, vitiatas et infectas, sumpserit et comederit.

“Cumque etiam prædictus Ricardus Weston, et quidam homo ignotus existens pharmacopola (Anglicè, an apothecary) Deum præ oculis suis non habens, sed instigatione diabolica moti et seducti, postea, scilicet, quarto-decimo die Septembris, anno regni nostri Angliæ, Franciæ et Hiberniæ undecimo, et Scotiæ quadragesimo-septimo, apud Turrim London prædictam, in parochia et warda prædictis, ex malitiis suis præcogitatis, quoddam venenum, vocatum Mercury sublimate in manus suas obtinuerunt et acquisiverunt, ac prædictus Ricardus Weston et præfatus pharmacopola ad tunc, scilicet prædicto quarto-decimo die Septembris, annis undecimo et quadragesimo-septimo supradictis, scientes prædictum venenum, vocatum Mercury sublimate, ultimo mentionatum, fore mortale venenum, idem Ricardus Weston et præfatus pharmacopola postea, scilicet, prædicto quarto-decimo die Septembris, annis undecimo et quadragesimo-septimo supradictis, apud Turrim London prædictam, in parochia et warda prædictis, venenum prædictum, vocatum Mercury sublimate, ultimo mentionatum, in quoddam clisterium (Anglicè a clister) malitiosè, diabolicè, felonice et voluntariè imposuerunt, et clisterium prædictum cum veneno prædicto, vocato Mercury sublimate, ultimo mentionato ad tunc, scilicet, quarto-decimo die Septembris, annis undecimo et quadragesimo-septimo supradictis, apud Turrim London prædictam in parochia et warda prædictis, vitiauerunt et infecerunt, ea intentione ut idem Ricardus Weston et præfatus pharmacopola, præfatum Thomam Overbury cum veneno prædicto, vocato Mercury sublimate, ultimo mentionato, sic ut præfertur, in clisterium prædictum, per præfatum Ricardum Weston et prædictum pharmacopolum, impositum magis celeriter interfecerent et murrerent; et prædictus pharmacopola pro iniquo lucro viginti librarum ei in ea parte dandarum et solvendarum, clisterium prædictum sic ut præfertur, per præfatum Ricardum Weston et ipsum pharmacopolum prædictum, cum veneno prædicto, vocato Mercury sublimate, ultimo mentionato vitiatum et infectum præfato Thomæ Overbury, tanquam bonum medicinale et salutare clisterium pro corpore ipsius Thomæ Overbury ad tunc, scilicet, prædicto quarto-decimo die Septembris, annis undecimo et quadragesimo-septimo supradictis, apud Turrim London prædictam, in parochia et warda prædictis, felonice, voluntariè, et ex malitia sua

præcogitata suppeditaverint (Anglicè, did minister) et in intestina (Anglicè, the guts) ipsius Thomæ Overbury infuderint (Anglicè, did infuse and put up); et quod prædictus Ricardus Weston ad tunc, scilicet, prædicto quarto-decimo die Septembris, annis undecimo et quadragesimo-septimo supradictis, apud Turrim London prædictam, in parochia et warda prædictis, felonice, voluntariè, et ex malitia sua præcogitata, fuerit præsens et auxilians eidem pharmacopolæ in suppeditatione et infusione prædicti clisterii sic, ut præfertur, per præfatum Ricardum Weston et prædictum pharmacopolum cum veneno prædicto, vocato Mercury sublimate, ultimo mentionato, vitiatum et infectum, in intestina prædicti Thomæ Overbury; et quod immediatè, tam post prædictas separales captiones et comesturas separalium venenorum prædictorum, per præfatum Thomam Overbury in forma prædicta, quam post prædictam infusionem et suppeditationem clisterii prædicti in intestinas prædicti Thomæ Overbury, per præfatum pharmacopolum in forma prædicta, idem Thomas Overbury apud Turrim London prædictam, in parochia et warda prædictis ægrotaverit, et in diversa genera morborum, tam ratione prædictarum captionem et comesturarum separalium venenorum prædictorum per prædictum Thomam Overbury in forma prædicta, quam ratione infusionis et suppeditationis clisterii prædicti in intestina ipsius Thomæ Overbury, per præfatum pharmacopolum in forma prædicta, incidit, et in corpore suo variè distemperatus et disturbatus devenit: et prædictus Thomas Overbury de separalibus venenis prædictis et operatione inde prædictis separalibus temporibus, tam captionis et comesturæ separalium venenorum prædictorum per præfatum Thomam Overbury in forma prædicta, quam prædictæ infusionis et suppeditationis clisterii prædicti in intestina ipsius Thomæ Overbury per præfatum pharmacopolum in forma prædicta usque in quintum decimum diem Septembris, anno regni nostri Angliæ Franciæ et Hiberniæ undecimo, et Scotiæ quadragesimo-septimo supradictis, apud Turrim London prædictam, in parochia et warda prædictis, graviter languebat et intoxicatus fuit; quo quidem quinto-decimo die Septembris, annis undecimo et quadragesimo-septimo supradictis, prædictus Thomas Overbury apud Turrim London prædictam, in parochia et warda prædictis de separalibus venenis prædictis obiit venenatus: et sic prædictus Ricardus Weston præfatum Thomam Overbury modo et forma supradictis, felonice voluntariè et ex malitia sua præcogitata, venenaverit, interfecerit et murrerit, contra pacem nostram, coronam et dignitatem nostras, et in iurium et legum nostrarum contemptum manifestum, et in pessimum exemplum omnium aliorum in tali casu delinquentium, nec non contra formam statuti in hujusmodi casu editi et provisum.

“Robertus Karr nuper comes Somerset, per nomen Roberti comitis Somerset nuper de parochia Sanctæ Margaretæ in Westm. in comitatu Middlesex indictatus fuit, pro eo quod ipse, Deum præ oculis suis non habens, sed

instigatione diabolicâ motus et seductus, ante feloniam et murdrum prædicta, per præfatum Ricardum Weston modo et forma prædictis felonice facta et perpetrata (videlicet) octavo die Maii anno regni nostri Angliæ, Franciæ, et Hiberniæ undecimo, et Scotiæ quadagesimo-sexto supradictis, prædictum Ricardum Weston apud prædictam parochiam Sanctæ Margarietæ in Westm. in dicto comitatu Middlesex ad feloniam et murdrum prædicta modo et forma prædictis faciendâ et perpetranda malitiosè, felonice, voluntariè et ex malitia suâ præcogitatâ, incitavit, movit, præcepit, conduxit, auxiliatus fuit, abettavit, procuravit et consuluit contra pacem nostram, coronam et dignitatem nostras, nec non contra formam statuti in hujusmodi casu editi et provisâ, prout per indictamentum prædictum in curiâ nostrâ coram nobis de Recordo remanens, plenius liquet et apparet.

“Cumque præfatus Robertus Karr nuper comes Somerset, super prædictam inquisitionem in modo et forma prædictis captam, de et super accessariis feloniam et murdri prædictorum, aut feloniam et murdrum illa facta et perpetrata in eadem inquisitione contenta mentionata, arreatus, convictus, atinctus et adjudicatus existit, prout per recordum inde plenius liquet et apparet.

“*Sciatis quòd Nos*, Oculis vere regis et gratiosis præmissa inuentes, nec non gratissima et fidelissima servitia quæ Thomas Karr de Faruherst in regno nostro Scotiæ miles, pater præfati Roberti nuper Comitis Somerset, tam præcharissimæ matri nostræ dominæ Mariæ nuper Scotæ et Franciæ Reginæ, ob cujus causam prædictus Thomas Karr exilium et fortunarum suarum jacturam et ruinas constanti animo et fide passus est, quam nobis ipsis summa cum fide et alacritate multifariè præstiterit, animo benigno recolentes, pietate etiam mæti erga ipsum nuper comitem Somerset et innocentem sobolem suam; qui etiam ipse Robertus multa fidelia et perquam acceptabilia servitia nobis ante hac impendit.

“De gratia nostra speciali, ac ex certa scientia et inero motu nostris, pardonavimus, remisimus, et relaxavimus, ac per præsentem, pro nobis, hæredibus et successoribus nostris, pardonamus, remittimus et relaxamus præfato Roberto Karr nuper comiti Somerset, alias dicto Roberto communiter dicto comiti Somerset, alias dicto Roberto nuper comiti Somerset, aut quocunque alio nomine, cognomine, sive additione nominis vel cognominis officii, honoris, dignitatis, loci vel locorum idem Robertus Karr sciatur, censeatur, vocetur sive nuncupetur, aut nuper sciebatur, censebatur, vocabatur sive nuncupabatur, omnes et omnimodas conspirationes, felonias, abettationes, procurationes, incitationes, motiones, confortationes, manutationes, præceptiones, auxiliationes, conductiones, mandata, consilia, crimina, transgressiones, malefacta, offensa et delicta quæcunque in indictamento sive inquisitione prædicta specificata, mortem, occisionem, necem, venenationem, intoxicationem, feloniam, et feloniam interfectionem prædicti Thomæ Overbury

militis, in aliquo tangentiâ sive concernentiâ: Ac accessaria eorundem tam ante factum quam post factum, ac fugam et fugas superinde factas, licet idem Robertus Karr nuper comes Somerset de præmissis vel aliquo præmissorum indictatus, impetitus, appellatus, arreatus, utlagatus, convictus, condemnatus, atinctus sive adjudicatus existit et non existit, aut inde indictari, impetiri, appellari, rectari, utlagari, convinci, condemnari, attingi sive adjudicari contigerit in futurum; ac omnia et singula indictamenta, judicia, condemnationes, executiones, pœnas mortis, pœnas corporales, pecuniarias punitiones, imprisonmenta, restrictiones ad locum certum vel loca certa, (Anglicè confining) pœnas et penalitates quascunque, de, pro, sive concernentes mortem, occisionem, necem, venenationem, intoxicationem, feloniam et feloniam interfectionem prædicti Thomæ Overbury, militis, in aliquo tangentiâ sive concernentiâ: ac accessaria eorundem tam ante factum quam post factum, ac fugam et fugas superinde factas, licet idem Robertus Karr nuper comes Somerset de præmissis vel aliquo præmissorum indictatus, impetitus, appellatus, arreatus, utlagatus, convictus, condemnatus, atinctus sive adjudicatus existit vel non existit; aut inde indictari, impetiri, appellari, rectari, utlagari, convinci, condemnari, attingi sive adjudicari contigerit in futurum; ac omnia et singula indictamenta, judicia, condemnationes, executiones, pœnas mortis, pœnas corporales, pecuniarias punitiones, imprisonmenta, restrictiones ad locum certum vel loca certa, (Anglicè confining) pœnas et penalitates quascunque, de, pro, sive concernentes mortem, occisionem, necem, venenationem, intoxicationem, feloniam et feloniam interfectionem prædicti Thomæ Overbury, militis, in, super vel versus ipsum Robertum Karr nuper comitem Somerset habita, facta, reddita, sive adjudicata, aut imposterum habenda, fienda, reddenda, sive adjudicanda; aut quæ nos versus ipsum Robertum Karr nuper comitem Somerset, pro præmissis vel aliquo præmissorum habuimus, habemus seu imposterum habere notuimus, aut hæredes vel successores nostri ullo modo habere poterint in futurum.

“Pardonavimus insuper, ac pro nobis, hæredibus et successoribus nostris remittimus, pardonamus et relaxamus præfato Rob. Karr nuper com. Somerset omnes et singulas utlagaria, si quæ versus prædictum Rob. Karr nuper comitem Somerset, ratione sive occasione præmissorum, sive eorum alicujus promulgata fuerint, sive imposterum erint promulganda; ac omnes et omnimodas sectas, querelas, impetitiones et demanda quæcunque, quæ nos, versus ipsum Robertum Karr nuper comitem Somerset, pro præmissis vel aliquo præmissorum habuimus, habemus, seu in futurum habere potuerimus: sectamque pacis nostræ, quæ ad nos versus ipsum Robertum Karr nuper comitem Somerset pertinet seu pertinere poterit ratione præmissorum, sive eorum alicujus, et firmam pacem nostram eidem Roberto Karr nuper comiti Somerset damus et concedimus per præsentem.

“Nolentes quod idem Robertus Karr nuper comes Somerset, per vicecomites, justiciarios, escaetores, ballivos sive alios ministros nostros occasionibus prædictis seu eorum aliquo, molesteretur, occasionetur, perturbetur, seu in aliquo gravetur, licet idem Robertus Kerr, nuper comes Somerset, non inveniatur sufficientes manucapiones sive securitates, juxta formam et effectum cujusdam actus in parlamento domini Edwardi nuper regis Angliæ tertii progenitoris nostri, anno regni sui decimo, apud Westmonasterium tento, editi, de se bene gerendo, exnunc, erga nos, hæredes et successores nostros et cunctum populum nostrum.

“Sciatis ulterius quod nos, de uberiori gratiâ nostrâ speciali, et ex certâ scientiâ et mero motu nostris, pro nobis, hæredibus et successoribus nostris concedimus præfato Robertus Karr, nuper comiti Somerset, et hæredibus suis, quantum in nobis est, quod idem Robertus Karr, nuper comes Somerset, de cætero plenè et integrè adjudicetur, habeatur et reputetur in lege de et in eisdem hujusmodi et consimilibus honore, statu, ordine, dignitate, stilo, sanguine, et loco honoris et præcedentiæ, ad omnes intentiones et proposita, ac si prædictæ feloniam, venenationem, intoxicationem et feloniam interfectio præfati Thomæ Overbury, militis et accessaria eorundem, et prædictæ conspirationes, feloniam, abettationes, procuraciones, incitationes, motiones, confortationes, proscriptiones, auxiliactiones, condemnationes, mandata, consilia, et alia malefacta, transgressiones et offensæ, per ipsum, per se solum, aut cum aliis nunquam facta commissa sive perpetrata fuissent, et prout prædictæ convictiones, condemnationes, judicia, utlagaria sive attincturæ nunquam habita, data, seu promulgata fuissent: ac eundem Robertum Karr, nuper comitem Somerset, et hæredes suos ad omnia et singula dignitates, status, præheminentias sanguinis, loci honoris, ordinis et præcedentiæ quæcunque, que idem Robertus Karr, nuper comes Somerset, ratione aliquorum prædictorum convictionum, judiciorum, utlagariarum sive attincturarum, seu eorum alicujus, amisit seu forisfecit plenariè quantum in nobis est damus, reddimus et restituimus per præsentem, adeo plenè, liberè et integrè ad omnes intentiones et proposita, ac si idem Robertus Karr, nuper comes Somerset, prædicta feloniam aut alia malefacta nunquam commisisset aut perpetrasset; aut pro eisdem indictatus, arreatus, convictus, utlagatus aut attinctus nunquam extitisset: quodque idem Robertus Karr, nuper comes Somerset, et hæredes sui de cætero et deinceps (quantum in nobis est) sunt et erunt in lege capaces et habiles in sanguine, ac de cætero et deinceps fore hæredes ad omnes et singulos antecessores lineales sive collaterales suos quoscunque, et (quantum in nobis est) ad petendum, habendum, hæreditandum et gaudendum omnia et singula, honores, maneria, dominia, terras, jura, titulos, actiones, et hereditamenta quæcunque impofterum descendentiâ seu devenientiâ, per descensum hæreditarium ab aliquo antecessorum suorum quorumcunque.

“Et ulterius de ampliori gratiâ nostrâ speciali, ac ex certa scientiâ et mero motu nostris volumus et concedimus per præsentem, pro nobis, hæredibus et successoribus nostris, præfato Roberto Karr, nuper comiti Somerset, hæredibus et assignatis suis, quod hæc literæ nostræ patentem, et omnia et singula in eisdem contenta vel irrotulamentum earundem, erunt in omnibus et per omnia firmæ, validæ, bonæ, sufficientes et effectuales in lege erga et contra nos, hæredes et successores nostros, tam in omnibus curiis nostris quam alibi infra regnum nostrum Angliæ, absque aliquibus confirmacionibus, licentiis vel tolerationibus, de nobis, hæredibus vel successoribus nostris per prædictum Robertum Karr, nuper comitem Somerset, aut hæredes sive assignatos suos, procurandis vel obtinendis; quodque impofterum idem Robertus Karr, nuper comes Somerset, ullo modo non judicetur, arregetur, impetatur, vexetur, seu gravetur de, pro, vel concernente mortem, occisionem, necem, venenationem prædicti Thomæ Overbury militis qualitercunque, seu quocunque modo idem Thomas Overbury miles ad mortem suam devenerit: non obstante statuto in parlamento domini Ricardi, nuper regis Angliæ secundi, anno regni sui decimo tertio, tento, edito: et non obstante nulle aut non vere recitando vel mentionando prædictum indictamentum sive inquisitionem superius in præsentibus mentionatum, vel aliquam inde parcellam: et non obstante non recitando vel non mentionando aliquam inquisitionem de, pro, aut concernentem præmissa per præsentem pardonata sive relaxata, aut eorum aliquod vel aliqua, aut aliquo alio statuto, actu, ordinatione, provisione, restrictione, materiâ vel re; in contrarium inde non obstantibus.—In cujus rei, &c. Teste rege apud Westmonasterium septimo die Octobris. Per Breve de Privato Sigillo.”

When king Charles came to the crown, Somerset used great solicitations for the recovery of his estate; for which end he presented the following Petition:

“To the King's most Excellent Majesty: The humble PETITION of Robert earl of Somerset.

“Sheweth; THAT in the year 1616, after your petitioner's troubles were over, the king (your majesty's father) was pleased by the earl of Suffolk, the Lord Treasurer, the earl of Worcester, Lord Privy Seal, and the duke of Richmond, Lord Steward, to make known to your petitioner his favourable intentions towards him, as well touching his pardon and enlargement, and the payment of his debts, as for his estate, of which they shewed him that his majesty did mean to take some part to the crown; but would make up to your petitioner in other lands to as much in value: and in particular, that with a maner which he had in Northamptonshire, of 1,000*l.* per ann. there was 4,000*l.* of the king's lands to be given him, which should be improvable, and be esteemed at 6,000*l.* per ann. But your petitioner, in that he had never taken any lands of gift from the king, as for

some other reasons, did delay to take hold of that offer, desiring that he might be allowed to keep that estate which he had formerly got, without prejudice to his majesty or any person. In which hope he rested, until he found that some pieces of it had been disposed of. Whereupon, being urged by his wife's friends, he was content, in the behalf of her and his daughter, to give way that they should sue to his majesty for the performance of that which had been proffered to your petitioner; but in that he would not appear therein himself, (doubting lest that might be understood to imply an assent on his part to that which had been done with his estate) it was given otherwise than as it was at first intended. Notwithstanding whereof, and that your petitioner continued in the same mind, without craving any reparation therein for the space of eight or nine years after, yet he found cause at last to sue both for his freedom and pardon, and for that part of his estate which rested in the crown; which pardon he had not above four months before God took the king. And his majesty being moved a little before concerning your petitioner's estate (he being then at Newmarket) professed that he would give order therein at his coming to Whitehall; which it pleased God to prevent.

"Since that time he hath sued to your majesty by the duke of Buckingham, the earl of Portland, and afterwards by my lord of Canterbury, my lord of Cottingham, and others. At the marriage of his daughter with the now earl of Bedford, he was by the duchess of Buckingham and the earl of Pembroke desired, for reasons they then gave him, not to press your majesty therein at that time; being assured by them, that what-ever he had to demand justly of your majesty, or should make appear to have been meant of him by your father, you would do him right in it. Whereupon he went on, and engaged himself to the late earl of Bedford, and for his use, in which he stands yet bound, to his exceeding great prejudice: all which notwithstanding, and that he afterwards did petition your majesty for a reference in this same cause, yet he could not then neither obtain any.

"Your Petitioner humbly prayeth, That your majesty will be pleased to take into your consideration this suit of his, of a nature far differing from all others that are made to you; that which he craves being only the performance of what your father intended for him, in lieu of so much as he had taken of his, and the same no otherwise in your majesty to give him, than as he hath forborn to take hold of it; and for which your majesty may conceive there hath been a cause, and that not a common one, which hath made him so long dispute with himself the receipt of so great a benefit, and wherein his whole fortune consisted, and all that he had been getting for many years. However, he being the first that hath left in the crown that which he might have had from it, may well hope that his confidence will not be

imputed to him for a crime, or that your majesty (if he had thereby given you any advantage) would think fit to make use of it, against one whom you may have cause to find, when it comes to be enquired into, that he hath been more than any trusted by the crown, and hath more proofs to shew than any other, that he hath deserved well of the king your father, of your majesty, and of all these your three kingdoms.

"His last and humble suit to your majesty is, That in respect of the many crosses he hath met with in this present cause, and that time hath taken away those great men before-mentioned, as also the earl of Carlisle and others, that were employed by the king to your petitioner, or present when he received his message from the lords, there remaining only now some noble persons of a greater number in this kingdom, that can testify so much as will give credit to that which is delivered here; that your majesty will therefore please to be informed by them what your petitioner hath further to say herein for himself, and what they themselves can report touching the intentions of the king, your majesty's father, towards him in this particular which is now sought of you: That after the many losses he hath sustained by his want of access to your majesty, and the assistance of those about you, such course may be taken now at length by your majesty for the repairing him again, either out of that estate which was his own, or otherwise, as may accord with the purpose of the king your father, with your majesty's justice, and is due to the demand of your petitioner.—And he shall pray for your majesty's long and happy reign."

The request of this Petition was never granted, and he and his countess both died in obscurity.

The Book called "Truth brought to Light by Time," &c. part 2d, p. 133, says, "After my lord of Somerset had been proceeded with as is shewed in his Petition, the earl of Carlisle was sent to him, by the king, who told him as from his majesty, that he was sorry for what had past, but he could not hinder the course of justice to go on, but it had concerned his own son, and that to repair him again he would do what he might by law or otherwise. In a few days after, the Lord Treasurer and the other lords came to him and spake to the same effect, and as it is in the Petition a while after, when some pieces of his estate were passed away under the seals, my lord William Howard, my lady Banbury and some of his own friends came and shewed him what was done, willing him that he would take care, if not of himself, yet of his wife and child, and of his children he might have; whereupon, he gave way to have his wife write to my lord of Carlisle, to move the king about that estate which had been tendered them before in his majesty's name; which letter being shewed to the king, his majesty gave order to the Lord Treasurer, that the same should be done accordingly, but this

falling out to be not long before the king's going into Scotland, it was expressly delayed till then, at which time the Lord Treasurer sent to him, and lets him know, that he now had order to make ready two warrants, one of lands, and another of fee-farm rents, and if he would not use means, and that by his own suit, to have the king put in mind of his first directions, it was like he should have the worst of them returned to him; but the other apprehending what was meant thereby, would not be induced to make any such suit, for the reason he gives in the Petition, wherefore the king being in his way as far as Huntingdon, the warrant with the fee-farms was sealed with the want of 1,000*l.* a year, besides of the sum formerly offered to him, which altogether took off, of the value of the whole, about the one half. This made some of his court friends then in Scotland with the king, to acquaint his friends here, with those passages, whereupon his sisters, and divers of our greatest lords, went to the king, to whom and to that which was desired his majesty, he made answer.—But after the king's return into England he continued as before without moving either for his estate or any thing else, until the king fell dangerously sick at Royston, then he hastened to pass through those fee-farm rents, taking them for a maintenance in the present, or in part of that which was meant for him, attending a fitter time when to move for the rest, since there was nothing could set him right, or repair him in all, but a reversal of the judgment, which he sought no otherwise than as the means whereby he might in his own person, be enabled to hold an estate or sue for one, for it seems he had some hold which he would not quit, of a hope of having that which had been his own formerly, but the times going on to the worse for him, he found cause seven or eight years after, to seek both for his liberty

and pardon; which pardon he had got but four months before the king died immediately after he had his pardon, he moved for that which rested of his estate, which sir Henry Gibb acquainted the king withal. But the king, without looking upon the paper in which the particulars were to be shewed him, told sir Henry that what Somerset had to demand of him in that matter, he should have it, if he had so much land in England. This was at Newmarket, a little before the king sickened at Theobalds.—So afterwards when his majesty came to the crown, he did by my lord of Buckingham, and the other lords he names in the Petition, continue this suit of his without intermission, but he could obtain no answer, nor reference, until about the time that his daughter was to be married, then by the duchess of Buckingham's means, the queen got the king to promise one, and this my lord Cottington told him of also, but it came no further, only this, he benefited thereby, that advising with my lord Cottington upon the time of the reference, for that he had the testimony of a nobleman to produce on his part, who was then troubled with the gout, and 100 miles off in the country, my lord Cottington bid him get it in writing, and it would be as well, and this lord's testimony, who died soon after, we have in a letter to my lord Cottington, yet sealed, but because the reference went not on, was never delivered him; so as here we have this letter which makes good that part of the Petition, which mentions the particulars of the king's gift for the estate, and our report for that which passeth here in Scotland, shews, the continuance of the king in the same mind and disposition, and sir Henry Gibb is now present in this kingdom, who will testify so much as hath been delivered here, in his name."

## 110. The Proceedings against Sir JOHN HOLLIS, Sir JOHN WENTWORTH, and Mr. LUMSDEN, in the Star-Chamber, for traducing the Publick Justice: 13 JAMES I. A. D. 1615.

*In Camera Stellata decimo Novembris, 13 Jacobi Regis, 1615.*

Present,

THE Lord Chamberlain, archbishop of Canterbury, lord Crew, lord steward, earl of Pembroke, bishop of London, bishop of Winton, lord Zouch, lord Knowles, secretary Winwood, Chancellor of the Duchy, sir Thomas Lake, and the three Chief Justices, being sat, there were brought to the bar, sir John Hollis, (now lord Houghton) sir John Wentworth, and Mr. Lumsden, a Scottish gentleman, as offenders and prisoners, committed by the Lords of the Council. Mr. Attorney-general (sir Francis Bacon) did inform against them *ore tenus* in this manner:

The offence wherewith I shall charge the three offenders at the bar, is a misdemeanor of

a high nature, tending to the defacing and scandal of justice in a great cause capital. The particular charge is this:

The king, amongst many his princely virtues, is known to excel in that proper virtue of the imperial throne, which is Justice. It is a royal virtue, which doth employ the other three cardinal virtues in her service. Wisdom to discover, and discern nocent or innocent: fortitude to prosecute and execute: temperance, so to carry justice as it be not passionate in the pursuit, nor confused in involving persons upon light suspicion nor precipitate in time. For this his majesty's virtue of justice God hath of late raised an occasion, and erected as it were a stage of theatre much to his honour for him to shew it, and act it in the pursuit of the untimely death of sir Thomas Overbury, and



therein cleansing the land from blood. For, my lords, if blood spilt pure doth cry to heaven in God's ears, much more blood defiled with poison.—This great work of his majesty's justice, the more excellent it is, your lordships will soon conclude the greater is the offence of any that have sought to affront it, or traduce it. And therefore, before I descend unto the charge of these offenders, I will set before your lordships the weight of that which they have sought to impeach; speaking somewhat of the general crime of imposition, and then of the particular circumstances of this fact upon Overbury; and thirdly and chiefly, of the king's great and worthy care and carriage in this business.—This offence of imposition is most truly figured in that device or description, which was made of the nature of one of the Roman tyrants, that he was *latum sanguine maceratum*, mire mingled or cemented with blood: for as it is one of the highest offences in guiltiness, so it is the basest of all others in the mind of the offenders. Treasons, *magnum aliquid spectant*: They aim at great things; but this is vile and base. I tell your lordships what I have noted, that in all God's books, (both in the Old and New Testament) I find examples of all other offences and offenders in the world, but not any one of an imposition or an imposer. I find mention of fear of casual imposition: when the wild vine was shred into the pot, they came complaining in a fearful manner; 'Master, mors in olla.' And I find mention of poisons of beasts and serpents; 'the poison of asps is under their lips.' But I find no example in the book of God of imposition. I have sometime thought of the words in the Psalm, 'let their table be made a snare.' Which certainly is most true of imposition; for the table, the daily bread, for which we pray, is turned to a deadly snare: but I think rather that that was meant of the treachery of friends that were participant of the same table.

But let us go on. It is an offence, my lords, that hath the two spurs of offending; *spes perficiendi*, and *spes celandi*: it is easily committed, and easily concealed.

It is an offence that is 'tanquam sagitta nocte volans'; it is the arrow that flies by night. It discerns not whom it hits; for many times the poison is laid for one, and the other takes it: as in Sander's case, where the poisoned apple was laid for the mother, and was taken up by the child, and killed the child: and so in that notorious case, whereupon the statute of 22 Hen. 8, cap. 9. was made, where the intent being to poison but one or two, poison was put into a little vessel of barm that stood in the kitchen of the bishop of Rochester's house; of which barm pottage or gruel was made, wherewith seventeen of the bishop's family were poisoned: nay, divers of the poor that came to the bishop's gate, and had the broken pottage in alms, were likewise poisoned. And therefore, if any man will comfort himself, or think with himself, here is great talk of imposition, I hope I am safe; for I have no ene-

mies; nor I have nothing that any body should long for. Why? that is all one; for he may sit at table by one for whom poison is prepared, and have a drench of his cup, or of his pottage. And so, as the poet saith, 'Concidit infelix alieno vulnere'; he may die another man's death. And therefore it was most gravely, and judiciously, and properly provided by that statute, that imposition should be high-treason; because whatsoever offence tendeth to the utter subversion and dissolution of human society, is in the nature of high-treason.

Lastly, it is an offence that I may truly say of it, 'non est nostri generis, nec sanguinis.' It is (thanks be to God) rare in the Isle of Britain: it is neither of our country, nor of our church; you may find it in Rome or Italy. There is a region, or perhaps a religion for it: and if it should come amongst us, certainly it were better living in a wilderness than in a court.

For in the particular fact upon Overbury. First, for the person of sir Thomas Overbury: I knew the gentleman. It is true, his mind was great, but it moved not in any good order; yet certainly it did commonly fly at good things; and the greatest fault that I ever heard by him was, that he made his friend his idol. But I leave him as sir Thomas Overbury.

But take him as he was the king's prisoner in the Tower; and then see how the case stands. In that place, the state is as it were respondent to make good the body of a prisoner. And if any thing happen to him there, it may (though not in this case, yet in some others) make an aspersion and reflection upon the state itself. For the person is utterly out of his own defence, his own care and providence can serve him nothing. He is in custody and preservation of the law; and we have a maxim in our law, (as my lord the judges know) that when a state is in preservation of law, nothing can destroy it, or hurt it. And God forbid but the like should be for the persons of those that are in custody of law; and therefore this was a circumstance of great aggravation.

Lastly, To have a man chased to death in such manner (as it appears now by matter of record; for other privacy of the cause I know not) by poison after poison, first roseacre, then arsenick, then mercury sublimate, then sublimate again; it is a thing would astonish man's nature to hear it. The poets feign, that the furies had whips, that they were corded with poisonous snakes; and a man would think that this were the very case, to have a man tied to a post, and to scourge him to death with snakes: for so may truly be termed diversity of poisons.

Now I will come to that which is the principal; that is, his majesty's princely, yea, and as I may truly term it, sacred proceeding in this cause. Wherein I will first speak of the temper of his justice, and then of the strength thereof.

First, it pleased my lord chief justice to let me know, (that which I heard with great com-

fort) which was the charge that his majesty gave to himself first, and afterwards to the commissioners in this case, worthy certainly to be written in letters of gold, wherein his majesty did fore-rank and make it his prime direction, that it should be carried without touch to any that was innocent; nay more, not only without impeachment, but without aspersion: which was a most noble and princely caution from his majesty; for men's reputations are tender things, and ought to be like Christ's coat, without seam. And it was the more to be respected in this case, because it met with two great persons; a nobleman that his majesty had favoured and advanced, and his lady being of a great and honourable house: though I think it be true, that the writers say, that there is no pomegranate so fair or so sound, but may have a perished kernel. Nay, I see plainly, that in those excellent papers of his majesty's own hand-writing, being as so many beams of justice issuing from that virtue which doth shine in him; I say, I see it was so evenly carried without prejudice, (whether it were a true accusation of the one part, or a practice of a false accusation on the other) as shewed plainly that his majesty's judgment was 'tanquam tabula rasa,' as a clean pair of tables, and his ear 'tanquam janua aperta,' as a gate not side open, but wide open to truth, as it should be by little and little discovered. Nay, I see plainly, that at the first (till farther light did break forth) his majesty was little moved with the first tale, which he vouchsafeth not so much as the name of a tale; but calleth it a rumour, which is an headless tale.

As for the strength or resolution of his majesty's justice, I must tell your lordships plainly: I do not marvel to see kings thunder out justice in cases of treason, when they are touched themselves; and that they are 'vindices doloris proprii': but that a king should 'pro amore justitiæ' only, contrary to the tide of his own affection, for the preservation of his people, take such care of a cause of justice, that is rare, and worthy to be celebrated far and near. For, I think, I may truly affirm, that there was never in this kingdom, nor in any other kingdom, the blood of a private gentleman vindicated, 'cum tanto motu regni,' or to say better, 'cum tanto plausu regni.'—If it had concerned the king or prince, there could not have been greater nor better commissioners to examine it. The term hath been almost turned into a *justitium*, or vacancy; the people themselves being more willing to be lookers-on in this business, than to follow their own. There hath been no care of discovery omitted, no moment of time lost. And therefore I will conclude this part with the saying of Solomon, 'Gloria Dei celare rem, et gloria regis scrutari rem.' And his majesty's honour is much the greater, for that he hath shewed to the world in this business, as it hath relation to my lord of Somerset, (whose case in no sort I do prejudice, being ignorant of the secrets of the cause, but taking him as the law takes him hitherto,

for a suspect) I say, the king hath to his great honour shewed, that were any man in such a case of blood, as the signet upon his right hand, (as the scripture says) yet would he pull him off.

Now will I come to the particular charge of these gentlemen, whose qualities and persons I respect and love; for they are all my particular friends: but now I can only do this duty of a friend to them, to make them know their fault to the full.

And therefore, first, I will by way of narrative declare to your lordships the fact, with the occasion of it; then you shall have their confessions read, upon which you are to proceed, together with some collateral testimonies by way of aggravation: and lastly, I will note and observe to your lordships, the material points which I do insist upon for their charge, and so leave them to their answer. And this I will do very briefly, for the case is not perplexed.

That wretched man Weston, who was the actor or mechanical party in this imprisonment, at the first day being indicted by a very substantial jury of selected citizens, to the number of nineteen, who found *billu vera*, yet nevertheless at the first stood mute; but after some days intermission, it pleased God to cast out the dumb devil, and that he did put himself upon his trial; and was by a jury also of great value, upon his confession, and other testimonies, found guilty: so as thirty-one sufficient jurors have passed upon him. Whereupon judgment and execution was awarded against him. After this, being in preparation for another world, he sent for sir Thomas Overbury's father, and falling down upon his knees, with great remorse and compunction, asked him forgiveness. Afterwards, again, of his own motion, desired to have his like prayer of forgiveness recommended to his mother, who was absent. And at both times, out of the abundance of his heart, confessed that he was to die justly, and that he was worthy of death. And after, again, at his execution (which is a kind of sealing-time of confessions), even at the point of death, (although there were tempters about him, as you shall hear by and bye) yet he did again confirm publickly, that his examinations were true, and that he had been justly and honourably dealt with. Here is the narrative which induceth the charge. The charge itself is this:

Mr. Lumsden, whose offence stands alone single (the offence of the other two being in consort; and yet all three meeting in their end and center, which was to interrupt or deface this excellent piece of justice:) Mr. Lumsden, I say, mean while, between Weston's standing mute and his trial, takes upon him to make a most false, odious, and libellous relation, containing as many untruths as lines, and sets it down in writing with his own hand, and delivers it to Mr. Henry Gibb, of the bed-chamber, to be put into the king's hand; in which writing he doth falsify and pervert all that was done the first day at the arraignment of Weston;

turning the pike and point of his imputations principally upon my lord chief justice of England, whose name (thus occurring) I cannot pass by, and yet I cannot skill to flatter. But this I will say of him, and I would say as much to ages, if I should write a story; that never man's person and his place were better met in a business, than my lord Coke and my lord chief justice, in the cause of Overbury.

Now, my lords, in this offence of Mr. Lumsden's, for the particulars of these slanderous articles, I will observe them unto you when the writings and examinations are read; for I do not love to set the gloss before the text. But in general I note to your lordships, first, the person of Mr. Lumsden: I know he is a Scots gentleman, and thereby more ignorant of our laws and forms: But I cannot tell whether this doth extenuate his fault in respect of ignorance, or aggravate it much, in respect of presumption; that he would meddle in that that he understood not: but I doubt it came not out of his quiver; some other man's cunning wrought upon this man's boldness. Secondly, I may note unto you the greatness of the cause, wherein he being a private, mean gentleman, did presume to deal. Mr. Lumsden could not but know to what great and grave commissioners the king had committed this cause; and that his majesty in his wisdom would expect return of all things from them to whose trust he had committed this business. For it is the part of commissioners, as well to report the business, as to manage the business; and then his majesty might have been sure to have had all things well weighed, and truly informed: and therefore it should have been far from Mr. Lumsden to have presumed to put forth his hand to so high and tender a business, which was not to be touched but by employed hands. Thirdly, I note to your lordships, that this infusion of a slander into a king's ear, is of all forms of libels and slanders the worst. It is true, that kings may keep secret their informations; and then no man ought to enquire after them, while they are shined in their breast. But where a king is pleased that a man shall answer for his false information; there, I say, the false information to a king exceeds in offence the false information of any other kind; being a kind (since we are in matter of poison) of imprisonment of a king's ear. And thus much for the offence of Mr. Lumsden.

For the offence of sir John Wentworth and sir John Hollis, which I said was in consort, it was shortly this: At the time and place of the execution of Weston, to supplant his Christian resolution, and to scandalize the justice already past, and perhaps to cut off the thread of that which is to come; these gentlemen, with others, came mounted on horseback, and in a ruffling and facing manner, put themselves forward to re-examine Weston upon questions: and what questions? Directly cross to that that had been tried and judged; for what was the point tried? That Weston had poisoned Overbury. What was sir John Wentworth's question; whether

Weston did poison Overbury or no? A contradictory directly: Weston answered only, that he did him wrong; and turning to the sheriff said, You promised me I should not be troubled at this time. Nevertheless, he pressed him to answer; saying, he desired to know it, that he might pray with him. I know not that sir John Wentworth is an Ecclesiastick, that he should cut any man from the communion of prayer. And yet for all this vexing of the spirit of a poor man, now in the gates of death, Weston nevertheless stood constant, and said, I die not unworthily: my lord chief justice hath my mind under my hand, and he is an honourable and just judge. This is sir John Wentworth's offence.

For Sir John Hollis, he was not so much a questionist; but wrought upon the other's questions, and, like a kind of confessor, wished him to discharge his conscience, and to satisfy the world. What world? I marvel! It was sure the world at Tyburn. For the world at Guild-Hall, and the world at London, was satisfied before; teste the bells that rung. But men have got a fashion now-a-days, that two or three busy-bodies will take upon them the name of the world, and broach their own conceits, as if it were a general opinion. Well, what more? When they could not work upon Weston, then sir John Hollis in an indignation turned about his horse (when the other was turning over the ladder) and said, he was sorry for such a conclusion; that was to have the state honoured or justified: but others took and reported his words in another degree: but that I leave, seeing it is not confessed.

Sir John Hollis's offence had another appendix, before this in time; which was, that at the day of the verdict given by the jury, he also would needs give his verdict, saying openly, that if he were of the jury, he would doubt what to do. Marry (he saith), he cannot tell well whether he spake this before the jury had given up the verdict, or after; wherein this is little gained. For whether sir John Hollis were a pre-juror or a post-juror, the one was to pre-judge the jury, the other as to taint them.

Of the offence of these two gentlemen in general, your lordships must give me leave to say, that it is an offence greater and more dangerous than is conceived. I know well, that as we have no Spanish inquisitions, nor justice in a corner; so we have no gagging of men's mouths at their death, but that they may speak freely at the last hour; but then it must come from the free motion of the party, not by temptation of questions. The questions that are to be asked, ought to tend to farther revealing of their own or others guiltiness; but to use a question in the nature of a false interrogatory, to falsify that which is *res judicata*, is intolerable. For that were to erect a court or commission of review at Tyburn, against the King's Bench at Westminster. And besides, it is a thing vain and idle: for if they answer according to the judgment past, it adds no credit; or if it be contrary, it derogateth nothing: But

yet it subjecteth the majesty of justice to popular and vulgar talk and opinion.

My lords, these are great and dangerous offences; for if we do not maintain justice, justice will not maintain us.

But now your lordships shall hear the Examinations themselves. Hereupon the Examinations were read.

*Mr. Lumden* for Answer to this charge said, that himself was not at the arraignment, but what he had spoken, or set down in writing, he had received of many in common discourse; who being now demanded to justify the same, do deny it; and therefore he would confess that which was written was false. He pleaded ignorance of the law, and that he did it without any purpose of prejudice to the public business, but only as he conceived out of duty; and because he had always lived as a gentleman, he would not so much degenerate from himself and his birth, nor so much offend against human society, as to become a base accuser; but would submit himself and his offence to the censure of the court, and to the favourable interpretation of their lordships.

*Mr. Attorney* replied, that his answer and submission were modest, and therefore he would not press his offence further; yet he would tell him, that in criminal causes whosoever would raise a slander, and refuse to tell his author, he must tell him that which the laws tell him, that he was the author himself. This kind of slandering judges to kings and princes is common. Popham, a great judge in his time, was complained of by petition to queen Elizabeth; it was committed to four privy-counsellors; but the same was found to be slanderous, and the parties punished in the court. He likewise said, I may not admit of this new learning; I hold it not unworthy a gentleman to discharge his fault upon the first author; and by the law, the not doing thereof maketh him the first author; so he becomes a false accuser of himself.

*Sir John Wentworth's* answer was, that he would not willingly be conceived to speak more here than he had done heretofore. It was true, that he was at the execution of Weston, and did ask those questions touching the poisoning of sir Thomas Overbury; which he did on two reasons: the one was, because he had seen others do the same at the same time, and especially one Parkes; and he thought he might do it as well as he. Another reason was, because he not being at the arraignment, and hearing that Weston had denied the fact, he was desirous to be satisfied of the truth from himself; yet he purposed not to ask any questions when he came thither; but if to ask questions of a man going to execution were offensive to the state, he did humbly submit to their lordship's censures.

*Sir John Hollis* answered, that the matter declared against him contained three crimes. The first, that whereas at the first upon the indictment he should fore-judge the jury, by delivering his opinion; saying, that he should

doubt what to do; and this he confessed, as a man perhaps more trickish and curious to give his verdict or judgment of life or death than others: and if a bare word of his opinion drawn by discourse (he being but a stander-by in this business) be to be censured, I appeal to your judgments. His second offence was for giving of counsel, and asking questions of Weston at the execution. He said, he confessed he was there, but carried with a general desire which he had to see the execution, as he had done in many like cases before. And he had formerly seen that it was a common thing for men standers-by to ask questions of those that were to be executed: and now many asking this question of the fact of Weston, and he answering in general terms, I die not unworthily; he also, among many others, did ask him the question (as hath been opened;) which was not purposed of him when he came thither, but was occasioned by reason of one that stood behind him at the gallows, who said to Weston, that he should confess the truth of this fact, for if he had had his right, he had been hanged many years ago: whereunto Weston answered, fact or no fact I die worthily. *Sir John* said, that *Mr. Attorney* had so well applied his charge against him, that though he carried the seal of a good conscience with him, he would almost make him believe that he was guilty; but he hoped their lordships would take the bird by the body and not by the feathers: his speech, he said, might be well understood, but the worst end of it was turned towards him; he did but the part of a christian to persuade Weston to discharge his conscience, and intended not to contrivert the law and justice that had passed on him. As for the testimony of Bearingborne, I know not what he hath deposed against me; but it seems he is some man of trade, against whom I think I may now put myself in opposition, that my denial may stand against his affirmation. In his youth some of your lordships know, that he [*sir John Hollis*] had spent some of his time in the wars and travel, and afterwards had lived in place at court, both in the time of queen Elizabeth, and his majesty eight years: he had served the late most worthy prince, the memory of whom, he said, did grieve him that he should plead his name at the bar, whom for the misery of this state it pleased God to take away; since whose death he had been as a fish out of the water. Thus much, he said, was pulled out of his mouth, by reason of his testimony produced against him; but he knew that not words but his cause must help him out of this mire. And therefore if their lordships had determined any thing against him for these offences, he did humbly submit himself to their honourable censures.—The lord chancellor said, that this deposition of Bearingborne was not read but in explanation and aggravation, and not for evidence of condemnation against *sir John Hollis*.

*Mr. Attorney* replied upon *sir John* to this answer of his, that his speech to Weston was

occasional, and not resolved on before his coming to the execution; that it was new matter thought upon and devised since his being questioned for his offence; for there was never a word thereof spoken in this examination: and there this is the feather you spoke of, and not the body. Whereunto sir John Hollis answered, that they might very well stand together.

Hereupon sir Edward Coke, the chief justice of the king's Bench, pronounced the Sentence; when he said, that he would say of this business, and his dealing therein, as Abimelech said of himself, 'Tu scis, Domine, quod feci in simplicitate cordis et munditie manuum;' and therefore would also boldly affirm, that there were none brought into question of this great business of poison, but such as in his soul and conscience were apparently guilty: He said he was no fit man for a common-place; yet he had found some records of poisoning which he would shew: as namely in the treasury 31 Ed. 3, as the king indeed had two treasuries, the one of records, the other of gold and silver; where a woman committed adultery, and after poisoned her husband. And 21 Edw. 1, Solomon le Roch, a judge, was poisoned by a monk, who afterwards prayed to be delivered to the censure of the church; and he was denied, because the same was a wrong to the state to poison a judge. And it is to be observed in the first case, that poison and adultery go together; and on the second, that poison and popery go together. From Edward 3, down to 22 Henry 8, (which was a great lump of time) no mention is made of poisoning any man; and then a statute was made, that those that did poison any body should be boiled to death, and were first to be put in at the tiptoes. In this business, he said, he would tell no news, but he was not yet at the root; God forbid that those kinds of offences should be unsearched and unpunished, wheresoever they are found: There are divers sorts of poisoning, by some whereof a man shall die a month or a quarter of a year after, 'ut sic se sentiat mori;' and shall not know in what manner he is poisoned: as one Squire, a priest, should have poisoned queen Elizabeth by poisoning her saddle. This poisoning came first from popery. In this case of Weston he would never confess the indictment, because the indictment was, that he poisoned sir Thomas Overbury with arsenick, roe-eaker and mercury sublimate; whereas indeed it was not known what poison killed him. Here the poor man conceived a scruple, that if he did not know with which of the poisons Overbury was poisoned, he was not guilty of the offence laid in the indictment; and therefore said he was not guilty of the offence. Now 'ut obstruat os iniqui,' that the mouth of the wicked man may be fully stopped; after that it was resolved unto him, that the manner of killing, laid in the indictment, was not the point of the indictment, but the matter of killing; as if the indictment be, that a man was killed with a sword, whereas indeed he was killed with a

dagger; yet the party is guilty, because the killing of a man is the point of the indictment; then he confessed the fact. And for this gentleman, Mr. Lumsden, a Scottish gentleman, a nation than he loved well, (and to his majesty both English and Scottish were equally dear) 'Scoti et Angli nullo discrimine, &c.' He that infuseth into his majesty's ears the least falsehood concerning his judges unjustly, is like him that infuseth never so little copper into coin; they both commit a kind of treason; and for the matter of it, which was informed, for 'qui non bene respondet, non respondet;' and a little to divert from this business, you, Mr. Lumsden, were a pandar to the earl of Somerset, and were his favourer in deed, but his follower in evil. 'Afflictio dat intellectum,' let your affliction now give you sense and feeling of your sins; your service of a pandar is apparently to be shewed you by a letter under my lord of Somerset's own hand, and your answer to it. Let it then enter your heart and soul to assure yourself, that there is now no safety, protection, nor assurance, but under a religious faith in Jesus Christ; and that, 'radix justitiæ est pietas,' the foundation and root of justice is piety. I confess I had a great suspicion out of whose quiver the murder came first; but because I had no certain proofs, I would never question them. This resolution of Weston to be mute, was very great. When he was persuaded by the bishop of London and Ely to plead, he would not: and after being promised that if he would speak, he should have a popish priest; he thereunto answered, Have I refused the godly persuasions of the bishop of London, and shall I answer to a popish priest? And for your persuasions, Mr. Lumsden, that you will not be an accuser, this is a contemptuous answer; for this is not to be an accuser, being examined of another to discover him; but your refusal in this kind of answer is a manifest contempt: and for the like offence, a great lady of the land lieth now in the Tower, only for refusing to answer being examined. 'Quod diabolus ad malum exposuit, Deus ad bonum exposuit;' That which the devil exposeth to evil, God disposeth to good. This refusing to discover an offender, is a contempt to a master of a family; if he should command any of his servants to tell him of an offence committed, and by whom; and the servant that is so asked shall refuse to tell him, he shall be worthy of punishment: much more any subject being examined by the king's authority and commissioners, if he shall refuse to make discovery of the truth. The statute of the 1st and 2d of Rich. 2, is, that he that doth raise false news between the king and his nobles, shall be imprisoned for the space of a year; I think fit that Mr. Lumsden's imprisonment should be for a year, and afterwards, until he should produce his author. As for sir John Hollis, his fault of questioning and counselling, it is very great, the same being made after a verdict; for if a man commit treason the 30th day of May, and sell his lands the 5th day, and

after is indicted that he did commit the treason the 1st day, which goes before the sale, and after is found guilty of this indictment; he that is to lose the land cannot deny this verdict, and say the treason was committed the 20th day, though it concern him for all that he hath of laying; if that he that is to be undone by a verdict shall not speak cross matter to a verdict (as the books of Ed. 3, and Ed. 1, are, and 11 Hen. 4, 53 Estophel. 137,) what shall be done to him that having no cause in a matter capital, wherein he had nothing to do, would intermeddle? For as the law saith, 'Turpis est admissio rei ad se non pertinentis.' Sir John said, that it hath been a custom to ask questions at those times, and that he did usually go to executions. For his own part, he said, that ever since he was a scholar, and had read those verses of Ovid, *Trist. iii. 5.*

'Et lupus et vulpes instant morientibus—  
'Et quæcunque minor nobilitate fera est,'

he did never like it; and therefore, he said, he did marvel much at the use of sir John. Sir John answers here: at the bar, and saith, that if any thing were determined against him, he did humbly submit himself thereto: by which term so determining, he meant, I think, as if we did give our censures against him by conspiracy. For my own part, I talked with none other, nor I think did any of us onespeak with other before we came together here. Peradventure he thinks, as some have thought, that all the carriage of this business is but a conspiracy against the earl of Somerset. He saith, he hath been since the prince's death but as a fish out of the water. I know not what he means by a fish out of the water: I have heard that 'Clericus in oppido, tanquam piscis in arido,' a clerk in the town is like a fish out of the water: he is a justice of peace, a commissioner of Oyer and Terminer; a man of fair lands, 1500*l.* per annum at the least; this money is enough to be a privy-counsellor: and yet sir John Hollis is like a fish out of the water. I know he hath travelled many countries, speaks many languages, hath seen many manners and customs, and knows much of foreign nations;

yet a little knowledge of the common-law of this land would have been better for him than all these; it would have kept him from asking questions, and counselling in scandal of religion and justice; two of the main pillars of the kingdom, and that in cold blood. Evidence is above eloquence; the party himself acknowledged that he died justly; and those that saw him said he died penitently: so to conclude, as it was sometime said of Rome, 'Et quæ tanta fuit Romam tibi causa videndi,' he might very well now say of sir John Hollis his going to Tyburn, with a little alteration of the words, 'Et quæ tanta fuit Tyburn tibi causa videndi.' For the censure, he agreed with that which had been set; and the acknowledgment of Mr. Lumsden should be also in the court of Common-Pleas and the Exchequer, because the justice of all courts may be wronged with slanderous petitions. He moved that information might be made against the other gentlemen that were asking such questions as these were; and that they might receive their due punishment: he meant, he said, Mr. Sackvil, sir Thomas Vavasor, and sir Henry Vane, who would be a baron if attainders did not lie in the way: If these be not punished, these gentlemen will think that they have wrong; for 'quæ mala cum multis patimur leviora videntur.' He said he would wish gentlemen to take heed how they fell into discourses of these businesses, when they be at their chambers; for in the proceeding of these great businesses and affairs, if a man speak irreverently of the justice thereof, the bird that hath wings will reveal it.

The Sentence was fine, imprisonment, and submission, as followeth:

Lumsden fined 2,000 marks, imprisoned in the Tower for a whole year, and after until he shall, at the King's-bench bar, submit himself and confess his fault, and also produce his authors.

Sir John Hollis was fined 1,000*l.* imprisoned in the Tower for the space of a year.

Sir John Wentworth fined 1,000 marks, imprisoned in the Tower for a year; and both to make submission at the King's-bench bar.

### 111. The CASE of DUELS; or Proceedings in the Star-Chamber, against Mr. WILLIAM PRIEST for writing and sending a Challenge, and Mr. RICHARD WRIGHT for carrying it: 26th Jan. 13 JAMES I. A. D. 1615. [2 Bacon's Works, 563.]

CHARGE of sir FRANCIS BACON, the King's Attorney-general.

MY lords; I thought it fit for my place, and for these times, to bring to hearing before your lordships some cause touching private Duels, to see if this court can do any good to tame and reclaim that evil, which seems unbridled. And I could have wished that I had met with some greater persons, as a subject for your

censure; both because it had been more worthy of this presence, and also the better to have shewed the resolution myself hath to proceed without respect of persons in this business. But finding this cause on foot in my predecessor's time, and published and ready for hearing, I thought to lose no time in a mischief that groweth every day: and besides, it passes not amiss sometimes in government, that the greater sort be admonished by an example made in the

meauer, and the dog to be beaten before the lion. Nay, I should think, my lords, that men of birth and quality will leave the practice, when it begins to be vilified, and come so low as to barber-surgeons and butchers, and such base mechanical persons. And for the greatness of this presence, in which I take much comfort, both as I consider it in itself, and much more in respect it is by his majesty's direction, I will supply the meanness of the particular cause, by handling of the general point: to the end, that by the occasion of this present cause, both my purpose of prosecution against Duels, and the opinion of the court, without which I am nothing, for the censure of them, may appear, and thereby offenders in that kind may read their own case, and know what they are to expect; which may serve for a warning until example may be made in some greater person: which I doubt the times will but too soon afford.

Therefore before I come to the particular, whereof your lordships are now to judge, I think it time best spent to speak somewhat 1. Of the nature and greatness of this mischief. 2. Of the Causes and Remedies. 3. Of the justice of the law of England, which some stick not to think defective in this matter. 4. Of the capacity of this court, where certainly the Remedy of this Mischief is best to be found. 5. Touching mine own purpose and resolution, wherein I shall humbly crave your lordships aid and assistance.

For the Mischief itself, it may please your lordships to take into your consideration, that when revenge is once extorted out of the magistrate's hands, contrary to God's ordinance, 'mihi vindicta, ego retribuam,' and every man shall bear the sword, not to defend, but to assail; and private men begin once to presume to give law to themselves, and to right their own wrongs; no man can foresee the danger and inconveniencies that may arise and multiply thereupon. It may cause sudden storms in court, to the disturbance of his majesty, and unsafety of his person. It may grow from quarrels to bandying, and from bandying to trooping, and so to tumult and commotion; from particular persons to dissension of families and alliances; yea to national quarrels, according to the infinite variety of accidents, which fall not under foresight. So that the state by this means shall be like to a distempered and imperfect body, continually subject to inflammations and convulsions. Besides, certainly, both in divinity and in policy, offences of presumption are the greatest. Other offences yield and consent to the law that it is good, not daring to make defence, or to justify themselves; but this offence expressly gives the law an affront, as if there were two laws, one a kind of gown-law, and the other a law of reputation, as they term it. So that Paul's and Westminster, the pulpit and the courts of justice, must give place to the law, as the king speaketh in his proclamation, of ordinary tables, and such reverend assemblies: the Year-Books

and statute-books must give place to some French and Italian pamphlets, which handle the doctrine of Duels, which if they be in the right, *transeamus ad illa*, let us receive them, and not keep the people in conflict and distraction between two laws. Again, my lords, it is a miserable effect, when young men full of towardness and hope, such as the poets call *Aurora filii*, sons of the morning, in whom the expectation and comfort of their friends consisteth, shall be cast away and destroyed in such a vain manner. But much more it is to be deplored when so much noble and gentle blood should be spilt upon such follies, as if it were adventured in the field in service of the king and realm, were able to make the fortune of a day, and to change the fortune of a kingdom. So as your lordships see what a desperate evil this is; it troubleth peace; it furnisheth war; it bringeth calamity upon private men, peril upon the state and contempt upon the law.

Touching the Causes of it: the first motive, no doubt, is a false and erroneous imagination of honour and credit; and therefore the king, in his last Proclamation, doth most aptly and excellently call them bewitching Duels. For, if one judge of it truly, it is no better than a sorcery that enchanteth the spirits of young men, that bear great minds with a false shew, *species falsa*; and a kind of Satanical illusion and apparition of honour against religion, against law, against moral virtue, and against the precedents and examples of the best times and valiantest nations; as I shall tell you by and by, when I shall shew you that the law of England is not alone in this point. But then the seed of this mischief being such, it is nourished by vain discourses, and green and unripe conceits, which nevertheless have so prevailed, as though a man were staid and sober-minded, and a right believer touching the vanity and unlawfulness of these duels; yet the stream of vulgar opinions such, as it imposeth a necessity upon men of value to conform themselves, or else there is no living or looking upon mens facts: so that we have not to do, in this case, so much with particular persons, as with unsound and depraved opinions, like the dominations and spirits of the air which the scripture speaketh of. Hereunto may be added, that men have almost lost the true notion and understanding of fortitude and valour. For fortitude distinguisheth of the grounds of quarrels whether they be just; and not only so, but whether they be worthy; and setteth a better price upon mens lives, than to bestow them idly. Nay, it is weakness and dis-esteem of a man's self, to put a man's life upon such liddger performances. A man's life is not to be trifled away: it is to be offered up and sacrificed to honourable services, public merits, good causes, and noble adventures. It is in expence of blood as it is in expence of money. It is no liberality to make a profusion of money upon every vain occasion; nor no more it is fortitude to make effusion of blood, except the cause be

of worth. And thus much for the causes of this evil.

For the Remedies, I hope some great and noble person will put his hand to this plough, and I wish that my labours of this day may be but forerunners to the work of a higher and better hand. But yet to deliver my opinion as may be proper for this time and place, there be four things that I have thought on, as the most effectual for the repressing of this depraved custom of particular combats.

The first is, that there do appear and be declared a constant and settled resolution in the state to abolish it. For this is a thing, my lords, must go down at once, or not at all; for then every particular man will think himself acquitted in his reputation, when he sees that the state takes it to heart, as an insult against the king's power and authority, and thereupon hath absolutely resolved to master it; like unto that which was set down in express words in the edict of Charles 9, of France touching duels, that the king himself took upon him the honour of all that took themselves grieved or interested for not having performed the combat. So must the state do in this business; and in my conscience there is none that is but of a reasonable sober disposition, be he never so valiant, except it be some furious person that is like a firework, but will be glad of it, when he shall see the law and rule of state disinterest him of a vain and unnecessary hazard.

Secondly, care must be taken that this evil be no more cockered, nor the humour of it fed; wherein I humbly pray your lordships, that I may speak my mind freely, and yet be understood aright. The proceedings of the great and noble commissioners martial I honour and reverence much, and of them I speak not in any sort. But I say the compounding of quarrels, which is otherwise in use by private noblemen and gentlemen, it is so punctual, and hath such reference and respect unto the received conceits, what is before-hand, and what is behind-hand, and I cannot tell what, as without all question it doth, in a fashion, countenance and authorize this practice of duels, as if it had in it somewhat of right.

Thirdly, I must acknowledge, that I learned out of the king's last proclamation, the most prudent and best applied remedy for this offence, if it shall please his majesty to use it, that the wit of man can devise. This offence, my lords, is grounded upon a false conceit of honour; and therefore it would be punished in the same kind, 'in eo quis rectissime plectitur, in quo peccat' The fountain of honour is the king, and his aspect, and the access to his person continueth honour in life, and to be banished from his presence is one of the greatest eclipses of honour that can be. If his majesty shall be pleased that when this court shall censure any of these offences in persons of eminent quality, to add this out of his own power and discipline, that these persons shall be banished and excluded from his court for certain years, and the courts of his queen and prince; I think

there is no man, that hath any good blood in him, will commit an act that shall cast him into that darkness, that he may not behold his sovereign's face.

Lastly, and that which more properly concerneth this court: we see, my lords, the root of this offence is stubborn; for it despiseth death, which is the utmost of punishments; and it were a just but a miserable severity, to execute the law without all remission or mercy, where the case proveth capital. And yet the late severity in France was more, where, by a kind of martial law, established by ordinance of the king and parliament, the party that had slain another was presently had to the gibbet, insomuch as gentlemen of great quality were hanged, their wounds bleeding, lest a natural death should prevent the example of justice. But, my lords, the course which we shall take is of far greater lenity, and yet of no less efficacy; which is to punish, in this court, all the middle acts and proceedings which tend to the duel, which I will enumerate to you anon, and so to hew and vex the root in the branches, which, no doubt, in the end will kill the root, and yet prevent the extremity of law.

Now for the Law of England, I see it excepted to, though ignorantly, in two points. The one, that it should make no difference between an insidious and foul murder, and the killing of a man upon fair terms, as they now call it. The other, that the law hath not provided sufficient punishment, and reparations, for contumely of words, as the lye, and the like. But these are no better than childish novelties against the divine law, and against all laws in effect, and against the examples of all the bravest and most virtuous nations of the world.

For first, for the Law of God, there is never to be found any difference made in homicide, but between homicide voluntary, and involuntary, which we term misadventure. And for the case of misadventure itself, there were cities of refuge; so that the offender was put to his flight, and that flight was subject to accident, whether the revenger of blood should overtake him before he had gotten sanctuary or no. It is true that our law hath made a more subtle distinction between the will inflamed and the will advised, between manslaughter in heat and murder upon premeditated malice or cold blood, as the soldiers call it; an indulgence not unfit for a choleric and warlike nation; for it is true, 'ira furor brevis,' a man in fury is not himself. This privilege of passion the ancient Roman law restrained, but to a case: that was, if the husband took the adulterer in the manner. To that rage and provocation only it gave way, that an homicide was justifiable. But for a difference to be made in case of killing and destroying man, upon a fore-thought purpose, between foul and fair, and as it were between single murder and vied murder, it is but a monstrous child of this latter age, and there is no shadow of it in any law divine or human. Only it is true, I find in the scripture that Cain enticed his brother into the field and slew him treacher-



ously; but Lamech vaunted of his manhood, that he would kill a young man, and if it were to his hurt; so as I see no difference between an insidious murder and a braving or presumptuous murder, but the difference between Cain and Lamech.

As for examples in civil states, all memory doth consent, that Græcia and Rome were the most valiant and generous nations of the world; and, that which is more to be noted, they were free estates, and not under a monarchy; whereby a man would think it a great deal the more reason that particular persons should have righted themselves. And yet they had not this practice of duels, nor any thing that bare shew thereof: and sure they would have had it, if there had been any virtue in it. Nay, as he saith, 'fas eat et ab hoste doceri.' It is memorable, that is reported by a counsellor ambassador of the emperor's, touching the censure of the Turks of these duels. There was a combat of this kind performed by two persons of quality of the Turks, wherein one of them was slain, the other party was convented before the council of bushaws. The manner of the reprehension was in these words: 'How durst you undertake to fight one with the other? Are there not Christians enough to kill? Did you not know that whether of you shall be slain, the loss would be the great seignor's?' So as we may see that the most warlike nations, whether generous or barbarous, have ever despised this wherein now men glory.

It is true, my lords, that I find Combats of two natures authorized, how justly I will not dispute as to the latter of them. The one, when upon the approaches of armies in the face one of the other, particular persons have made challenges for trial of valours in the field upon the public quarrel. This the Romans called 'pugna per provocationem.' And this was never, but either between the generals themselves, who were absolute, or between particulars by licence of the generals; never upon private authority. So you see David asked leave when he fought with Goliath; and Joab, when the armies were met, gave leave, and said, 'let the young men play before us.' And of this kind was that famous example in the wars of Naples, between twelve Spaniards and twelve Italians, where the Italians bare away the victory; besides other infinite like examples worthy and laudable, sometimes by singles, sometimes by numbers.

The second Combat is a judicial trial of right, where the right is obscure, introduced by the Goths and the northern nations, but more anciently entertained in Spain. And this yet remains in some cases as a divine lot of battle, though controverted by divines, touching the lawfulness of it; so that a wise writer saith, 'taliter pugnantēs videntur tentare Deum, quia hoc volunt ut Deus os: endat et faciat miraculum, ut justam causam habens victor efficiatur, quod sæpe contra accidit.' But howsoever it be, this kind of fight taketh its warrant from law. Nay, the French themselves, whence

this folly seemeth chiefly to have flown, never had it but only in practice and toleration, and never as authorised by law; and yet now of late they have been fain to purge their folly with extreme rigour, in so much as many gentlemen left between death and life in the duels, as I spake before, were hastened to hanging with their wounds bleeding. For the state found it had been neglected so long, as nothing could be thought cruelty, which tended to the putting of it down. As for the second defect pretended in our law, that it hath provided no remedy for lies and fillips, it may receive like answer. It would have been thought a madness amongst the ancient lawgivers, to have set a punishment upon the lye given, which in effect is but a word of denial, a negative of another's saying. Any lawgiver, if he had been asked the question, would have made Solon's answer: That he had not ordained any punishment for it, because he never imagined the world would have been so fantastical as to take it so highly. The civilians, they dispute whether an action of injury lie for it, and rather resolve the contrary. And Francis the first of France, who first set on and stamped this disgrace so deep, is taxed by the judgment of all wise writers for beginning the vanity of it; for it was lie, that when he had himself given the lye and defy to the emperor, to make it current in the world, said in a solemn assembly, 'that he was no honest man that would bear the lye:' which was the fountain of this new learning.

As for words of reproach and contumely, whereof the lye was esteemed none, it is not credible, but that the orations themselves are extant, what extreme and exquisite reproaches were tossed up and down in the senate of Rome and the places of assembly, and the like in Græcia, and yet no man took himself fouled by them, but took them but for breath, and the stile of an enemy, and either despised them or returned them, but no blood spilt about them.

So of every touch or light blow of the person, they are not in themselves considerable, save that they have got them upon the stamp of a disgrace, which maketh these light things pass for great matter. The law of England, and all laws, hold these degrees of injury to the person, slaunder, battery, maim, and death; and if there be extraordinary circumstances of despite and contumely, as in case of libels, and bastinadoes, and the like, this court taketh them in hand and punisheth them exemplarily. But for this apprehension of a disgrace, that a fillip to the person should be a mortal wound to the reputation, it were good that men did hearken unto the saying of Gonsalvo, the great and famous commander, that was wont to say, a gentleman's honour should be *de tela crassiore*, of a good strong warp or web, that every little thing should not catch in it; when as now it seems they are but of cobweb-lawn or such light stuff, which certainly is weakness, and not true greatness of mind, but like a sick man's body, that is so tender that it feels every thing. And so

much in maintenance and demonstration of the wisdom and justice of the law of the land.

For the Capacity of this Court, I take this to be a ground infallible: that wheresoever an offence is capital, or matter of felony, though it be not acted, there the combination or practice tending to that offence is punishable in this court as a high misdemeanor. So practice to im poison, though it took no effect; waylaying to murder, though it took no effect; and the like; have been adjudged heinous misdemeanors punishable in this court. Nay, inceptions and preparations in inferior crimes, that are not capital, as suborning and preparing of witnesses that were never deposed, or deposed nothing material, have likewise been censured in this court, as appeareth by the decree in Garzon's Case.

Why then, the major proposition being such, the minor cannot be denied: for every appointment of the field is but combination and plotting of murder. Let them gild it how they list, they shall never have fairer terms of me in place of justice. Then the conclusion followeth, that it is a case fit for the censure of the court. And of this there be precedents in the very point of challenge. It was the case of Wharton, plaintiff, against Ellekar and Acklam defendants, where Acklam, being a follower of Ellekar's, was censured for carrying a challenge from Ellekar to Wharton, though the challenge was not put in writing, but delivered only by word of message; and there are words in the decree, that such challenges are to the subversion of government. These things are well known, and therefore I needed not so much to have insisted upon them, but that in this case I would be thought not to innovate any thing of my own head, but to follow the former precedents of the court, though I mean to do it more thoroughly, because the time requires it more.

Therefore now to come to that which concerneth my part; I say, that by the favour of the king and the court, I will prosecute in this court in the cases following. If any man shall appoint the field, though the fight be not acted or performed. If any man shall send any Challenge in writing, or any message of challenge. If any man carry or deliver any writing or message of challenge. If any man shall accept or return a challenge. If any man shall accept to be a second in a challenge of either side. If any man shall depart the realm, with intention and agreement to perform the fight beyond the seas. If any man shall revive a quarrel by any scandalous bruits or writings, contrary to a former proclamation published by his majesty in that behalf.

Nay, I hear there be some counsel learned of Duels, that tell young men when they are before-hand, and when they are otherwise, and thereby incense and incite them to the duel, and make an art of it. I hope I shall meet with some of them too: and I am sure, my lords, this course of preventing duels in nipping them in the bud, is fuller of clemency and pro-

VOL. II.

vidence, than the suffering them to go on, and hanging men with their wounds bleeding, as they did in France.

To conclude, I have some petitions to make first to your lordship, my lord chancellor, that in case I be advertised of a purpose in any to go beyond the sea to fight, I may have granted his majesty's writ of *ne exeat regnum* to stop him, for this giant bestrideth the sea, and I would take and snare him by the foot on this side; for the combination and plotting is on this side, though it should be acted beyond sea. And your lordship said notably the last time I made a motion in this business, that a man may be as well *fur de se*, as *felo de se*, if he steal out of the realm for a bad purpose. As for the satisfying of the words of the writ, no man will doubt but he doth *machinari contra coronam*, as the words of the writ be, that seeketh to murder a subject; for that is ever *contra coronam et dignitatem*. I have also a suit to your lordships all in general, that for justice sake, and for true honour's sake, honour of religion, law, and the king our master, against this foud and false disguise or puppetry of honour, I may in my prosecution, which, it is like enough, may sometimes stir coals, which I esteem not for my particular, but as it may hinder the good service, I may, I say, be countenanced and assisted from your lordships. Lastly, I have a petition to the nobles and gentlemen of England, that they would learn to esteem themselves at a just price. 'Non hos quæsitum munus in usus,' their blood is not to be spilt like water or a vile thing; therefore that they would rest persuaded there cannot be a form of honour, except it be upon a worthy matter. But for this, *ipsi viderunt*, I am resolved. And thus much for the general, now to the present case.

DECREE of the Star-Chamber against DUELS.

*In Camera Stellata coram concilio ibidem, 26 Januarii, 13 Jac. regis.*

PRESENT, George lord archbishop of Canterbury, Thomas lord Ellesmere, lord chancellor of England, Henry earl of Northampton, lord privy seal. Charles earl of Nottingham, lord high admiral of England, Thomas earl of Suffolk, lord chamberlain, John lord bishop of London, Edward lord Zouch, William lord Knolles, treasurer of the household, Edward lord Wotton, comptroller, John lord Stanhope, vice-chamberlain, sir Edward Coke, knight, lord chief justice of England, sir Henry Hobart, knight, lord chief justice of the Common Pleas, sir Julius Cæsar, knight, chancellor of the Exchequer.

This day was heard and debated at large the several matters of Informations here exhibited by sir Francis Bacon, kt. his majesty's Attorney-General: the one against William Priest, gent. for writing and sending a letter of Challenge, together with a stick, which should be the length of the weapon: and the other against Richard Wright, esq. for carrying and delivering the said letter and stick unto the party chal-

lenged, and for other contemptuous and insolent behaviour used before the justices of the peace in Surry at their sessions, before whom he was convented. Upon the opening of which cause, his highness's said Attorney-General did first give his reason to the court, why, in a case which he intended should be a leading case for the repressing of so great a mischief in the common-wealth, and concerning an offence which reigneth chiefly amongst persons of honour and quality, he should begin with a cause which had passed between so mean persons as the defendants seemed to be; which he said was done, because he found this cause ready published, and in so growing an evil, he thought good to lose no time; whereunto he added, that it was not amiss sometimes to beat the dog before the lion; saying farther, that he thought it would be some motive for persons of high birth and countenance to leave it, when they saw it was taken up by base and mechanical fellows; but concluded, that he resolved to proceed without respect of persons for the time to come, and for the present to supply the meanness of this particular case by insisting the longer upon the general point.

Wherein he did first express unto the court at large the greatness and dangerous consequence of this presumptuous offence, which extorted revenge out of the magistrate's hands, and gave boldness to private men to be law-givers to themselves; the rather, because it is an offence that doth justify itself against the law, and plainly gives the law an affront; describing also the miserable effect which it draweth upon private families, by cutting off young men, otherwise of good hope; and chiefly the loss of the king and the common-wealth, by the casting away of much good blood, which, being spent in the field upon occasion of service, were able to continue the renown which this kingdom hath obtained in all ages, of being esteemed victorious.

Secondly, his majesty's said Attorney-General did discourse touching the Causes and Remedies of this mischief that prevailed so in these times; shewing the ground thereof to be a false and erroneous imagination of honour and credit, according to the term which was given to those Duels by a former Proclamation of his majesty's, which called them bewitching duels, for that it was no better than a kind of sorcery, which enchanteth the spirits of young men, which bear great minds, with a shew of honour in that which is no honour indeed; being against religion, law, moral virtue, and against the precedents and examples of the best times, and valiantest nations of the world; which though they excelled for prowess and military virtue in a public quarrel, yet know not what these private duels meant; saying farther, that there was too much way and countenance given unto these duels, by the course that is held by noblemen and gentlemen in compounding of quarrels, who use to stand too punctually upon conceits of satisfactions and distinctions, what is before-hand, and

what behind-hand, which do but feed the humour: adding likewise, that it was no fortitude to shew valour in a quarrel, except there were a just and worthy ground of the quarrel; but that it was weakness to set a man's life at so mean a rate as to bestow it upon trifling occasions which ought to be rather offered up and sacrificed to honourable services, public merits, good causes, and noble adventures. And as concerning the Remedies, he concluded, that the only way was, that the state would declare a constaut and settled resolution to master and put down this presumption in private men, of whatsoever degree, of righting their own wrongs, and this to do at once; for that then every particular man would think himself acquitted in his reputation, when that he shall see that the state takes his honour into their own hands, and standeth between him and any interest or prejudice, which he might receive in his reputation for obeying. Whereunto he added likewise, that the wisest and mildest way to suppress these Duels, was rather to punish in this court all the acts of preparation, which did in any wise tend to the duels, as this of Challenges and the like, and so to prevent the capital punishment, and to vex the root in the branches, than to suffer them to run on to the execution, and then to punish them capitally after the manner of France; where of late times gentlemen of great quality that had killed others in duel, were carried to the gibbet with their wounds bleeding, lest a natural death should keep them from the example of justice.

Thirdly, his majesty's said Attorney-General did, by many reasons which he brought and alledged, free the Law of England from certain vain and childish exceptions, which are taken by these duellists. The one, because the law makes no difference in punishment between an insidious and foul murder, and the killing a man upon challenge and fair terms, as they call it. The other, for that the law hath not provided sufficient punishment and reparation for contumely of words, as the lye, and the like. Wherein his majesty's said Attorney-General did shew, by many weighty arguments and examples, that the law of England did consent with the law of God and the law of nations in both those points, and that this distinction in murder between foul and fair, and this grounding of mortal quarrels upon uncivil and reproachful words, or the like disgraces, was never authorised by any law or ancient examples; but it is a late vanity crept in from the practice of the French, who themselves since have been so weary of it, as they have been forced to put it down with all severity.

Fourthly, his majesty's said Attorney-General did prove unto the court by rules of law and precedents, that this court hath capacity to punish sending and accepting of Challenges, though they were never acted nor executed; taking for a ground infallible, that wheresoever an offence is capital or matter of felony, if it be acted and performed, there the conspiracy,

combination, or practice tending to the same offence, is punishable as a high misdemeanor, although they never were performed. And therefore, that practice to impositon, though it took no effect, and the like, have been punished in this court; and cited the precedent in Garion's Case, wherein a crime of a much inferior nature, the suborning and preparing of witnesses, though they never were deposed, or deposed nothing material, was censured in this court. Whereupon he concluded, that for as much as every appointment of the field is in law but a combination of plotting of a murder, howsoever men might gild it; that therefore it was a case fit for the censure of this court: and therein he vouched a precedent in the very point, that in a case between Wharton plaintiff, and Ellekar and Acklam defendants. Acklam being a follower of Ellekar, had carried a challenge unto Wharton; and although it were by word of mouth, and not by writing, yet it was severely censured by the court; the decree having words, that such challenges do tend to the subversion of government. And therefore his majesty's attorney willed the standers-by to take notice that it was no innovation that he brought in, but a proceeding according to former precedents of the court, although he purposed to follow it more thoroughly than had been done ever heretofore, because the times did more and more require it. Lastly, his majesty's said attorney-general did declare and publish to the court in several articles, his purpose and resolution in what cases he did intend to prosecute offences of that nature in this court; that is to say, that if any man shall appoint the field, although the fight be not acted or performed; if any man shall send any challenge in writing or message of challenge; if any man shall carry or deliver any writing or message of challenge; if any man shall accept or return a challenge; if any man shall accept to be a second in a challenge of either part; if any man shall depart the realm with intention and agreement to perform the fight beyond the seas; if any man shall revive a quarrel by any scandalous bruits or writings contrary to a former proclamation, published by his majesty in that behalf; that in all these cases his majesty's attorney-general, in discharge of his duty, by the favour and assistance of his majesty and the court, would bring the offenders, of what state or degree soever, to the justice of this court, leaving the lords commissioners martial to the more exact Remedies: adding farther, that he heard there were certain counsel learned of duels, that tell young men when they are before-hand, and when they are otherwise, and did incense and incite them to the duel, and made an art of it; who likewise should not be forgotten. And so concluded with two petitions, the one in particular to the lord chancellor, that in case advertisement were given of a purpose in any to go beyond the seas to fight, there might be granted his majesty's writ of *ne creat regnum* against him; and the other to the lords in general,

that he might be assisted and countenanced in this service.

After which opening and declaration of the general cause, his majesty's said Attorney did proceed to set forth the Proofs of this particular challenge and offence now in hand, and brought to the judgment and censure of this honourable court; whereupon it appeared to this honourable court by the Confession of the said defendant Priest himself, that he, having received some wrong and disgrace at the hands of one Huchest, did thereupon, in revenge thereof, write a letter to the said Huchest, containing a challenge to fight with him at single rapier; which letter the said Priest did deliver to the said defendant Wright, together with a stick containing the length of the rapier, wherewith the said Priest meant to perform the fight. Whereupon the said Wright did deliver the said letter to the said Huchest, and did read the same unto him; and after the reading thereof, did also deliver to the said Huchest the said stick, saying, that the same was the length of the weapon mentioned in the said letter. But the said Huchest, dutifully respecting the preservation of his majesty's peace, did refuse the said challenge, whereby no farther mischief did ensue thereupon.

This honourable court, and all the honourable presence this day sitting, upon grave and mature deliberation, pondering the quality of these offences, they generally approved the Speech and Observations of his majesty's said Attorney-General, and highly commended his great care and good service in bringing a cause of this nature to public punishment and example, and in professing a constant purpose to go on in the like course with others: letting him know, that he might expect from the court all concurrence and assistance in so good a work. And thereupon the court did by their several Opinions and Sentences declare, how much it imposed the peace and prosperous estate of his majesty and his kingdom to nip this practice and offence of Duels in the head, which now did overspread and grow universal, even among mean persons, and was not only entertained in practice and custom, but was framed into a kind of art and precepts: so that, according to the saying of the scripture, 'mischiefs are imagined like a law.' And the court with one consent did declare their opinions: That by the ancient law of the land, all inceptions, preparations, and combinations to execute unlawful acts, though they never be performed, as they be not to be punished capitally, except it be in case of treason, and some other particular cases of statute law, so yet they are punishable as misdemeanors and contempts: and that this court was proper for offences of such nature; especially in this case, where the bravery and insolency of the times are such as the ordinary magistrates and justices, that are trusted with the preservation of the peace, are not able to master and repress those offences, which were by the court at large set forth, to be not only against the law

of God, to whom, and his substitutes, all revenge belongeth, as part of his prerogative, but also against the oath and duty of every subject unto his majesty, for that the subject doth swear unto him by the ancient law allegiance of life and member; whereby it is plainly inferred, that the subject hath no disposing power over himself of life and member to be spent or ventured according to his own passions and fancies, insomuch as the very practice of chivalry in jousts and tournays, which are but images of martial actions, appear by ancient precedents not to be lawful without the king's licence obtained. The court also noted, that these private duels or combats were of another nature from the combats which have been allowed by the law, as well of this land as of other nations, for the trial of rights or appeals. For that those combats receive direction and authority from the law: whereas these contrariwise spring only from the unbridled humours of private men. And as for the pretence of honour, the court much misliking the confusion of degrees which is grown of late, every man assuming unto himself the term and attribute of honour, did utterly reject and condemn the opinion, that the private duel, in any person whatsoever, had any grounds of honour; as well because nothing can be honourable that is not lawful, and that it is no magnanimity or greatness of mind, but a swelling and tumour of the mind, where there faileth a right and sound judgment; as also for that it was rather justly to be esteemed a weakness, and a conscience of small value in a man's self to be dejected so with a word or trifling disgrace, as to think there is no re-cure of it, but by the hazard of life; whereas true honour in persons that know their own worth is not of any such brittle substance, but of a more strong composition. And finally, the court, shewing a firm and settled resolution to proceed with all severity against these duels, gave warning to all young noblemen and gentlemen, that they should not expect the like connivance or toleration as formerly have been, but that justice should have a full passage without protection or interruption. Adding, that after a strait inhibition, whosoever should attempt a challenge or combat, in case where the other party was restrained to answer him, as now all good subjects are, did by their own principles receive the dishonour and disgrace upon himself.

And for the present Cause, the court hath ordered, adjudged, and decreed, that the said William Priest and Richard Wright be committed to the prison of the Fleet, and the said

Priest to pay 500*l.*, and the said Wright 500 marks, for their several fines to his majesty's use. And to the end, that some more public example may be made hereof amongst his majesty's people, the Court hath further ordered and decreed, that the said Priest and Wright shall at the next assizes, to be holden in the county of Surry, publicly in face of the court, the Judges sitting, acknowledge their high contempt and offence against God, his majesty, and his laws, and shew themselves penitent for the same.

Moreover, the wisdom of this high and honourable Court thought it meet and necessary, that all sorts of his majesty's subjects should understand and take notice of that which hath been said and handled this day touching this matter, as well by his highness's attorney-general, as by the lords judges, touching the law in such cases. And therefore the Court hath enjoined Mr. Attorney to have special care to the penning of this Decree, for the setting forth in the same summarily the matters and reasons, which have been opened and delivered by the Court touching the same; and nevertheless also at some time convenient to publish the particulars of his Speech and Declaration, as very meet and worthy to be remembered and made known unto the world, as these times are. And this Decree, being in such sort carefully drawn and penned, the whole court thought it meet, and so have ordered and decreed, that the same be not only read and published at the next assizes for Surry, at such time as the said Priest and Wright are to acknowledge their offences as aforesaid; but that the same be likewise published and made known in all shires of this kingdom. And to that end the Justices of Assize are required by this honourable court to cause this Decree to be solemnly read and published in all the places and sittings of their several circuits, and in the greatest assembly; to the end, that all his majesty's subjects may take knowledge and understand the opinion of this honourable court in this case, and in what measure his majesty and this honourable court purposeth to punish such as shall fall into the like contempt and offences hereafter. Lastly, this honourable court much approving that, which the right honourable sir Edward Coke, knight, Lord Chief Justice of England, did now deliver touching the law in this Case of Duels, hath enjoined his lordship to report the same in print, as he hath formerly done divers other cases, that such as understand not the law in that behalf, and all others, may better direct themselves, and prevent the danger thereof hereafter.

## 112. The Case of MARY SMITH,\* for Witchcraft :† 13 JAMES I. A. D. 1616.

MARIE wife of Henrie Smith, glover, possessed with a wrathfull indignation against some of her neighbours, in regard that they made gaine of their buying and selling cheese, which shee (using the same trade) could not doe, or they better (at the least in her opinion)

then she did, oftentimes cursed them, and became incensed with unruly passions, armed with a settled resolution, to effect some mischievous projects and designs against them. The Devell who is skillfull, and rejoyceth of such an occasion offered, and knoweth how to stirre

\* From a curious Tract printed in 1616, with the following Title, 'A Treatise of Witchcraft: wherein sundry Propositions are laid downe, plainly discovering the wickedness of that damnable art, with diverse other speciall points annexed, not impertinent to the same, such as ought diligently of every Christian to be considered.—With a true Narration of the Witchcrafts which Mary Smith, wife of Henry Smith, Glover, did practise: of her contract vocally made between the Devill and her, in solemne termes, by whose meanes she hurt sundry persons whom she envied: which is confirmed by her owne confession, and also from the publique Records of the Examination of diverse upon their oathes: and lastly, of her death and execution, for the same; which was on the twelfth day of Januarie last past.—By Alexander Roberts, B. D. and Preacher of Gods Word at Kings-Liane in Norfolke. Exod. 22, 18. "Thou shalt not suffer a Witch to live."

'Impium est nos illis esse Remissos, quos cœlestis Pietas,

'Non Patitur impunitos: Alarus Rex apud Cassiodorum.

'London, Printed by N. O. for Samuel Man, and are to be sold at his Shop in Pauls Church-yard at the signe of the Ball, 1616.'

† "A sixth species of offences against God and religion, of which our ancient books are full, is a crime of which one knows not well what account to give. I mean the offence of witchcraft, conjuration, enchantment, or sorcery. To deny the possibility, nay, actual existence of witchcraft and sorcery, is at once flatly to contradict the revealed word of God, in various passages both of the old and new testament: and the thing itself is a truth to which every nation in the world hath in its turn born testimony, either by examples seemingly well attested, or by prohibitory laws, which at least suppose the possibility of a commerce with evil spirits. The civil law punishes with death not only the sorcerers themselves, but also those who consult them; (Cod. l. 9. t. 18.) imitating in the former the express law of God, (Exod. xxii. 18.) 'thou shalt not suffer a witch to live.' And our own laws, both before and since the conquest, have been equally penal; ranking this crime in the same class with heresy, and condemning both to the flames (3 Inst. 44.) The president Montesquieu (Sp. L. b. 12, c. 5.) ranks them also both together,

but with a very different view: laying it down as an important maxim, that we ought to be very circumspect in the prosecution of magic and heresy; because the most unexceptionable conduct, the purest morals, and the constant practice of every duty in life, are not a sufficient security against the suspicion of crimes like these. And indeed the ridiculous stories that are generally told, and the many impostures and delusions that have been discovered in all ages, are enough to demolish all faith in such a dubious crime, if the contrary evidence were not also extremely strong. Wherefore it seems to be the most eligible way to conclude, with an ingenious writer of our own, (Mr. Addison, Spect. No. 117.) that in general there has been such a thing as witchcraft; though one cannot give credit to any particular modern instance of it. Our forefathers were stronger believers, when they enacted by statute 33 Hen. 8. c. 8. all witchcraft and sorcery to be felony without benefit of clergy; and again by statute 1 Jac. 1. c. 12, that all persons invoking any evil spirit, or consulting, covenanting with, entertaining, employing, feeding, or rewarding any evil spirit; or taking up dead bodies from their graves to be used in any witchcraft, sorcery, charm, or enchantment; or killing or otherwise hurting any person by such infernal arts; should be guilty of felony without benefit of clergy, and suffer death. And, if any person should attempt by sorcery to discover hidden treasure, or to restore stolen goods, or to provoke unlawful love, or to hurt any man or beast, though the same were not effected, he or she should suffer imprisonment and pillory for the first offence, and death for the second. These acts continued in force till lately, to the terror of all ancient females in the kingdom: and many poor wretches were sacrificed thereby to the prejudice of their neighbours, and their own illusions; not a few having, by some means or other, confessed the fact at the gallows. But all executions for this dubious crime are now at an end; our legislature having at length followed the wise example of Louis 14 in France, who thought proper by an edict to restrain the tribunals of justice from receiving informations of witchcraft.\* And accordingly

\* Voltaire Siecl. Louis xiv. ch. 29. Mod. Un. Hist. xxv. 215. Yet Voughlans (de Droit Criminel, 353. 459.) still reckons up sorcery and witchcraft among the crimes punishable in France.

up the evill affected humours of corrupt mindes (she becoming now a fit subiect, through this her distemper, to worke upon, having the understanding darkened with a cloude of passionate, and revengefull affections) appeared unto her amidst these discontentments, in the shape of a blacke man, and willed that she should continue in her malice, envy, hatred, banning and cursing; and then he would be revenged for her upon all those to whom she wished evill: and this promise was uttered in a lowe murmuring and hissing voyce: and at that present they entered tearines of a compact, he requiring that she should forsake God, and depend upon him: to which she condescended in expresse tearmes, renouncing God, and betaking herselfe unto him. I am sparing by anie amplification to enlarge this, but doe barely and nakedly rehearse the truth, and number of her owne words unto mee. After this hee presented himselfe againe at sundry times, and

that to this purpose (as may probably bee conjectured) to hold her still in his possession, who was not able, eyther to look further into these subtilties, then the superficiall barke thereof, or not discover the depth of his designements, and in other formes, as of a mist, and of a ball of fire, with some dispersed spangles of blacke; and at the last in prison (after the doome of judgement, and sentence of condemnation was passed against her) two severall times, in that figure as at the first: only at the last he seemed to have a paire of horns upon his head, as she came downe from her chamber, being sent for to conferre with some learned and reverend divines, by whose prayers and instructions she might be brought to the sight and confession of her grievous offences, be regained and rescued out of his hands, brought to repentance, and the favour of God, assured hope of mercie, and eternall life, and at these times he wished her to con-

it is with us enacted by statute 9 Geo. 2. c. 5. that no prosecution shall for the future be carried on against any person for conjuration, witchcraft, sorcery, or enchantment. But the misdemeanor of persons pretending to use witchcraft, tell fortunes, or discover stolen goods, by skill in the occult sciences, is still deservedly punished with a year's imprisonment, and standing four times in the pillory." See 4 Bl. Comm. p. 60.

"The law against witches," says Selden, (Table Talk) "does not prove there be any, but it punishes the malice of those people that use such means to take away men's lives. If one should profess that by turning his hat thrice and crying *Buz*, he could take away a man's life (though in truth he could do no such thing) yet this were a just law made by the state that whosoever should turn his hat thrice and cry *Buz* with an intention to take away a man's life, shall be put to death."

Some curious particulars of *Obc*, or *Obi*, the witchcraft of negroes in the West Indies, are to be found in Edwards's Hist. b. 4, c. 3.

Mr. Barrington, Obs. on st. 20 H. 6, thinks "such a law as that suggested by Selden, may be declared to be not only ridiculous and futile, but highly unjust." Among other matter relating to witchcraft, he mentions, from Grey's notes on Hudibras, that Hopkins, the noted witch-finder, hanged sixty suspected witches in one year; and that thirty thousand had been burned within an hundred and fifty years. He also mentions from Etoile, that, in the year 1572, there were supposed to be in France thirty thousand persons addicted to necromancy. And he speaks of an able pamphlet, written by sir Robert Filmer, entitled, "An Advertisement to the Jurymen of England touching witches." King James in his *Dæmonologia* says, that he was "moved to write that work, by the fearful abounding, at this time in this country, of those detestable slaves of the devil, the witches or enchaunters." Howell, in two letters, one dated Feb. 3, 1646,

the other Feb. 20, 1647, says, that in two years there were indicted in Suffolk, and Essex, between 200 and 300 witches, of whom more than half were executed." In 1659 was published, from an original MS. which had belonged to sir Robert Cotton, "A true relation of Dr. Dee's actions with Spirits, &c." It is stuffed with the strangest fancies, that a disordered imagination could conceive. His familiars not only predict matters, relative to those about whom he consults them, but instruct him in their own natures and conduct. Thus we learn that "Trithemius is wrong, when he asserts, that no good angel would ever appear *formâ muliebri*." Of the morality and piety of these spirits, the following specimen is uttered in the name of the Deity: "adulterizans propter me in sempiternum benedicetur, et premio afficietur celesti." Yet to this book the learned Dr. Meric Casaubon, published a copious preface, in which he affirms the *truth and sincerity* of all the matters, related in it to have happened, but asserts, that the author mistook *false lying spirits*, for *angels of light*. Dr. Johnson's opinions concerning the agency of spirits, and the arguments, which he employed in support of them, are recorded by Hawkins and Boswell. In addition to the very frequent convictions for extorting money, under pretence of telling fortunes, recovering lost or stolen goods, &c. by skill in the occult sciences, the case of *Rex v. Mary Bateman*, York Spring Assizes, 1809, has just now afforded a very remarkable proof, that a disposition to give credit to the power of witches is by no means extinct in this country. Sir Francis Bacon was a member of the house of commons when the st. 1 Jac. 1. c. 12, was enacted. It is not likely he opposed it, considering the trash he wrote about witches. See 8vo. Edition, 1803, Bacon's works, pp. 27, 46, 62, 69. This act originated in the Upper House, where the committee to which it was referred, contained 12 bishops. 1 Cobb. Parl. Hist. 1018. Coke was Attorney General.

fesse nothing to any of them, but continue constant in her made promise, rely upon him, and hee would save her. This was too high a straine above his reach to have made it good, and a note of his false descant, who having compassed this wretched woman, brought her to a shamefull and untimely end; yet doing nothing herein contrary to his malicious purposes, for hee was a murderer from the beginning, John 8, 44. Now then, to descend to particulars, and the effects of this hellish association made. Being thus ioyned and linked together in a reciprocall league, he beginneth to worke for her, in procuring the mischief of those whom she maligned, whereof these few acknowledged by herselfe, may yeeld some taste of more, though concealed.

*Her wicked practice against John Orkton.*

The first who tasted of the gall of her bitterness was John Orkton a sailer, and a man of strong constitution of body, who about some five yeares sithence, returning out of Holland in the Netherland, or Low Countries beyond the seas, happened, for some misdemeanors committed by him to strike the sonne of this Mary Smith (but in such sort as could not in reason bee offensively taken) who hearing his complaint, came fourth into the streete, cursing and banning him therefore, as oftentimes shee did, dwelling in the next adjoining house, and wished in a most earnest and bitter manner, that his fingers might rotte off; whereupon presently hee grew weake, distempered in stomacke, and could digest no meate, nor other nourishment received, and this discrasie or feblenesse continued for the space of three quarters of a yeare; which time expired, the forementioned grieffe fel downe from the stomacke into his hands and feete, so that his fingers did corrupt, and were cut off; as also his toes putrified and consumed in a very strange and admirable manner. Nevertheless, notwithstanding these calamities, so long as hee was able, went still to sea, in the goods and shippes of sundry merchants (for it was his onely meanes of living) but never could make any prosperous voyage (as then other men did) eyther beneficiall to the owners, or profitable to himselfe. Whereupon, not willing to bee hindrance to others, and procure no good for his own maintenance by his labours, he left that trade of life, and kept home, where his former grieffe encreasing, sought to obtaine help and remedie by chirurgery, and for this end went to Yarmouth, hoping to be cured by one there, who was accompted very skillfull: but no medicines applyed by the rules of arte and experience, wrought any expected or hoped for effect: for both his handes and feete, which seemed in some measure every evening to be healing, in the morning were found to have gone backward, and growne far worse then before: so that the chirurgian perceiving his labour to bee wholly frustrate, gave over the cure, and the diseased patient still continueth in a most distressed, and miserable estate, unto the which hee was

brought by the hellish practises of this malicious woman, who long before openly in the streetes, (when as yet the neighbours knew of no such thing) reioycing at the calamity, said, Orkton now lyeth a rotting. And no marvell though she could tell that which herselfe had done, and her good maister would not suffer to be concealed, but that the testimony of her owne tongue should remane as a record towards her further detection and condemnation, who sought meanes of her voluntary accord to be reconciled with the wofull distressed party, but this was nothing else but to plaister over and disguise her former inhumane and barbarous actions, for no reliefe at all followed thereof: for oftentimes, as hath beene procured, the divells and witches his instruments doe cause such diseases, which neyther the one, nor the other can remove againe. And this is not any vaporous imagination, but a most undoubted truth. For now this poor man continueth still in a lamentable estate, grieffe, and paines encreasing, without hope of helpe, except God in the abundance of his tender mercies vouchsafe to grant comfort and deliverance.

*Her wicked practice against Elizabeth Hancocke.*

The second person distressed, by this witch, was Elizabeth Hancocke, then widdow, now wife of Iames Scot: the maner, occasion, and proceeding of whose dealing against her was thus. Shee comming out of the towne from the shoppe of one Simon Browne a silkeman, unto whom she had carried home some worke, which was by him put out unto her; Henry Smith, as shee passed by his doore, tooke her by the hand, and smilingly said, that his ducke (meaning his wife, this woman of whom we now speake) tolde him that shee had stolne her henne; which wordes shee then passed over, as onely spoken in merriment, and denying the same: in the meane time, as they were interchanging these words, shee came herselfe, and directly charged her with the henne, and wished that the bones thereof might sticke in her throat, when she should eate the same: which speech also she made no great reckoning of, supposing them to be but words of course, and might bee uttered in jest. Nevertheless, afterward better considering of the same, conceived much grieffe, to bee counted one of so evill quality and disposition, and espying that hen for which she was accused, to sit upon the hatch of her shoppe doore, went to her, and mooved with the indignity of that slaunder, and unjust imputation, told her in some passion and angry manner, that it was a dishonest part thus to blemish the good name of her neighbors with so untrue aspersions: whereupon, breaking fourth in some violence, she wished the pox to light upon her, and named her prowde Inny, prowde flurts, and shaking the hand, bade her go in, for she should repent it; and the same night, within three or foure houres after these curses and imprecations



uttered, she was taken and pinched at the heart, and felt a sodaine weaknesse in all the parts of her body; yet her appetite to meate nothing diminished, and so continued for the space of three weekes; in which time, when she was any thing well, would come to the doore, and leane upon the stall, whom this Marie Smith seeing, did ever banne, adding the former curse, the poxe light upon you, can you yet come to the doore? and at the end of these three weekes, being but very weake, came fourth as shee used to doe, to take the ayre, this mischievous woman most bitterly cursed her againe, whereupon she went into the house, fell into such a torturing fit, and nipping at the heart, that she fainted, hardly recoverable for the space of halfe an houre, and so grievously racked and tormented through all parts of her body, as if the very flesh had bene torne from the bones, by the violent paine whereof she could not retrain, but tore the haire from off her head, and became as one distraught, bereaved of sence, and understanding: and the same night the bed whereon she lay, was so tossed, and lifted up and downe, both in her owne feeling, and in the sight of others, then present beholders of her extremities, by the space of one houre or more, that she was therewith exceedingly terrified, and did thinke oftentimes in her sleepe, that she did see this Marie Smith standing before her. And this fit continued sixteene houres, during which passion Edward Drake her father came to the towne, touched with griefe for this torture of his daughter (as parents hearts are relenting and tender, and naturall compassion is soone stirred up in them) tooke her urine, went to one for his advice (whose fact herein is no way justifiable, and argued but a small measure of religion, and the knowledge of God in him) who first tolde unto him the cause of his comming, that is, to seeke help for his daughter, and then added, that she was so farre spent, that if hee had stayed but one day longer, the woman who had wronged her, would have spent her heart, and so become unrecoverable, and thereupon shewed him her face in a glasse; and further, opened the beginning cause of falling out, which was for a hen, which before this, Drake neither knew nor heard of, and then gave his counsell for remedy, which was the matter sought for and desired, and that was in this order. To make a cake with flower from the bakers, and to mix the same instead of other liquor, with her owne water, and bake it on the harth, whereof the one half was to be applied and laid to the region of the heart, the other halfe to the back directly opposit; and further, gave a box of ointment like triacle, which must be spread upon that cake, and a powder to be cast upon the same, and certaine words written in a paper, to be layd on likewise with the other, adding this caveat, that if his daughter did not amend within six houres after the taking of these receipts, then there was no health or recovery to be looked for: and farther, wished silence to be kept herein, for

the woman who had done this, would know any thing.

And being thus furnished with instructions, and returning home, as hee alighted from his horse to enter into that house where his daughter lay (being the next unto Mary Smiths) shee then stood leaning over her shop window, whom hee knew to be that person, which was shewed unto him, and she cursed him passing by, and told his daughter that her father had bene with a wisard. And the next day following after they had put in practice the directions given, she affirmed to divers of the neighbours, that Drake the afflicted womans father, had bene to aske counsell, and made a witch cake, but shee would learne how they came to have that knowledge: yet for the present she found helpe, and was freed from the languishing and other conflicts wherewith she was assaulted by the space of sixe weekes.

After this, being married unto James Scot, a great cat which kept with this witch (of whose infernall both purposes and practises wee now speake) frequented their house; and upon doing some scathe, her husband moved therewith, thrust it twice through with his sword: which notwithstanding those woundes received, ran away: then he stroke it with all his force upon the head with a great pike staffe, yet could not kill her; but shee leapt after this upward almost a yard from the boards of that chamber where she now was, and crept downe: which hee perceiving, willed his lad (a boy of foureteene yeares) to drage her to the muck-hill, but was not able; and therefore put her into a sacke, and being in the same, she still moved and stirred. Whereupon they put her out againe, and cast her under a paire of staires, purposing in the morning, to get more helpe, and carry her away; but then she could not be found, though all the doores that night were locked, and they never heard what afterward became thereof.

Not long after, this witch came forth with a birchin broome, and threatened to lay it upon the head of Elizabeth Scot, and defiled her clothes therewith, as she swept the street before her shop doore, and that in the sight of her husband, who not digesting this indignity offered unto his wife, threatened that if she had any such fits, as she endured being a widow before marriage, hee would hang her. At this shee clapped her hands, and said hee killed her cat. And within two or three dayes after this interchange of words betweene them, his wife was perplexed with the like paine and griefe at her heart, as formerly shee had bene; and that for two dayes and a night: wherefore her husband went to this wrathfull and malicious person, assuring that if his wife did not amend, hee would accuse her to the magistrate, and cause the rigor of the law to be executed upon her, which is due to such malefactors. These things were done some three yeares sithence. The party troubled yet liveth, but in no confirmed health, nor perfect soundnes of body.

*Her wicked practices against Cicely Balye.*

A third subject whereupon this wrathfull womans anger wrought, was Cicely Balye, then servant to Robert Coulton, now wife of William Vaux, who sweeping the street before her maisters doore upon a Saturday in the evening, Mary Smith began to picke a quarrell about the manner of sweeping, and said unto her she was a great fat-tailed sow, but that fatnesse should shortly be pulled downe and abated. And the next night being Sunday immediately following, a cat came unto her, sate upon her breast, with which she was grievously tormented, and so oppressed, that she could not without great difficulty draw her breath, and at the same instant did perfectly see the said Mary in the chamber where she lay, who (as she conceived) set that cat upon her, and immediately after fell sicke, languished, and grew exceeding leane; and so continued for the space of halfe a yere together, during the whole continuance in her maister's service; untill departing from him, she dwelt with one mistress Garroway, and then began to bee amended in her health, and recover of her former pining sicknesse: for this witch had said, that so long as she dwelt neare her, she should not be well, but grow from evill to worse.

Thus every light trifle (for what can bee lesse then sweeping of a little dust awry?) can minister matter to set on fire a wrathfull indignation, and inflame it unto desired revenge, the Divell being willing to apprehend and take hold upon such an occasion, that so he might do some pleasing office to his bond-slave, whom she adored in submisse maner, upon her knees, with strange gestures, uttering many murmuring, broken, and imperfect speeches, as this Cicely did both heare and see, there being no other partition between the chamber wherein shee performed these rites, and the house of her maister with whom she then dwelt, but only a thiu seeling of boord, through a cranny or rift whereof she looked, listened attentive unto her words, and beheld diligently her behaviour, and might have seene and heard much more, but that she was with the present spectacle so affrighted, that shee hastened downe in much feare and distemper.

*Her wicked practice against Edmund Newton.*

The fourth endammaged by this hagge, was one Edmund Newton: the discontentment did arise from this ground; because hee had bought severall bargaines of Holland cheese, and sold them againe, by which she thought her benefit to be somewhat impaired, using the like kinde of trading. The manner of her dealing with him was in this sort. At every severall time of buying cheese he was grievously afflicted, being thrice, and at the last, either she or a spirit in her likeness did appeare unto him, and whisked about his face (as he lay in bed) a wet cloath of very loathsome savour; after which hee did see one cloathed in russet with a little bush beard, who told him hee was sent to looke upon

his sore legge, and would heale it; but rising to shew the same, perceiving hee had cloven feet, refused that offer, who then (these being no vaine conceits, or phantasies, but well advised and 'diligently' considered observances) suddenly vanished out of sight. After this she sent her impes, a toad, and crabs crawling about the house, which was a shoppe planched with boords, where his servants (hee being a shooe-maker) did worke: one of which tooke that toad, put it into the fire, where it made a groaning noyse for one quarter of an houre before it was consumed; during which time Mary Smith who sent it, did endure, (as was reported) torturing paines, testifying the felt grieffe by her out-cryes then made.

The sicknesse which he first sustained, was in manner of a madnesse or phrensie, yet with some interposed release of extremity: so that for thirteene or foureteene weekes together hee would be of perfect memory, other times distracted and deprived of all sense. Also the ioynts and parts of his body were benumbed, besides other pains and griefes from which hee is not yet freed, but continueth in great weaknesse, disabled to performe any labour, whereby hee may get sufficient and competent maintenance. And by the counsel of some, sending for this woman by whom hee was wronged, that he might scratch her (for this hath gone as currant, and may plead prescription for warrant, a foule sinne among Christians to thinke one witch-craft can drive out another) his nailes turned like feathers, having no strength to lay his hands upon her.

And it is not improbable but that she had dealt no better with others then these above mentioned. For Mr. Thomas Yonges of London, fishmonger, reported unto me, that after the demand of a debt due unto Mr. John Mason, silkeman of the same citie, whose widow hee married, from Henry Smith glover her husband, some execrations and curses being wished unto him, within three or foure dayes (being then gone to Yarmouth in Norfolke upon necessary businesse) he there fell sicke, and was tortured with exceeding and massacring griefes, which by no meanes (having used the advise of sundry learned and experienced physicians in Norwich) could in any part be mitigated, and so extraordinarily vexed thirteene moneths, was constrained to go on crutches, not being able to feed himselfe, and amended not before this mischievous woman was committed to prison (accused for other wickednesses of the like kinde) at which time (so neere as he could conjecture) he then received some release of his former pains, though at the present when hee made this relation, which was at Candlemas last past, had not perfectly recovered his wonted strength: for his left hand remained lame, and without use.

But thus much by the way onely, omitting how before this accident a great water-dogge ran over his bed, the doore of the chamber where he lay being shut, no such one knowne (for carefull enquiry was made) either to have

beene in that house where hee lodged, or in the whole towne at any time.

I doe not insist upon this, because shee did not nominate him or any other unto us, but onely those foure already expressed: and for the wrongs done to them, she craved mercy at Gods hands, as for all other her sins, and in particular for that of witch-craft, renounced the Divell, embraced the mercies of God purchased by the obedience of Iesus Christ, and professed that her hope was onely by his suffering and passion to bee saued. And all these, that is to say, her former grievous offences committed against God, and his people, her defiance, of the Divell, and reposing all confidence of saluation in Christ Iesus alone, and his merits, she in particular maner confessed openly at the place of execution, in the audience of multitudes of people gathered together (as is usuall at such times) to be beholders of her death. And made there also profession of her faith, and hope of a better life hereafter; and the meanes whereby she trusted to obtaine the same, as before, hath beene specified. And

being asked, if she would be contented to have a psalme sung, answered willingly that she desired the same, and appointed it herselfe, the Lamentation of a Sinner, whose beginning is, Lord turne not away thy face, &c. And after the ending thereof thus finished her life: so that in the iudgement of charity we are to conceive the best, and thinke she resteth in peace, notwithstanding her heynous transgressions formerly committed: for there is no malady incurable to the Almighty physitian, Esai. 1, 18. Ezech. 33, 11. Therefore Caius did injury to God, when convicted of the barbarous and unnaturall murder of his righteous brother, he cryed out that his sinne was greater then could be forgiven, Gen. 4, 13. for Gods mercy is greater then mans misery can be. And even for the like unto this very fact, we have a booke case, already adiudged, and over-ruled in those Ephesians, who brought their coniuring bookes, sacrificed them in the fire, estimated at the value of 900*l.* of our money, repented of their sinnes, and obtained mercy, Acts 19, vers. 19.

### 113. Proceedings against Mr. WRAYNHAM, in the Star-Chamber, for Slandering the Lord-Chancellor Bacon of Injustice, Pasch. 16 JAMES I. A. D. 1618.\*

BEFORE the duke of Lenox; the earl of Suffolke, lord treasurer; the earl of Worcester, lord privy seal; the earl of Pembroke, lord chamberlain; the earl of Arundel; Viscount Wallingford; sir Fu ke Greville, chancellor of the exchequer; Dr. Abbot, lord archbishop of Canterbury; Dr. King, bishop of London; Dr. Andrews, bishop of Ely; sir Edward Montague, l. c. justice of the Kings-bench; sir Henry Hobart, l. c. justice of the Common Pleas; sir Laurence Tanfield, Lord chief baron of the Exchequer; sir Edward Coke; sir Thomas Lake, principal secretary; sir Henry Cary, comptroller.

*Sir Henry Yelverton*, Attorney General — May it please your Lordships; It is the honour of this Court, that it represents the highest earthly majesty, and his presence; and it is his majesty's honour, that as himself is clothed with justice, so you, as the greatest and highest next his ma-

esty, should put on the same garment. Clemency and justice are the two lights of every kingdom, without which your persons and estates would be exposed to violence, and without which great monarchies would be but great thefts; and as justice is not to be recompensed in price, so ought not the scandal hereof to go unpunished; especially, when it toucheth so great a person, as, in the sacred seat of justice, is next to the king; the Chief Judge in this Court, and the sole Judge in Chancery, who is much defamed by the gentleman at the bar, in the most precious point of all his virtues, his Justice: be it spoken without offence, basely and blamelessly is my Lord Chancellor traduced, as if he deserved that all the thunderbolts of heaven should fall upon him.

At my lord's first coming into this place, he found a Cause in Chancery, between this gentleman at the bar, and one Mr. Fisher, not controverted in the title, but concerning the value of the lease, which Fisher held of Wraynham; in which, the Lord Chancellor perused the proceedings of the cause, called the parties to give a summary end to so tedious a cause; and because the success answered not the desire of this gentleman, therefore he kicks against authority, who before was not more grieved at the expence, than now impatient at the sentence; which was not want of justice in my lord, but of equity in the cause.

I confess I was of counsel with Mr. Wraynham, and pressed his cause as far as equity would suffer; but I know that Judges look with other eyes than Counsellors do; they go not

\* It should seem from the proceedings against Wraynham for libelling lord Bacon with regard to one of his Decrees, that the Chancellors sometimes decided causes rather in a more summary manner than is usual at present. See also what Roper, as quoted by Mr. Barrington, says of sir Thomas More's often stopping proceedings upon his perusal of bills preferred to him. Among other curious particulars to be inferred from this trial, it is very clear that the Master of the Rolls was then considered only as the first Master in Chancery, as his reports are frequently alluded to. See Barrington Observations on stat. 15 Hen. 6.

by tale, but by weight. And therefore, their judgment must answer the counsel, and quiet the mind of the party; and though in gaming losers may speak, yet in judgment they must be silent; because it is presumed that nothing is taken from them but what is none of theirs. But this gentleman being of an unquiet spirit, after a secret murmuring, breaks out into a complaint to his majesty; and not staying his return out of Scotland, but fancying himself, as if he saw some cloud arising over my lord, wearying and tiring his majesty with infinite supplications in this case. And now, my lords, as if all his former cause had been lost, he presents it no more in parts, or loose papers, but compiling his undigested thoughts into a Libel, though the volume was but in quarto, fastens it on the king on Good Friday last. And his most princely majesty, finding it stuffed up with most bitter reviling speeches against so great and worthy a Judge, hath of himself commanded me this day to set forth and manifest his fault unto your lordships, that so he might receive deserved punishment.

In this velvet pamphlet (for this Book is bound in velvet) is set forth his cause, the work of this day; wherein Mr. Wraynham saith, he had two decrees in the first Lord Chancellor's time, both under the great seal, and yet both are altered since the last lord chancellor's death, and cancelled by this lord chancellor in a preposterous manner; and 1, without cause; 2, without matter; 3, without any legal proceeding; 4, without precedent; 5, upon the party's bare suggestions; and 6, without calling Mr. Wraynham to answer. And of this, my lords, spitefully he imagines a threefold end: 1, to reward Fisher's fraud and perjuries; 2, to palliate his unjust proceedings, and to rack things out of joint; and 3, to confound Wraynham's estate: and that my lord was therein led by the rule of his own fancy. Yet he stayed not here; but, as if he would set spurs against my lord, he aggravates my lord's injustice to be worse than murder; saying, That in his Sentence, he hath devoured him and his whole family. And secondly, as if one sin should follow upon another, he doubles it upon my lord, and, in a manner, plainly gives my lord the lye. And hearing that my lord had satisfied his majesty in this case; he saith in his Book, that he that did it unjustly, must, to maintain it, speak untruly, adding falsehood to my lord's injustice; saying in his Book, it is given out my lord hath begged Wraynham's pardon: which, though it be the shew of a gentle heart, yet argues a guilty conscience, and is but my lord's cunning to avoid the hearing of the cause. And as if my lord should know his own disease to be foul, and were unwilling to have it searched or discovered; he charged my lord with shifts, and tells him that he hath palliated oppression with greatness, wit and eloquence; and that the height of authority makes men presume. And to make this yet more sharp, he urgeth, that my lord, to maintain this, useth secret means, whereby the soundness of his actions may not be seen,

and so to avoid censure; and, as if my lord should have skill in magic, he saith, That my lord hath raised a report from hell of the late Master of the Rolls, which was confuted before his face, and damned before his death; not content to scandalize the living, but so far, my lords, doth his malice overspread his wisdom, that he doth not cease, with his nails, to scrape the dead out of their graves again. When it is well known unto your lordships, that the Master of the Rolls was a man of great understanding, great pains, great experience, great dexterity, and of great integrity; yet, because this cause fell by casualty into his hands, by reverence from the last lord chancellor, and he followed not this man's humour in his report; therefore he brands him with these aspersions, and adds this to the rest, That he grounded this report upon witnesses that swore impossibilities, gross absurdities, and apparent untruths. How can you but think, my lords, but that this gentleman's head is full of poison, seeing it fell out so fast then into his pen, trampling upon the dead? And this is an addition unto his punishment, the injury of him that is dead, because the state yet lives, wherein his justice is scandalized.

And now, my lords, that you may the more detest his slanders, whereby he goeth about to slander my Lord Chancellor's justice; give me leave to open the plain and even way, wherein this great judge walks in this particular case. The questions in Chancery at first were two, between Wraynham and Fisher, upon cross suits, either against the other; Wraynham complains of trust broken, whereby he was defrauded; Fisher upon a debt of a private reckoning detained by Wraynham. Upon proof of both these, it was by assent ordered, That Fisher should assign the lease made unto him upon trust, and Wraynham should pay the money, so well proved to be due to Fisher: so by assent was the decree had, which is the first decree.

But Mr. Wraynham, wisely suspecting that Mr. Fisher had incumbered his lease, and if it should be assigned to him according to the decree, it would be merely illusory; he exhibits a new bill to discover what charge, and in what sort, Fisher had charged the land with incumbrances. And Mr. Wraynham finding the incumbrances greater, upon the reference of the lord chancellor to the master of the rolls, a bargain was mediated between them, that Fisher should hold the lease in question, and Wraynham should have after the rate of twelve years purchase; and to this both assented; so that your lordships see that the first decree was not cancelled by my Lord Chancellor, but discharged by himself; for by the decree he might have had the lease; but he contented himself with twelve years purchase.

After this, the question grew upon the value, which being referred to the last Master of the Rolls, how the value was at first, before the improvement, when it was in lease to one Harply, and there, upon proof and oath of divers wit-

nesses, the Master of the Rolls returned and certified the constant produce of the lease to be worth 200*l.* by the year; whereupon Wraynham was to have it at twelve years purchase, amounting to 2,400*l.* Mr. Wraynham seeing the land was much improved by a defence made against the sea and other means, whereby the nature of the land was altered, and the profit much raised, moves the Lord Chancellor not to recede from the bargain, but saith, that the value returned was not the true value, for the land was worth 400*l.* by the year, and yet excepts by retainer in his hands, 2000 marks which he owed to Fisher, 1,066*l.* odd money; whereby now Mr. Wraynham had received his 2,400*l.* in his purse. And when he saw himself thus fleeced, having received 2,400*l.* for that which cost but 200*l.* now he stirs up new suits, and moves the Lord Chancellor by a commission to refer the value to two knights that had been farmers to the land, that they might certify the true value: the one, sir J. Strange Mordaunt, who certifies the value 313*l.* yearly; and the other, sir Henry Spillman, certified the value to be 364*l.* yearly; and my Lord Chancellor strikes between them, and makes it 340*l.* So here is a difference of values, the first of 200*l.* upon oath yearly, and this at 340*l.* yearly, without oath. The first value is at the time of Harply's lease, the second is at the time of the commission granted; and after improvement of which, your lordships well know in your wisdom, the difference between land barren, and improved in value. The last Lord Chancellor, according to the amounting value of 340*l.* a year, annexed the increase to Wraynham's bargain, and that he should have it, as if the lands were worth 340*l.* per ann. So that now, the 2,400*l.* in his purse, had been worth 1,680*l.* annexed above 4,000*l.* Mr. Fisher finding this annexed to the bargain, and that he should be pressed to pay the surplusage, and that he had choice either to pay the money, or to part with the lease; Fisher moved the court, that he might give up the lease, and desire his first 2,000 marks with damages, which Wraynham assented to, so that he might have defalcation of that which Fisher had received of the profits of the land. Upon this, upon consent of parties, it was again decreed (and this is the second Decree, which Wraynham so much triumphs upon, not being an absolute and positive Decree, but qualified with this): 1. That Wraynham should pay the 2,400*l.* with damages to Fisher; and 2. That Wraynham should have defalcation of such profits as Mr. Fisher had received out of the land.

Mr. Wraynham strives with this second Decree, being willing to have the value of the land, not according as Fisher had received, but what he might have recovered.

Now my Lord-Chancellor finding the case thus standing, thought it no injustice against Wraynham's own offer, nor that Fisher should lose his damages, having forborn 2400*l.* ten years, nor that Wraynham should be allowed more defalcation than Fisher could receive, be-

cause he was tyed to a dry rent; and finding that Wraynham was neither willing nor able to return the 2400*l.* with damages unto Fisher, my Lord-Chancellor thought fit to establish the bargain, according to the first certificate of the master of the rolls upon oaths; because the last certificate without oath, was not so equal in the balance of justice, as that with oath, certified by the master of the rolls, upon the examination of divers witnesses.

Now, my good lords, if this case stands thus, what injustice is there committed? What un-soundness is there in this action? or, what cause is there for my Lord-Chancellor to hide himself, that this gentleman should in this case declaim against him this day? If it were, my lords, to make my Lord-Chancellor, for fear, to take off his hand; he will let the world know he is more constant and courageous in the points of justice, than that which he did so justly, so slightly to revoke. And if it were to this end, to make my Lord-Chancellor to dispute with Mr. Wraynham; I am to let you know from his majesty, that he will not let him forego, nor forget his place, so much as to enter into debate with Mr. Wraynham, knowing that it were not fit for him to stand to wrestle or wrangle with Mr. Wraynham, but rather to despise so mean an adversary.

My lords, you know, that wise and just men may walk the same way, though not the same passage; there are divers courses and divers ways to the same end, justice: for justice sake, they are both to be honoured, neither to be blamed. For, my lords, if judges should be traduced as unjust, because they differ in opinion, they should have thankless offices. Justice is the harmony of heaven, but *‘Lingua detractio est lancea triplex.’* Though this gentleman hath sweat hard to scoff and dare so high a judge, yet the razor of his tongue cannot charge him that any thing came between God and his own conscience, but the merits of the cause; though it be certainly true, whilst a man carries this flesh about him, his judgments and faculties will be imperfect. Yet, my lords, I know that my lord is the branch of such a tree, who, though he blossom'd last, yet took more sap from the root than any of the rest: the son living in the memory of so worthy a father, the father living in the memory of so virtuous a son, who may say, as Agesilaus once said to his father, *‘I obey you in judging nothing contrary to law.’*

I am glad this gentleman is so naked of excuse, yet heartily sorry his defamation is so foul, as to draw such a smart of punishment as this will be upon him; and here if necessity (the true defender of man's wickedness) should step in, I answer, Though necessity break through all laws, yet flying into the face of justice, it must be broken by justice; else no subject can be safe, nor no court keep itself from infamy.

It is well, my lord, that this fault falls out but seldom; for being exorbitant when it happens, it cannot but be foul. It is a pernicious

example; for by this, when slanders are presented instead of complaints, that is but to set divisions between the king and his great magistrates, to discourage judges, and vilify justice in the sight and mouths of all the people. Therefore I beseech your lordships to pardon me, if I be too long, and suffer me to shew your lordships what this court, in like cases, hath done.

In the second year of his majesty's reign, when sir Edward Coke, according to his place, informed against Foorth in this court, *ore tenus*, for petitioning his majesty against the last Lord-Chancellor, for granting an injunction for staying of a suit at the common law, (which your lordships know how necessary it is) he being convicted upon his own confession, received a sharp censure. I will conclude with this one, and I shall desire your lordships, in this place, to hear it read; and then do humbly beseech your lordships to hear the gentleman at the bar, either for his defence, or excuse.

Then Wraynham's Examinations were read in this Book and Epistle.

Then he was charged with these words following, in the end of his Epistle to his majesty: 'He that judgeth unjustly, must, to maintain it, speak untruly; and the height of authority maketh men to presume.' Also, in shewing of his majesty reasons why the Master of the Rolls was faulty, he said, 1. The master of the rolls had omitted many of his material proofs. 2. He shifted off other some. 3. That he sometimes wrested the equity of his cause. 4. That he did falsely cite Fisher's proofs. 5. That he grounded the report upon the deposition of witnesses that swore absurdities, untruths, and mere impossibilities. And, lastly, as if the report had been condemned and damned before to the pit of hell, he said it was raised as *ab inferno*.

In his Epistle to his majesty, he is charged with these words: 'I understand my Lord-Chancellor hath begged my pardon: it is outwardly the shew of a great heart, but inwardly it argueth a guilty conscience; otherwise, if first I had been found guilty, and his lordship should then have interceded with his majesty for me, it had been an argument of an indulgent nature; but to beg pardon where there is no need, was manifestly done to avoid an hearing, and not in pity towards me; for he that despoils me of my goods, I will not trust him with my person. And therefore, far be it from me to hope, or trust in his goodness: I disclaim his favour, and infinitely deplore the judgment of his majesty.'

And in the conclusion of his Epistle were these words: 'I desire to suffer at your gates, if I shall dare to slander so great and eminent a judge, unto so great and wise a king. If he should not desire to reward the Fishers for their fraud and perjuries, I know not why he should have racked all out of joint. My lord, with this his last cunning and rhetorick, hath palliated his unjust proceedings against me; for my lord's gesture and pronunciation in his speech is wanting in my writing, out of which

a cloudy mist may rise to hide the verity of your princely judgment.—I could never see by what reasons or words his lordship hath coloured his dealings to excuse himself unto your majesty, understanding only a piece, and not the whole from your majesty. This must move me most humbly to beseech your majesty to save my wife and children; and out of your princely justice to appoint a day of hearing, whereby there shall appear unto your majesty, as well the sincerity of my affirmations, as the unsoundness of his lordship's actions. For I never sought corners, but openly, and sometimes in my lord's presence, have notified and complained of my wrongs, and desire a public hearing before your majesty, which the greatest subject dares not do without truth and justice.'

And in another place, Wraynham saith, My lord chancellor proves nothing by record, nor delivers any thing by writing, to answer the things objected against him; but would hide himself from the eyes of your majesty's justice.'

His majesty saith, though he receive petitions from his subjects against his highest justices; yet he will have his judges know, that they are subject to his account only, and to none else upon earth. His majesty received this petition on Good-Friday last, in which this gentleman hath so far exceeded the measure of an humble complaint, that I must appeal to your lordships against him.

Then was Foorth's precedent read, bearing date 14th Nov. termino Mich. 2 Jac. 1. And likewise Foorth's two last Petitions against my lord-chancellor, touching which reference is had. And the lords asked Mr. Wraynham what he could say for himself.

Mr. Wraynham. Right honourable, and my very good lords; from a man so perplexed with so many miseries, what can be expected? and what marvel, if I should faultier, or might let fall any speech that might seem uncomely? My lords, I know not how to behave myself, I will not willingly offend any, but especially the king's most excellent majesty; yet nature commands me to defend myself, for it cannot be thought he can be faithful to another, that is not so to himself. And therefore I humbly desire that what I offer in extenuation, or defence, that neither the meanest that hear it, nor your lordships, which are to judge of it, would take it offensively. My Book consisteth of three parts. 1. An Epistle to his majesty. 2. The body of the book, which relateth the truth of all the proceedings. And, 3. a conclusive Speech in the nature of an epilogue.

Touching the body of the Book, and the truth of the cause, I conceive it not now called in question, for I think your lordships will not enter into the particulars; but because it hath pleased Mr. Attorney to speak something of it, I will not be silent. My accusations, my lords, are set forth in two things: 1, that the complaint is of the right-hon. the lord-chancellor. 2. That it is in bitter and unreverend terms.—

For the 1st, I must fly for succour and protection unto our dread sovereign lord the king; for it pleased his majesty, sitting here in the sacred seat of justice, to declare, that if any were wronged in point of justice, to him they might come and have redress; and for proof thereof, I humbly desire your lordships to hear me read a sentence or two in his majesty's Book. 'For,' saith he, 'if any were wronged, their complaint should have come unto me; none of you but will confess you have a king of a reasonable understanding,' &c. And in another place, 'Why then should you spare to complain unto me, being the high-way; therefore as you come gaping to the law for justice, &c.' 'But if you find bribery or corruption, then come boldly; but beware of the justness of your cause.' 1st, therefore, in his majesty's opinion, a man may be wronged in a court of justice. 2dly, In that case, his majesty is not only willing to receive a complaint, but to reform what is amiss: so that his majesty publishing this much to all his subjects, I hope your lordships will not conceive that barely to complain is a fault; especially seeing that his majesty saith, 'Why do you spare to complain?'

The second part of my Accusation is, because I have used unreverend and bitter terms. 1st, I divided the collections objected against me into two parts. 1. Into two sentences, which Mr. Attorney hath endeavoured to fasten on the lord-chancellor by inference. 2. Into words, applied to his lordship.

My lords, touching the first, I hope general speeches shall have no such construction. In the 116th Psalm, the prophet saith of himself, 'I have said in my fury, all men are liars.' And in the 14th Psalm, it is said of all men, 'They have all gone out of the way, and are abominable; there is none that doeth good, no not one.' And in the Epistle to the Romans, it is said, 'Let God be just, and all men liars.' And again it is said in Scripture, 'That the poison of asps is under their lips, that their throats were open sepulchres.' And yet it was never heard, that any of the prophets and apostles (godly men) found fault with David, saying, 'You have said my throat is an open sepulchre; that I am a liar; and abominable;' because they were but general speeches. And therefore, my lords, I humbly pray, that any general speeches may not be applied to my lord-chancellor, for I had no such meaning.

For particular words, they are, as I take it, these; unsoundness of his lordship's actions; unjust proceedings, oppression, and injustice. Now, my lords, I must again fly to the king for succour, in these words; for his majesty points forth the things for which a subject may complain. For his majesty saith in his Book, 'If a man be wronged in the course of justice.' What is it but injustice? 2dly, His majesty saith, 'That if one find bribery, corruption, injustice, &c.' and then we should come boldly.

1st, For the word Injustice: he that proves the justice of his cause, proves the judgment given against it injustice: for, my lords, I conceive, under your lordships favour, that this very word contains all the rest, and that all other words that I have used are but synonymies unto this; and I used them all, yea all, I protest, to avoid tautology, and to avoid always using of the same word, injustice. And that also which urged me to use it, was necessity: and that twofold necessity; 1st, For that unless I particularly accused his lordship of injustice, I was out of hope ever to obtain an hearing of his majesty.

Secondly, My miseries enforced me unto it: And therefore it may please your lordships to understand, that in my first position to his majesty, there was no such word as Injustice, or that tended near unto it: but only it did set forth what the then Master of the Rolls, this lord, and the last Lord Chancellor had done; and desired his majesty to judge, whether the last Lord Chancellor or the now lord keeper, had most justly distributed justice: It pleased his majesty to give answer, 'That he would take some other course, when he came near London.' When his majesty came to Theobalds, I framed two other petitions, and delivered the one to his majesty, and the other to secretary Winwood; and in neither of these petitions was there mention of injustice, or a word savouring of it. And when I besought his majesty, at that time, to hear the cause, or to refer the examination, he gave me this answer: 'If myself, and the lords should trouble themselves about hearing of sentences, no other business would be done by us, for every man would be ready to complain.' And thus I had fallen off, but that his majesty said further unto me, 'Will you charge my Lord Chancellor with injustice or bribery?' I blanch'd the matter again, and desired his majesty would be pleased to grant me an hearing of the cause.

After which, when I had mediated again of his majesty's question, I found great coherence between this question and the words in his majesty's Book, and thereupon was bold to use the word injustice. Unto which his majesty was pleased to answer, 'These accusations are too common: but I will have relation of the cause from my lord himself.'

After all this, understanding that the Lord Chancellor had endeavoured to answer this matter unto his majesty, and to this end had produced the Master of the Rolls, Phillips, his report; which, I confess, taken by itself, may not only satisfy my Lord Chancellor, but the king himself, or any man else living: and therefore, fearing that my lord endeavoured to satisfy the king with that report, I saw there was no other course, but to give an answer unto it, which I could not do without the book. In making whereof, something was required, both before and after which drew me to make the Epistle and the Epilogue. In the making whereof, I mustered together all my miseries; I saw my land taken away, which had been

before established unto me; and after six and forty Orders, and twelve Reports, made in the Cause; nay, after motions, hearings, and re-hearings, fourscore in number, I beheld all overturned in a moment, and all overturned without a new bill preferred. I discerned the representation of a prison gaping for me, in which I must from thenceforth spend all the days of my life without release: for in this suit I have spent almost 3000*l.* and many of my friends were engaged for me, some damnified, many undone: and with this, did accompany many eminent miseries, likely to en-sue upon me, my wife and four children, the eldest of which being but five years old; so that we that did every day formerly give bread to others, must now beg bread of others, or else starve, which is the miserablest of all deaths: and there being no means to move his majesty to hear the cause, but to accuse his lordship of injustice; this, and all these, moved me to be sharp and bitter, and to use words, though dangerous in themselves, yet I hope pardonable in such extremities.

And now I hope, if this will not acquit me, yet your honours will be pleased to move the king for his gracious pardon: for misery made patient Job break out and swell against God himself; and therefore, my lords, how much more may it make me so compleatly miserable, to swell and transgress against man!

And if, my good lords, you should hear all the passages of the cause, I should the better conceive your lordships will not be troubled with it; and Mr. Attorney hath already set it forth in that fashion, as it makes much against me: but if your lordships will vouchsafe me that favour, I hope I shall alter, or at least extenuate your lordships opinions in this cause. In the year 1606, I preferred a bill in chancery against Edward Fisher, for defrauding me of a lease of 60 years: Fisher forswears the trust, and preferred another bill against me for debts; both bills came to be heard before Kinglosse: Fisher offered to purchase the lease, and the debts were referred to two masters. These took great pains concerning the debts; after which the Lord Chancellor referred the whole business to those two masters of the Chancery, and then having examined both trust and debts, they report the trust proved; and for the debts, they think fit that I should give Fisher 2000 marks, whereof 500 marks were for damages. Fisher, not satisfied, moves my Lord Chancellor to hear the cause himself, and this was in 1608; and my lord, upon an hearing, decreed, with the consent of Fisher and his counsel, that he should assure the land, and I pay him 2000 marks within six months.

After this, my lord having made this decree by consent, I served Fisher with it; but his contempt was such, that after three commissions of rebellion, I was enforced to take a serjeant at arms to attach him, and had a commission awarded to the sheriff of Norfolk, to put me in possession. Fisher perceiving that the hiding of his head could not keep me from

having possession of the land, takes another course by fraudulent conveyances between him and his brother, and others; and in a motion made in the name of sir Thomas Challoner, (for they lodge the fast interest in him) they inform that this conveyance was before my bill exhibited, and therefore desire I might be put out of possession; and so it was ordered, that the possession should remain then as it was.

Then I, to discover those frauds, preferred a new Bill against Fisher the deceiver and three others. They in their answer set forth matter sufficient to shew the fraud. For sir Thomas saith, that this conveyance from sir Edward his brother, was made and sealed when he never thought of it; that 1700*l.* was to be paid; but yet he never saw the land, he never bargained or conditioned for it, but bearing the trouble of it, assured it to Richard, the younger son of Fisher the deceiver; and so because he also was unable to go on in the purchase, he lodged it in the hands of sir Thomas Challoner.

Hobart, Attorney, informs my Lord Chancellor of these frauds; my lord gave them a day, to shew cause why I should not have the land till they could make better proofs. Then those witnesses which were both Fisher's men, were examined by my Lord Chancellor in open court, and one of them swears that the conveyance, which must defeat the decree, was sealed in the hall; the other swears it was done in the parlour; one, that it was read, the other, that it was not read: the one, that it was signed: the other, that it was not signed: one swears, that sir Edward Fisher was present; the other, not present; and both, that it was done at such a time, when the deed bears date twelve months after.

Then what remains after all this, but that I should have a confirmation of the old decree, or else a new? But I find it true, 'Nemo leditur nisi a seipso.' For then the lord chancellor made a motion, that Fisher should buy the land; against which, I not gainsaying, his lordship referred the mediation of the bargain to the master of the rolls, where it appeared, that sir Edward Fisher had made a lease of half the land for 200*l.* the year; and therefore it was agreed, that Fisher should give 2400*l.* out of the which he was to deduct 2,000 marks for his debts, due by the first decree, and the residue about 1,066*l.* I received, because it did not appear what the lands were worth. A commission was awarded out to sir L'Estrange Mordaunt and three others, to find out the true value of the land, and a bargain was not commanded, but propounded by the court: and I beseech your lordships to observe, that the master of the rolls being to consider of all the examinations, lawfully taken in the cause, nine witnesses were taken by the commission and duly examined; five witnesses more were examined in the examiner's office, without any privy or consent, and contrary to an order in court: which witnesses being examined, swore point-blank in all things; and according to those proofs, the master of the rolls made his



certificate, and found 200*l.* a-year to be as much as the lands were worth. Hereupon the Lord Chancellor gave a day to shew cause, why the cause should not be decreed, which was the Order, quarto Maii, 1610. After this the lord Hobart, then Attorney, in the presence of the master of the rolls himself, did set down the defects of his own report.

*Lord-Treasurer.* My lords, this is contrary to all course, this must not be; for we mean not to enter into the merits of the cause.

*Mr. Attorney Yelverton.* Mr. Wraynham, for you to shift it off, doth but aggravate your offence; for when you say, you used the rest of your phrases as *synonymics* to injustice, that implieth a taxation of his lordship in point of justice; and so likewise do your words imply, when you say, by the greatness of his wit and eloquence he doth palliate the injustice of the cause: therefore tax my lord particularly with one point of injustice.

Here Mr. Wraynham would not instance in any one particular.

*Wrayn.* Had I thought his majesty would not have heard my cause, I would have sat down in silence, and have devoured my sorrow. I have formerly set down to your lordships, that my decree was reversed without a bill.

*Mr. Attorney.* That is, when the bill is absolute and constant, for there it must have a bill of revivor; but when it depends upon subsequent acts, and is qualified and conditional, there it may be reversed without bill.

*Wrayn.* I humbly submit myself in all things to your honourable and clement censure: for the manner, I beseech your lordships pardon; and for the matter, I humbly crave compassion.

*Mr. Serjeant Crew.* May it please your lordships, the prisoner at the bar hath made a good submission at the last, I would he had begun with it. My lords, the flux of foul mouths must be stopped, otherwise the greatest magistrates will be traduced and slandered to majesty himself; and though it be not treason, yet I have heard it from a great and honourable person sitting in this place, that it is *arimen lesa majestatis*. My lords, for the two lords, the one that lives, the other that is dead, and their demeanor in this case, in honour of him that is dead, and without flattery to him that is alive; I say, they both judged according to their consciences. The Lord Chancellor that is dead, gave his judgment according to his conscience, and not according to the conscience of another man, but according to the integrity of his own heart: for the judges are to judge *secundum æquum et bonum in foro conscientiarum*. And this lord also judged out of his noble conscience and integrity of his heart; for, my lords, there was no binding decree. As for the merits of the cause, it must not be examined of the one side, nor of the other, for both lords have done according to conscience *coram Deo et hominibus*. And each hath delivered his own sense according to their consciences. The lord which is dead, when he was alive, was one of the oracles of the wisdom

of the time; and my living lord attributes very much unto him, whom God hath also enriched with great ornaments of nature; for no man, no magistrate, hears with more attention, nor no magistrate of justice attends with more understanding and patience. You then, Mr. Wraynham, thus to traduce my lord, is a foul offence, with that black mouth of yours: you cannot traduce him of corruption, for thanks be to God, he hath always despised riches, and set honour and justice before his eyes; and where the magistrate is bribed, it is a sign of a corrupted estate. For the justice of the cause; my lords, I was of counsel with Fisher, and I knew the merits of the cause; for my Lord Chancellor seeing what recompence Fisher ought in justice to have received, and finding a disability in Wraynham to perform it, was enforced to take the land from Wraynham to give it to Fisher, which is hardly of value to satisfy Fisher's true debt and damages. And this, my lords, was the true course of it; so it stands upon these parts your lordships have heard. I am glad at last to hear Mr. Wraynham's Submission, and do humbly crave your lordship's censure.

*Sir Edward Coke.* The cause before you, my lords, is a very great cause, for a man must tread in this course upon a very slender bridge: I will single out, as near as I can, the state of the question, and then I will shew you in others, upon what words, and in what I shall ground my sentence: for a complaint to the king's majesty, or a petition by any man that thinks himself wronged, I hold that regularly to be no offence. God forbid it should be so: I can make no hedge between the sovereign and the subject; nay, in some kingdoms, *Querelas subditorum detrahere in principe desercentur capitale est*. And that would be derogation from a monarch, that no subject should complain unto him; yet upon the statute of Westminster, and at common law, I make no question, but to shew you, that where petitions were made to the king in an unfit manner, they have been severely punished. Our case is now particularly in a sentence given by my Lord Chancellor, an eminent Judge in this Court, and a sole Judge in the highest Court of Equity that is in this kingdom; yea, this case is after sentence, and against the sentence, and with many such scandalous and opprobrious terms against so high a Judge; and that not in paper, in a book presented to the king; this book in my hand, which the king hath delivered to the attorney-general, that it might come before us for due punishment. Whether this Book be justifiable, or no; that is the question.

It is a black Book, *Est jam conveniens luctibus iste color*. And it is a strange Book for some things that I will shew you, for it is no petition; and yet I will confirm every word I say by ancient and modern authorities; whereof, I am sorry, very sorry in good faith, for the excellent and worthy parts that are in you, Mr. Wraynham. Now mark your own words in your Book; you call it a Review, or

Revivor of the Report of the Master of the Rolls, Phillips, and the Decree of my Lord Chancellor: the High Commissioners have sometimes a Commission of Review, but it is very rare: and that is a Commission of Grace, not of Right: such a Review is presented unto his majesty by Wraynham, in which he deals not like a petitioner, but like a censurer, censuring every man that deals in the cause.

Mark how the Common Law sets forth a petitioner: it gives no ill words, it toucheth not men of injustice; for take this from me, that what grief soever a man hath, ill words work no good; and learned counsel never use them. And therefore the petitioner at the Common Law, is, 'Si placet majestati,' &c. 'et quod justitia et rectum fiat,' &c. Now in your Petition, see whether you have behaved yourself well: first, you make your major proposition; The unjust sentence of a Judge, is far worse than a particular murder: then your minor is, That my Lord Chancellor hath satisfied his majesty, that I have informed him falsely; but his majesty knoweth, that he that judgeth unjustly, must, to maintain it, speak untruly; and that your lordships and all logicians know, the conclusion followeth necessarily.—First, he chargeth my Lord Chancellor with injustice, not complaining of any particular to be referred to examination; but saith in general, 'He hath done unjustly, and is worse than a murderer; and that he hath informed the king falsely.'

My Lords; You know, if a man put false metal into the king's coin, it is treason; and if my Lord Chancellor shall infuse poison and false information into the king's ear, it was an heinous offence. Yet this contents not Wraynham; but he saith at all, saying, 'That the height of authority maketh men presume.' And hath a place of Scripture in his Book, 'Woe be to them that write wicked Decrees;' and in another place he saith, 'Oppression is palliated with wit and eloquence.' My Lords, ought these things to be in a petitioner? A petitioner must go meekly and humbly to work, without shew of touch of any man.

I will not omit a dead man; for, though spoken of him, it is a living fault. As for this Master of the Rolls, never man in England was more excellent for the Chancery than that man; and for ought I heard, (that had reason to hear something of him) I never heard him taxed of corruption, being a man of excellent dexterity, diligent, early in the morning, ready to do justice: for him to be taxed in such a high degree, as to omit some of the material proofs, to shift off others, to wrest the equity of the cause, and such-like: and in another place, 'That the Master of the Rolls made an unjust and corrupt gloss upon a false text, &c.' And in another place, he saith, 'That sir Edward Phillips's report was raised *ab inferno*.'

My Lords; You know that the slander of a dead man is punishable in this court, as Lewis Pickering is able to tell you, whom I caused

VOL. II.

here to be censured for a slander against an Archbishop that is dead; for justice lives, though the party be dead; and such slanders do wrong the living posterity and alliance of the man deceased. But Mr. Wraynham spares not the king himself; for in one place of his Book he saith, 'assurgat rex,' &c. as if the king slept. And in another place he saith, 'That the Decree is reversed without precedent.' But that is not so, as I will satisfy you anon.

For Mr. Wraynham's censure, I will never judge a man without authority and reason: 18 E. 1, in Rotulo Parliament 3, my Lord-Abbot there complained that Solomon of Wragg, and Hugh Courtney then Chief-Justice, had confederated to give judgment against the Abbot. And the king answered, 'Shall we, upon this petition, call a judgment in question?' And in the end, the answer is, 'Rex rogabit, et aliter facere non potest per legem terre.' And my Lord-Abbot, because he was a lord, escaped punishment at that time.

Another precedent I will shew you, is, Mich. 18 E. 3, Rot. 151, *coram Rege*: Thomas Wilbraham petitioned against the Justices of the King's-bench, 'That they had not done according to law and reason.' And the petition was delivered to the representative body of the king and his council; for the which the said Wilbraham was indicted, convicted, fined, and ransomed in the King's-bench.—19 Ass. p. 3, Between sir William Scott and Humphrey Hunney, who complained to king Edw. 3. 'That sir William Scott, Chief-Justice, had awarded an assize contrary to law.' And the king sent it to the Judges; whereupon Hunney was imprisoned, judged, fined, and ransomed: yet he had no remedy but in parliament.

The Statute hath made a sharp law against such as speak scandalous news of the Chancellor, justice of the King's-bench, &c. And because divers were punished for slanders, in petitions to his majesty; therefore, 13 R. 2, rot. parl. numb. 45, the commons desired they might not be troubled for any matter that should be contained in petitions to the king: and the king answered, 'Let every man complain, so it be with law and reason.'

Wraynham objected a place of Scripture for himself, where the Psalmist saith, 'I have said in my fury, that all men are liars.' The text is, 'Dixi in excessu:' so Wraynham saith, 'It was not in his fury, but in his excess.'—And another thing that Wraynham offered in his defence, was the king's words, where he saith, in his Book, 'Be bold to complain.' But of what? Of corruption? So likewise, in Rot. Parl. 24 Edw. 3, parl. 3, numb. 16. 'If any man mix corruption with his censures, *Anathema sit*.' So likewise it is extant in the Rolls of the Parliament *de la plbe*, that the great de la Pole was convicted of bribery, and put from his place; and Cardinal Wolsey was convicted of a foul corruption.

But ~~the~~ according to sincerity, give judgment, though he differ from another Judge, this is no injustice. Parnous Dyer gave judg-

ment in the Common Pleas, and this was reversed in the King's-Bench; yet he discharged his conscience: and although it was afterwards reversed, yet it was no injustice. The like instance might be made of sir Christ. Wray, and others. Now, in this case, my Lord-Chancellor that is living, differs from the Lord-Chancellor that is dead. This is not strange, it hath ever been, and ever will be; but if a judge's conscience be oiled and moistened with corruption, then all is naught.

The king hath the Pleas of the Crown, and upon every Judgment one of the parties is angry and displeas'd: but this must not presently produce a new hearing, for that will hinder all other businesses. For I will put you a great case between a nobleman here, and divers other noblemen that were trusted by the countess of Southampton, who were all Plaintiffs, and sir Moyle Finch Defendant: and this was Mich. 42 and 43 Eliz. The main point that was controverted in the cause, was upon an exception of a manor (as I remember) in the *habendum* of the deed, which my lord-chancellor then thought void. And therefore decreed, 'That my lady of Southampton should have all.' Whereupon sir Moyle Finch petitioned queen Elizabeth, that she should refer the examination of the decree to some of the judges; but the queen would never refer any thing to those that were named unto her, but she referred it to two other judges not named in the petition, who attended my lord-chancellor; and they then resolved it against the decree, and my lord reversed his own decree.

I know I have held your lordships long; yet I cannot tell, in these critical days, whether men will be satisfied, which hath made me longer than I would have been. Therefore, to conclude, I agree, in all things, with the sentence given in Foorth's Case of 2 Jac.

Sir *Fulke Greville*, Chancellor of the Exchequer. This Court hath no intent to discourage the meanest subject of his lawful appeal unto his prince; for that were to dishonour the people of law, and the king of the intelligence of the oppression that might fall upon his people. But this case I suppose not to be within the first. The matter in such cases, is but a review of an inferior sentence of a superior magistrate, my Lord Chancellor of England: and that before he be heard, making the king his speedy executioner.

But examine the nature of these accusations, and you shall find them mere scandals, and impossibilities; as breking decrees, rewarding frauds and perjuries, palliating oppressions with greatness, wit, and eloquence. Why, my lords, if this liberty should spread, then I desire the indifferent hearers to see in what a miserable case the subject stands, when the right of every good man shall stand in the malignity, and unquiet nature of every turbulent spirit? And, my lords the judges, in what a case stand they, if by such clamours every delinquent shall be made judge over them? and what pri-

vilence shall the king my master have? For if this humour should take a little head, will it not carry both him and justice into the field? And therefore I conclude, that this is severely to be punished; and is not a petition, but a presumptuous challenge, and of so far a worse nature beyond duels, as honour and universal justice is beyond particular right: and therefore I agree with him that went before me, leaving his good parts to mercy, and his ill parts to the censure of Foorth's Case.

Lord Chief Baron, Sir Laurence Tantfield. This cause is a cause of a high nature, being a scandal of a great and principal officer of the kingdom, and of one that is an high and eminent person: which scandal is set forth in this Book, which certainly I cannot call a petition: for the petitioner hath presumed too far, that it is a plain revise of a decree. Every man knoweth, that the Chancellor hath the keeping of the great-seal, whereby is managed mercy and justice: and if this great person so trusted shall be thus traduced by every offender, how insufferable will this mischief be?

I doubt not but that by a right way, you may, by a petition in an humble course, and submissive manner, desire his majesty that he would be pleased to review a Sentence in Chancery, or else grant a commission to others to review the same. But doth this man observe this course? No, but he will be his own judge, sentencing his own cause. I can call this Book no better, than a scandalous and malicious invective against the Lord Chancellor; and that not without great bitterness, as I have heard. First, he taxeth him with injustice: then mark the circumstances; he saith, 'My Lord Chancellor hath reversed the Decree, without cause, without new matter, without legal proceeding, without precedent, and upon a bare suggestion.' Then he goeth further, saying, 'Injustice is worse than murder; for this Decree hath devoured him and his whole family.' And, not content with this, chargeth him with oppression, and palliating it with greatness, wit, and eloquence; than which, a greater and heavier scandal cannot be!

You shall not be barred of access to his majesty; but that by a petition you may desire to have a Decree reviewed, and that his majesty would grant a commission to review it. But these things must be done legally, and then the law protects us, though it be against a nobleman. Sir Richard Crofts did sue an action for forgery of false deeds against the lord Beauchamp; whereupon my lord Beauchamp sued an action upon the statute de Scand. Magnat. But that would bear no action, because it was done legally: for a man may suppose in his writ such a fact, by the use of the said writ; but he must beware that he prove it well, or else he shall be well fined in the same court. But much more shall he deserve a fine, if he shall do it without writ, or without ground or proof, as Wrayham hath done. And therefore, because I must be short, I think him

fully worthy of the censure before given, in all points.

Lord Hobart, Chief Justice of the Common Pleas. Mr. Attorney hath very worthily and like himself, according to his place, brought this man into this court, to give answer for the greatest and most outrageous offence that of this kind hath been committed; in which case, I will first tell you, what I do not question, and then what I do question.

For the first, Petitions may be exhibited to the king without controversy; nay, in some cases they must be exhibited; and God forbid, that any man's way should be locked up, or that any subject should be barred of access to his majesty; for when appeals fail, and when ordinary remedy is wanting, so that there is no judge above the highest judge; yet, you may still resort unto your sovereign for extreme remedy: this is proper to a king, 'Cessas regnare, si cessas judicare;' for it is an inherent quality to his crown. So that without controversy a man may petition against a sentence; for God forbid, that we that are judges, should draw that privilege to ourselves, to give sentence, and not to hear it examined. But it is true, it must be presented as a supplication, and you must go formally to work: ordinarily you must go to the proper courts of justice; if that fails, the extraordinary course is open by the king: and this is no more than to shew to his majesty, how you find yourself grieved, and then remit the cause and form to the king's wisdom.

But now see what this man hath done, he hath made neither the matter nor form of a petition. First, for matter, he pretends, that is not saying that my lord-chancellor hath expressly infringed two decrees, when he hath done nothing, only crossed an order, than which, there is nothing more common, for they are but interlocutory, and not definitive.—And for form, this is no petition, no book, as he would call it, but an express, peremptory and audacious libel. Then the manner offends yet more: for whereas a supplication imports, that a man should speak it upon his knees, for as it is in some realmes, men attempt nothing against law, but they must do it with a rope about their necks: so that he that goeth about to attempt any thing against a decree, he doth it with a rope of the king's censure about his neck: but mark the carriage of this man, how insolently he proceeds in this case!

First, for the king, as hath been well observed, he saith, 'assuat Rex;' as if he should bid the king arise and take revenge.

Therefore for the Decree, he saith, that the foundation of it came from hell: if that be so, then this sentence must needs be hellish, when he falls upon a poor man, the master of the rolls: I call him poor man, because he is not living to answer for himself, but yet he was a worthy minister of justice, (for I had much cause to know him) and he was of as much dexterity and integrity, as ever man that sat in his place, and I believe the chancery will find want of such a man. But not content with

this, he scorns my lord-chancellor's courtesies, and carries himself, as if he would trample all under foot.

So much for the manner: as for the matter, it is odious: the person with whom he hath to do, is the principal officer and magistrate of justice in the kingdom, one that hath the nomination of all the justices of peace, and the principal that names all the sheriffs: one that keeps and carries the seal, and sits chief judge in this court, and sole judge in the chancery.—And shall we think that this man is bought and sold to corruption, to injustice, to murder? What more tends to the king's dishonour, than that he should place in the judicature such an unworthy man? a man infinitely the more wronged, because he deserves his place, as well as any man that went before him: and yet his last predecessor was very excellent, and deserved no small commendations. But Wraynham I condemn, as a man barbarous both toward the living and the dead: wherefore, there is a justice and tribute due to the master of the rolls deceased. I would have mention made of it in the decree, and with that addition to the sentence, I concur in all things with the president of the court.

Sir Edward Mountague, Lord Chief-Justice. My lords, it is a true saying, 'Judicium non redditur nisi in invitum.' For I yet never saw any man sit down satisfied with a sentence that went against him. I would not so far have blamed Wraynham as to have censured him for complaining to the king: yet this restraint I find in law, which any man may see in king Edgar's law. "Let no man complain to the king in matters of variance, except he cannot have right at home, or that right be too heavy for him. Then let him complain to the king." Whereby it is meant, that if the laws be so strict, he shall complain in a court of equity to the king himself. Then, to complain is not denied to any man, for all justice comes from the king, and though he distribute his justice to be ministered in several courts, yet the primitive power resides still in his person. Therefore, to the justice of his majesty may any subject have resort: but this must be humbly as a petitioner, not as Mr. Wraynham hath done here, who is not a suitor, but a censurer: and doth not complain, but proudly rails upon a high judge.

Can you, Mr. Wraynham, charge your judge with corruption, through fear or affection? (for I make them both alike;) Spare not the chief judge nor highest counsellor: I say, spare us not, whenever you can take us. But a judgment is pronounced from the sincerity of our consciences, and warranted by our judgment and learning: shall we then undergo the censure of every suitor? No state, at no time, ever suffered this.—My lords, it lies upon us Judges as a duty, to restrain this boldness: our places as Judges, give us no privilege to do what we list, nor have suitors liberty to speak as they list of judges: God, and order, hath set bounds to both.

For the matter heretofore handled in the Chancery, it is not a work of this day to deal with that; we meddle not with your Decrees, we censure you only for your scandals. I saw in your Book a smooth pen, and from your tongue I have heard fair speeches; but in both I see a fiery spirit. For you would raise up dissention between the two Lord-Keepers of the king's conscience, him that now is, and him that was, and now is, with God: of these two worthies I shall not say much; I will neither wrong the dead, nor flatter the living. The matter of difference, for any thing I can see, or you can say, is but an order against an order, wherein judgment may be varied by occasions, and through circumstances: true attributes are no flatteries. This honour let me give to these two great men: of greater parts, better fitted for that place, never sat in this place: nay, a man may truly say, that the world hath scarce yielded two such men of so excellent gifts, in this latter age of the world.

But you, Mr. Wraynham, wronged both the living and the dead. Of the Master of the Rolls, that is dead, you spake your pleasure: but all that hear you, and know him, will be ready to give you the lye. You say that he should omit some of the proofs, and rest otherwise, and ground himself upon witnesses that swore impossibilities, and absurdities, &c. Whoever knew that man, knows him to be a true reporter, and a judicious collector upon proofs, as ever was. I will not dissemble what others thought a fault in him, to be over-swift in judging: but this was the error of his greater experience, and riper judgment, than others had.

Now, for my Lord-Chancellor, by the words you use, you lay four of the greatest crimes upon him, that can be laid upon a judge: Presumption, Oppression, Falsity, and Injustice: all these you utter, with one breath, charging him with all in one sentence: for you say, 'Height of authority makes great men presume: there is presumption and oppression. And in these words, 'He that judges unjustly, must, to maintain it, speak untruly: there you accuse him of falsity and injustice. 'Ex ore tuo te judico, serve nequam.' For in your book you say, 'Let me suffer as a traitor, if all that I say prove not an entire truth, if I should dare to slander so great a judge to so wise a king.' Therefore, out of your own mouth I pronounce sentence against you, *lese majestatis*; and though not as a traitor, yet as a great scandalizer. And if all were true that is said in your book, yet would I censure you for your quarrel with my Lord-Chancellor for form; and yet yourself use no form, no, not common civility. So that if it were against a common man, it were punishable, to utter such words to the eye of a King, as here you give to my Lord-Chancellor, calling him a rewarder of frauds and perjuries, an afflicter of the afflicted, a rack of things out of joint, a confounder of your estate, and the like.

These are not words fitting a Petitioner, to

be spoken of a Lord-Chancellor, to be offered to a king. And, my Lords, this man's fault goeth one step higher, touching the person of majesty itself. I am a judge of crown-matters; and in this libel, I think he hath scandalized the king in four things: First; he saith, 'The king is but a man, and so may err;' implying an error in the king. Secondly, 'That my Lord-Chancellor defends himself by secret means, and that you are not called to answer.' Than which, what greater tax unto so high a majesty, to condemn and not to hear! Thirdly, 'That my Lord-Chancellor doth cover his injustice with wit and eloquence.' When we all know, that we have a sovereign of those high and excellent gifts, that it is not rhetorick, or eloquence, that can cast dust in the king's eyes, or cause him any ways to turn aside from justice. Lastly, you say, 'That a man may distaste truth, and suspect judgment;' applying it unto his majesty. Which offences reaching so high, my censure shall be the heavier upon you.

Now it will rest, what shall be done with this man? As I give my sentence from his own mouth, so I will take advice from himself; he saith, 'State super viis antiquis.' Look what our ancestors have done of old, so let us do. In this then, you shall see what they did in like cases.—Mich. 13. of the queen, Rot. 39. Henry Blaunsford, a counsellor at law, was committed to the Fleet, and fined for false reporting the opinion of the lord Leicester, and secretary Cecil, with these words, 'Humanum est errare.'

So likewise, 19 Hen. 8. my lord Stourton was committed by the court, and fined, for saying these words, 'I am sorry to see rhetorick rule where law should.'—Sir Rowland Flaxing was committed, and fined, for reporting to the king, 'That he could have an indifferency before the lords of the council.' For which he was deeply fined, 7 Feb. 18 H. 8.—So likewise, in the time of Hen. 7. sir R. Terres was committed, fined, sent to the pillory, and adjudged to lose both his ears for his slanderous complaint exhibited to the king in a written Book; and that against the chief-justice Fitz-James: the punishment of him that depraved the good judge sir James Dyer, is fresh in memory.—So that party which said judge Catlyne was an unjust judge, 8 Eliz. Rot. 10. whose name was Thomas Welch, of London, who was indicted in the King's-Bench for this as for an offence against the common-law. His words that were delivered, were these: 'My Lord-Chief-Justice Catlyne is indicted against me, I cannot have justice, nor can be heard; for that court now is made a court of conscience.' This Indictment was found, and the record was, that it was 'in magnam contempt. Dominæ Regiæ ac curi suæ, ac in magni scandalum, ac ignominiam legi Angliæ, ac in scandalum cap talis just. ac in malum exemplum omnium subditum.'

So it is that this offence of Wraynham's is against the law, the commonwealth, and the justice of the kingdom; and therefore, according to the last judgment in law, and with the sentence that was pronounced against Fourth,

I concur and pronounce the same against Wraynham in all things. And this right I would have done to the Lord-Chancellor living, the Lord-Chancellor and Master of the Rolls that are dead, that those things be fitly expressed to their honours, in the drawing up of the decree.

Sir *Thomas Lake*, Principal Secretary. My Lords, If I had been the first that had spoken in this case, I should have thought it the greatest difficulty how to walk evenly between the not discouraging the king's subjects, and in judging the prisoner at the bar. But for that, my lords before me have so well spoken, that no man may be discouraged to come to his majesty in a discreet manner: And very good learning hath been delivered by all my lords the judges, such as may satisfy every man; yea, and not satisfy only, but direct them what to do in such cases: therefore I may be the shorter.—I will not be long in speaking of the honour due unto magistrates; he that wades into that, shall have little of his own invention; nor of the offence that is now before us; for the king's counsel hath so fully and perfectly delivered it, that perhaps by this time, he knows his own error. And my lords the Judges have made it appear so, whereby I think it as great an offence, as ever was in this nature; and much more deserveth punishment, because it is against a man no less eminent in virtue, than in place. Three things the prisoner urgeth for himself. First, for the word Injustice, he saith, 'That admitting the thing were unjust, then he might call it unjust.' But I answer, for a private man to call a public sentence, Injustice, herein he sheweth his error. Secondly, He urgeth, that it causeth a great loss unto him, and therefore he would be the rather excused.—It is true, I think, that men, by sentence, have lost, for 'Judicium redditur in invitum': but though it be a loss, it is 'Damnum absque injuria.' Thirdly, He went the wiser way, when he urgeth commiseration unto us. For my own part, I could commiserate the man, but I commiserate the Commonwealth much more; for if this should be suffered, tumults, and a multitude of other inconveniences, would arise. And therefore I judge him as the rest have done before me.

Sir *Henry Cary*, Comptroller. My lords before me have spoken so much, that I shall not need to speak, neither do I make any scruple of the said sentence. When I consider how fully this man hath behaved himself, in scandal and invectives against so high a magistrate, I must concur with the rest of the lords that have gone before me.

*Bishop of Ely*, (Dr. Launcelot Andrews.) Though the ground of the complaint had been just, yet I believe my lords the judges, that the complaint being in so foul a manner, against so great a person, in so high a place, deserves sharp punishment: and therefore I agree with the former sentence.

*Bishop of London*, (Dr. John King.) I shall borrow a phrase of him, though spoke to another purpose: 'That in a senate, where many assistants were, after two or three have well

'spoken, and well agitated a cause, there is required nothing of the rest, but their assent.' It is a worthy saying, but when I find here before me an honourable person fully and despitfully spoke against, being one of the three vital parts of this court, and without which it cannot have its subsistence; and of the three vital parts, the principal, and also a judge of another court; and (as I learned of my lords the Judges) of such a temporal court, where if the edge of the law be too keen, the equity of the Chancery doth abate it:—In regard of this duty, it becometh me to speak, and because the party wronged is a great counsellor and officer of the state:

The first thing I say and lay hold of, is this, *interest reipublicæ*, it stands not with the honour of the king, with the safety and peace of the kingdom, nor with the quiet of his majesty, that counsellors of state, and judges in the seat of justice and conscience, should be deprived, 'anima et vita regnorum autoritas,' take it away from the magistrate of state, take it away from the king himself, 'et subversa jacet pristina sedes soliorum.' For the place wherein this honourable person sits, is great between blood and blood, plea and plea, plague and plague, for the Judge shall end the controversy.—So that the first lesson which I shall make, is that which Cambyses made to another, 'emento ex quo loco,' they sit in God's seat, and execute his, and not their own judgments: it is their art, their faculty, their profession, their learning to judge, and it is not open to every man, but it is 'peregrina et unusquisque in arte sua artifex;' and therefore, for mine own part, I shall ever bend the best of my thoughts, the favourablest of my wishes, and the most of my prayers, that sitting in seats as they do, they may judge as they ought. I know, that while they carry flesh about them, their faculties and judgments will be imperfect; they are but men, 'et scientia juris infinita:' so that I know not (amongst the number of mortal wights) that man that can conceive every particularity of the law.

No marvel then, if one Judge differ from another, when the same man differs from himself; 'Socrates puer differt a Socrate sene.' And though the Judges walk not in the same way, they tend to the same end; and though there be not *idem cursus*, yet there is the same, 'idem portus, et non mutant, sed aptant legem,' according as the matter comes before them is varied, shaped, and fashioned.

It is unreasonable then to complain of a Judge, or unusual to go to the king with complaints; nay, it must be done with 'calamo et atramento temperato;' and it must be done, 'libello supplici, non famoso,' not as a sycophant and slanderer, but as a supplicant with a petition; not with a petulant invective declaration against a person of so great and honourable a place. This is a fact so unnatural, and unlawful, that all laws are broke both of God and nations, and civility, and good manners, and all: nay, I know not how the laws of speech

are kept, they are but three, *quid, de quo, cuique*, the matter foul, spoken of so honourable a person, and to so transcendent a magistrate.

Wraynham is a man, that did not only curse in the bitterness of his soul, but he comes 'in amaritudine linguæ et chartæ.' It is not fit, God gives not blessing to these histricks and porcupine quills: it shoots far, it enters deep, it wounds sore, it is not to be tolerated! Let him keep his poison in his surmatico and invective Book. Wherein, let me add for my last, the manner of presenting it, the writing it self; and then withal the defence now made, which, when I heard it, I was more offended than with the Book itself; and I may justly make a question, whether he were more foolish in writing it, or more vain in defending it? His defence is a two-fold necessity: first, a necessity to induce the king to hear him; like Absalom, that would needs set Tobias's fields on fire, to get his ear. The other, a necessity of estate, proceeding out of the laws of necessity; 'Gravisimi sunt morsus irritatæ necessitatis.' One part of speech was general: in that he meant not my Lord Chancellor: but in the general there is a major, and in the particular there is the application, and then every man can make the conclusion, as hath been well observed by sir Edward Coke.—You are a man of a private and profane spirit, and if you know not of what spirit you are, I can teach you; I say, of that spirit, that you compare yourself with apostles and prophets, and you misapply scripture; your 'dixi in excessu et trepidatione,' sheweth a difference between sinning upon passion, and deliberation. It comes fully home into your own bosom, 'et pulchrum patet guttur in ore.' The best part of this answer, was the last, and I would it had been all in all; and so I agree with the Sentence given before me.

*Viscount Wallingford.* I am sorry a man should deserve so great a censure as this man's foul fault will make; yet I am very glad in this bold and quick-sighted age, that other men, by his example, may take heed not to exceed the bounds of modesty. This humour, it seemeth self-love (which believes nothing but itself) hath begot that, that hath bred this gentleman up so unmannerly, that he spares not to accuse the highest and greatest judge of the kingdom, of oppression, injustice, murder, nay, of any thing; which is not only spoken by so ill a tongue, but aggravated by his answer.—For it seems, he would encourage other men by the king's Book to do the like, wherein we may see the malice of this man, that will get poison from the fairest flower; yet every subject may take comfort in his majesty's Book, and God forbid, that he which is wronged, should be restrained to complain to his sovereign; yet, this complaint is no petition, but a very libel, and deserves no better name.—The king's will is, that you should be bold, and that you should come to him; but yet you must be sure that your cause must be just and right. This is a good and gracious speech of a king; but it is pity Mr. Wraynham alleges scripture to maintain an ill cause: and

I do clear my Lord Chancellor dead, and alive, to be as worthy men as any in my time, and yet I have lived a long age; and God forbid their consciences should be led by private men's humours.—I say no more, but let every man that hears us this day, take heed, that their humours lead them not into these outrageous courses, but carry themselves with modesty. I shall not need to enlarge, but consent with my lords before me.

*Earl of Arundel.* I shall not need to use many words for the matter; in brief, Wraynham hath forgot himself fully against a great and high instrument of justice, renewing complaints upon complaints; after the king had told him in my hearing, that the Lord Chancellor had done justly, as he himself would have done; and therefore I think him very much to blame, and well deserving the censure given. And the use is, as you see by him, for malicious men not to suck honey, but venom and poison out of the wholesome flowers; as his presumption is to be hated, so his humiliation and submission is to be pitied; yet I agree with my lords in all things.

*Pembroke, Lord Chamberlain.* No man's mouth is so stopped, but in case of grief he may seek redress. I think there is little scruple, that either the Master of the Rolls that is dead, or this Lord Chancellor that is living, did proceed without justice; because it is but an order against an order, a thing very frequent and usual in this, and in all other arbitrary courts. For the sentence, I agree with the court, being sorry, since his last submission was humble, that before he hath abused this good part, and used his wit to his own confusion.

*Duke of Lenox.* I am sorry that Wraynham hath not the grace of God to make use of his majesty's Book, which is not to complain without just cause; and without he could make proof of his complaint. I will not repeat the worth of my Lord Chancellor living, or dead: but I am sorry that a man of so great parts should deserve so heavy a sentence; whereunto in all things I agree.

*Worcester, Lord Privy-Seal.* My lords, I am of opinion, as formerly my lords have been: I do hold this a very scandalous libel, being against a person of such worth; the greater the person is, the more severe should the punishment be for the offender: and so I concur in opinion with my lords before me, and do think this offence to have exceeded his punishment; and therefore if a great fine had been laid upon him, I should have agreed unto it.

*Abbot, Lord Archbishop of Canterbury.* The Lord, the Fountain of Wisdom, hath set this glorious work of the world in the order and beauty wherein it stands, and hath appointed princes, magistrates, and judges to hear the causes of the people, not so much out of authority, as out of justice and reason: for if no such persons were to hear and determine other men's causes, every man must be his own judge, which would tend to nothing but ruin

and preposterous confusion : God therefore, in his wisdom, ordered and ordained their bounds, in the magistrate on the one side with instruction, and the subject on the other side with protection ; which instruction when he shewed them, the king's throne is upheld by justice : and David was commanded to rule his people with justice and judgment ; and the like commandment is given to others in subordinate places, not to pity the person of the poor, nor to stand in awe of the face of the mightiest, but to weigh the simplicity and integrity of conscience. For mark the example of the most holy and reverend judges, Moses, Samuel, and the rest, to whom their greatest comfort was, that they could say, ' Whose ox or ass have I taken ? From whom have I received a reward ?' And by the course of piety and divinity, we that sit sometimes to judge others, are at another time to stand at an higher bar, to receive judgment from heaven.—With the great grace, and benefit of protection, God calls them by his own name, God's children of the highest ; God being present amongst them to direct them, and defend them ; God standeth in the congregation of princes, he is amongst all the people : thou shalt not detract nor slander the judge, nor speak evil of the princes of the people. And in two several epistles, both in Peter and in Jude, it is said, ' That in the latter days there shall be wicked men, that shall speak evil of magistrates, and men of authority, blaspheming them ;' as if it were blasphemy, though not against God, yet against those that are the image of so great a God.—And therefore, since Wraynham hath blasphemed, spoken evil, and slandered a chief magistrate as any in the kingdom ; it remaineth, that in honour to God, and in duty and justice to the king and kingdom, that he should

receive severe punishment ; for it is his cause to-day, and it may be ours every day : and have not some, for justice sake, been enforced to endure the threatening of their heads ? Wherefore, if greater punishment had been given him, I should have assented ; for justice belongeth to us, but mercy to our gracious sovereign. Wherefore I agree in all things with the sentence before given.

*Suffolk, Lord Treasurer.* I perceive, as the prisoner at the bar was charged at first, that he had fully offended, and ought to have yielded himself at the first, and not to have made his offence greater, by defending a bad cause. My lords who have heard his fault in part laid out, and censured him, I think they have done very worthily. For the party himself, I would I could come to him with a little better charity than I can, for his answer did more displease me, than his censure ; for I see his spleen and his humour grows, rather to defame a worthy man, than to free himself, how unjustly, I appeal to the whole world ; who came to his place with as much satisfaction to all hearts, and applause, with as good carriage as any man I ever heard came before him.—The thing that I would conclude with, is, that I would be glad that all that hear us might take us aright that are judges ; we desire not to be forborn by any subject's tongue, that hath cause to complain : and therefore do it not for any particular respect to ourselves, but for the public course of justice, and for the care we have of the public good, and for nothing else.—For the fault itself, it hath been so well opened by all the lords, that I will spare to hold you longer in speaking of it. And for the sentence, I think it very fit and just : and therefore agree with the rest.

114. The Case of WILLIAMS, of Essex, for Treason : B. R. Easter, 17 JAMES I. A. D. 1619. [2 Rolle's Reports, p. 88.]

WILLIAMS, a Papist and barrister of the Middle Temple, but expelled seven years ago for his religion, was indicted for High Treason for the writing of two books, one called " Balaam's Ass," and the other was called " *Speculum Regali*," in which he took upon himself the office of a prophet, and affirms that the king which now is, will die in the year of our Lord 1621, which opinion was grounded upon the prophecy of Daniel, where that prophet speaks of a time and times and half a time, [Dan. ch. 7, v. 25. ch. 12, v. 7.] and then Antichrist shall be revealed until the end of the world, viz. five years and a half before the end of the world, which contradicts the popish opinion of Williams ; and Williams holds that the time in which Antichrist shall be revealed, is the time in which sin shall be at the highest, and then the end is nigh, but such is our time, sin is now at the highest, ergo, &c. And he also says, that this land is the abomination of

desolation mentioned in Daniel, [In king James's translation, the phrase in Daniel is, " the abomination that maketh desolate ;" See chap. 11, v. 31. ch. 12, v. 11, yet it is quoted, in the same translation of the New Testament, from Daniel in the words " abomination of desolation." See Matthew ch. 24, v. 15. Mark ch. 13, v. 14.] and that it is full fraught with desolation, and that it is a habitation of devils, and the Antimark of Christ's Church ; and upon these and many other such opinions contained in his book, all the court clearly agreed that he was Guilty of High Treason, and this by the common law, for these words import the end and destruction of the king and his realm, and that Antichristianism and false religion is here maintained, which is a motive to the people to commit treasons, rebellions, &c. for, by Mountague, treason is defined to be *crimen lesa majestatis*, and how can the king be more hurt than by the branching and



bearing of such opinions in the ears and hearts of the people, being his subjects, and Glanvil defines treason to be, viz. *qui aliquid machinatur in nocum regis*, see 25 E. 3.—But Williams for himself objects, that what he did and wrote, was not out of any malicious or disloyal heart towards the king, but proceeded out of his love, and that he intended this as a caveat and admonition, whereby the king should avoid these mischiefs which were very like for to happen to him, which appears many times in his book, as he says, for when he has declared the judgment and destruction, &c. he concludes the sentence thus, viz. (which God avert) or such like words. 2. This matter rests only in opinion and thought, and it was not carried to any overt act in execution, for no rebellion, treason, or other mischief ensued upon it. 3. He inclosed his Book in a box sealed up, and so secretly conveyed it to the king, and never published it.—As to the first objection, the court answer, that no respect shall be paid to the good intention of a man, when his words and actions appear to the contrary, and when a man had talked treason in the previous part of a sentence, he cannot qualify it by ‘God save the king.’ As to the second objection, howbeit rebellion, treason, &c. did not ensue upon it, yet Doddridge said that the rule is *in atrocioribus delictis, puniatur affectus, licet non sequatur effectus*; for if an attempt be made to imprison the king, albeit his death is not intended, still this is high treason, for it is the means by which his death may ensue, and this was the case as Mountague said of king E. 2. \*

\* As to this, see Luders on the Law of High Treason, in the articles of levying war, 77;

and he cited sir Nicholas Throgmorton’s Case in Dyer, \* where was only a conference concerning the death of the queen, and it did not take effect, and still it was resolved to be high treason, and it cannot be said in this case that this matter rests in thought, since it is reduced to writing, *for scribere est agere*, † and if words can amount to treason, (as clearly they may) *à fortiori* when they are reduced to writing, and although they were never spoken, still it now appears that his intent was treasonable; and therefore, as to the third objection, it was clearly agreed that although this Book was inclosed in a box sealed or in his study, still because by this act his intent appears, therefore it is high treason, and Yelverton, the king’s Attorney, said, that at common law there be four manners of treasons, 1. Rebellion. 2. To deny the king’s title and power, temporal or spiritual. 3. To advance and maintain superior power to the king. 4. In bearing his subjects in hand that the king’s government is erroneous, heretical, and unjust, whereby the manner of his government is impeached, and called in question; which Doddridge affirmed, and said that these are undeniable maxims.

and Mr. St. John’s Argument in lord Stafford’s case, (*infra*) as there quoted.

\* There is a very short note of the point in Dyer’s Rep. 98. b. pl. 56. The case at large is inserted in this Collection, vol. 1, p. 869.

† Concerning words and writings as overt acts of treason, see East’s Pleas of the Crown, ch. 2, s. 55, 56, and the cases and other authorities there referred to. In this Collection see the cases of Algernon Sidney, A. D. 1683. Sir John Fenwick, A. D. 1696.

115. Proceedings in Parliament against FRANCIS BACON Lord Verulam, Viscount St. Albans, Lord Chancellor of England, upon an Impeachment for Bribery and Corruption in the Execution of his Office: And also against Dr. THEOPHILUS FIELD, Bishop of Llandaff, &c. 18 & 19 JAMES, A. D. 1620. [1 Commons’ Journals, 554. 3 Lords’ Journals, 53. 1 Cobb. Parl. Hist. 1208.]

PROCEEDINGS IN THE HOUSE OF COMMONS.  
March 15, 1620.

SIR Robert Phillips reports from the Committee appointed to enquire into Abuses in the Courts of Justice, viz.

“I am commanded from the said Committee to render an account of some Abuses in the Courts of Justice, which have been presented unto us. In that which I shall deliver, are three parts. First, The Person against whom it is alledged. Secondly, The Matter alledged. Thirdly, The Opinion of the Committee.

1. The Person against whom it is alledged, is no less than the Lord Chancellor, [Francis lord Verulam, viscount St. Albans,] a man

so endued with all parts, both of nature and art, as that I will say no more of him; being not able to say enough. 2. The Matter alledged, is Corruption. 3. The Persons by whom this is presented to us, are two, viz. Awhrey and Egerton. Awhrey’s Petition saith, that he having a Cause depending before the Lord-Chancellor, and being tired by delays, was advised by some that are near my lord, to quicken the way by more than ordinary means, viz. by presenting my lord with 100*l*. The poor gentleman not able by any means to come to his wished-for port, struck sail at this, and made a shift to get an 100*l*. from the u-rer; and having got it, went with sir George Hastings and Mr. Jenkins to Grays-Inn: and

being come to my lord's house, they took the money of him, and carried it in to my lord Chancellor, and came out to him again, saying, my lord was thankful, and assured him of good success in his business. Sir George Hastings acknowledgeth the giving of advice, and carrying in of the money to my lord, and saith he presented it to my lord as from himself, and not from Awbrey.

"This is all confirmed by divers Letters, but it wrought not the effect which the gentlemen expected; for notwithstanding this, he was still delayed. Egerton sheweth, that he desiring to procure my lord's favour, was persuaded by sir George Hastings and sir Richard Young, to present my lord with a sum of money. Before this advice, he had given a present of 52*l.* and odd shillings in plate, as a testimony of his love; but is doubtful whether before his calling to the seal, or since: but now by mortgaging his estate he got up 400*l.* and sends for sir George Hastings and sir Richard Young, desires their assistance in presenting this money, and told them how much it was. They took it and carried it to my Lord Chancellor as a gratuity from the gentleman; for that my lord (who he was Attorney) stood by him. My lord (as they say) started at first, saying it was too much, he would not take it; but at length was persuaded, because it was for favours past, and took it, and the gentleman returned him thanks; saying that their lord said, that he did not only enrich him, but laid a tie on him to assist him in all just and lawful business. Sir George Hastings, and sir Richard Young, acknowledged the receiving and delivery of the purse; but said they knew not what was in it. Then a question was proposed, Whether there were any suit depending during those offerings, either in the Chancery or the Star-chamber; but there was no certain Evidence of it. Thus you see Corruption laid to the charge of a Judge too, a great judge; nay, to the great keeper of the king's conscience.

"Another point came in by-the-bye, shewing that some indirect means are sometimes open (I fear too often) to the courts of justice,

"It concerns no less a man than a divine, who is now a bishop,\* but then called Dr.

\* He was made bishop of Landaff 1619. His share in this transaction does not seem to have impeded his preferment. He was translated to St. David's 1627, and to Hereford 1635. He died 1636. Some of Howell's letters are addressed to him. The fact is, corruption was, as Bacon himself stiles it in his Submission of April 22, 1621, *vitiū temporis*: all the contemporary writers prove this. See also Luders's Considerations on the Law of High Treason in the article of Levying War, cap. iv." Mr. Luders indeed says, "Bacon was conscious that he did justice better and with more expedition than his contemporaries: it is remarkable that he was not accused of selling injustice. The sale of justice would have been sufficiently bad ('nulli vendemus justitiam,' Magna Charta VOL. II.

Field, Mr. Egerton and he being acquainted, and Mr. Egerton's mind being troubled with the ill success of his business, vented it to the divine, who (contrary to his profession) took upon him to broke for him, in such a manner as was never preceded by any. He made Egerton to acknowledge a recognizance of 10,000 marks, with a defeazance, that if my Lord Chancellor did decree it for him, 6,000 marks was to be distributed among those honourable persons that did solicit it for him: but if it did not go as they desired, he promised, *in verbo sacerdotis*, that he would deliver up the bonds.

"This appeared by Letters from the now reverend bishop, but then practical doctor. Mr. Johnson (a moral honest man) perceiving that Mr. Egerton, finding no relief, did intend to prefer a Petition against the Lord Chancellor by one Heales's means, took occasion to talk with Mr. Egerton; asking him, why he would prefer such a scandalous Petition against my lord; he would have him take the money out of the Petition, and then his cause, by the mediation and conference of some other judge with my lord, might be brought to a good end; and for money, if he had lent any, he might be satisfied again.

"Afterwards upon a Petition to the king by sir Rowland Egerton, there was a reference of this matter to the Lord Chancellor, and Mr. Edward Egerton entered into a bond for ten thousand marks. He had treated with one Dr. Sharp, that if he would give 1100*l.* he should have his desire. We sent for Sharp, but he denied that he ever contracted with him. The desire of the committee was, to reform that which was amiss; and they thought fit to give as much expedition as might be, because so great a man's honour is soiled with it, and therefore do think meet that farther inquisition be made this afternoon, and when the truth of the matter is found, then to be sent to the lords. Thus I have faithfully related what hath passed, and with as much duty and respect, as I might to my Lord Chancellor; I desire it to be carried out of the house with a favourable construction."

Ordered, That this matter be further considered by the committee this afternoon. Then the house adjourned.

March 17. Sir Robert Phillips made Report from the Committee of the Abuses in the Courts of Justice, viz.

"We met on Thursday in the afternoon; the principal thing wherein I desired to be satisfied was, whether at the time of giving those Gifts to the Lord Chancellor there were any suit depending before him. In Awbrey's Case it appeared plainly there was: Something accidentally fell out in this Examination, and that is, a Declaration of sir George Hastings, who hath been struggling with himself betwixt gratitude and honesty; but public and private

cap. 49,) but I fear it is impossible to confine Bacon's guilt within that limit."

goods meeting, he preferred the public, and owned, that he taking pity on Awbrey's suit, did give in a box of 100*l.* to the Lord Chancellor, in these terms, or the like, 'That it was 'to help Awbrey in his Cause.' Notwithstanding, not long after, a very prejudicial and murdering order was made against Awbrey in his cause: whereupon sir George Hastings moved my Lord Chancellor to rectify this order. My lord promised to do it, but did it not. The Order was put into the hands of one Churchill (one of the Registers in Chancery) by a servant of the Lord Chancellor's. There are Letters of Awbrey's to the Lord Chancellor touching this business. Now for Mr. Egerton's Case: As the matter was of more weight, the sum was of larger extent, for there was 400*l.* given them, and a suit then depending in the Star-Chamber; about which time sir Rowland Egerton did prefer a Petition to the king for a reference unto the Lord Chancellor: Whereupon my lord caused him to enter into a bond for 6000 marks to stand to his award. An award was afterwards made, which was refused by Mr. Edward Egerton; thereupon a suit by the Lord Chancellor's direction was commenced against him, and the bond of 6000 marks assigned over to sir Rowland Egerton. About this time Edward Egerton became acquainted with Dr. Field, and related his cause unto him; who pitying him, sent him to two worthy gentlemen, Mr. Dampont and sir John Butler (who is now dead); he makes known his case to them, and desires them to be a means to put off his cause from hearing, because his witnesses were not here. Whereupon Dampont wrote to the duke of Buckingham to have had his letter to the Lord Chancellor to stop it: But the duke said he would not write, because the matter was already decreed, and he would not receive it. Mr. Egerton was drawn into a bond of 10,000 marks for the payment of 6000: and Mr. Dampont being asked, what he and Dr. Field should have had of this money, he said, he did not remember what certain sum: but he said it was more than any cause could deserve in any court of justice.

"In Awbrey's Case this is to be said. That sir George Hastings being at Hackney, where he dwelt, was sent for by the Lord Chancellor, and accordingly he came to him and found him in bed, who bid him come near him, and willed the rest to depart the room; and then said unto him, 'Sir George, I am sure you love me, and I know that you are not willing that any thing done by you shall reflect any dishonour upon me. I hear, that one Awbrey pretends to petition against me; he is a man that you have some interest in; you may take him off if you please.'

"Sir George Hastings afterwards met with Awbrey, and asked him whether he intended any such thing, and desired to see it, to shew my Lord Chancellor: which sir George accordingly did, and desired my lord to do the poor man justice. My lord promised to do it, and bid him bring his counsel; and they did, but

could have no remedy, so the Petition went on. Sir George Hastings, some time since, had conference with my Lord Chancellor: and he told him, 'He must lay it upon his lordship.' 'If you do, George,' said he, 'I must deny it upon my honour.' Thus you see the Relation of what hath passed.

"Now for our Proceedings in it; it is a cause of great weight, it concerns every man here: for if the fountains be muddy, what will the streams be? If the great dispenser of the king's conscience be corrupt, who can have any courage to plead before him? I will present one thing unto you, and then make a request. That which I move, is, that we present his business singly to the lords, and deliver it without exasperation; 1. Because there is but one precedent\* for it, in the like case for a chancellor in a cause of corruption. 2. Because the party accused is a peer of the kingdom, sitting in the higher house, whom we cannot meddle with. 3. Because we have no power to give an oath. That which I request is, that those people which have been fettered with much calamity by these courses, may by petition to his majesty, or otherwise, have their cause revived and revised.

*Sir Edward Sackville.* This honourable lord stands but yet suspected, and I hold not those gentlemen that have testified against him competent witnesses. 1. Because they speak to discharge themselves. 2. Because if he be guilty, they were those that tempted him. But yet, if notwithstanding you resolve to send it up to the lords, let it be presented without any prejudicial opinion, to be weighed in the balance of their lordships judgments. And if they think fit to examine these witnesses, let them.

*Sir George Hastings.* This adds to my grief; but this is my resolution, I had rather perish with a just sentence here, than escape with a guilty conscience.

Some moved that sir George Hastings and sir Richard Young should be sequestered from parliament till the matter was ended; but there was nothing ordered therein.

*Mr. Nevill.* After some reluctance within me, I am resolved to speak what my conscience leads me unto. I speak for the good of my country, the honour of my king, and advancement of justice. Justice is the fountain, the king the head thereof, clear as the waters of Siloah, pure as the river of Damascus: but there is a derivative justice brought unto us by channels, those are often muddy and more bitter than the waters of Marah: Such waters flow abundantly in chancery. I will not touch upon the person of him that sits in court, for he is the dispenser of the king's conscience; but because some motions are made against the testimony of those gentlemen, I will say this, I think them fit to sit here, because they are neither delinquents nor accused. My lord means to deny it upon his honour: but I would

\* This seems to be the Case of Cardinal Wolsey. See 3 Co. Inst. 148. 4 Co. Inst. 9.

not have that serve his turn, for he himself hath made the nobility swear in chancery. Therefore I would have their lordships informed what privileges they have lost. Next, I would have them note the luxuriant authority of that court, and how it is an inextricable labyrinth, wherein resideth such a monster as gormandizeth the liberty of all subjects whatsoever.

*Mr. Recorder Finch.* If we shall make but a presentation of this, we do in a sort accuse him, nay judge him: if the gentlemen be admitted to give testimony, before it shall condemn another it must agree with itself. First, I heard him say, he gave it as a present from himself: yet afterwards he saith, he told my Lord Chancellor he had it from Awbrey.—Again, Awbrey speaks not of any delivery of money himself to my Lord Chancellor. Then again it is urged, that a discontented suitor writ letters to my lord: the letters are rejected, not hearkened unto; what doth this but free him? In the other case, if Egerton, out of a desire to congratulate him at his coming to the seal, made my lord a present for his kindnesses and pains in former businesses, what wrong hath he done if he hath received a present? And though a suit were depending, yet who keeps a register in his heart of all causes? Nay, who can, among such a multitude? And for the 6000 marks, there is no colour to say that ever he was to have any part thereof. For taking away the privilege of the nobility in requiring an oath, he found the court possessed of it before he came there; so that we have no sufficient grounds to accuse so great a lord upon that account.—But if we shall present Articles to the lords, what do we (as I said before) but accuse him?

*Sir Edward Coke.* It is objected, that we have but one single witness; therefore no sufficient proof. I answer, That in the 37th of Eliz. in a complaint against Soldier-Sellers, for that having warrant to take up soldiers for the wars, if they pressed a rich man's son they would discharge him for money, there was no more than *singularis testis* in one matter; but though they were single witnesses in several matters, yet agreeing in one and the same third person, it was held sufficient to prove a work of darkness. For in such works it is a marvel there are any witnesses.—But some object that these men are culpable; and therefore no competent witnesses. I answer, They came not to accuse, but were interrogated.—If I be interrogated, I had rather speak truth than respect any man; and you will make Bribery to be unpunished, if he that carrieth the Bribe shall not be a witness. In this, one witness is sufficient; he that accuseth himself by accusing another, is more than three witnesses: and this was wrought out of them.

Ordered, That the Complaint of Awbrey and Egerton against the Lord Chancellor and the bishop for Corruption, for the 100*l.* and 400*l.* and the recognizance, should be drawn up by sir Robert Phillips, sir Edward Coke, Mr. Noy, and sir Dudley Diggs; and that the

same be related to the lords without prejudice of opinion at a conference; and that a Message be sent to the lords for this purpose on Monday next. Adjourned, &c.

March 19.

A Message was sent to the lords by sir Robert Phillips, to desire a Conference touching the Lord Chancellor and the bishop of Landaff, being petitioned against by Awbrey and Egerton.

Sir Robert Phillips reports that the lords had agreed to a Conference.

Mr. Secretary Calvert brings a Message from the king, "That this parliament hath sat a long time, and Easter is near come, and thinks it is fit there should be a cessation for a time; yet the king will appoint no time, but leaves it to yourselves. But for the beginning again, he thinketh the 10th of April a fit time, but will appoint none; only he would have you take care that there be no impediment in the Subsidies.—The king also took notice of the Complaints against the Lord Chancellor, for which he was sorry, for it hath always been his care to have placed the best; but no man can prevent such accidents; but his comfort was, that the house was careful to preserve his honour. And his majesty thought not fit to have the affair hang long in suspense; therefore would not have any thing to hinder it. But for the furtherance thereof, he proposed a Commission of six of the higher house, and twelve of the lower house, to examine it upon oath. This proposition if we liked well, he would send the like to the lords, and this he thought might be done during this Cessation: and though he hoped the Chancellor was free, yet if he should be found guilty, he doubted not but you would do him justice."

*Sir Edward Coke* said, We should take heed the Commission do not hinder the manner of our parliamentary proceedings.

The Answer returned to the King was, To render him thanks for the first Part of his gracious Message. And for the second, we desired that the like Message may be sent to the lords; for there being so great a concurrence betwixt us, we may have conference with them about it. And then adjourned, &c.

March 20.

Sir Edward Giles made a motion that one Churchill should be called in. Whereupon there was a Petition of one Montacute, Wood, &c. against the Lord Chancellor for taking 300*l.* of the lady Wharton, and making orders, &c. which was read. Churchill and Keeling were said to be Witnesses, and a committee was appointed to examine them.

Sir Robert Phillips reports from the Conference, that according to the commandment of this house he had delivered those Heads which were agreed on at the Conference yesterday; excusing himself if he had failed in any point. That the lords accepted it with a great deal of affection, as sensible of the wrongs done to the Commonwealth; and returned Answer by the Lord Treasurer; First, by way of Question,

Whether we would not reduce them into writing. Resolved No, for no cause; this only consisting of two or three points, clear and plain; and as for the Letters and other things which the lords desired, we would acquaint the house, and doubted not but it would be yielded.

The lords further returned for Answer, That they would proceed in this matter with care, diligence and expedition.

A Message from the lords to signify, that they have taken into consideration the last Conference, and shall need the testimony of two members of this house; and therefore desire, that voluntarily, and without ordering, as private persons, they make declaration upon Oath, and the like for others if occasion were.

The Answer returned was, That the gentlemen would attend voluntarily as private gentlemen, and upon private notice be examined.

Sir Robert Phillips reports from the committee appointed to examine Churchil; from which particular a general may be extracted, conducing to the discovery of Corruption in the Lord Chancellor.

"The lady Wharton having a Cause depending in-chancery, many orders were made in it. Amongst the rest, there was an Order made for the dismission of the Bill, by the consent of the counsel on both sides; which my lady disliking, took Churchil the Register into her coach, and carried him to my Lord Chancellor's, and so wrought that he was willed not to enter the last Order; so that my lady was left at liberty to prosecute it in chancery, brought it to a hearing, and at length got a Decree.

"Keeling being examined, saith, That near about the time of passing this Decree, my lady took an hundred pound (he saw it), and she made him set down the words and style which he should use in the delivery of it. Then she goes to York-house, and delivered it to my Lord Chancellor, as she told him. She carried it in a purse. My lord asked her, 'What she had in her hand?' She replied, 'A purse of my own making,' and presented it to him; who took it and said, 'What lord could refuse a purse of so fair a lady's working?'

"After this my lord made a Decree for her, but it was not perfected; but 200*l.* more being given (one Gardiner being present) her Decree had life. But after the giving of the 100*l.* because she had not 200*l.* ready in money, one Shute dealt with her to convey the land to my Lord Chancellor and his heirs, reserving an estate to herself for life; but she knowing no reason to disinherit her own children, asked Keeling her man what he thought of it; he (like an honest servant) was against it.

"Shute knowing this, sets upon Keeling, and brings him to be willing my lady should do it, with power of revocation upon the payment of 200*l.* but that not being liked, they made a shift to pay 200*l.* in a reasonable time. Keeling lets fall some speeches, as if he had left York-house for the Corruption which was there,

which he himself knew in part. Gardiner, Keeling's man, confirmed the payment of the 300*l.* for the Decree, viz. 100*l.* before, and 200*l.* after. This purchased Decree being lately damned again by my Lord Chancellor, was the cause of this Complaint.

"Keeling saith, 'Sir John Trevor did present my Lord Chancellor with 100*l.* by the hands of sir Richard Young, for a final end to this cause.'

"Sir Rd. Young answered, 'That when he attended my Lord Chancellor, sir John Trevor's man brought a cabinet and a letter to my Lord Chancellor, and intreated me to deliver it, which I did openly; and this was openly done, and this was all I knew of it.'

Sir Edward Coke. Strange to me that this money should be thus openly delivered, and that one Gardiner should be present at the payment of the 200*l.*

Ordered, That sir Robert Phillips do deliver to the lords this afternoon the bishop of Landaff and Awbrey's Letters, and all other Writings that he hath. And then adjourned, &c.

March 21.

Sir Robert Phillips reports from the committee appointed to examine Keeling and Churchil, who informed many Corruptions against the Lord Chancellor.

"1. In the cause betwixt Hull and Holeman, Hull gave or lent my lord 1000*l.* since the suit began. 2. In the cause between Wroth and Manwaring, there were 100 pieces given, of which Hunt had 20*l.* 3. Hoddy gave a jewel which was thought to be worth 500*l.* but he himself said it was a trifle of a hundred or two hundred pound price: it was presented to the Lord Chancellor by sir Thomas Peryn and sir Henry Holmes. 4. In the cause between Peacock and Reynell, there was much money given on both sides. 5. In the cause of Barker and Bill, Barker said he was 800*l.* out in gifts since this suit began. 6. In the cause between Smithwick and Welsh, Smithwick gave 300*l.* yet my lord decreed it against him; so he had his money again by piecemeal.—In this and other causes, my lord would decree part; and when he wanted more money he would send for more, and then decree another part. In most causes my lord's servants have undertaken one side or another; insomuch as it was usual for counsel, when their clients came unto them, to ask what friend they had at York-house."

Mr. Mewtis. Touching the persons that inform, I would intreat this honourable house to consider that Keeling is a common solicitor (to say no more of him); Churchil a guilty Register by his own confession: I know that fear of punishment, and hopes of lessening it, may make them to say much, yea more than is true. For my own part, I must say I have been an observer of my lord's proceedings; I know he hath sown the good seed of justice, and I hope that it will prove that the envious man hath sown those tares. I humbly

desire that these Generals may not be sent up to the lords, unless these men will testify them in particular.

Ordered, That a Message be sent to the lords by sir Robert Phillips, to relate the Case of the lady Wharton, and the informations of Churchil.

Sir Robert Phillips reports from the lords, That they acknowledged the great care of this house in these important businesses; return thanks for the correspondence of this house with them, and assure the like from them for ever to this house. In these and all other things they will advise, and return answer as soon as possible.—And then adjourned, &c.

#### PROCEEDINGS IN THE HOUSE OF LORDS.

On Monday the 19th day of March 1620, in the afternoon, the Commons had a Conference with the Lords: which Conference was reported the next day by the Lord-Treasurer; That it was the desire of the commons to inform their lordships of the great Abuses of the Courts of Justice, the Information whereof was divided into these three parts. 1. The Persons accused. 2. The Matters objected against them. 3. The Proofs.

The Persons are the Lord Chancellor of England, and the now bishop of Landaff, being then no bishop, but Dr. Field. The incomparable good parts of the Lord Chancellor were highly commended, the place he holds magnified, from whence bounty, justice and mercy were to be distributed to the subjects, with which he was solely trusted; whither all great causes were drawn, and from whence no appeal lay for any injustice or wrong done, save to the parliament.

That the Lord Chancellor was accused of great Bribery and Corruption\* committed by him in this eminent place; whereof two cases were alledged. The one concerning Christopher Awbrey, and the other concerning Edward Egerton.

1. In the cause depending in the Chancery between the said Awbrey and sir William Bronker, Awbrey feeling some hard measure, was advised to give the Lord Chancellor 100*l.* the which he delivered to his counsel, sir George Hastings, and he to the Lord Chancellor: this business proceeding slowly notwithstanding, Awbrey did write divers letters, and delivered them to the Lord Chancellor, to which he never obtained any answer from his lordship; but at last delivering another letter, his lordship answered, 'If he importuned him, he would lay him by the heels.'—The Proofs of this Accusation are five. 1. Sir George Hastings relating it long since unto sir Charles Montague. 2. The Lord Chancellor fearing this would be complained of, desired silence of sir George Hastings. 3. Sir George Hastings' testimony thereof, which was not voluntary, but urged. 4. The Lord Chancellor desired

sir George Hastings to bring the party Awbrey unto him, and promised redress of the wrongs done him. 5. That the Lord Chancellor said unto sir George Hastings if he should affirm the giving of this 100*l.* his lordship would and must deny it upon his honour.

2. The case of sir Edward Egerton is this: There being divers suits between Edward Egerton and sir Rowland Egerton in the chancery, Edward Egerton presented his lordship, a little after he was Lord Keeper, with a bason and ewer of the value of 50*l.* and upwards; and afterwards he delivered unto sir George Hastings, and sir Richard Young, 400*l.* in gold.

Sir Rd. Young presented it to his lordship, who took it, and poised it, and said it was too much; and returned answer, that Mr. Egerton had not only enriched him, but had laid a tye upon his lordship to do him favour in all his just causes.

The Proofs for this are the testimony of sir George Hastings, and the testimony of Merfill a scrivener thus far, that he took up 700*l.* for Mr. Egerton; Mr. Egerton then telling him that a great part of it was to be given to the Lord Chancellor, and that Mr. Egerton afterwards told him that the 400*l.* in gold was given to the Lord Chancellor.

At this Conference was farther declared somewhat relating to a Bishop, who was touched in this business upon the bye, whose function was much honoured, but his person touched herein. The business depending between the Egertons being ordered against Edward Egerton, he procured a new reference thereof from the king to the Lord Chancellor; his lordship demanded the parties to be bound in 6000 marks to stand to his lordship's award; they having entered into that bond, his lordship awarded the matter against Edward Egerton for sir Rowland Egerton; but Edward Egerton refusing to stand to the said award, a new Bill was exhibited in the Chancery, and thereupon his lordship ordered that this bond of 6000 marks should be assigned unto sir Rowland Egerton, and he to put the same in suit in his lordship's name.

The bishop of Landaff, as a friend to Mr. Edward Egerton, adviseth with Randolph Dampart, [otherwise Davenport] and Butler (which Butler is now dead) that they would procure a stay of the decree of that award, and procure a new hearing; upon which it was agreed, that the said 6000 marks should be given for this by Edward Egerton, and shared amongst them, and amongst certain noble persons. A recognizance of 10,000 marks was required from Mr. Egerton to the bishop for the performance hereof; the bishop his share of this 6,000 marks was so great, as no court of justice would allow.

To prove this they produce Letters of the bishop, naming the sum, and setting down a course how these 6000 marks might be raised, viz. the land in question to be decreed for Mr. Egerton, and out of that the money to be levied; and if this were not effected, then the bishop, 'in verbo sacerdotis,' promised to de-

\* 3 Co. Inst. 148.

liver up this recognizance to be cancelled; the new recognizance is sealed accordingly, and Randolph Dampont rides to court, and moved the Lord Admiral [duke of Buckingham,] for his lordship's letter to the Lord Chancellor herein: but his lordship denied to meddle in a cause depending in suit.

Then the said Randolph Dampont assayed to get the king's letter, but failed therein also; so that the good they intended to Mr. Egerton was not effected, and yet the bishop, though required, refused to deliver up the said Recognizance, until Mr. Egerton threatened to complain thereof unto the king.

The Lord Treasurer shewed also, that the Commons do purpose, that if any more of this kind happen to be complained of before them, they will present the same to your lordships, wherein they shall follow the antient precedents, which shew that great persons have been accused for the like in parliament.—They humbly desire, that forasmuch as this concerneth a person of so great eminency, it may not depend long before your lordships, that the examination of the Proofs may be expedited, and if he be found Guilty, then to be punished; if not Guilty, the now Accusers to be punished. This being reported, the Lord Admiral presented to the house a Letter written unto their lordships; the tenor whereof follows:

**Lord Bacon's LETTER to the House of Lords.**

My very good lords; I humbly pray your lordships all to make a favourable and true construction of my absence; it is no feigning nor fainting, but sickness both of my heart, and of my back, though joined with that comfort of mind, that persuades me, that I am not far from heaven, whereof I feel the first fruits: and because whether I live or die, I would be glad to preserve my honour and fame as far as I am worthy: hearing that some Complaints of base Bribery are coming before your lordships, my Requests unto your lordships are,—First, That you will maintain me in your good opinion without prejudice, until my cause be heard.—Secondly, That in regard I have sequestered my mind at this time in great part from worldly things, thinking of my Accompt and Answer in a higher court, your lordships would give me convenient time, according to the course of other courts, to advise with my counsel, and to make my Answer; wherein nevertheless my counsel's part will be the least, for I shall not by the grace of God trick up an innocency with cavillations, but plainly and ingeniously, as your lordships know my manner is, declare what I know or remember.—Thirdly, That according to the course of justice, I may be allowed to except to the Witnesses brought against me, and to move questions to your lordships for their cross Examination, and likewise to produce my own witnesses for discovery of the truth.—And lastly, That if there come any more Petitions of like nature, that your lordships

would be pleased not to take any prejudice or apprehension of any number or muster of them, especially against a Judge, that makes two thousand Orders and Decrees in a year; not to speak of the courses that have been taken for hunting out Complaints against me; but that I may answer them according to the rules of justice severally and respectively. These requests I hope appear to your lordships no other than just; and so thinking myself happy to have so noble peers, and reverend prelates to discern of my cause, and desiring no privilege of greatness for subterfuge of guiltiness, but meaning, as I said, to declare fairly and plainly with your lordships, and to put myself upon your honours and favours, I pray God to bless your councils, and your persons; and rest your lordships humblest servant,  
FRA. ST. ALBAN.

March 19, 1620.

Upon which Letter, Answer was sent from the lords unto the said Lord Chancellor on the said 20th of March, viz. "That the lords received his lordship's Letter delivered unto them by the Lord Admiral: They intend to proceed in his Cause now before their lordships, according to the right rules of justice; and they shall be glad, if his lordship shall clear his honour therein; to which end they pray his lordship to provide for his just Defence."

**Farther COMPLAINTS against the LORD CHANCELLOR.**

And afterwards on the 21st of March, the commons sent a Message unto the lords concerning their further Complaint against the said Lord Chancellor; which consisted of these four points, viz.

"The first in Chancery being between the lady Wharton plaintiff, and Wood and others defendants, upon cross-bills; the Lord Chancellor upon hearing wholly dismissed them, but upon entry of the Order, the cross-bill against the lady Wharton was only dismissed, and afterwards for a bribe of 300*l.* given by the lady Wharton to the Lord Chancellor, his lordship decreed the Cause further; and then hearing that Wood and the other defendants complained thereof to the house of commons, his lordship sent for them, and damned that Decree as unduly gotten: and when the lady Wharton began to complain thereof, his lordship sent for her also, and promised her redress; saying, the Decree is not yet entered.

"Secondly, In a suit between Hall plaintiff, and Holman defendant, Holman deferring his Answer was committed to the Fleet, where he lay twenty weeks; and petitioning to be delivered, was answered by some about the Lord Chancellor, the Bill shall be decreed against him *pro confesso*, unless he would enter into 2,000*l.* bond to stand to the Lord Chancellor's Order; which he refusing, his liberty cost him one way or other 1,000*l.* Holman being freed out of the Fleet, Hall petitioned to the Lord Chancellor, and Holman finding his cause to go hard with him on his side, complained to

the commons; whereupon the Lord Chancellor sent for him, and to pacify him, told him, 'He should have what Order he would himself.'

"Thirdly, In the Cause between Smithwick and Welsh, the matter in question being for Accompts, it was referred to certain merchants, who certified in the behalf of Smithwick; yet Smithwick to obtain a Decree, was told by one Mr. Burrough, one near to the Lord Chancellor, that it must cost him 200*l.* which he paid to Mr. Burrough or Mr. Hunt to the use of the Lord Chancellor, and yet the Lord Chancellor decreed but one part of the certificate, whereupon he treats again with Mr. Burrough, who demanded another 100*l.* which Smithwick also paid to the use of the Lord Chancellor. Then his lordship referred the Accompts again to the same merchants; who certified it again for Smithwick; yet his lordship decreed the second part of the certificate against Smithwick, and the first part, which was formerly decreed for him, his lordship made doubtful. Smithwick petitioned to the Lord Chancellor for his money again, and Smithwick had all his money again, save 20*l.* which was kept back by Hunt for a year."

The Lord Chief Justice (sir James Ley) also delivered three Petitions, which his lordship received yesterday from the commons, the first by the lady Wharton, the second by Wood and others, and the third by Smithwick.

The fourth part of the Message consists only of Instructions delivered unto the commons by one Churchill, a register, concerning divers Bribes and Abuses in the Chancery, which the commons desire may be examined.

The lords in the mean time proceeded to the Examination of the Complaints, and took divers Examinations of Witnesses in the house, and appointed a select Committee of themselves, to take Examination of Witnesses to the Briberies and Corruptions of the Lord Chancellor; which being ended and collected, were ordered to be transcribed with the proofs, and were as follow:

That in the Cause between sir Rowland Egerton and Edward Egerton, his lordship received on the part of sir Rowland Egerton before he decreed for him	£. 300
Item, Of Edward Egerton in the said Cause	400
Item, In the Cause between Hodie and Hodie, a dozen of buttons, after the cause ended, of the value of	50
Item, Of the lady Wharton	310
Item, Of sir Thomas Monk	100
Item, Of sir John Trevor	100
Item, Of one Young	100
Item, Of one Fisher	106
Item, In the Cause of Kenday and Valore, of Kenday a cabinet worth	800
Of Valore, borrowed at two times	2000
Item, In the Cause between Scot and Lenthall, of Scot	200
Item, Of Lenthall	100

Item, Of one Wroth, who had a Cause between him and one Manwaring	100
Item, Of sir Ralph Hansby	500
Item, In the lord Mountaine's Cause, of the lord Mountaine, and more promised at the end of the Cause	600 or 700
Item, Of one Mr. Dunch	200
Item, In a Cause between Reynell and Peacock, 200 <i>l.</i> in money, and a diamond ring worth 5 or 600 <i>l.</i>	700 or 800
Item, Of Peacock	100
Item, In a Cause of Barker	700
Item, There being a reference from his majesty to his lordship of a business between the grocers and apothecaries, he had of the grocers	200
Of the apothecaries, (besides a rich present of ambergrease)	150
Item, Of the French merchants, to constrain the vintners of London to take 1500 tuns of wine; to accomplish which, he used very indirect means, by colour of his office and authority, without bill or other suit depending, as threatening and imprisoning the vintners, for which he received of the merchants	1000

Lastly, That he had given way to great exactions by his servants, in respect of private seals, and sealing injunctions.

April 24, the Prince his highness signified unto their lordships, that the said Lord Chancellor had sent a Submission unto their lordships, which was presently read *in hac verba*:

The Lord-Chancellor's Submission.

'May it please your lordships; I shall humbly crave at your lordships hands a benign interpretation of that, which I shall now write; for words, that come from wasted spirits, and an oppressed mind, are more safe in being deposited in a noble construction, than in being circled with any reserved caution.—This being moved, and as I hope obtained in the nature of a Protection for all that I shall say, I shall now make into the rest of that, wherewith I shall at this time trouble your lordships, a very strange entrance: for in the midst of a state of as great affliction, as I think a mortal man can endure, (honour being above life) I shall begin with the professing of gladness in some things.—The first is, that hereafter the greatness of a Judge or Magistrate shall be no sanctuary or protection of guiltiness, which (in few words) is the beginning of a Golden World.—The next is, that after this example, it is like that Judges will fly from any thing that is in the likeness of Corruption (though it were at a great distance) as from a serpent; which tendeth to the purging of the Courts of Justice, and the reducing them to their true honour and splendor. And in these two points, God is my witness, that, though it be my fortune to be the anvil whereupon these good effects are beaten and wrought, I take no small comfort.—But to pass from the motions of my heart, wherof God is only judge, to the merits of my Cause, wherof your lordships



are Judges unto God, and his lieutenant; I do understand there hath been heretofore expected from me some Justification, and therefore I have chosen one only Justification instead of all other, one of the justifications of Job: for after the clear Submission and Confession, which I shall now make unto your lordships, I hope I may say and justify with Job in these words, 'I have not hid my sin, as did Adam, nor concealed my faults in my bosom;' (Job, c. 31. verse 33.) This is the only Justification, which I will use: it resteth therefore, that without fig-leaves I do ingenuously confess and acknowledge, that having understood the particulars of the Charge, not formally from the house, but enough to inform my conscience and memory, I find matter sufficient and full both to move me to desert the Defence, and to move your lordships to condemn and censure me.—Neither will I trouble your lordships by singling those Particulars, which I think may easiest be answered, 'Quid te exempta juvat spinis de pluribus una?' Neither will I prompt your lordships to observe upon the Proofs, where they come not home, or the scruples touching the credit of the Witnesses; neither will I represent to your lordships how far a Defence might in divers things extenuate the offence in respect of the time or manner of the Gift, or the like circumstances; but only leave those things to spring out of your own noble thoughts and observations of the Evidence and Examinations themselves, and charitably to wind about the particulars of the Charge here and there, as God shall put you in mind, and so submit myself wholly to your pity and grace.—And now that I have spoken to your lordships as Judges, I shall say a few words to you as Peers and Prelates, humbly commending my cause to your noble minds and magnanimous affections.—Your lordships are no simple Judges, but parliamentary Judges; you have a farther extent of arbitrary power, than other Judges; and if your lordships be not tied by the ordinary course of courts or precedents in points of strictness and severity, much less are you in points of mercy and mitigation.—And yet if any thing which I shall move, might be contrary to your honourable and worthy end to introduce a reformation, I should not seek it; but herein I beseech you give me leave to tell your lordships a Story. Titus Manlius took his son's life for giving battle against the prohibition of his general: not many years after the like severity was pursued by Papirius Cursor the Dictator against Quintus Maximus; who, being upon the point to be sentenced, by the intercession of some principal persons of the senate, was spared; whereupon Livy makes this grave and gracious observation: 'Neque minus firmata est disciplina militaris periculo Quinti Maximi, quam miserabili supplicio Titi Manlii.' 'The discipline of war was no less established by the questioning of Quintus Maximus, than by the punishing of Titus Manlius.' And the same reason is of

the Reformation of Justice; for the questioning men of eminent place hath the same terror, though not the same rigour, with the punishment.—But my Case stayeth not there; for my humble desire is, that his majesty would take the Seal into his hands, which is a great downfall, and may serve, I hope, in itself for an expiation of my faults.—Therefore if mercy and mitigation be in your powers, and do no way cross your noble ends, why should I not hope of your lordships favours and commiseration? Your lordships will be pleased to behold your chief pattern, the king our sovereign, of most incomparable clemency, and whose heart is inscrutable for wisdom and goodness: your lordships will remember that there sat not these 200 years before a Prince in your house, and never such a prince, whose presence deserves to be made memorable by records and acts mixt of mercy and justice. Yourselves, either nobles (and compassion ever beats in the veins of noble blood) or reverend prelates, who are the servants of him that would not break the bruised reed, nor quench the smouldering flax; you all sit upon an high stage, and therefore cannot but be more sensible of the changes of the world, and of the fall of any of high place. Neither will your lordships forget, that there are *vitia temporis* as well as *vitia hominis*;\* and that the beginning of reformations hath the contrary power of the Pool of Bethesda; for that had strength to cure only him that is first cast in, and this hath strength to hurt him only that is first cast in: and for my part, I wish it may stay there, and go no further. Lastly, I assure myself your lordships have a noble feeling of me as a member of your own body; and one thing there was, that in this very session had some taste of your loving affections, which I hope was not a lightning before death, but rather a spark of that grace, which now in conclusion will more appear. And therefore my humble suit unto your lordships is, that my penitent Submission may be my Sentence, and the loss of the Seal my Punishment, and that your lordships will spare my farther Sentence: But recommend me to his majesty's grace and pardon for all that is past. God's holy spirit be among you! Your lordships humble servant and supplicant,

FRAN. ST. ALBANS, Canc.

\* The judicial corruption of those times may be inferred from my lord Bacon's address to Serjeant Hutton upon becoming a judge of the Common Pleas, wherein Bacon particularly cautions the new judge to beware of corruption: "That your hands and the hands of your hands (I mean those about you) be clean and uncorrupt from gifts, from meddling in titles, and from serving of turns, be they great ones, or small ones." See Luders's chapter "on the station and character of the Judges in the sixteenth and seventeenth centuries." Mr. Barrington, in his Observations on Magna Charta, has collected some particulars of Judicial Corruption in different periods.

The Lords having considered of this Submission, and heard the Collections of Corruptions charged upon the said Lord Chancellor, and the Proofs thereof read, they sent a Copy of the same without the Proofs unto the Lord Chancellor by Mr. Baron Denham, and Mr. Attorney General, (sir Thomas Coventry) with this Message from their lordships, viz. "That the Lord Chancellor's Confession is not fully set down by his lordship in the said Submission, for three causes. 1. His lordship confesseth not any particular Bribe or Corruption. 2. Nor sheweth how his lordship heard the Charge thereof. 3. The Confession, such as it is, is afterwards extenuated in the same Submission. And therefore the Lords have sent him a particular of the Charge, and do expect his Answer to the same with all convenient expedition."

Unto which Message the Lord Chancellor answered, That he would return the Lords an Answer with speed. And on the 25th of April, the Lords considered of the Lord Chancellor's said Answer sent unto their Message yesterday, and sent a second Message unto his lordship to this effect, by the said Mr. Baron Denham, and Mr. Attorney General, viz. "The Lords having received a doubtful Answer unto the Message their Lordships sent him yesterday, therefore they now send to him again to know of his lordship directly, and presently, whether his lordship will make his Confession, or stand upon his Defence."

Answer returned by the said Messengers, viz. "The Lord Chancellor will make no manner of Defence to the Charge, but meaneth to acknowledge Corruption, and to make a particular Confession to every point, and after that an humble Submission; but humbly craves liberty, that where the Charge is more full than he finds the truth of the fact, he may make Declaration of the truth in such particulars, the Charge being brief, and containing not all circumstances."

The Lords sent the same Messengers back again to the Lord Chancellor, to let him know, that their lordships have granted him time until Monday next the 30th of April, by ten in the morning, to send such Confession and Submission as his lordship intends to make.

On which Monday the Lord Chancellor sent the same accordingly, which follows in *hæc verba*, viz.

To the right honourable the Lords Spiritual and Temporal, in the High Court of Parliament assembled:

*The humble Confession and Submission of  
Me the Lord Chancellor.*

"Upon advised consideration of the Charge, descending into my own conscience, and calling my memory to account so far as I am able, I do plainly and ingenuously confess, that I am guilty of Corruption, and do renounce all Defence, and put myself upon the grace and mercy of your lordships.—The Particulars I confess and declare to be as followeth:

To the first Article of the Charge, viz. 'In VOL. II.

'the Cause between sir Rowland Egerton and Edward Egerton, the Lord Chancellor received 300*l.* on the part of sir Rowland Egerton, before he had decreed the Cause:—I do confess and declare, that upon a reference from his majesty of all suits and controversies between sir Rowland Egerton and Edward Egerton, both parties submitted themselves to my Award by recognizances reciprocal in 10,000 marks a-piece. Thereupon, after divers hearings, I made my Award, with the advice and consent of my lord Hobart. The Award was perfected and published to the parties, which was in February. Then some days after, the 300*l.* mentioned in the Charge, were delivered unto me. Afterwards Mr. Edward Egerton flew off from the Award. Then in Midsummer Term following a suit was begun in Chancery by sir Rowland, to have the Award confirmed: and upon that suit was the Decree made, mentioned in the Article.

The second Article of the Charge, viz. 'In the same Cause he received from Edward Egerton 400*l.*—I confess and declare, that soon after my first coming to the Seal, being a time when I was presented by many, the 400*l.* mentioned in the said Charge, was delivered unto me in a purse, and as I now call to mind, from Mr. Edward Egerton; but, as far as I can remember, it was expressed by them that brought it, to be for favours past, and not in respect of favours to come.

The third Article of the Charge, viz. 'In the Cause between Hody and Hody, he received a dozen of buttons of the value of 50*l.* about a fortnight after the Cause was ended:—I confess and declare, that as it is laid in the Charge about a fortnight after the Cause was ended, it being a suit for a great inheritance, there were gold buttons, about the value of 50*l.* as is mentioned in the Charge, presented unto me, as I remember, by sir Thomas Perrot, and the party himself.

To the fourth Article of the Charge, viz. 'In a Cause between the lady Wharton and the coheirs of sir Francis Willoughby, he received of the lady Wharton 310*l.*—I confess and declare, that I did receive of the lady Wharton, at two several times, as I remember, in gold 200*l.* and 100 pieces, and this was certainly *pendente lite*: But yet I have a vehement suspicion, that there was some shuffling between Mr. Shute and the Register, in entering some orders, which afterwards I did distaste.

To the fifth Article of the Charge, viz. 'In sir Thomas Monk's Cause, he received from sir Thomas Monk, by the hands of sir Henry Holmes, 110*l.* but this was three quarters of a year after the suit was ended:—I confess it to be true that I received 100 pieces, but it was long after the suit ended, as is contained in the Charge.

To the sixth Article of the Charge, viz. 'In the Cause between sir John Trevor and Ascue, he received on the part of sir John Trevor 100*l.*—I confess and declare, that I received at New-Year's-Tide 100*l.* from sir John Tre-

vor; and because it came as a New-Year's Gift, I neglected to inquire, whether the Cause was ended or depending: but since I find that though the Cause was then dismissed to a trial at law, yet the equity was reserved, so as it was in that kind *pendente lite*.

To the seventh Article of the Charge, viz. 'In the Cause between Holman and Young, he received of Young 100*l.* after the Decree made for him:—I confess and declare, that as I remember, a good while after the cause ended, I received 100*l.* either by Mr. Toby Mathew or from Young himself: but whereas I have understood, that there was some money given by Holman to my servant Hatcher, to that certainty I was never made privy.

To the eighth Article of the Charge, 'In the Cause between Fisher and Wrenham, the Lord Chancellor, after the Decree passed, received a suit of hangings worth 160*l.* and better, which Fisher gave him by advice of Mr. Shute:—I confess and declare, that some time after the Decree passed, I being at that time upon remove to York-house, I did receive a suit of hangings of the value, I think, mentioned in the Charge, by Mr. Shute, as from sir Edward Fisher, towards the furnishing of my house, as some others, that were no ways suitors, did present me with the like about that time.

To the ninth Article of the Charge, 'In the Cause between Kenneday and Vanlore, he received a rich cabinet from Kenneday, appraised at 800*l.*:—I confess and declare, that such a cabinet was brought to my house, though nothing near half the value; and that I said to him that brought it, that I came to view it, and not to receive it, and gave commandment that it should be carried back, and was offended when I heard it was not. And about a year and an half after, as I remember, sir John Kenneday having all that time refused to take it away, as I am told by my servants; I was petitioned by one Pinkney, that it might be delivered to him, for that he stood engaged for the money that sir John Kenneday paid for it; and thereupon sir John Kenneday wrote a letter to my servant Sherborne, with his own hand, desiring I would not do him that disgrace as to return that gift back, much less to put it into a wrong hand: and so it remains yet ready to be returned to whom your lordships shall appoint.

To the tenth Article of the Charge, viz. 'He borrowed of Vanlore 1000*l.* upon his own bond at one time, and the like sum at another time upon his lordship's own bill, subscribed by Mr. Hunt his man:—I confess and declare, that I borrowed the money in the article set down; and that this is a true debt, and I remember well, that I wrote a letter from Kew about a twelvemonth since to a friend about the king, wherein I desired, that whereas I owed Peter Vanlore 2,000*l.* his majesty would be pleased to grant me so much out of his fine set upon me in the Star-chamber.

To the eleventh Article of the Charge, viz. 'He received of Richard Scott 200*l.* after his Cause was decreed, but upon a precedent pro-

mise; all which was transacted by Mr. Shute:—I confess and declare, that some fortnight after, as I remember, that the Decree passed, I received 200*l.* as from Mr. Scott, by Mr. Shute, as upon some precedent promise or transaction by Mr. Shute: Certain I am I knew of none.

To the twelfth Article of the Charge, viz. 'He received in the same Cause on the part of sir John Lentall 100*l.*:—I confess and declare, that some month after, as I remember, that the Decree passed, I received 100*l.* by my servant Sherborne, as from sir John Lentall, who was not the adverse party to Scott, but a third person relieved by the same Decree in the suit of one power.

To the thirteenth Article of the Charge, viz. 'He received of Mr. Worth 100*l.* in respect of the Cause between him and sir Arthur Manwaring:—I confess and declare, that this Cause being a Cause for inheritance of good value, was ended by my arbitrement and consent of parties, and so a Decree passed of course; and some month after the cause was ended, the 100*l.* mentioned in the said article, was delivered to me by my servant Hunt.

To the fourteenth Article of the Charge, viz. 'He received of sir Ralph Hansbye, having a Cause depending before him, 500*l.*:—I confess and declare, that there were two Decrees, one, as I remember, for the inheritance, and the other for the goods and chatties, but all upon one bill: and some good time after the first Decree, and before the second, the said 500*l.* was delivered unto me by Mr. Toby Mathew; so as I cannot deny but it was upon the matter *pendente lite*.

To the fifteenth Article of the Charge, viz. 'William Compton being to have an extent for a debt of 1200*l.* the Lord Chancellor staid it, and wrote his letter; upon which part of the debt was paid presently, and part at a future day. The Lord Chancellor hereupon sends to borrow 500*l.* and because Compton was to pay 400*l.* to one Huxley, his lordship requires Huxley to forbear six months, and hereupon obtains the money from Compton. The money being unpaid, suit grows between Huxley and Compton in Chancery, where his lordship decrees Compton to pay Huxley the debt, with damage and costs, when it was in his own hands:—I do declare, that in my conscience the stay of the extent was just, being an extremity against a nobleman, by whom Compton could be no loser. The money was plainly borrowed of Compton upon bond with interest, and the message to Huxley was only to intreat him to give Compton a longer day, and in no sort to make me debtor or responsible to Huxley; and therefore, though I was not ready to pay Compton his money, as I would have been glad to have done, save only 100*l.* which is paid, I could not deny justice to Huxley in as ample manner as if nothing had been between Compton and me: But if Compton hath been damnified in my respect, I am to consider it to Compton.

To the sixteenth Article of the Charge, viz. 'In the Cause between sir William Bronker and Awbrey, the Lord Chancellor received from Awbrey 100*l.*':—I do confess and declare, that the money was given and received; but the manner of it I leave to the witnesses.

To the seventeenth Article of the Charge, viz. 'In the lord Montague's cause he received from the lord Montague 6 or 700*l.* and more was to be paid at the ending of the cause:—I confess and declare, there was money given, and as I remember, to Mr. Bevis Thelwall, to the sum mentioned in the article, after the cause was decreed; but I cannot say it was ended, for there have been many orders since caused by sir Francis Inglesfield's contempts: and I do remember, that when Thelwall brought the money, he said, that my lord would be yet farther thankful if he could once get his quiet. To which speech I gave little regard.

To the eighteenth Article of the Charge, viz. 'In the Cause of Mr. Dunch, he received from Mr. Dunch 200*l.*':—I confess and declare, that it was delivered by Mr. Thelwall to Hatcher my servant, for me, as I think some time after the Decree; but I cannot precisely inform myself of the time.

To the nineteenth Article of the Charge, viz. 'In the Cause between Reynell and Peacock, he received from Reynell 200*l.* and a diamond-ring worth 5 or 600*l.*':—I confess and declare, that at my first coming to the seal, when I was at Whitehall, my servant Hunt delivered me 200*l.* from sir George Reynell, my near ally, to be bestowed upon furniture of my house; adding farther, that he had received divers former favours from me: And this was, as I verily think, before any suit began. The ring was received certainly *pendente lite*: and though it were at New-Years-tide, it was too great a value for a new year's gift, though, as I take it, nothing near the value mentioned in the Article.

To the twentieth Article of the Charge, viz. 'That he took of Peacocke 100*l.* without interest, security, or time of payment:—I confess and declare, that I received of Mr. Peacocke 100*l.* at Dorset-house, at my first coming to the seal, as a present; at which time no suit was begun: and at the summer after I sent my then servant Lister to Mr. Rolfe, my good friend and neighbour, at St. Albans, to use his means with Mr. Peacocke (who was accounted a monied man) for the borrowing of 500*l.* and after by my servant Hatcher, for borrowing of 500 more; which Mr. Rolfe procured, and told me at both times it should be without interest, script, or note, and that I should take my own time for payment of it.

To the twenty-first Article of the Charge, viz. 'In the cause between Smithwick and Welsh, he received from Smithwick 200*l.* which was repaid:—I confess and declare, that my servant Hunt did upon his account, being my receiver of the fines upon original writs, charge himself with 200*l.* formerly received of Smithwick, which after that I had

understood the nature of it, I ordered him to repay, and to defalk it out of his accounts.

To the twenty-second Article of the Charge, viz. 'In the Cause of sir Henry Ruswell he received money from Ruswell, but it is not certain how much:—I confess and declare, that I received money from my servant Hunt, as from Mr. Ruswell, in a purse: And whereas the sum in the Article is indefinite, I confess it to be 3 or 400*l.* and it was about a month after the cause was decreed: in which decree I was assisted by two of the judges.

To the twenty-third Article of the Charge, viz. 'In the cause of Mr. Barker, the Lord Chancellor received from Barker 700*l.*': I confess and declare, that the sum mentioned in the Article was received from Mr. Barker some time after the decree passed.

To the 24th, 25th, and 26th Articles of the Charge, viz. the 24th; 'There being a reference from his majesty to his lordship of a business between the grocers and the apothecaries, the Lord Chancellor received of the grocers 200*l.*' The 25th Article; 'In the same cause he received of the apothecaries, that stood with the grocers, a taster of gold, worth between 4 or 500*l.* and a present of ambergrease.' And the 26th Article; 'He received of a new company of apothecaries, that stood against the grocers, 100*l.*' To these I confess and declare, That the several sums from the three parties were received: and for that it was no judicial business, but a concord of composition between the parties, and that as I thought all had received good, and they were all three common purses, I thought it the less matter to receive that which they voluntarily presented; for if I had taken it in the nature of a corrupt bribe, I knew it could not be concealed, because it needs must be put to account to the three several Companies.

To the twenty-seventh Article of the Charge, viz. 'He took of the French merchants 1000*l.* to constrain the Vintners of London to take from them 1500 tuns of wine: To accomplish which he used very indirect means, by colour of his office and authority, without bill or suit depending, terrifying the Vintners by threats, and by imprisonment of their persons, to buy wines, whereof they had no need nor use, at higher rates than they were vendible:—I do confess and declare, that sir Thomas Smith did deal with me in behalf of the French company, informing me that the Vintners, by combination, would not take off their wines at any reasonable prices; that it would destroy their trade, and stay their voyage for that year; and that it was a fair business, and concerned the state: and he doubted not but I should receive thanks from the king, and honour by it; and that they would graffy me with a thousand pounds for my travail in it. Whereupon I treated between them by way of persuasion, and to prevent any compulsory suit, propounding such a price as the Vintners might be gainers 6*l.* in a tun, as it was then maintained unto me. And after the merchants petitioning

to the king, and his majesty recommending this business unto me as a business that concerns his customs and the navy, I dealt more earnestly and presumptorily in it, and as I think, restrained in the messenger's hand for a day or two some that were the most stiff; and afterwards the merchants presented me with 1000*l.* out of their common purse; and acknowledging themselves, that I had kept them from a kind of ruin, and still maintaining to me that the Vintners, if they were not insatiably minded, had a very competent gain. These are the merits of the cause, as it then appeared to me.

To the twenty eighth Article of the Charge, viz. 'The Lord Chancellor hath given way to great Exactions by his servants, both in respect of private seals, and otherwise for sealing of injunctions:—I confess it was a great fault of neglect in me, that I looked no better to my servants.

"This Declaration I have made to your lordships with a sincere mind, humbly craving, that if there should be any mistake, your lordships would impute it to want of memory, and not to any desire of mine to obscure truth, or palliate any thing; for I do now again confess, that in the points charged upon me, though they should be taken as myself have declared them, there is a great deal of corruption and neglect, for which I am heartily sorry, and submit myself to the judgment, grace and mercy of the Court.—For extenuation, I will use none concerning the matters themselves; only it may please your lordships, out of your nobleness, to cast your eyes of compassion upon my person and estate: I was never noted for an avaricious man, and the apostle saith, 'That covetousness is the root of all evil.' I hope also that your lordships do rather find me in the state of grace, for that in all these particulars there are few or none that are not almost two years old; whereas those, that have an habit of Corruption, do commonly wax worse. So that it hath pleased God to prepare me by precedent degrees of amendment to my present penitency: and for my estate, it is so mean and poor, as my care is now chiefly to satisfy my debts.—And so fearing I have troubled your lordships too long, I shall conclude with an humble suit unto you, That if your lordships proceed to Sentence, your Sentence may not be heavy to my ruin, but gracious and mixed with mercy: and not only so, but that you would be noble intercessors for me to his majesty likewise, for his grace and favour. Your lordships' most humble servant and suppliant,  
FRANC. ST. ALBANS, Canc."

The Lords having heard this Confession and Submission read, these Lords under-named, viz. the earl of Pembroke lord chamberlain, the earl of Arundel, the earl of Southampton, the bishop of Durham, the bishop of Winchester, the bishop of Coventry and Litchfield; the lord Wentworth, the lord Cromwell, the lord Sheffield, the lord North, the lord Chandois, the lord Hundon, were sent to him the said Lord Chancellor, and shewed him the said Confes-

sion, and told him, that the Lords do conceive it to be an ingenious and full Confession; and demanded of him, whether it be his own hand that is subscribed to the same, and whether he will stand to it or not. Unto which the said Lord Chancellor answered, 'My lords, it is my act, my hand, my heart; I beseech your lordships to be merciful to a broken reed.' The which Answer being reported to the house, it was agreed by the house to move his majesty to sequester the Seal: and the Lords intreated the prince's highness that he would be pleased to move the king; whereunto his highness condescended. And the same Lords which went to take the acknowledgment of the Lord Chancellor's hand, were appointed to attend the prince to the king, with some other lords added. And his majesty did not only sequester the Seal, but awarded a new Commission unto the Lord Chief Justice, to execute the place of the Chancellor, or Lord Keeper.

This was on the 1st of May: and on Wednesday, the 2d of May, the said Commission being read, their lordships agreed to proceed to sentence the Lord Chancellor to-morrow morning. Wherefore the Gentleman Usher, and Serjeant at Arms, attendants on the upper house, were commanded to go and summon him, the said Lord Chancellor, to appear in person before their lordships to-morrow morning by nine of the clock. And the said Serjeant at Arms was commanded to take his mace with him, and to show it unto his lordship at the said summons: but they found him sick in bed; and being summoned, he answered, that he was sick, and protested that he feigned not this for any excuse, for if he had been well he would willingly have come.

#### JUDGMENT

given against the Lord Chancellor.

The Lords resolved to proceed notwithstanding against the said Lord Chancellor. And therefore, on Thursday, the 3d of May, their lordships sent their Message to the commons to this purpose, viz. "That the Lords are ready to give Judgment against the lord viscount St. Albans, Lord Chancellor, if they, with their Speaker, will come to demand it." And the Commons being come, the Speaker came to the bar; and, making three low obeisances, said:

"The knights, citizens, and burghesses of the commons house of parliament, having made complaints unto your lordships of many exorbitant offences of Bribery and Corruption committed by the Lord Chancellor, understand that your lordships are ready to give Judgment upon him for the same; Wherefore I, their Speaker, in their name do humbly demand, and pray Judgment against him the said Lord Chancellor, as the nature of his offence and demerits do require."

The Lord Chief Justice answered: "Mr. Speaker, Upon complaint of the Commons against the visc. St. Albans, Lord Chancellor, this high Court hath thereby, and by his own Confession, found him Guilty of the Crimes

and Corruptions complained of by the Commons, and of sundry other Crimes and Corruptions of like nature.<sup>2</sup> And therefore this high Court having first summoned him to attend, and having his excuse of not attending, by reason of infirmity and sickness, which he protested was not feigned, or else he would most willingly have attended, doth nevertheless think fit to proceed to Judgment: and therefore this high Court doth adjudge;

“That the lord viscount St. Albans, Lord Chancellor of England, shall undergo a fine and ransom of 40,000*l.*—That he shall be imprisoned in the Tower during the king’s pleasure.—That he shall for ever be incapable of any office, place, or employment, in the state or commonwealth.—That he shall never sit in parliament, nor come within the verge of the Court.”—“This is the Judgment and Resolution of this High Court.”<sup>3</sup>

<sup>2</sup> About three years afterwards, he wrote to king James the following letter:

“To the KING.

“Most gracious and dread Sovereign; Before I make my petition to your majesty, I make my prayers to God above, *pectore ab imo*, that if I have held any thing so dear as your majesty’s service, nay, your heart’s ease, and your honour’s, I may be repulsed with a denial: but, if that hath been the principal wish me, that God, who knoweth my heart, would move your majesty’s royal heart to take compassion of me, and to grant my desire.

“I prostrate myself at your majesty’s feet, I, your ancient servant, now 64 years old in age, and three years five months old in misery. I desire not from your majesty means; nor place nor employment, but only, after so long a time of expiation, a complete and total remission of the sentence of the upper-house, to the end that blot of ignominy may be removed from me, and from my memory with posterity; that I die not a condemned man, but may be to your majesty, as I am to God, *vox creatura*. Your majesty hath pardoned the like to sir John Bennet, between whose case and mine, not being partial with myself, but speaking out of the general opinion, there was as much difference, I will not say as between black and white, but as between black and grey, or ash-coloured: look therefore down, dear sovereign, upon me also in pity. I know your majesty’s heart is inscrutable for goodness; and my lord of Buckingham was wont to tell me, you were the best natured man in the world; and it is God’s property, that those he hath loved, he loveth to the end. Let your majesty’s grace, in this my desire, stream down upon me, and let it be out of the fountain and spring-head, and *ex vero motu*, that, living or dying, the print of the goodness of king James may be in my heart, and his praises in my mouth. This my most humble request granted, may make me live a year or two happily; and denied, will kill me

Thus he lost the privilege of his Peerage, and his Seal; and it was for some time doubtful, whether he should be allowed to retain his Titles of Honour, which was all he did, having only a poor empty being left, which lasted not long with him, his honour dying before him. Though he was afterwards set at liberty, and had a Pension from the king, he was in great want to the very last, living obscurely in his chambers at Grays-inn, where his lonely and desolate condition so wrought upon his melancholy temper, that he pined away; and after all his height of abundance was reduced to so low an ebb, as to be denied beer to quench his thirst: for having a sickly stomach, and not liking the beer of the house, he sent now and then to sir Fulk Grevile lord Brook, who lived in the neighbourhood, for a bottle of his beer; and, after some grumbling, the butler had orders to deny him. So sordid, says Wilson, was the one, that advanced himself to be called sir Philip Sidney’s friend, and so friendless was the other, after he had dejected himself from what he was.

He died on the 9th of April, 1626, being Easter-day, early in the morning, in the 66th year of his age, at the earl of Arundel’s house in Highgate, near London, to which place he had casually repaired about a week before. The distemper of which he died was a gentle fever, accidentally accompanied with a violent cold; whereby the defluxion of rheum was so great upon his breast, that he was quite suffocated. He was buried in St. Michael’s church at St. Alban’s, being the place directed for his burial by his last Will, both because his mother had been buried there before, and because it was the only church then remaining within the precincts of old Verulam; where he hath a monument erected for him of white marble, by sir Thomas Meautys, formerly his lordship’s secretary, afterwards clerk of the king’s privy-council, with an inscription composed by the famous sir Henry Wotton.

Howell thus writes of Bacon: “My lord chancellor Bacon is lately dead of a long languishing weakness; he died so poor that he scarce left money to bury him, which, though he had a great wit, did argue no great wisdom; it being one of the essential properties of a wise man to provide for the main chance. I have read that it had been the fortunes of all poets commonly to die beggars, but for an orator, a lawyer, and philosopher, as he was, to die so, is rare. It seems the same fate befel

quickly. But yet the last thing that will die in me, will be the heart and affection of your majesty’s most humble, and true devoted servant, FR. ST. ALBAN. July 30, 1624.”

King James readily granted him a full and entire pardon of his whole sentence. Notwithstanding this pardon, he was never again summoned to parliament in this reign, but he was summoned to the first parliament called by Charles I. See 2 Cobb. Parl. Hist. p. 38.

him that attended Demosthenes, Seneca, and Cicero (all great men), of whom the two first fell by Corruption. The fairest diamond may have a flaw in it, but I believe he died poor out of a contempt of the pelf of fortune, as also out of an excess of generosity, which appeared as in divers other passages, so once when the king had sent him a stag, he sent up for the under-keeper, and having drank the king's health to him in a great silver gilt bowl, he gave it him for his fee. He wrote a pitiful Letter to king James not long before his death, and concludes 'Help me dear sovereign lord and master, and pity me so far that I who have been worn to a bag, be not now in my age forced to bear a wallet, nor that I who desire to live to study may be driven to study to live;' which words, in my opinion, argued a little abjection of spirit as his former Letter to the prince did of profaneness, wherein he hoped that 'as the Father was his Creator the Son will be his Redeemer.' I write not this to derogate from the noble worth of the lord viscount Verulam, who was a rare man, a man reconдите, *scientio et ad salutem literarum natus*, and I think the eloquentest that was born in this isle." James Howell to Dr. Pritchard, Jan. 6, 1625 (1626, N. S.) Letters, B. 1. § 4, Letter 8.

It will be observed that this Letter, unless the date be misprinted, falsifies the account given above of the time of Bacon's death. The dates to Howell's Letters are not to be depended on. Dr. Birch's account of the time of Bacon's death, agrees with that given in the text: but Birch has not given very great accuracy to his dates. He says that Bacon was born Jan. 23d, 1561, and entered of Trinity College, Cambridge, June 16th 1573, in his twelfth year. Now in June 1573, Bacon was in his thirteenth year, if he were born Jan. 23d, 1561, N. S.; and in his fourteenth year if born on Jan. 24d, 1561, O. S. Dr. Birch in the life of Bacon, prefixed to the Doctor's edition of Bacon's Works, expresses an opinion that the representations of his poverty are exaggerated. Bacon's Will certainly indicates a condition far removed from indigence. It is printed at the end of the third volume of Birch's edition.

It must, however, be observed, that though in his Will he named six executors, none of them would undertake the office; for on July 23d, 1627, administration 'juxta tenorem et effectum testamenti,' was granted to two of his creditors.—Rushworth thus speaks of Bacon: "This learned peer, eminent over the Christian world for his many writings extant in print, was known to be no admirer of money, yet had the unhappiness to be defiled therewith: He treasured up nothing, either for himself or his family; for he both lived and died in debt; he was over indulgent to his servants, and connived at their takings, and their ways betrayed him to that error; they were profuse and expensive, and had at command whatever he was master of. The gifts taken were, for the most part, for interlocutory Orders; his

Decrees were generally made with so much equity, that though gifts rendered him suspected for injustice, yet never any Decree made by him was reversed as unjust, as it hath been observed by some knowing in our laws."

As to bishop Field, on May 16th a message was sent from the commons to remind the lords of the Complaint against the bishop of Landaff for an offence proved to the house of commons by the testimony of Randolph, Davenport, and divers other witnesses, wherefore the commons demand Judgment against him for the same answer. The lords have been busied with many matters of great importance, but they shall hear from them shortly touching the said complaint.

May 30.

The first thing of moment the Lords went upon this day, was to hear the Report of the earl of Huntingdon, one of the committee appointed to take Examinations concerning Dr. Field, now bishop of Landaff. A collection was made thereof, which, with divers letters, sent up by the Commons, concerning that cause, were delivered by his lordship into court. The bishop having withdrawn, the king's serjeant, Crewe, came to the clerk's table and read the said collection in *hec verba*—"Edw. Egerton having a suit in chancery with sir Rowland Egerton, for lands of good value; and supposing he had some hard measure therein, was commended to Dr. Field, now lord bishop of Landaff, for the procuring of some great friends to assist him in this cause. Upon conference between Edw. Egerton and the lord bishop about this matter, and to the end to procure such assistance and friendship, he acknowledged a recognizance of 10,000*l.* to the bishop, and one Randolph Davenport a gentleman belonging to the late lord chancellor; which was dated March 13th, in the 16th year of this reign. Whereupon there was a draught of a defeasance conceived, but not perfected, as it seems; by which it was agreed between them, That if, by means or mediation of the said commissaries, or either of them, the said Egerton should prevail, either by decree in chancery, or at common law, to recover so much of the ancient inheritance of the said Edward, as is mentioned in the defeasance, then to pay the lord bishop or Davenport, or either of them, 6000*l.* within two years after.—On the 15th of March 1618, Dr. Field writes a letter to Edw. Egerton, in the nature of a defeasance of that recognizance, which containeth, that the sum of 6000*l.* is for gratuities to such honourable friends as shall be made in his business, if he recover, by the power of those friends, his ancient inheritance; or, otherwise, a third part of whatsoever shall be added to that which had been formerly awarded to the said Edward in chancery. And, if nothing was done, then he promised, *in verbo sacerdotis*, to return the recognizance.—After this the lord bishop writes another letter without date, to Mr. Egerton, letting him know thereby, that

there was a stay made of decreeing the lord chancellor's award till next term, by the means of one of my lord chancellor's gentlemen, who would have conferred with Mr. Egerton, but that his leisure permitted him not then to do it; he therefore required some further warrant and direction to proceed in his behalf. Underneath this letter one Woodward, brother-in-law to Mr. Egerton, writes this postscript, That he thinks his cause will do well, and that he hath assured this gentleman he shall find Mr. Egerton faithful in his promise, and wisheth he would write back to Woodward to that purpose.—Woodward writes another letter to Mr. Egerton without date, letting him know, that Dr. Field is sorry my lord hath not sent an answer as he expected, but that my lord chancellor shall be moved this night for a stay of the decree; which he hopes to get by such means as he shall use; and that he hath assured him Mr. Egerton would perform his promise.—Davenport being examined in this high court, touching the sharing the 6000*l.* betwixt him, Butler, the bishop, and others, saith, He himself should have had nothing; Butler was to have 3000*l.* and 1000*l.* was thought fit to be given to the lord chancellor; but his lordship knew not of it, and Butler dared not to move it. Davenport and Butler meant to have shared that 1000*l.* For the other 3000*l.* he knew not how it should be shared. The matter promised was a letter from the lord admiral, and a reference from the king to the lord chancellor.—Francis Joyner being examined in this cause, confesseth, he was the means to make Mr. Egerton and Dr. Field acquainted; and that the doctor had conference with Butler and Davenport about Mr. Egerton's business; and that the doctor drew in the lord Haddington to be a furtherer of it. He spoke to the recognizance; and that the doctor confessed he was trusted from the lord Haddington, and that his lordship was to dispose of the money at his pleasure. Tristram Woodward being likewise examined, confessed, Joyner told him Dr. Field had friends at court; and how Mr. Egerton was drawn to the doctor's house. The recognizance was taken for Butler and the lord Haddington, as he thinks; but out of it the doctor expected recompence, as he heard amongst them: and confessed he wrote the postscript to Dr. Field's letter sent to Mr. Egerton.—Edw. Egerton saith, "That he agreed with Dr. Field for the recognizance, that he should have his land decreed to him: that 6000*l.* was to be paid on the event of the suit. He was to pay the money to Dr. Field and Davenport; but how much each should have he knoweth not. He further said, That Woodward, his brother-in-law, and Dr. Field, procured him to acknowledge the recognizance; but he did not pay the charge of it: that Dr. Field told him he would bring him to one Butler, who would procure an order from my lord chancellor for his relief in the cause as he would desire: thereupon the doctor demanded a recognizance of 10,000*l.* for pay-

ment of 6000*l.* when this examinant should have such an order from the court as he desired. The recognizance was entered accordingly; after which, this examinant finding no good thereby, demanded back his recognizance; when, after many delays, and a year's distance of time, he had the same delivered.—Lastly, that Woodward told him Dr. Field, capt. Field his brother, and Butler should have shared the money amongst them; but how, he knoweth not."

Then the king's serjeant read also the Proofs, which consisted of all the letters and examinations before mentioned. After which the bishop of Durham\* stood up, and, in a speech, repeated the manner how this matter was first complained of by the commons to this house, with the several proofs thereof; but added, "That since there was nothing proved but an intent, at the most, he moved that the consideration thereof be referred to the archbishop of Canterbury, and he to give the bishop an admonition for the same in the convocation house." The archbishop (George Abbot) then rose up and said, "That Dr. Field, the now bishop of Landaff, could not be excused from Brokage in Bribery; for which he was to blame: but hoped that he might bear his fault as Dr. Field, and not as bishop of Landaff; and that, if it was referred to him, he would do that which belongs unto him."

Whereupon it was ordered, That the affair of the lord bishop of Landaff should be referred to the archbishop of Canterbury, and he to be admonished by his grace in the Convocation House, before the bishops and clergy there. The Lords also taking into consideration the complaint of the Commons, touching this matter, agreed upon a message to be sent to that house, to this purpose: viz. "Whereas the house of commons informed this house of a great misdemeanor committed by Dr. Field, now bishop of Landaff, and hath also sent since to demand judgment in that cause; the Lords having taken full examination thereof upon oath, do not find it proved in the same manner as, it seems, they were informed by examinations taken in their house. And, for further satisfaction of the commons therein, their lordships have sent them the examination of Randolph Davenport."—"Ans. The commons returned great thanks for their lordships honourable and just proceedings in the cause of the lord bishop of Landaff, and for sending the examination of Davenport; by which it doth appear, that his examination, taken by them, doth differ much from that taken upon his oath before their lordships."—Then the question was put, Whether the said bishop should take his place in the house before he received his admonition from the archbishop or not?

\* Richard Neile, who had himself been complained of by the Commons, when bishop of Lincoln, for some expressions in the house of lords, tending to advance the prerogative royal. See No. 98, p. 885.



Agreed, *per plures*, that he should: whereupon his lordship was called in by the gentleman usher, and went to his place. Thus ended this affair.

The following characteristic Letter from this bishop Field to Buckingham is printed in the Cabala, p. 117.

“ My gracious good lord; In the great library of men, that I have studied these many years, your grace is the best book, and most classick author, that I have read, in whom I find so much goodness, sweetness and nobleness of nature, such an heroic spirit, for boundless bounty, as I never did in any. I could instance in many, some of whom you have made deans, some bishops, some lords, and privy-counsellors; none that ever looked towards your grace did ever go away empty. I need go no further than myself, a gum of the earth, whom you raised out of the dust, for raising but a thought so high as to serve your highness. Since that, I have not played the truant, but more diligently studied you than ever before: and yet, dunce that I am, I stand at a stay, and am a non proficient, the book being the same that ever it was, as may appear by the great proficiency of others. This wonderfully poseth me, and sure there is some guile, some wile, in some of my fellow students, who hide my book from me, or some part of it; all the fault is not in

my own blackishness, that I thrive no better; I once feared this before, that some did me ill offices. Your grace was pleased to protest no man bad; and to assure me no man could. My heart tells me it hath been always upright, and is still most faithful unto you. I have examined my actions, my words, and my very thoughts, and found all of them, ever since, most sound unto your grace. Give me leave, to comfort myself with recordation of your loving kindnesses of old, when on that great feast day of your being inaugurated our chancellor [of Cambridge] my look was your book, wherein you read sadness, to which I was bold to answer, I trusted your grace would give me no cause. You replied (with loss of blood rather.) But God forbid so precious an effusion. (I would rather empty all my veins than you should bleed one drop,) when as one blast of your breath is able to bring me to the haven where I would be. My lord, I am grown an old man, and am like old household stuff, apt to be broke upon often removing. I desire it therefore but once for all, be it Ely, or Bath and Wells; and I will spend the remainder of my days in writing an history of your good deeds to me and others, whereby I may vindicate you from the envy, and obloquy of this present wicked age wherein we live, and whilst I live in praying for your grace, whose I am, totally and finally.

“ THEOPHILUS LANDAVEN.”

## 116. Proceedings in Parliament against Sir GILES MOMPESSEON, a Monopolist and Patentee: 18 JAMES I. A. D. 1620. [Journals of both Houses. 1 Cobb. Parl. Hist. 1198.]

WE shall now present the reader with a Narrative of the Proceedings against sir Giles Mompesson, a member of parliament, a Projector, and a great Dealer and Patentee. This man the Commons convened before them, and ordered him into custody of the serjeant at arms; but he, being conscious of his guilt, found means to make his escape, and fled beyond sea. The particulars of this affair will best appear from the Journals of the Lords, to whom the Commons carried their Complaint against the said sir Giles, and others concerned with him in the execution of his projects: all the judicial proceedings both against this man, and others of much higher rank, in the sequel, being transacted before this supreme Court of Judicature.

March 3, 1620. A Message from the Lower House was delivered to the Lords by sir Edw. Coke, attended by several knights, citizens and burgesses, to this effect:

“ That the House of Commons had entered into a due consideration of divers heavy Grievances, and do desire a Conference about them; leaving the time, number and place to their lordships appointment. He further added, as part of what they had enjoined him to say, that whilst their house was thus, amongst them-

selves, in treaty and advise, the principal offender, sir Giles Mompesson, was escaped. Therefore, the Commons did desire strict scrutiny should be made for finding him out within the realm.” The messengers being withdrawn, the Lords agreed to the Conference: the number, the whole house: the time and place, March 5th at two in the afternoon, in the Painted Chamber. Sir Edw. Coke and the rest were again called, and the Lord Chancellor acquainted them, That the house had agreed to meet with the Commons, as above; and that their lordships would give their best aid and assistance for finding out the offender. On which Answer, sir Edw. desired to explain his Message a little further; and declared that the Commons were not fully provided for a Conference so soon: but that his meaning was, That if their lordships would be pleased to yield to one, then the other house would prepare the business so as it might give least interruption to their lordships greater affairs: and, when they were ready, would return and acquaint their lordships with it. The Chancellor answered, That the lords would suspend the time, till the Commons were ready for the Conference.

Several proposals were then made for the

apprehending of sir Giles Mompesson; and a Message was sent to the Lower House to acquaint them, "That they had appointed a committee of 40 lords, of which the Prince was the first, to confer with a number of the Commons, immediately, about that point." The lord Zouch, warden of the Cinque-Ports, was ordered to send his warrant thither, to search for and apprehend the said sir Giles, if he should attempt to escape that way. The two lords presidents, of Wales and of the Council at York, were ordered to cause strict search to be made in the several ports under their charge. The Lord Treasurer had the same charge given him, to take care that all officers of the Customs and other officers, within the ports, havens and creeks of this land, be warned of this business. Lastly, orders were given to the Lord-Admiral that he should instruct all vice-admirals and other maritime officers under his jurisdiction, to make the like search for this extraordinary runagate.

All these orders and directions of the Lords being told to the Committee of the Commons, they approved of them, with thanks; and only desired that a more private search might be made for the offender. Accordingly, a warrant was ordered to be drawn, as from the Lords, and signed by the Chancellor, as their Speaker: and the lord chamberlain, the earls of Arundel and Southampton, the lords Hunsden and Houghton, were appointed for that purpose. Which warrant, was ordered to be directed to the deputy-clerk of the crown, and clerk of parliament; and to all mayors, bailiffs, &c.—In the midst of these orders and directions, the Lord Admiral, the marquis of Buckingham, declared openly to the house how much he had been deceived and abused by this offender, sir Giles Mompesson; who, but very lately, had wrote to him, protesting his innocency, affirming that what was objected against him was but matter of civil, and that he desired only a legal trial by due course of law.

March 5. The Lord Chancellor acquainted the Lords, that the deputy-clerk of the crown, and the clerk of parliament, with others, had, according to their lordships direction, made search into the several houses of sir Giles Mompesson, sir Francis Mitchell, and in the house called and used as for the exercise and execution of letters patents, concerning Gold and Silver Thread, &c. in Wood-street; and that in each search the said clerks had brought away divers books and writings, concerning such matters wherewith the said sir Giles standeth charged; which they had sealed up, according to the direction of the house. The Lords ordered that the said things so sealed up, should be safely kept by the clerk of parliament, until their lordships should be pleased to give further direction, about delivering them to such members of that house as should be assigned to receive the said books and papers, for the better manifestation of the truth in such matters as the said sir Giles stood charged with.

March 6. The lords received a message

from the commons, "That they had taken notice of some Warrants, issued by their lordships, for search in certain places for papers concerning sir Giles Mompesson. That the parties, therein employed, had found and brought in certain papers sealed up, also, a trunk and a bag in which other papers and books are sealed up, which they desire may be delivered to them. That one question had been made by the persons so employed, concerning their power, and they desire further warrant, from the lords, to authorize them to open locks, doors or chests, that their search may be more enlarged." *Answer*, "That the lords do grant the request of the commons in all its points; and will give direction for the proper additional words to be added to the warrant."

March 12th. The Lord Chancellor reported what passed at the last Conference of both houses; the inducement of which was, to clear the king's honour touching Grants to sir Giles Mompesson, and the means of procuring the same. The effect of this Conference was, "That the king, on the Petition of the said sir Giles, to have a Patent to reform abuses in divers Innkeepers, and a warrant to compound for the penalty of obsolete laws touching the prices of horse-meat, had referred the same to several judges, for the point of law; and to divers lords, for the point of conveniency. That his majesty had shewn the like care, in granting the Patent for Monopoly of the sole making of Gold and Silver Thread. That sir Henry Yelverton, Attorney-General to the king, had advised the same to be returned into his majesty's own hands, and then by indentures to authorize divers persons to manage it; but that this also was referred by his majesty to the consideration of several of his council. That the benefit arising to the king was made over to others, *pro tempore*; that the authority granted by the king, was much abused in the execution thereof, to the intolerable grievance of the subject; and lastly, that much imposture was used in the trade."

March 15th. The lord Wentworth moved, and it was ordered, That no bill but the Prince's bill should be read, until the business of sir Giles Mompesson be past and determined. The house to sit on convocation days, for the more speedy dispatch of that business.

March 22d. The Lord Chamberlain, one of the committee appointed to enquire into the Grievances of the Patent concerning Inns and Hostelries, reported, "That in the said Patent were three things considerable: 1st, the legality of it granted to Mompesson; but in that the committee had no power to judge. Next the inconvenience. Lastly, the abuses in the execution. That the inconvenience appeared in the patent, where the judges are made subject to a base of fee 5s.; and, in the execution, because that sir Giles Mompesson affronted the justices of the peace, and threatened several of them with the council-table. And, because there were certificates sent him, from time to time, of those Alehouse-keepers, who were sup-

pressed for ill behaviour, he made this use of it, to make them Inn-keepers. That he granted licences to divers base fellows to keep inns; and sued out processes against 4000, for keeping inns without licence, and for the price of horse-meat, of which he only tried two suits. Lastly, his lordship delivered a collection of the several abuses and the proofs of them."

The *Earl of Arundel* reported, "That the consideration of the Grievances by the Patents of sole Manufacturing Gold and Silver-Thread, complained of, being committed to his lordship and other lords joined with him in committee, That they had often met, the business being attended with great difficulty, and consisted of many particulars. That they had examined many witnesses, and more were produced who were fit to be examined, if the time of recess was not so near at hand. The lords committees have thought good to present to the house those proofs they have made, not to delay the time, but that their lordships were not to be excluded from giving further proofs hereafter.—His lordship observed, That the committee dealt, chiefly, with the execution, not with the legality of these patents. They found in the execution thereof, that the authority given by these patents, which ought to have been rarely used, was used by them familiarly, to the undoing of thousands. That the warrants dormant, to seize and imprison, &c. exceed all kinds of warrants; of which there are three, and one of them is without date and razed; and the other hath a date by a new hand. That sir Giles Mompesson committed divers to prison, without examination, which they could not do by that warrant. Several were threatened with imprisonment. That one Fowlis did lock up divers in his own house. That several houses were violently broke up and the parties goods seized. That others were compelled to enter into bonds, not to exercise their own trade and to stand to their orders; and to make oath what quantity of Gold and Silver-Thread they sold, and to whom. That sir Giles confessed divers of these wrongs, and made restitution unto many. That this work of Gold and Silver-Thread was much sophisticated, since the grant of the sole manufacture thereof. He further declared, That the lords committees urged none to accuse himself, and admonished every man not to accuse another out of passion. He desired, That though sir Giles be fled, yet that Fowlis and other delinquents may be heard here, what they can say in their own defence."

The *Earl of Southampton*, one of the committee to consider of the Grievances complained of for concealments, reported to the house, "That they find his majesty to be much abused in the pretence and execution of this grant. They find that sir Giles Mompesson obtained a commission to himself, to call all officers before him; by virtue whereof he fetched up, from all parts, the king's officers, and kept them here to fill his book, granted unto him, of 200*l.* per annum on concealed lands, in

recompence of his service. The proceedings, warrants, and the abuses in the execution, are all set down in the declaration, delivered by the commons. Their lordships labour was to look into these informations, wherein they desired the help of divers gentlemen of the lower house; who, not as members of that house, but as private gentlemen and friends, gave their lordships full satisfaction therein. In this search, they found proofs of every point, set down in the said declaration: and, for their more full satisfaction, they reviewed the Records themselves, wherein they found some proceedings, not mentioned in the declaration, and not warranted by any commission, viz. 1. Process used by George Geldard, sir Giles Mompesson's agent, in the king's attorney's name; the said Geldard confessing to one and but one. 2. Sir Giles used Geldard and his man, as his agents; Geldard to be Commissioner and Geldard's man to be his clerk. Their lordships found likewise, That Geldard's man gave the evidence to the Jury, and, though the jury found an imperfect verdict, yet Geldard proceeded as upon a perfect one. That Geldard compounded with divers who were questioned for their lands, as concealed, and employed those parties, as commissioners, for their own compositions. That they set down in their book an Advowson and a Rectory at 4*d.* per annum; and lands, called Pease Marsh, at 10*s.* a year; which was affirmed by sir George Moore, the tenant to it, to contain 700 acres, and to be better worth than 300*l.* a year. That there was no time limited to sir Giles to fill up his book; whereby, his vexing the subject, to fill the same, might continue 7 years. Lastly, their lordships conceived, That as his majesty had been abused in the Grant and in the Execution of it, so he should also have been in the end."—After this last Report was ended,

The *Lord Admiral* (Buckingham) stood up and moved the house, "That care might be taken hereafter, that the sophistication of the manufacture of Gold and Silver-Thread be prohibited; and none be permitted to work thereon, to waste and consume the bullion of the land." He commended the trade that set so many thousands on work; and, if order was first taken for bringing in bullion, and against the sophistication, it might be gainful both to the king and commonwealth; and to new patentees, if another patent thereof should be thought fit. He shewed further, "that the motive for the grant of Concealments was, that sir Giles Mompesson offered his service to consider how the multitude of officers in the exchequer might be cut off. In which his majesty first asked the opinion of the Judges; and his majesty's pleasure was not to prejudice any officer, during his life, but to provide for the future; which was, and yet is, his majesty's resolution to do; in consideration whereof, this Patent of Concealments was first granted to the said sir Giles. It was ill foreseen, that a man of his corrupt disposition should be admitted to

view the Records, which he might embezzle, blot or raze out for his own profit; but, at that time, sir Giles had the reputation of an honest man. That sir Giles had abused this grant many ways, but, as yet nothing was past under seal. That the abuse, partly, grew out of this, that sir Giles had compounded with one Geldard for the same, who, to make his best commodity thereof, put into the book matters of great value at small rates; which when his lordship heard of, he rebuked sir Giles and willed him to look to it, and not to suffer any thing to be past but what the chancellor of the exchequer should first allow of. That, thereupon, the said sir Giles, in the hearing of his lordship, delivered his book to Mr. Chancellor to be viewed, and whatsoever he thought good to be put out. Lastly, though much was intended to the prejudice of his majesty and the subject, yet nothing was past."—When the minister had ended his speech, a motion was made and agreed to, "That, although the Proofs given before the Lords against sir Giles Mompesson and others his agents, for their misdemeanors, were good and manifold, yet their lordships will hear the parties themselves what they can say in their own defence. But, because Easter is drawing on, and the time of recess very near, in which short space all the delinquents cannot be heard and proceeded against; it was further agreed, That a collection be made of all the proofs, concerning sir Giles only; which being read to the house, the Lords would proceed to sentence sir Giles, though absent; for that his flight is an eviction in law: and for that the expectation thereof is great as well as the grievance, therefore the proceedings should be with expedition, that the whole kingdom might hear of the Punishment imposed upon Delinquents, by this parliament, as well as of the granted Subsidies."

A debate arising, in what manner to proceed against the said sir Giles, whether by Indictment in that house, or otherwise? And there being some confusion amongst the speakers, the Prince of Wales, who constantly attended this business morning and afternoon, made a motion, "That by the ancient Orders of the House, no lord was to speak twice, though to explain himself, except some other lord mistake his meaning in any part of his speech." This was commanded to be entered, and ordered to be observed.

March 23. The Earl of Huntingdon, one of the committee appointed to search Precedents of Sentences, &c. reported, "That they had searched the records, and the earl of Warwick read the heads of several precedents, and then delivered the notes taken out of the records, and signed by the officers, to be kept by the clerk"—The collection of sir Giles Mompesson's offences, touching Inns and Hosteries, and the proofs thereof, were read, with the patent and commission concerning the same.

March 26. The King came to the House of Lords, the peers being all in their robes, and

the Prince with his coronet on his head; the earl of Oxford, as lord great chamberlain, bearing his white staff, and the earl of Montgomery the sword. His majesty being seated on the throne, made the following Speech to the Lords only:

"My lords; The last time I came hither, my errand was to inform you (as well as my memory could serve me, of things so long passed) of the verity of my proceedings, and the cautions used by me in the passing of those Patents, which are now in question before you; to the effect, that they might not be abused in the execution; and this I did by way of declaration. But now I am come (understanding the time of your censure to draw near) to express my readiness to put in execution (which is the life of the law) those things, which ye are to sentence (for even the law itself is a dead letter without execution) for which office God hath appointed me in these kingdoms. And though I assure myself, that my former behaviour, in all the course of my life, hath made me well known for a just king; yet in this special case I thought fit to express my own intentions, out of my own mouth, for punishment of things complained of. The first proof whereof I have given by the diligent search I caused to be made after the person of sir Giles Mompesson, who though he were fled, yet my Proclamation pursued him instantly: and as I was earnest in that, so will I be to see your sentence against him put in execution.—Two reasons move me to be earnest in the execution of what ye are to sentence at this time: first, that duty I owe to God, who hath made me a king, and tied me to the care of government by that politic marriage betwixt me and my people. For I do assure you in the heart of an honest man, and by the faith of a christian king (which both ye and all the world know me to be) had these things been complained of to me before the parliament, I would have done the office of a just king; and out of parliament have punished them as severely, and peradventure more, than ye now intend to do.—But now that they are discovered to me in parliament, I shall be as ready in this way, as I should have been in the other. For (I confess) I am ashamed (these things proving so, as they are generally reported to be) that it was not my good fortune to be the only author of the reformation and punishment of them, by some ordinary courts of justice. Nevertheless since these things are now discovered by parliament which before I knew not of, nor could so well be discovered otherwise, in regard of that representative body of the kingdom, which comes from all parts of the country: I will be never a whit the slower to do my part for the execution. For, as many of you that are here have heard me often say, so I will still say: so precious unto me is the public good, that no private person whatsoever, were he never so dear unto me, shall be so respected by me, by any degrees, as the public good, not only of the

whole commonwealth, but even of any particular corporation that is a member of it: and I hope that ye, my lords, will do me that right to publish to my people this my heart and purpose.—The 2nd reason is, That I intend not to derogate or infringe any of the liberties or privileges of this house, but rather to fortify and strengthen them. For never any king hath done so much for the nobility of England as I have done, and will ever be ready to do. And whatsoever I shall now say or deliver unto you as my thought, yet when I have said what I think, I will afterwards freely leave the judgment wholly to your house. I know ye will do nothing, but what the like hath been done before: and I pray you be not jealous, that I will abridge you in any thing that hath been used. For whatsoever the precedents in times of good government can warrant, I will allow. For I acknowledge this to be the supreme court of justice, wherein I am ever present by representation. And in this ye may be the better satisfied by my own presence, coming divers times amongst you: neither can I give you any greater assurance, or better pledge of this my purpose, than that I have done you the honour to set my only son among you; and hope that ye with him, shall have the means to make this the happiest parliament that ever was in England. This I profess, and take comfort in, that the Commons at this time have shewed greater love, and used me with more respect in all their proceedings, than ever any house of commons have heretofore done to me, or (I think) to any of my predecessors. As for this house of yours, I have always found it respective to me; and accordingly do I, and ever did favour you as ye well deserved. And I hope it will be accounted a happiness for you, that my son doth now sit amongst you, who, when it shall please God to set him in my place, will then remember that he was once a member of your house; and so be bound to maintain all your lawful privileges, and like the better of you all the days of his life. But, because the world at this time talks so much of bribes, I have just cause to fear, the whole body of this house hath bribed him to be a good instrument for you upon all occasions: he doth so good offices in all his reports to me, both for the house in general, and every one of you in particular. And the like I may say of one that sits there. (Buckingham.) He hath been so ready upon all occasions to do good offices, both for the house in general, and every member thereof in particular. One proof thereof, I hope my lord of Arundell hath already witnessed unto you, in his report made unto you of my answer, touching the privileges of the nobility, how earnestly he spake unto me in that matter.—Now, my lords, the time draws near of your recess: whether formality will leave you time for proceeding now to sentence against all, or any the persons now in question, I know not. But for my part since both houses have dealt so lovingly and freely with me, in giving me, as a free gift, two Subsidies in a more loving manner than hath

been given to any king before, and so accepted by me; and since I cannot yet retribute by a general pardon, which hath by form usually been reserved to the end of a parliament: the least I can do (which I can forbear no longer) is to do something in present, for the good and ease of my people.—Three patents at this time have been complained of, and thought great Grievances: 1. That of the Inns and Hosteries. 2. That of the Alehouses. 3. That of Gold and Silver Thread. My purpose is to strike them all dead, and (that time may not be lost) I will have it done presently. That concerning the Alehouses, I would have to be left to the managing of the justices of peace, as before. That of Gold and Silver Thread was most vilely executed, both for wrongs done to men's persons, as also for abuse in the staff; for it was a kind of false coin. I have already freed the persons that were in prison: I will now also damn the patent: and this may seem instead of a pardon. All these three I will have recalled by proclamation, and wish you to advise of the fittest form for that purpose.—I hear also that there is another bill amongst you against Informers: I desire you, my lords, that as ye tender my honour, and the good of my people, ye will put that bill to an end so soon as ye can; and at your next meeting to make it one of your first works. For I have already shewed my dislike of that kind of people openly in Star Chamber; and it will be the greatest ease both to me, and all those that are near about me at court, that may be. For I remember, that since the beginning of this parliament Buckingham hath told me, he never found such quiet, and rest, as in this time of parliament from projectors and informers, who at other times miserably vexed him at all hours.—And now I confess, that when I looked before upon the face of the government, I thought (as every man would have done) that the people were never so happy as in my time. For even, as at divers times I have looked upon many of my coppices, riding about them, and they appeared on the outside very thick, and well grown unto me: but when I entered into the midst of them, I found them all bitten within, and full of plaius and bare spots; like an apple or pear, fair and smooth without, but when ye cleave it asunder, ye find it rotten at the heart: even so this kingdom, the external government being as good as ever it was, and I am sure as learned judges as ever it had (and I hope as honest) administering justice within it; and for peace, both at home and abroad, I may truly say, more settled, and longer lasting, than ever any before, together with as great plenty as ever: so as it was to be thought, that every man might sit in safety under his own vine, and his own fig-tree: yet I am ashamed, and it makes my hair stand upright, to consider, how in this time my people have been vexed, and polled by the vile execution of projects, patents, bills of conformity, and such like; which, besides the trouble of my people, have more exhausted their purses, than

subsidies would have done.—Now, my lords, before I go hence, since God hath made me the great judge of this land under him: and that I must answer for the justice of the same: I will therefore (according to my place) remember you of some things, though I would not teach you. For no man's knowledge can be so good, but their memories will be the better to be refreshed. And now because ye are coming to give judgment, all which moves from the king, that you may the better proceed, take into your care two things: 1st to do *bonum*; 2ndly, next to do it *benè*. I call *bonum* when all is well proved, whereupon ye judge, for then ye build upon a sure foundation; and by *benè* I understand, that ye proceed with all formality and legality: wherein you have fit occasion to advise with the judges, who are to assist you with their opinions in cases of that nature; and woe be to them, if they advise you not well. So the ground being good, and the form orderly, it will prove a course fitting this high court of parliament.—In sentence ye are to observe two parts: 1st, to recollect that which is worthy of judging and censuring; and 2ndly, to proceed against these, as against such like crimes properly. We doubt there will be many matters before you, some complained of out of passion, and some out of just cause of grievance. Weigh both; but be not carried away with the impertinent discourses of them, that name as well innocent men, as guilty. Let your judgments only take hold of the guilty: proceed judicially, and spare none where ye find just cause to punish: but let your proceedings be according to law. And remember, that laws have not their eyes in their necks, but in their foreheads. For the moral reason of the punishment of vices, in all kingdoms and commonwealths is, because of the breach of laws standing in force: for none can be punished for breach of laws by predestination, before they be made. There is yet one particular, which I am to remember you of, I hear that sir Henry Yelverton who is now in the Tower, upon a sentence given in the Star Chamber against him, for deceiving my trust) is touched concerning a warrant dormant, which he made while he was my attorney: The which my lord treasurer\* here refused to set his hand unto, like an honest man, when it was brought unto him. I protest, I never heard of this warrant dormant before, and I hold it as odious a matter, as any is before you: and if, for respect to me, ye have forbore to meddle with him in examination, because he is my prisoner; I do now here freely remit him unto you, and put him into your hands.—And this is all I have to say unto you, at this time; wishing you to proceed justly and nobly, according to the orders of your house: and I pray God to bless you: and ye may assure yourselves of my assistance; wishing that what I have said this day,

\* Henry Montagu, viscount Mandeville. He had been before lord chief justice of England.

amongst you, may be entered into the records of this house."

The King having ended his Speech, the Lords conceived so much joy thereat; that they ordered the whole house to go to him, at one in the afternoon, with their most humble thanks for it.

The collection of Offences and Abuses committed by sir Giles Mompesson, in the three patents which were granted to him, being all read: it was resolved by the whole house, "That it did appear to the lords, and they were fully satisfied, sir Giles Mompesson had erected a court without warrant; and, also, that he imprisoned the king's subjects and exacted bonds from them by threats, without warrant; and, afterwards, by undue practices, procured a proclamation and other warrants to colour such his doings. And yet that he executed all these ills, and seized the goods of divers persons, contrary to such authority, so unduly procured by him. That he neither paid the 10*l.* reserved rent to the king, nor brought in the 5000*l.* of bullion yearly, as he pretended and covenanted to have done. And that all his other offences and abuses had been fully proved against him." Hereupon it was agreed, "That the lords would give sentence against sir Giles, in their robes, in the afternoon. The lord admiral, Buckingham, desired to be excused if he should be absent; but he gave his assent to their lordships censure of the said sir Giles; affirming, That he had highly abused the king, and also himself, more than any other lord of that house."

March 26, p. m. The whole house met again. The lords were in their robes, in order to give sentence against the offender, it was much debated first, amongst them, what punishment sir Giles deserved for his high crimes: and, because the punishment inflicted heretofore on Empson and Dudley was much spoken of, the lords desired to hear their indictments. The indictment of Rd. Empson, taken at Northampton, 1 Hen. 8. was read; by which it was observed, that the said Empson was indicted for treason against the king. The attorney-general also certified to their lordships, that Dudley was indicted, in London, for treason. But to the end that these matters might be more freely discussed, and what punishment was fit to be inflicted on the offender, the house adjourned *ad libitum*; when, after a long debate, the lords agreed upon a Judgment against sir Giles: the earl of Arundel observing, that their lordships might proceed against him hereafter, if more matter, or matter of a higher nature, was found out.—Accordingly a Message was sent from the Lords to the Commons, "That if they and their Speaker, according to the ancient custom of parliaments, come to demand of the lords, that judgment be given against sir Giles, for the heinous offences by him committed, they shall be heard: also that the Lords desire a conference with them, in the Painted Chamber, to-morrow morning." Answer returned, "That they

would come to demand judgment; and that they agreed to the conference."—In the mean time the lord treasurer reported, "That, according to the order of the house made this morning, the Prince's highness, accompanied with many lords, did present unto his majesty most humble thanks for his majesty's most gracious Speech to the Lords that morning; which thanks, with the manner of presenting the same, was most joyfully accepted by him, as he expressed in many kind and favourable words; adding, "That the Lords had taken the right way to catch a king, by speaking to him by his son."

The knights, citizens, and burgesses of the House of Commons, with their Speaker, being come up to the bar, the Speaker repeated the last message which the lords had sent unto them, and said, "The Commons, by me, their Speaker, demand judgment against sir Giles Mompesson, as the heinousness of his offences doth require."

The Lord Chief Justice, as Speaker of the house of peers, answered: "Mr. Speaker, the Lords spiritual and temporal have taken knowledge of the great pains the Commons have been at, to inform their lordships of many complaints brought unto them against sir Giles Mompesson, and others, whereof their lordships received several instructions from them; and, thereupon, proceeding by examination of divers witnesses upon oath, they find sir Giles, and several others, guilty of many heinous crimes against the king's majesty, and against the commonwealth.—Time will not permit their lordships to deal with all the offenders now; therefore they proceed to give judgment against sir Giles, according to your demand; and, hereafter, their lordships will proceed against the other offenders. The Judgment of the lords against the said sir Giles is, and, the Lords spiritual and temporal of this high court of parliament, do award and adjudge, 1. That sir Giles shall, from henceforth, be degraded of the order of Knighthood, with reservation to his wife and children; the ceremonies of degradation to be performed by direction of the earl marshal's court, whensoever he shall be taken. 2. That he shall stand perpetually in the degree of a person outlawed for misde-

meanors and trespasses. 3. That his testimony be received in no court; and that he shall be of no assize, inquisition, or jury. 4. That he shall be excepted out of all general pardons to be hereafter granted. 5. That he shall be imprisoned during life. 6. That he shall not approach within 12 miles of the courts of the king or prince, nor of the king's high courts usually holden at Westminster. 7. That the king's majesty shall have the profits of his lands for life, and shall have all his goods and chattels as forfeited; and he shall undergo fine and ransom, which their lordships assess at 10,000*l.* 8. That he shall be disabled to hold or receive any office under the king, or for the commonwealth. 9. Lastly, That he be ever held an infamous person."

March 27. The Lord Admiral delivered his majesty's hearty thanks to the Lords, for their Sentence given yesterday against Mompesson, it being so just, and yet moderate, in respect of the heinousness of the offence. And said, That the king, out of regard to his people and detestation of the said crimes, is pleased, *à* *abundante*, to inflict perpetual banishment on the said Mompesson, out of all his majesty's dominions.

The Commons being ready in the Painted Chamber, for the conference; before the Lords went to them, the lord treasurer first reported the heads of what he was to deliver, by direction from the house. "To make a short recital of his majesty's gracious speech here yesterday. His majesty's good allowance and approbation of the sentence given against Mompesson; and that, out of his grace and favour to the people, he had added, to the punishment, perpetual banishment. That the lords of this house yesterday presented, by the prince, their humble thanks unto his majesty for his said speech to their house; which was well accepted of. To let them know that the lords did consider of the precedents for Empson and Dudley; but found they did not concur with this case of Mompesson, they being both indicted for treason.—The conference being over, it was ordered, That the whole Proceedings against Mompesson should be drawn up by the king's council, perused by a committee of lords appointed for that purpose, and entered in the records of parliament.

117. Proceedings in Parliament against Sir FRANCIS MICHELL, a Monopolist and Patentee, and Co-Partner with Sir Giles Mompesson: 19 JAMES I. A. D. 1621. [Lords' Journals. 1 Cobb. Parl. Hist. 1242.]

Charge against Sir Francis Michell.

April 26, 1621.

THIS day, Mr. serjeant Crew came to the house of lords, and opened the Offences committed by sir Francis Michell, Prisoner in the Tower, and the Proofs thereof: viz.

Offences wherewith sir Francis Michell is charged, and their Proofs.

1. "That he received an annuity of 100*l.* per ann. (to be continued for five years), for executing the Commission concerning Gold and Silver Thread. Proved by the Deed of the Grant thereof from Ed. Dike and sir Nich.

Salter, kat. unto him the said sir Francis, dated 27th May, 1619.

2. "He and Henry Tweedy took upon them the execution of the first Commission touching Gold and Silver Thread, dated 22nd Aprilis, 16 Jac. and therein exceeded and abused their power, by committing divers to prison before conviction, and by committing to prison divers for refusal to enter into bond required by them; which was not then warranted by the commission. Proved by Robert Moore, Wm. Symondes, John Wakeland, and Hugh Underhill, committed for refusing to be bound from their free trades, in May 1618, 16 Jac. and by the bonds of divers others.

3. "That, there being a second Commission, touching Gold and Silver Thread, dated 26th Oct. 16 Jac. he alone committed divers to prison; the authority being unto two. Proved by Eleanor Tower, committed to prison by him alone, in Sept. 1618.

4. "That he erected an Office, kept a Court, made Officers, and divers unwarrantable Orders, and exacted bonds for the observance of the same. Proved by two books of Orders of that Court, and by the deposition of William Acton, S. Paske, James Grove, and Edm. Page, sent for to that Office, before Mompesson and him, for the exacting of Bonds; and by the Bonds themselves, dated June, 1619, and the Bond of Nath. Deards unto Mompesson and Michell, dated 25th Sept. 1620.

5. "That, in the Suit brought by Fowles, in the Star-chamber, against Francis Lake and others, he took of Francis Lake three 22 shilling pieces to compound the same. Proved by Frau. Lake."

#### Sir Francis Michell's Defence.

Sir Francis Michell, being called to the bar, was charged with the said Offences; and made his Answer unto them particularly.

1. To the first, touching the Annuity of 100*l.* per annum. He denied, that he received that Annuity as he was Commissioner, but in consideration of his pains to be taken to settle the controversies betwixt Mathias Fowles (the king's agent for gold and silver thread, as he termed him) and divers Goldsmiths, and others; which controversy he appeased, and settled what profit should be answered to any for that business; and said, he knew not whether he were a Commissioner or no at that time, when the annuity was granted unto him.

2. That he and Henry Tweedy committed to prison, contrary to the power given by the Commission, dated 22nd April, 16 Jac.; and exacted Bonds, &c. which was not then warrantable. He denied, that he committed any to prison before the 7th of May, 17 Jac.

The Depositions of — were read, who deposed that they were committed unto Prison before.

He denied also, that he took Bonds of any man before there was a Proclamation to warrant the same. Many Bonds were produced, dated in —. And the Proclamation was

read, dated in Oct. following, in the same year. Unto which he answered, That many Bonds were taken by Mompesson, but not by him; he confesseth, that he and Mr. Tweedy entered into this business alone, the other Commissioners not having leisure. That he trusted Mr. Tweedy with the examinations of any brought before them; and that they dealt with an even hand, and acquainted the king's Attorney, from time to time, with their courses, and had his advice; and, if Mr. Tweedy be not in more blame than he, then they have done nothing contrary to the Commission.

3. "That, there being a second Commission, touching Gold and Silver Thread, dated 26th Oct. 16 Jac. he alone committed divers unto prison, the authority being unto two. He denies, that he did ever sit down, or do any thing alone, as a Commissioner.—The Deposition of Eleanor Towne being read, it appeared, that he alone had committed to prison; and he being demanded why he recalled his mittimus to the keeper of Newgate, for the commitment of Robert Moore, William Symons, Hugh Underhill, John Wakeland, Robert Patrickson, Jo. Mason, Wm. Whiting, Anth. Sauds, and Thomas Ledsham, committed by him and Henry Tweedy, dated 6th June, A. D. 1618. He confessed he did so, and gave his reason why he did it; viz. because he would write with his own hands, in the margin thereof, the discharge of the said persons.

4. "Touching the erection of the Office, keeping of a Court, making Officers and Orders, and exacting Bonds, to observe those laws: He denied not the erection of an Office, nor keeping of a Court; but said, that he joined with the other Commissioner Mompesson therein.

Some of the Orders contained in the Book of Orders being read; he denied them not; but said, that all the Orders contained in that book were made by the parties consent, of whom they took Bonds; and confessed they were all made by Mompesson and him.

5. "And, touching his taking of money of Lake, in the Star-chamber suit, being then a Commissioner: he denied it not; but said, that Lake had more of him since."

The Prisoner, having leave to speak for himself, made a Discourse, commending the first Commission, touching Gold and Silver Thread; and that he misliked the second Commission, and the proceedings, and would not have meddled with it, if he could have avoided it; but Mompesson told him weekly, that he had command from the king to do thus and thus, and what should he do to withstand Mompesson. Sir Francis was then withdrawn from the bar."

#### Judgment against Sir FRANCIS MICHELL.

May 4. The Offences wherewith sir Francis Michell is charged, 26 April, being read, the house was adjourned *ad libitum*.

Mr. Serjeant Crew having opened the Charge, and the Proofs, the house was resumed again. It was put to the question, Whether



sir Francis Michell be so guilty of the Offences, or any of them, charged upon him, that is worthy to be censured. Agreed unto, *per omnes*.

The Lords, being agreed of the Sentence upon sir Francis Michell, sent a Message unto the house of commons: That the Lords have proceeded against sir Francis Michell, upon Complaint of the Commons; they have found him guilty of many exorbitant offences, and are ready to give Judgment against him, if they, with their Speaker, will come to demand it.

Answered, They will come accordingly, with all convenient speed. In the mean time, the lords put on their robes.

The Commons being come, and the Speaker at the bar, after low obeisances, he said:

"There was heretofore related unto their lordships, by the house of commons, a Complaint of many Grievances against Mompesson and sir Francis Michell, for many offences committed by them against the king and the commonwealth; your lordships have proceeded with Mompesson, and given Judgment against him. Understanding that you are ready to pronounce Judgment also against sir Francis Michell, I the Speaker, in the name of the knights, citizens, and burgeses of the commons house of parliament, do demand and pray, that Judgment be given against him the said sir Francis Michell, according to his demerits."

The Lord Chief Justice pronounced the Judgment, in *hec verba*:

"Mr. Speaker, the lords spiritual and temporal have taken into due consideration the great care and pains taken by the Commons to inform their lordships of the great Complaints, and the qualities and natures thereof, presented unto them against sir Francis Michell and others, whereof their lordships being well prepared by them, to the true understanding of the same, and thereupon having proceeded for the perfect discovery thereof, by examination of divers witnesses upon oath, do find thereby, the said sir Francis Michell clearly guilty of many great Crimes and Offences against his majesty and the commonwealth, and have resolved, at this time, to proceed to Judgment against him for the same.

"And therefore the Lords Spiritual and Temporal of this great and high court of parliament do award and adjudge: 1. That the said sir Francis Michell shall stand, and be from henceforth, degraded of the order of knighthood, with reservation of the dignity of his now wife and children; and the ceremonies of degradation to be performed by direction of this court to the earl Marshal's court. 2. That he shall be imprisoned, during the king's pleasure, in Finsbury Gaol, in the same chamber there, where he provided for others; The Tower, where he now remains, being a prison too worthy of him. 3. That he shall undergo the fine of 1000*l*. 4. That he shall be disabled to hold or receive any office under the king, or for the commonwealth."

### 118. Proceedings against Sir HENRY YELVERTON, the King's Attorney-General,\* for Misdemeanors: 19 JAMES I. A. D. 1621. [1 Cobb. Parl. Hist. 1232.]

April 17, 1621.

THE lords ordered, That the lord chief justice should grant a special warrant to the Lieutenant of the Tower, to bring sir Henry Yelverton and sir Francis Mitchel before their lordships at the same time.

ARTICLES of Charge against Sir H. Yelverton, with his ANSWERS.

April 18. The house adjourned themselves into a committee, to debate and settle in what manner to proceed against sir Henry Yelverton, then Attorney General, and, being agreed, the Chief Justice resumed his place.

\* Of this case Wilson (2 Kenn. Compl. Hist. 734) says, "Sir Henry Yelverton, the king's attorney, had found the effects of Buckingham's anger, by not closing with his desires in such patents as he required: so that all his actions being anatomized, some miscarriages are made criminal; he is committed to the Tower, and another put in his place that should be more observant. The king now lays upon him a warrant dormant, which did not much startle him; for he was not long after released, and Judge, carrying with him this character

Sir Henry Yelverton being brought by the gentleman usher to the bar, and kneeling until he had leave, and was willed to stand up; the Lord Chief Justice read the Particulars where-with he was charged; unto the which the said sir Henry Yelverton made several Answers immediately.

The Particulars and the Answers follow, in *hec verba*: "Sir Henry Yelverton is charged: 1. That he did commit divers, for refusing to enter into bonds, to restrain their own trade, &c. before he had any authority to require any such bonds."—*Resp.* He confesseth, he committed divers to prison; and justifieth the

of honesty, That he was willing to lay down his preferment at the king's feet, and be trod upon by the growing power of Buckingham, rather than prosecute his patron Somerset, that had advanced him, as his predecessor Bacon had spitefully done his."—The Historian's reproach of Bacon is for his conduct in the prosecution of the Earl of Essex; ante, vol. 1, p. 1333, as to which, see Bacon's Apology addressed to the Earl of Devonshire, printed in the second vol. of Birch's edition of his Works in 4to."

same. That he committed none to restrain them of their trade, but for their stubbornness, in not obeying the king's commandment; which he did to advance the lawful profit of his majesty; and that he had authority to do it.

II. That he first signed and directed the warrants for warrants, having no authority for the same, and yet containing many unwarrantable clauses.—*Resp.* He drew one, and first signed it, and no Clause unwarrantable in that. He justifieth that. For the others, he neither demeth nor confesseth, but remembers not whether he drew them or not.

III. That he advised the Patent of gold and silver Thread to be resumed into the king's hands, conceiving the same to be a monopoly, and advised the Patentees to proceed by contract with the king.—*Resp.* He advised it not alone. He was the weakest amongst many that advised the contract. He denies that he conceived it to be a monopoly, and doubts not but to prove it to be no monopoly. He denies that he confessed any such thing to the commons. He denies his advice in the contract to colour a monopoly. He advised it in his duty to the king.

IV. He, to procure a Proclamation to take Bonds; signed a Docket, shewing his advising thereupon with the Recorder of London and the City, whereas the Recorder was not acquainted with it.—*Resp.* He utterly denies he made any such Docket; he did sign a Docket, that he had acquainted the Lord Chancellor and Recorder of London with it; and he did acquaint the Lord Chancellor and the Recorder of London with it, and willed the Recorder to acquaint the City; but denies that the Docket is, that he acquainted the City with it.

V. That 3401 Quo Warrantos (to the vexation of the people) were brought by him, touching the Patent of Inns, and but two came to trial.—*Resp.* He cannot particularly answer it; if it appear upon record, that there be so many signed by him, he confesseth it; until then, he humbly desires to be retained in their lordships favour; adding, that if he ever deserved well of his majesty, it was in this. And added, that the king and subject were more abused by that Patent than by any other; and that he suffers at this day for that Patent, as he takes it.

VI. That he commenced divers suits in the exchequer, touching the gold and silver Thread, but did not prosecute the same.—*Resp.* It may be he did.

These Answers and Confessions being read, the said sir Henry Yelverton (having leave to speak) said, he thought himself happy, that, in these misdeeds of his majesty's disfavour, his majesty was pleased to cast that grace upon him, as to send him to this honourable house. That innocency hath her present Answer; wisdom requites time: therefore he made his humble suit, to have a particular of his Charge in writing, and time to answer the same; and that he might have leave to repair to his chamber at

Gray's-Inn, and to his house, to search his Papers, for that the matters objected against him did look into his actions of 4, 5, and 7 years of his serving his majesty.

The Speech ended, sir Henry Yelverton was withdrawn; and the house having taken this into their consideration, he was brought to the bar again; and the said Answers and Confessions were read unto him by the clerk, and acknowledged by sir Henry to be truly set down; yet desiring that the same might not preclude him, touching his future defence, desiring a seven-night for his further Answer.

The Lord Chief Justice signified unto him, That the lords were pleased that he should have a copy of the Charge objected against him, and leave (under the Lieutenant's charge) to go to his house in Aldersgate-street, and unto his chamber in Gray's Inn, to view his Papers, and to have time until Saturday come seven-night, to make his further Answer, which was more than his own request. And an order of the house was made for it accordingly.

April 30. Sir Henry Yelverton was brought to the bar; when the Lord Steward informed the house, That his majesty is satisfied concerning the charging sir Henry, in this house, with the matter of Inns and Hosteries. Then the chief justice read the Charge, which was made against him on the 18th of April, with his Answers thereto, and demanded of him, Whether he now would affirm those Answers? Unto which he replied, "That the six Charges against him may be reduced into two, the one of Gold and Silver Thread, the other of Inns and Hosteries. He humbly desired, therefore, that he might then Answer to every particular charge, in *seric temporis*."

May 2. The Lord Treasurer acquainted the house, "That he had his majesty's commands to deliver a Message to their lordships of a double nature; 1st, an Account of what was done; and, 2ndly, a Signification of what was to be done.—As to the first, his highness had presented their lordships request to his majesty, that he would be pleased, as the case then stood, to command the Seal from the Lord Chancellor. Accordingly, yesterday, his lordship, the Lord Steward, the Lord Chamberlain, and the earl of Arundel, at the king's command, went to the Lord Chancellor, and received from him the Great Seal, and delivered the same to his Majesty; who, by commission, hath appointed the keeping of it to him and the other lords with him.—To the second, his majesty hath commanded him to signify to their lordships, "That he understands sir Henry Yelverton, being called here before them the other day, as a delinquent, answered not as such, but as a Judge or Accuser of a member of this house, the lord of Buckingham. And whereas, in his first Speech, here in this house, he touched the king's honour; saying, He suffered for the Patents of Inns, or to that effect, he was so far from extenuating or excusing the offence, that the last day he had aggravated the same. Wherefore his majesty's pleasure is,

that himself will be the Judge as to what concerns his own person; and, as to what relates to the lord of Buckingham, since he had besought his majesty that it might be left to this house, so he leaves it wholly to their lordships."

This Message being delivered, the Lords conceived by it, that the king intended to take the Judgment of sir Henry Yelverton out of their hands, as touching his own honour; his majesty having been misinformed, that the Lords had referred it back to him: wherefore a motion was made, "That the house should be humble suitors to his majesty that he would be pleased not to resume this out of their hands, but give their lordships leave to continue Judges thereof." After some debate, it was resolved, That a committee of the whole house should attend his majesty at his pleasure; and that the archbishop of Canterbury, in the name of the whole house, should deliver the following Message to him: "Whereas it has pleased your majesty in a late speech to this house, to require us to do justice upon sir Henry Yelverton, in a matter concerning your own honour; since which time some words have been used in this house, which your majesty conceives do rather aggravate than extenuate his fault: whereupon your majesty did this day signify by the lord treasurer, 'That of what concerns your own honour, yourself would be the judge:' the lords knowing your majesty's tenderness of the privileges of this house, and their own zeal unto your majesty's honour, do humbly beseech your majesty to alter your resolution; otherwise, this change may strike some fear into us, that we are not held so tender and zealous, in our dutiful affections, in point of your majesty's honour, as we desire you should think us to be, and are most ready to yield due proofs thereof."

May 7. The Archbishop of Canterbury reported, "That yesterday, according to the direction of the house, he presented their lordships Petition unto the king, humbly desiring that his majesty would be pleased that this house might continue judges of sir Henry Yelverton, for the matter concerning his majesty's honour." At which time his majesty said, "That, in example of that most famous queen Elizabeth, when this whole house was suitors to her, he must return Answer, Answer-less." But that this morning his majesty's Answer was, "The lords knowing they enjoy their Honours from him, and under him, he doubts not but they will be more tender of his Honour for that cause; therefore he doth return back unto their lordships the whole and final ordering of that Business of sir Henry Yelverton."

May 8. The Lord Chamberlain declared, "That the king had commanded him to acquaint their lordships, That although nothing is so dear unto him as his honour: yet, as before, so he doth now, put into their lordships hands the Cause of sir Henry Yelverton, not mistrusting their affections to him, nor their judgments."

Whereas it was ordered yesterday, That

Thomas Emerson be examined, touching the Message which he brought sir Henry Yelverton, from Mompesson; Mr. Attorney read the Message, which sir H. alledged in his Speech here the 30th of April; viz. That sir H. Y. was not to keep his place (of the king's Attorney General) long, if he withstood the proceedings of the writs of Quo Warranto for the Inns: the said Thomas Emerson was this day called in, and being examined, said: "I never delivered any Message unto sir H. Y. from Gyles Mompesson; but I delivered him some Speech by way of advertisement (not by way of a Message), which past from Mompesson to me concerning him, which, I confess, Mompesson imparted to me, as a Message to be delivered unto sir H. Y. viz. Mompesson told me to this effect: There is a business concerns sir Edw. Villiers, of the Mint-masters place in the Tower; one pretends a former grant: the rest of the king's counsel had or would deliver their opinion, That the former Grant is void in law, and the party unfit to execute the place; only Mr. Attorney opposeth; but, if he takes these courses, and refuseth to concur with the rest of the king's council, to certify his opinion in things that are honest, convenient and agreeable to law, he must not think to be Attorney a month to an end; and tell him so. But I answered, You will not have me tell him so. Yes (quoth Mompesson) I pray tell him so; and, after supper, I took him aside, and asked him whether he would have me deliver that Message to sir H. Y. or no. He answered, Yes, by any means, if you love him.—When I imparted this unto sir H. Y. he answered me, This cannot be true, for I never was in better terms with my lord of Bucks, than now; and sir Edward Villiers is one of the best friends I have, and this suit I commended to him by the means of one Palmer.—Sir H. Y. either by word or writing, acquaints sir Edw. Villiers with this, as I heard: and sir Edw. Villiers was discontented with Mompesson for it: whereupon Mompesson came to me, to know, whether I had been with Mr. Attorney, and wished I had not imparted this Message unto him; and told me, that sir Edw. Villiers was much discontented with him for it. He began to wave it at the first: but afterwards yielded, that he would me to tell Mr. Attorney of it; and afterwards Mompesson went with me to sir H. Y. and acknowledged the Speeches which were delivered by me; and they seemed to be well satisfied the one with the other, and departed friends, for ought I could perceive: since which time I never spake with sir H. Y. but upon one business; and I never had any Speech with him touching the Patent of Inns, nor the granting of any Quo Warranto; neither had this Message any relation to the Patent of Inns, or Quo Warranto; neither did I ever hear of any message to him, touching the lord of Buckingham."

This was read unto him, and he did acknowledge it to be true, and affirmed it upon his oath.

For that his majesty conceives that sir H. Yelverton hath, by his second Speeches, aggravated the former, the lords directed Mr. Attorney General to open unto the house as well the first as the second. And Mr. Attorney, coming to the clerk's table, read: 1. Part of the copies of the first Charge upon sir H. Y. and his Notes for Answer, written in the margin thereof by him. 2. The Notes written by sir H. Y. of his second Speech. 3. The Speech abstracted by sir H. Y. out of those Notes, which he sent to the king, and which, he said, he did speak in the house, and would have spoken, if he had been permitted.—The day being far spent, the lords determined not to proceed against sir H. Y. at this time; but to take another day, to consider upon what point of those Speeches to think him worthy of censure.

May 12. The Lords being put in mind, that, by a former agreement, they are to proceed this morning in the Business of sir H. Yelverton; after long consultation, a double question was propounded: viz.

1. Whether the Words, or any of them, spoken by sir H. Yelverton, in this house, do much touch the king's Honour, as we yet conceive? 2. Whether the Words, or any of them, spoken by sir H. Yelverton, in this house, may touch the king's Honour, as we yet conceive?

*Mem.* Before the question was put, the house was moved to determine, That they are not concluded by assenting unto either of the two Questions; but that they may alter their opinions upon the hearing of sir H. Y.; which was agreed unto. It was also agreed, 1. To hear sir H. Y. speak, how he will explain himself, before he be censured. 2. That the first question only, and not the second, should be put; which being put, it was agreed unto.

Ordered, That sir H. Yelverton be brought into the Court, to answer for himself, on Monday next, and that an Order be made, and directed to the Lieutenant of the Tower, to bring him at the time appointed, before their lordships.

The king's counsel are to make a collection of the Words spoken by sir H. Yelverton in this house, and to confer with the Judges about them, and to deliver their opinion unto the house, on Monday next, before sir H. Y. be heard; and the king's counsel are to enforce the Words against him.

Sir Henry Yelverton lately sentenced in the Star-chamber.

May 14. The Lord Treasurer delivered a Petition, which sir H. Yelverton exhibited to his majesty; with his majesty's pleasure, that it be read in the house; and the same was read accordingly:

Sir H. Yelverton, in Michaelmas term last, was sentenced in the Star-chamber, for breach of trust, in the unwarrantable passing of a Charter to the city of London, tending to the disberison of his majesty, both in matter of kingly power and high prerogative, and also in matter of

revenue and profit of the Crown, and also to the oppression and grievance of the subject, by raising excessive Fees and Exactions. The Sentence consisted of these parts: 1. Imprisonment in the Tower. 2. A fine of 4000*l.* 3. A Declaration of disability and unfitness to hold the place of Attorney.

#### Sir Henry Yelverton's Speech.

Under this Sentence, sir H. Y. suffereth at this day, for he is a prisoner in the Tower, removed from the place of Attorney, and the fine is leviabie upon him at his majesty's pleasure.

18th of April last, he was brought to the bar in parliament; and being there charged, *inter alia*, with some miscarriage touching the Patent of Inns, he said, "If he ever deserved well of his majesty, it was in that;" adding, "That the king and subject were more abused by that patent than by any other; and that he suffers at this day for that patent, as he takes it."

30 April, he was again brought to the bar; and, in his Speech, uttered as followeth:

"I cannot but present myself this day before your highness and my lords with much fear, with more grief; for I am compassed with so many terrors from his majesty as I might well hide my head with Adam. His lordship's displeasure wounds me more than the conscience of any of these facts; yet had I rather die, than the commonwealth should receive so much as a scratch from me.—I, that in none of my actions feared the great man, on whom they (by sir Edward Villiers and sir Gyles Mompesson) did depend, much less would I fear them, who were but his shadows; but, my most noble lords, knowing that my lord of Buck. was ever at his majesty's hand, ready, upon every occasion, to hew me down, out of the honest fear of a servant not to offend so gracious a master as his majesty hath ever been to me, I did commit them, viz. the Silkmen."

And, speaking concerning the Patent of Inns, he said, "I cannot herein but bemoan my unhappiness, that, in the last cause, labouring by all lawful means to advance the honest profit of his majesty, and in this (with the sight almost of my own ruin) to preserve his majesty's honour and the quiet of the people, I am yet drawn in question, as if I had equally dishonoured his majesty in both.—When sir Gyles saw, I would not be wooed to offend his majesty in his direction, I received a message from Mr. Emerson, sent me by sir Gyles, That I would run myself upon the rocks; and that I should not hold my place long, if I did thus withstand the Patent of Inns, or to this effect: soon after came sir Gyles himself, and, like an herald at arms, told me to this effect: he had this message to tell me from my lord of Buck. That I should not hold my place a month, if I did not conform myself in better measure to the Patent of Inns; for my lord had obtained it by his favour, and would maintain it by his power.—How could I hut startle at this message? For I saw here was a great assuming of power to himself, to place and displace an offi-

cer. I saw myself cast upon two main rocks, either treacherously to forsake the standing his majesty had set me in, or else to endanger myself by a by-blow, and so hazard my fortune. I humbly beseech your lordships, to think nature will struggle, when she sees her place and means of living thus assaulted: for now it was come to this; whether I would obey his majesty, or my lord, if sir Gyles spake true: yet I resolved, in this, to be as stubborn as Mordecai; not to stoop, or pass those gracious bounds his majesty had prescribed me.—Soon after, I found the message in part made good; for all the profits almost of my place were diverted from me, and turned into an unusual channel, to one of my lord's worthies, that I retained little more than the name of Attorney. It became so fatal, and so penal, that it became almost the loss of a suit to come to me; my place was but as the seat of winds and tempests.

"Howbeit I dare say, if my lord of Buck had but read the Articles exhibited in this place against Hugh Spencer, and had known the danger of placing and displacing officers about a king, he would not have pursued me with such bitterness.—But my opposing my lord in this Patent of Inns, in the Patent of Alehouses, in the Irish Customs, in sir Robert Naunton's Deputation of his place in the Court of Wards; These have been my overthrow; and for these I suffer at this day, in my estate and fortune, not meaning to say as I take it, but as I know, for my humble opposition to his lordship, above 20,000*l.* I suffer in my estate by my lord of Buck's means; knowing well, that I suffer in my restraint justly, for my offence. My heart tells me I was faithful to him; I sought no riches but his grace."

Which being read, and sir H. Yelverton brought to the bar, Mr. serj. Crewe and Mr. Attorney General opened the Charge against him; and shewed, that those Speeches of his did directly point at the lord marquis of Buck, and by consequence fastened a scandal on his majesty.

And sir Henry Yelverton (having leave) explained himself touching the said Speeches, and did make his Defence unto the same Charge, which was very long. Then he was withdrawn; and ordered, That he should be brought again to-morrow in the afternoon, and at that time to be proceeded against.

May 15. The lords, being put in mind of their appointment yesterday, to proceed against sir H. Yelverton at this time, it was put to the question, Whether the said sir H. Y. is worthy to be censured for Words spoken by him in this house, which touch the king's honour; and generally agreed unto by all, nem. diss.

The time being spent, and most of the lords having not their robes ready, as not expecting to give Sentence against sir H. Y. at this day, they agreed notwithstanding what Censure they will give against him: viz. 1. To be fined to the king's majesty, at 10,000 marks. 2. To be imprisoned in the Tower, during the king's

pleasure. 3. To make such Acknowledgment of his fault and Submission to his majesty, as shall be prescribed unto him by this court; the same to be here at the bar, either in the king's presence or in his absence, at the king's pleasure.

The Lieutenant of the Tower had warning given him by the gentleman usher, to bring sir H. Yelverton thither to-morrow morning, by 9 o'clock.

The lords agreed to be here to-morrow morning in their robes, and to proceed to Sentence sir H. Yelverton:

1. For the matter touching the king's Honour. 2. For the Scandal of the marquis of Buck, Lord Admiral. 3. For the matter complained against him by the Commons.

*Mcm.* That the house agreed to move the king's majesty, to mitigate sir H. Yelverton's fine. Whereupon the Prince his highness offered to move his majesty therein.

#### Sir Henry Yelverton's first Judgment.

Sir Henry Yelverton being this day at the bar, and the lords being in their robes, the Lord Chief Justice pronounced the Judgment, *in hec verba*:

"The lords spiritual and temporal of this high court of parliament do award and adjudge: 1. That he, the said sir H. Yelverton, for his Speeches uttered here in this court, which do touch the king's majesty in Honour, shall be fined unto the king's majesty at 10,000 marks. 2. That he shall be imprisoned in the Tower, during the king's pleasure. 3. That he shall make such Acknowledgment of his fault, and such Submission to his majesty, as shall be prescribed unto him by this court; the same to be made here, at the bar, either in the king's presence, or in his absence, at the king's pleasure."

#### Sir Henry Yelverton's second Judgment.

This Judgment being pronounced against the said sir H. Yelverton, for the said Speeches which touched his majesty in Honour, and the prisoner being withdrawn; the lords took into their consideration that the said Words, and many others spoken here in this house, at the same time, by the said sir H. Y. did directly tend to the scandal of the marquis of Buck, lord high admiral of England; and therefore, by their lordships' appointment, the said sir H. Y. was called in again, and brought to the bar, and was charged with the same scandalous Speeches, by the said king's serjeant and attorney general; and whereas the greatest matter of averment, on his part, did depend on a Message which he the said sir H. Y. affirmed was delivered him by Mr. Tho. Emerson from Giles Mompesson, the Deposition of the said Mr. Emerson, taken here in court the 8th of May, was read by the clerk, wherein the said Tho. Emerson did, upon his oath, absolutely deny the said Message: and the said sir H. Y. having leave to speak for himself, and being heard without interruption, he did not give the house any good satisfaction for the scandalous

1145] STATE TRIALS, 19 JAMES I. 1621.—Proceedings against Sir John Bennett. (1146

Speeches here by him uttered against the said lord marquis of Buck. Wherefore, he being withdrawn from the bar, and the said marquis also withdrawing himself out of the parliament presence, the lords spiritual and temporal having long debated the matter, their lordships did resolve; That the said sir H. Y. was worthy to be censured, for false and scandalous Words spoken by him in this house, against the said Lord Marquis; and being fully agreed on their Censure for the same, the lord marquis of Buckingham was called in; and, the prisoner being brought to the bar, the Lord Chief Justice pronounced the Judgment against him, in *Ass. verba*:

“The lords spiritual and temporal of this high court of parliament do adjudge and award: 1. That sir Henry Yelverton, knight, for his false and scandalous Words, uttered in this high court of parliament, against the lord marquis of Buckingham, lord high admiral of England, shall pay 5000 marks unto the said mar-

quis. 2. That he shall be imprisoned. 3. That he shall make such Submission in this court to the said lord marquis, as this court shall prescribe.”

This Judgment being given, it pleased the lord marquis of Buck. freely to remit unto the said sir H. Yelverton the said 5000 marks; for which the said sir H. Yelverton humbly thanked his lordship. The lords also agreed to move his majesty to mitigate sir Henry's Fine, and his royal highness the Prince offered to undertake that office.

Soon after the king wholly relinquished the Fine due to him from sir Henry on the Sentence; he was set at liberty, reconciled to the marquis, and was esteemed, says Rushworth, ‘a man *valde eruditus lege*, in his time.’—In the succeeding reign he was made a Judge of the Common Pleas. He was author of the Reports: his father was Speaker of the house of commons, anno 1597, see 1. Cobb. Parl. Hist. 895.

119. Proceedings in Parliament against Sir JOHN BENNETT, knt. for Bribery and Corruption: 19 JAMES I. A. D. 1621. [Lords' Journals. 1 Cobb. Parl. Hist. 1236.]

April 24, 1621.

THE Lords received a message from the Commons to this effect: “That they had received Complaints of divers exorbitant Oppressions and Bribery, committed by sir John Bennet, knt. late a member of their house, but now expelled by them for the same; that they desire a conference also about him.” Agreed, that the Lords will meet the Commons at four this afternoon, in the Painted Chamber.

April 25. The Lord Treasurer made report of the Conference yesterday with the commons, touching sir John Bennet; the effect whereof was, That whereas the said sir John Bennet, knight, Judge of the Prerogative Court of Canterbury, being directed by the law both what to do, and what Fees to take, he did both contrary to the law, exacting extreme and great Fees, and much Bribery; some Complaints against him were opened, with a request of the commons, that they might send up more against him hereafter, if any came unto them.

The Petition of sir John Bennet unto the Lords of this house, was read; humbly shewing, that he is kept close prisoner, under the custody of the sheriffs of London, in his own house; and humbly desiring to have the liberty of his own house, upon good security.

Many motions being made by the Lords, in what sort, and how far, the Petitioner should have this liberty granted him, it was at last agreed and ordered, in manner following: viz.

“Whereas sir John Bennet, knt. this day presented his humble Petition unto the lords spiritual and temporal of this high court of parliament, shewing, that he is now kept close pri-

soner, under the custody of the sheriffs of London, in his own house; and humbly desiring that their lordships would permit him the liberty of his own house, upon good security by him given; it is this day ordered, by their lordships, That, if the said sir John shall nominate unto this court the names of such sufficient persons, that will be bail for his forth-coming, and the court shall like of their sufficiency, then, upon their bond of 40,000*l.* given here in open court, he the said sir John shall have his liberty, or else he shall be committed prisoner to the Tower of London, and have the liberty thereof. And it is left to the choice of sir John Bennet, either to put in such good bail as is required, or to be committed prisoner to the Tower.”

May 30. The Earl of Huntingdon reported, That his lordship, and the other lords joined in committee with him, have taken divers Examinations in the Cause of sir John Bennet, Judge of the Prerogative Court of the province of Canterbury, by which they find him guilty of much Bribery and Corruption; of which a collection was made, and his lordship delivered the same to Mr. Serjeant Crewe.

The Earl of Southampton also made the like Report, and delivered the Examinations, and the Collections of the Bribery and Corruptions wherewith the said sir John is charged by the same, unto Mr. Attorney General.

*Sir John Bennet's* CHARGE.

The several Collections, with the names of the Witnesses examined for proof thereof, being first read, sir John Bennet was brought to the bar.

*Mr. Serjeant Crewe* shewed, That the said

sir John Bennett, being Judge of the Prerogative Court of the province of Canterbury, and being directed by the law what fees to take for probate of wills, and unto whom to grant letters of administration, he had perverted the course of law for Bribes; and, being therewith corrupted, he granted administrations contrary to the law. He charged the said sir John with these particular Bribes and Corruptions; and read the Examinations of these Witnesses, for Proof thereof: viz.

"R. Luther, 1619, died intestate, without issue; Abigail his widow, requiring administration, paid 44s.; but, being opposed by Thomas Luther (a brother), at two several times, gave sir John Bennet, 44l. more; and yet he granted administration unto her and Thomas Luther jointly. Proved by the Examination of Tho. Tyler, Wm. Owen, Abigail the widow.

"Before sir John joined Tho. Luther in administration with the widow, he promised sir John Bennett 100l.; and, after he was joined, he gave him 120l. Proved by the Examination of Thomas Luther.

"For allowance of the Administrators Accounts, sir John had 100l. to distribute amongst the kindred of the intestate, and 50l. for pious uses, and seemed discontent he had not 50l. more. Proved by the Examination of John Worsley, Abigail now his wife.

"William Bannester, 1615, died intestate. His widow gave to sir John 30l. 16s. for administration. Proved by the Examination of Richard Williamson, James Godscall.

"Hercules Wytham claiming to be executor by will, first gave sir John 5 pieces; then Sampford (sir John's man) undertook for 20 pieces more to his master, and 5 to himself, to procure him a good end; which end was against the Will. Proved by the Examination of Hercules Wytham.

"Sir W. Whorwood died 7 years past. Field Whorwood, a younger son, and a daughter, offered to prove a Will; Thomas Whorwood, the elder brother, offered to prove a second Will; Badsor, the proctor, promised sir John 100l. for his hand to Field Whorwood, but paid only 34l. to him, and to his man Sampford 6l. Proved by John Badsor.

"Thomas Whorwood, by advice of Sampford, gave sir John 38l. yet sir John gave Sentence against him. Proved by the Examination of Thomas Whorwood, John Babham.

"George Sturges dying intestate, Francis Sturges, his kinsman, offered sir John, for administration, 20l. in gold, which, sir John said, was too light; then he gave him 40l. and had them. Proved by the Examination of Robert Davies, Robert Sturges, Robert Labourne.

"Phillip Hollman died 1619. Phillip Hollman exhibited his father's Will; a caveat being entered, he sent by Kelvert 20 pieces to sir John for his favour; which he accepted, and demanded 20l. more, which Kelvert promised, but paid not. Proved by the Examination of Phillip Hollman, Rd. Kilvert, proctor.

"James Lingard, 1618, died intestate. John

his brother, and James his nephew, contended for administration; for 50l. paid sir John, and 5l. to Sampford, John the brother obtained administration, which after was revoked. Proved by the Examination of William Basse, proctor.

"Robert Seyers, 1618, died intestate, his children minors. Simon Spachurst gave sir John, by direction of Sampford, 20l. for administration (*durante minore etate*), which was revoked two days before Spachurst to have had a cause heard in the Chancery, which concerned that estate. Proved by the Examination of Wm. Basse, proctor.

"Henry Rylie, 1610, died intestate. John Rylie sued for administration. He gave sir John 50l.; and sir John procured from John Rylie nine rings, set with diamonds, pawned to the intestate for 30l., but were not worth 10l.; Anthony Ashly and Tho. Welles, two of the kindred of the intestate, agreed with Sampford to give sir John 30l., and 10l. to Sampford, to procure sir John to order them part of the intestate's estate; then he ordered them 300l., which John Rylie was enforced to pay; and the said 40l. for the Bribes to sir John and his man. More, sir John had a piece of plate, which cost 4l. 16s. 6d., to change the great bond for true administration into a less. Proved by the examination of John Rylie, Anth. Ashley, Tho. Welles.

"Jane Corne, widow, died intestate; yet Francis Winscombe pretended a Will, *pendente lite*. Sir John received of Wm. Pound, her next kinsman, 40l., to grant him administration, which this deponent paid. Sir John would not give administration, unless he might have 40l. Proved by the Examination of Lewes Lashbrooke.—The deponent's administrators in trust to perform her Will, for obtaining of administration, gave 50l. in hand to sir John, and their bond to pay 50l. more three months then next after, and 25s. for forbearing the last 50l. Proved by the Examination of John Davies, Rowland Johnson."

The day being far spent, the house was moved, not to have any more read at that time; whereupon the Prisoner was withdrawn; and ordered, That he be brought hither again tomorrow morning.

May 31. Sir John Bennett being called in, Mr. Attorney General opened another part of Bribery and Corruptions, wherewith the said sir John is charged, and the Proofs thereof: viz.

"He received of Mr. Megges, on the behalf of Mrs. Pill, for the continuance of an administration formerly granted to her, and sought to be revoked, the sum of 46l. 13s. 4d. Proved by the Examination of Edw. Willett.

"He received of the widow of Hugh Lee, for the administration of her husband's goods, wherein she was crossed by Caveat, put in by the means of Stamford, sir John's man, 35l. Proved by the Depositions of Edw. Willett.

"He received of sir Edw. Scory, for the administration of his father's goods, 100l. Proved by sir Edw. Scory.

"He contracted with Edmund Malton to

have 20*l.* for the administration of the goods of John Clovill: and, the money being brought, there fell 5*l.* more casually out of his pocket; whereupon he took that also, and would not otherwise grant the administration. Proved by the Examination of Edmund Malton.

“ He received of sir John Brand, for an administration of his grandfather's goods, 50*l.*; and this was by way of contract, sir John pressing to have more. Proved by the Examination of Tho. Newman, sir Rob. Hichem.

“ He received of John Hull, for favour in a suit touching the probate of the will of one Holtman, 20*l.* - Proved by the Examination of John Hull.

“ He received of Wm. Huckmore, for the administration of the goods of Philip Huckmore, 15*l.* Proved by Rd. Williamson.

“ He received of Tho. Allen, for the administration of his father's goods, 5*l.* Proved by Rd. Williamson.

“ He received of Solomon and John Mansell, for a dividend out of their brother's estate, 20*l.*; and then gave them but 300*l.*, out of an estate of 8000*l.*; having received, from the widow of the intestate, as she hath confessed, 100*l.*, to the intent he should allot them no more. Proved by Solomon Mansell.

“ He received of sir Rd. Coningsby, for an administration of the goods of George Pollard, 20*l.* Proved by Edw. Willett.

“ He received of Edw. Willett, for an administration, 10*l.* Proved by Edw. Willett.

“ He received of Samuel Neast, for his favour in proving a nuncupative will of John Neast, 10*l.* at one time, and 5 pieces at another, and enforced him to pay a debt of 514*l.* to one Fishburne, for which Fishburne had neither specialty, nor so much as a subscription of the testator to his book. Proved by Samuel Neast.

“ He received of the same Samuel 60*s.* for making a report into the court of Chancery. Proved by Samuel Neast.

“ He received on the behalf of Hester Michell, for administration of the goods of Edward Michell her father, 20*l.* Proved by William Basse.

“ Flower Henshaw, widow, died intestate, in March, 1615, possessed of a personal estate of 14,249*l.* 2*s.* 7*d.* and for the granting of the administration of her said goods unto Benj. Henshaw, the said Benjamin did deliver unto Samford 200*l.* of which sum he verily believeth sir John had the greatest part, besides 90*l.* 7*s.* 7*d.* to pious uses. Proved by Benj. Henshaw.

“ Andrew More, about two years since, died intestate; the administration of whose goods was, by consent of one Clearke, and others, granted to the eldest brother of the said More; for which sir John had 60*l.* besides a gratuity given to Samford. Proved by Wm. Oland, John Ode.

“ Humphrey Rasearrock, of Pynchley, in Nov. 1616, made his will, and did make Philipp his wife his executrix, and died; which will being controverted, she first gave 20 old

angels to sir John to have the same will proved in common form; and, after sentence given, for the proof of the said will, 40*l.* Proved by Rd. Williamson.

“ Dr. Tighe, in Sept. 13 Jac. made his last will, and died; and made Mary his wife executrix, upon condition that she should prove the will in due form of law. And that Wm. Tighe, brother of the said doctor, could not have a copy of the said Will from sir John until he had given him 10 pieces; and afterwards; the said Wm. Tighe having spent a great part of his estate about the probate of the said Will, and being delayed therein, one Lister, sir John's man, said unto the said Tighe, that, if he would give unto his master 100*l.* and a gelding of 10*l.* and unto the said Lister 10*l.* then his master, sir John, would sentence the will for him; who answered, he could not provide so much money presently, but he would put in good bonds for the payment thereof. But the said Lister said, he would not have any bonds: and that, if he would not bring his master 40 pieces, that then one Dr. Bancrofte, brother to the said executrix, should have Sentence; whereupon he procured 15 pieces, and brought them to sir John, who would not accept thereof; saying, He would not take paper for gold. And thereupon the administration of the goods of the said Dr. Tighe was granted unto the said Mary, by the procurement of the said Dr. Bancrofte; upon which the said Lister said that a halting proctor had brought gold from the said Dr. Bancrofte, and that he had over-weighed him. Proved by Wm. Tighe, Tho. Stiles, Rd. Maxey.

“ Sir Henry Middleton, kt. made his last will and testament, and therein made David Middleton his brother, and Henry Middleton his son, executors thereof; and that Alice Middleton the wife of the said David, did give 40*l.* to sir John to have the administration of the goods of the said sir Henry Middleton granted unto her, during the minority of the said Henry the son. Proved by Rd. Williamson.

“ Mary Hawley, about six years since, died intestate, of an estate worth 6 or 700*l.* and Robert Hanbury gave to sir John 60*l.* and more, for the administration of her goods, as it was confessed by John Ray, upon his death-bed. Proved by Jane Fenwick, Eliz. Haley.

“ That Mr. Ashton, by the hands of Phillip King, did give to sir John's lady a Spanish caronnet, or girdle, about the value of 100 marks, for the kindness he had received of sir John about an administration of the goods of—. Proved by Philip King.

“ That Rd. Hawley, about five years since dying intestate, and the administration of his goods being granted to one Henbury during the minority of his children, sir John had 20*l.* or 20 pieces, given him by the said Henbury. Proved by Tho. Geares.

“ That George Scarlett, in June, 1615, died intestate; and that sir John would not grant the administration of his goods unto Peter Scarlett, until the said Peter had given the said sir John 10*l.* in gold in hand, and 5*l.* more



to be paid shortly after; which was paid accordingly. Proved by Peter Scarlett."

*Sir John Bennett's DEFENCE.*

This being read by Mr. Attorney General, the lord chief justice demanded of sir John Bennett what Answer he would make unto the same; who answered to the effect following: viz.

"I come, in all humility, to prostrate myself at your lordships feet. If your lordships expect a speedy and perfect Answer at this time, I hope you will excuse me, as being surprised with such a tempest of affliction.—The particulars of my Answer run through the compass of 19 years, (the whole time of my being Judge of the Prerogative Court of Canterbury), which doth constrain me to beseech your lordships to give me some time not only to call to mind the acts of judicature of mine own court, but to confer with others also.—I humbly desire to have a copy of my Charge; and what I am justly charged with I will confess, after I have had time to consider thereof. Those whereof I am otherwise accused (as of many), I desire (as by the law of nations I ought) to have liberty to peruse the Accusations, to exhibit cross Interrogatories, and to procure Witnesses to be examined, and to have counsel allowed me; and, lastly, I humbly beg at your lordships hands, even for justice sake, time proportionable to the multitude of these Accusations, to make my Answer. And I doubt not but so to extenuate them all, that, when your lordships shall see and consider the ground of them, you will not hold me so foul a guilty man as I am accused for. I am the first ecclesiastical officer charged in this manner, and whereas I am charged to have taken money in pious uses, amounting to a great sum, I will gage my life, that, upon proclamation made thereof, proof cannot be produced of 4000*l.* which is not above 200*l.* per annum, since I was judge; whereof if I cannot give good account, I will beg my bread all my life."

Sir JOHN BENNETT bailed upon 20,000*l.*

The Prisoner being removed, the house took into their consideration these Requests of sir John Bennet; and, after deliberation thereof, their lordships were pleased to grant the same thus far: viz. "That he should have, 1. Time till the next access of the parliament, to make his Answer. 2. Counsel to advise with only; but no counsel here in court to defend his cause. 3. Liberty to examine Witnesses *ex sua parte*; not to examine any upon cross Interrogatories. And his Witnesses are to be sworn here in court upon such Interrogatories as he should deliver and the court allow. 4. To have copies of the Heads of the Charge; but no names of any Witnesses or Proofs. 5. To have leave, at the hearing, to take Exceptions unto the witnesses produced against him; and the names of the witnesses are to be delivered him at the hearing. 6. Liberty to search the records of his own court, and his own writings.

And it is ordered, That the king's counsel shall only open the Charge and Proofs against him, but not to inform any thing against him at the hearing.

It is ordered, also, That sir John Bennett may be bailed, upon 20,000*l.*; bonds to be taken here in court, with such sureties as the court shall allow of; and, if he cannot procure sureties that amongst them will be bound in so great a sum, then he shall remain prisoner with the sheriffs of London."

Sir John Bennett being called in again, and at the bar, the lord chief justice told him, how far forth the lords had granted his Requests; and also that their lordships were pleased he should be bailed.

And the Lord Chief Justice, by commandment of the house, did admonish him not to impair his estate, but that it remain in the same plight as when he was first complained of here in court; and also to satisfy Mrs. Eliz. Skorye for 1,100*l.* which he hath of her money, as left with him in *deposito*; and to satisfy the 1000*l.* which remains in his hands, of sir Tho. Bodley's legacy to the university of Oxon.

Unto which sir John Bennett answered, "I do acknowledge the honourable favour of this Court, the goodness and grace of God, to put me into your hands, and these favours towards me in your hearts. Mrs. Skorye's money I confess due, and will give her satisfaction for the same. As for the other 1000*l.* I have performed as much as sir Tho. Bodley required, having laid out other moneys for the University of Oxford, which I intended to have done (whatsoever I may do yet) out of my own estate, had not these cross fortunes happened. As for my Bail, I am in debt and disgrace; and doubt whether I can procure bail to enter into so great a sum. I humbly beseech your lordships, that myself may be bound in 1000*l.* and my Sureties in another 1000*l.* more."

Sir John Bennett being withdrawn, it was put to the question, Whether the former Order touching his Bail should stand, or to be altered according to his request; and agreed, The former Order to stand.

June 4th. The parliament was adjourned. At the next meeting we hear no more of the Proceedings against sir John, than that he made his appearance to save his bail, and was ordered to attend from day to day; which proved so tedious, that he petitioned the house either to be tried, or discharged from so close an attendance. This was not complied with, and he was obliged to wait, without any Trial, till the 17th of Dec. on which day it being signified to the house, That sir John was so sick that he could not, without great danger of his life, make his personal appearance, it was agreed that the said sir John should stand upon his bail for his appearance, but not to incur any danger of forfeiture for his non-appearance, at this time, by reason of his indisposition. Thereupon the Lord Keeper acquainted the house, That many Petitions were exhibited, every morning against the said sir John, which were much called

upon. It was agreed, "That, lest the justice and care of this house, to question the said sir John for the same, may be doubted of, notice shall be given to the petitioners that this time was designed for greater affairs, and too short now to proceed against him upon those Complaints; but that the lords did resolve, at the

next access, to proceed against him effectually."

As this next meeting never took place, in this reign, it is very probable, if sir John did not die of this illness, that he got off his trial and censure by the confusion of the times; for his bail would be discharged in course, at the dissolution of the parliament.

120. Proceedings in Parliament against EDWARD FLOYDE, for scandalizing the Princess Palatine: 19 JAMES I. A. D. 1621. [Journals of both Houses. 1 Cobb. Parl. Hist. 1250.]

May 5, 1621.

THE House of Lords was moved to take into consideration an act, lately done by the Commons, in conveying before them the person of one Edward Floyde, in examining of witnesses, giving Judgment upon him, and entering it as an act of their own. That this proceeding trespassed deep into the privileges of their house, for that all Judgments do, properly and only, belong unto the Lords. Therefore, it was resolved not to suffer any thing to pass, which might prejudice their right in this point of judicature; and yet, so to proceed, as that the love and good correspondency between both houses might be continued.

The Commons had been some time engaged in examining witnesses against this Floyde; and having sufficient proof of his speaking the Words he was accused of, on the 1st of May proceeded to give Judgment against him. Many arguments ensued on what punishment to inflict upon him; and, among the rest, sir Edwin Sandys said, "That the house ought to be well advised, since there was much difficulty in the case: that their Sentence would be censured in a great part of the Christian world: that the root of this man's malice was ill-affection to Religion, and consequently, to the state. There were but two eminent persons before, viz. king Edward 6, and Queen Jane, who had escaped the virulent tongues of opposites in Religion. This lady Elizabeth was the third, who was much praised by all her enemies.\* That he was for joining with the Lords in this proceeding; was it not for the great business they had, and should soon bring before them: In the Sentence not to meddle with his religion, but his offence in tongue; for that would make him be canonized: that the words he had spoken were words of contempt, not of slander; therefore to punish him with as much contempt as may be, &c."

Sentence of the Commons.

On the whole, the Commons agreed on a Sentence, which the Speaker denounced against the offender, kneeling at their bar; which Sentence, was ordered to be entered in their Journals, and is, "Be it remembered, that upon

\* The princess Palatine, the king's daughter.

Tuesday, the 1st day of May, in the year of the reign of our sovereign lord James, by the grace of God, king of England, &c. the 19th; Edward Floyde, late of Clannewayne, within the county of Salop, esq. was impeached before the Commons assembled in this parliament, for that the said Edward sithence the summons of this parliament in the prison of the Fleete, having communication concerning the most illustrious princess the lady Elizabeth, only daughter of our said sovereign lord, and the most excellent prince her husband, did use and utter, openly and publicly, false, malicious and spiteful speeches, of the said two princes; saying in this manner, 'I have heard, that Prague is taken; and Goodman Palsgrave and Goodwife Palsgrave have taken their heels, and run away; and as I have heard, Goodwife Palsgrave is taken prisoner;' and that those words were spoken by him, in most spiteful and scornful manner, with a sneering and scoffing countenance, and with a purpose to disgrace, as much as in him lay, those two princes; and that at other times he did, in like spiteful and reproachful manner, use other malicious and opprobrious words of them. Whereupon the said Commons of their love and zeal to our said sovereign lord, and not minding to let pass unpunished those things, that tended to the disgrace of his majesty's issue, a part of himself, who is head of the parliament, did call before them the said Edward Floyde, and thereof did question him; and thereupon so far proceeded, that after upon the same day, for that the said matters, whereof the said Edward was impeached, were true and notorious, therefore the said Commons in the Commons House assembled in parliament did adjudge and award, that the said Edward should be returned that night prisoner to the Fleete, where before he remained in prison, and to lie that night in a place there, called Bolton's Ward: and shall the next morning be brought to Westminster, into the great yard before the door of the great hall of pleas, and be there set, and stand, upon the pillory, from 9 untill 11 of the clock, in the forenoon, with a paper upon his hat, with this inscription, in capital letters, of these words; 'For false, malicious, and spiteful Speeches, against the King's Daughter, and her Husband;' and from thence shall presently ride to the Ex-

change within the city of London, upon a horse without a saddle, with his face backwards toward the horse's tail, holding the tail in his hand, with the former paper on his head; and be there again set, and stand, upon the pillory, two hours: and from thence shall ride, in like manner, to the Fleete, and there to remain until the next Friday morning; and, on that morning, to ride in like manner, into Cheshside, in the city of London, and there shall be set, and stand, upon the pillory, with the former paper and inscription, by the space of two hours, that is, from 10 until 12 of the clock in the forenoon of that day; and ride back to the Fleete, in like manner as before: And that there is set, and assessed upon him, a fine of 1000*l*."

This Proceeding the Lords judged to be a great infringement of their privileges; and, on the day aforesaid, after mature deliberation of the matter, the lords sent a message, in writing, to the commons, by two of the Judges, importing, "That the Lords, during all this parliament, have had much contentment in the good correspondency that hath been between both houses: that their lordships have an earnest affection, and an assured confidence of the happy continuance of it to the end; with a full resolution of all possible endeavours, on their parts, tending thereunto. Their lordships having heard of a Censure lately passed in that house, against one Edward Floyde, are desirous of a Conference for the accommodation of that business, in such sort as may be without any prejudice to the privileges of either house. This Conference they desire, if it may stand with the occasions of that house, may be between the whole houses, at 3 in the afternoon, in the Painted Chamber; with power to each committee to treat and confer freely, and to understand each other's reasons."—To the end that the Lords might agree amongst themselves in what manner to proceed at the said Conference, the house adjourned *ad libitum*; and, being returned, it was resolved, That the archbishop of Canterbury should begin, and the Lord Treasurer, the Lord Chamberlain, and the earl of Southampton, should argue and dispute about it.—Answer returned from the Commons by sir Lyonel Cranfield and others: "The knights, citizens, and burgesses of the House of Commons, have commanded me to let your lordships understand, that they take great comfort in the message which your lordships sent them, and desire the happy continuance of the love and unity of both houses. Their whole house, as a committee, will attend your lordships at the conference desired, and at the time and place appointed."

May 5. p. m. After consulting a precedent shewn their lordships by Mr. Serjeant Crew, 1 Hen. 4. which proved, That the Commons were not Judges in parliament; but that judicature belongs unto the King and Lords alone, the whole house went, as a committee, into the Painted Chamber. And, being returned, the house was resumed; when it was agreed, that

the judges and king's council should make a report of the collections of what the Commons alledged for their right of judicature.

The Lords having considered the precedents alledged by the Commons at the last Conference, do find that they tended to prove, 1. "That the house of commons is a Court of Record. 2. That they have administered an Oath in matters concerning themselves. 3. That they have inflicted punishments on delinquents, where the cause has concerned a messenger of their house, or the privilege thereof."—Their lordships determined, "That the question, at this time, is not Whether that house be a Court of Record; nor whether the Oath by them alledged to be ministered, in a matter concerning that house, was given by the house, or by a master in Chancery, then one of their members; nor whether they have a right of judicature in matters concerning themselves? But the question is, Whether that house may proceed to Sentence any man, who is not a member of their house, and for a matter which does not concern them, for which the Commons alledged no proofs, nor produced any precedents? Therefore their lordships agreed to pray a Re-conference about the same; and, at the said Conference, to stick to this only, "That the house of commons have no power of Judicature, no coercion against any, but in matters concerning their own house."

May 8. p. m. The house being to meet the Commons at the Re-conference, this afternoon, concerning the Judicature in which the Lords conceived the others had trenched into their liberties and privileges; and wherein their lordships were not satisfied with the precedents alledged by the Commons, at the former Conference in their defence thereof: yet being desirous to continue that good respect and correspondency which hath been all this parliament between both the houses, they thought proper to order, That the archbishop of Canterbury should begin the introduction to the Conference, and propound any thing that might tend to a gentle ending of the same. And, that if the Commons would agree to a sub-committee, to end this business, then the Archbishop, the Lord Admiral, the Lord Chamberlain, the earls of Arundel and Southampton were appointed for that purpose; and it was further agreed, That this sub-committee should be limited not to yield to any thing, in point of Judicature, which they of the commons have done, lest it may in time become a precedent to wrong the privileges of the lords. The Commons agreed to a sub-committee, to end this difference.

May 12. The archbishop of Canterbury reported the Conference held yesterday between the sub-committees of both houses, to this effect; "1. The Commons shewed their constant resolution to maintain the love and good correspondency between the two houses. 2. Their resolution not to invade the privileges of this house, that have dealt so nobly with them. Lastly, that out of their zeal they sentenced Floyde; but they leave him to the Lords with

an intimation of their hope that this house will censure him also. Then they proposed a Protestation to be entered with the Lords for a mean to accommodate the business between them.—A Protestation was immediately drawn up and agreed to, in these words; "That the proceedings lately passed in the House of Commons, against Edward Floyde, be not at any time hereafter drawn or used as a precedent to the enlarging or diminishing of the lawful rights or privileges of either house: but that the rights and privileges of both houses shall remain in the self-same state and plight as before." This Protestation is also entered in the Journals of the Commons, without any addition or alteration by them.

#### Proceedings before the Lords.

May 25. The archbishop of Canterbury, first of the committee appointed by the House to take Examinations in the Cause of Edward Floyde, reported, That they had taken several, and were satisfied of the Proof of the Crimes objected against him; and moved the house that Mr. Attorney General might read the said Examinations. Accordingly, the Deposition of six persons were read, and then it was ordered, That Floyde should be brought to the bar the next morning, in order to proceed to Judgment against him.

#### The Attorney General's Charge.

May 26. Edward Floyde being brought to the bar, Mr. Attorney charged him with notorious Misdemeanors and high Presumption: viz. 1. For rejoicing at the losses happened to the king's daughter and her children. 2. For discouraging of others, which bear good affection unto them. 3. For speaking basely of them. 4. For taking upon him to judge of the rights of kingdoms.

The first, Mr. Attorney shewed, that, in Dec. last, Floyde, being prisoner in the Fleet, having advertisement that Prague was taken, did, upon all occasion, shew himself joyful and glad of that calamity and afflictions which had happened unto the prince and princess Palatine, the king's only daughter, and their children.

And for the second, Mr. Attorney shewed, that this Floyde, relating unto Henry Pennington this loss of Prague, and the captivity, as he believed, of the king's son in law, and of the king's daughter and her children; and the said Pennington wishing that himself, and all the convenient men of this kingdom, were pressed forth, not to return with their lives, till they had redeemed her from captivity; he the said Floyde replied: 'I am sorry, thou art such a fool.' And the said Pennington reproving him for saying so, he the said Floyde replied, 'That, if he had been out of his chamber, he would have struck him.'

And for the third, Mr. Attorney shewed, That the said Floyde taking occasion to speak of these matters, did term the prince and princess Palatine, the king's daughter, by the igno-

minious and despitiful terms of 'Goodman Palsgrave,' and 'Goodwife Palsgrave;' and termed him 'that poor lad;' and scoffingly, and with great jollity, related a stage play of the princess running away with two children, the one under one arm, and the other under the other arm, and the third in her belly, and the Palsgrave following with the cradle.

And for the fourth, Mr. Attorney shewed, That one Abdias Cole going to preach on a Sunday morning in the Fleet, the said Floyde called to him, and told him that Prague is taken; and the said Abdias Cole answering, 'That is little comfort to me,' Floyde replied, 'Nay, now we may freely speak it, for any nobleman has as good right to be king of Wales, as he, meaning the Palsgrave, to be king of Bohemia.'

Here Mr. Attorney opened that point of the ancient Oath of Allegiance: \* Of which oath and the danger to the offender in such case, the said Floyde (being a lawyer) could not be ignorant and that therefore his offence was greater. And Mr. Attorney did further shew, That this Floyde; being a man of good estate, was a justice of peace in the county of Salop, and for that he was put out of the commission (which was affirmed to be true, by Mr. Baron Bromley, being this day present). And also that this Floyde, having heretofore studied the common laws of this land in the Inner Temple, where he was called to the bar, was put out of that society by the benchers of that house.

#### Floyde's Answer.

This being said, the Lord Chief Justice demanded of Floyde what Answer he could make unto these Misdemeanors, wherewith he was charged by Mr. Attorney. Floyde thereupon began with a long discourse, to traduce the persons of such as had deposed against him; but, being demanded to make a direct Answer to the Charge; He said, 'I cannot remember that these Words were ever spoken by me.'

Whereupon the Clerk read the Depositions and Examinations of Lettice Harris, Henry Pennington, John Broughton, George Hardman, Edward Aldred, Abdias Cole. Which being read, the L. C. Justice demanded of Floyde, whether he spake these Words, 'Goodman Palsgrave,' and 'Goodwife Palsgrave.' He the said Floyde said, 'I spake not those Words in such sort as they are laid down in the said Examinations.'—The L. C. Justice demanding of him again, whether he spake those Words, or words to that effect; He answered, 'It is but a folly for me to deny them, because so many have proved them.' And afterwards he said, 'I will not deny them, because so many have proved them.' And he being demanded, whether he spake the other words, or used the insolent behaviour towards the prince and princess Palatine; answered, 'I remember it not.'

The Prisoner being withdrawn; although the

\* Sic in Orig.

lords were fully satisfied by these Examinations, and Floyd's Answers, yet, for order sake, it was put to the question, Whether Edward Floyd be so guilty of the offences wherewith he is charged, as that he deserves to be censured; and agreed unto by all, *non. diss.*

The Censure against E. Floyd being pronounced in this manner: viz. "1. Not to bear Arms as a gentleman, &c. 2. To ride with his face to the horses tail, to stand on the pillory, and his ears nailed, &c. 3. To be whipped at a cart's tail. 4. To be fined at 5000*l.* 5. To be perpetually imprisoned in Newgate." It was put to the question, first, Whether the said Floyd shall be whipped or no, which some lords doubted to yield unto, because he was a gentleman; yet it was agreed, *per plures*, that he shall be whipped.—Then it was put to the question, Whether Floyd's ears shall be nailed to the pillory or no; and agreed, *per plures*, not to be nailed.

#### Sentence of the Lords.

Then the form of the Sentence being read, it was put to the question, Whether those Punishments therein mentioned shall be inflicted on the said Floyd or no; and agreed unto generally. And he being brought to the bar again, Mr. Attorney General came to the clerk's table, and making a short repetition of Floyd's offence, prayed the lords to proceed to Judgment against him.

Whereupon the Lord Chief Justice pronounced the Sentence in these words: viz.

"The lords spiritual and temporal, considering of the great Offence of the said Edward Floyd, do award and adjudge: 1. That the said Edw. Floyd shall be incapable to bear arms as a gentleman; and that he shall be ever held an infamous person, and his testimony not to be taken in any court or cause. 2. That on Monday next, in the morning, he

shall be brought to Westminster-hall, and there to be set on horse back, with his face to the horse tail, holding the tail in his hand, with papers on his head and breast, declaring his offence, and so to ride to the pillory in Cheapside, and there to stand two hours on the pillory, and there to be branded with a letter K in his forehead. 3. To be whipped at a cart's tail, on the first day of the next terms, from the Fleet, to Westminster-hall, with papers on his head, declaring his offence, and then to stand on the pillory there two hours. 4. That he shall be fined to the king in 5000*l.* 5. That he shall be imprisoned in Newgate, during his life."

*Mem.* The clerk signed a warrant to the Serjeant at Arms, and the Warden of the Fleet, to see the Sentence executed; with a clause therein, for the sheriffs of London and Middlesex, and all other his majesty's officers to whom it might appertain, to be aiding, and assisting unto them. And *Mem.* That these Words were written in the Paper to be on Floyd's head, declaring his offence: viz. "Forguominous and despicable Words and malicious and scornful behaviour towards the Prince and princess Palatine, the king's only daughter, and their children."

Cambden tells us, That every part of this Sentence was executed on Floyd; but the Lords Journals assure us, That some days after on a motion from the Prince it was ordered, That the punishment of whipping, with all that belongs to it, to be inflicted upon Edward Floyd, be suspended and forborn, until the pleasure of the house be further known; the rest of the punishment to be executed according to the former order. It was also ordered, That, hereafter, when any Censure beyond imprisonment be agreed on, that judgment thereupon be not then given, but on another day, or sitting, that time may be taken to consider thereof.

121. Proceedings against GEORGE ABBOT,\* Archbishop of Canterbury, for the killing of Edward Hawkins, one of the Lord Zouch's Keepers: 19 JAMES I. A. D. 1621. [2 Collier's Eccl. Hist 720. Fuller's Ch. Hist. Book 10, Cent. Heylin's Life of Laud, 80. Hacket's Life of Williams, 66. Sir Henry Spelman's Remains.]

THE next summer, (1621,) archbishop Abbot being invited by lord Zouch to kill a buck at his Park at B. amzil, in Hampshire, met with a very calamitous accident, for shooting at a

deer with a cross bow, the keeper, coming up unwarily too forward, was struck with the arrow under the left arm, and died about an hour after.† The king informed of this misfortune,

\* James Howell in a letter to sir Thomas Savage, Nov. 9, 1622, writes, "Since that sad disaster which befel Archbishop Abbot, to kill the man by the glancing of an arrow as he was shooting at a deer (which kind of death befel one of our king's once in New Forest) there hath been a commission awarded to debate

whether upon this fact, whereby he hath shed human blood, he be not to be deprived of his archbishoprick; and pronounced irregular: some were against him; but bishop Andrews, and sir Henry Martin, stood stiffly for him, that in regard it was no spontaneous act, but a mere contingency, and that there is no degree of men

and apprehensive scandal might be given if the matter was passed over, resolved to have the case thoroughly examined.] To this purpose the following Letter was directed to the Lord Keeper Williams, the bishops of London, Winchester, Rochester, and the elects of St. Davids and Exeter, sir Henry Hobart, knight, Chief Justice of the Common Pleas, Mr. Justice Doddridge, of B. R. sir Henry Martin Dean of the Arches, and Mr. Dr. Steward, or any six of them, whereof the Lord Keeper (then bishop of Lincoln elect) the bishop of London, Winton, and St. David's elect, to befour.]]

‘ It is not unknown unto you what happened this last summer unfortunately to our right trusty, and our right well beloved counsellor the Lord Archbishop of Canterbury, who shooting at a deer with a cross bow in Bramail Park, did with that shoot casually give the keeper a wound whereof he died, which accident, though it might have happened to any other man, yet because his eminent rank and function in the Church hath (as we are informed) ministered occasion

but is subject to misfortunes and casualties, they declared positively that he was not to fall from his dignity or function, but should still remain a regular, and in *statu quo prius*. During this debate, he petitioned the king that he might be permitted to retire to his alms-house at Guildford where he was born, to pass the remainder of his life; but he is now come to be again *rectus in cursu*, absolutely quitted, and restored to all things: but for the wife of him who was killed, it was no misfortune to her, for he hath endowed herself, and her children with such an estate, that they say her husband could never have got.”

† No two of the authors cited relate the accident in the same way.

‡ Heylia and bishop Hacket both give a letter (which is also in the Cabala, p. 55.) expressing his opinion, that Abbot by this mischance, had become irregular and incurred forfeiture, and his desired hope that the king would shew him mercy.

¶ It is elsewhere stated “*quorum unum Mevensium, &c.*” It happened very unluckily, as it is expressed in an article in the British Museum, that there were four bishops elected but not consecrated, viz. Dr. John Williams, Lord Keeper of the Great Seal, to the see of Lincoln, Dr. John Davenant to that of Salisbury, Dr. Valentine Cary to that of Exeter, and his old antagonist Dr. Wm. Laud, whose preferment on this occasion he had warmly opposed, to that of St. David's; and all except Dr. Davenant scrupled the archbishop's capacity to lay hands on them till he was cleared from all imputation as to this fact. It seems not unlikely that this scrupulosity arose from a cautious apprehension, that the validity of their consecrations might afterwards be questioned if performed by a metropolitan who was irregular, or to whom any imputation or suspicion of irregularity might be reproached.

‘ of some doubts, as making the case different in his person in respect of the scandal, (as is supposed) we therefore, being desirous (as it is fit we should) to be satisfied therein, and reposing especial trust in your learning and judgment, have made choice of you to inform us concerning the nature of the ease: and do therefore require you to take it presently into your consideration, and the scandal that may have risen thereupon, and to certify us, what in your judgments the same may amount unto, either to an irregularity or otherwise, and lastly what means may be found to redress the same (if need be) of all which points, we shall expect to hear your reports with what diligence, and expedition, you possibly may. Dated at Theobalds, 3 Oct. 1621.’

To this Letter the bishops and others to whom the consideration of the Archbishop's Case was referred, returned their Answer in these words:

‘ May it please your majesty; Whereas we received a command from your majesty under your royal siget, to deliver our opinions unto your majesty, whether an irregularity or scandal might arise by this unfortunate act, which God permitted to come to pass by the hand of the most reverend Father in God, the Lord Archbishop of Canterbury, shooting in a cross-bow at a deer in Bramail Park: as also of the cure and remedy of the same irregularity. For the first; Whether any irregularity be contracted by this act, in the person of my Lord Archbishop or not? No greater part of our number could assent or agree, because the Canons and Decrees themselves are so general, and so ready to entertain distinctions and limitations, the doctors and glosses so differing, inferences and disputes so peculiar to every man's conceit and apprehension, authorities of canonists and casuists, so opposite in this very case in hand, that we could not return unto your majesty any unanimous resolution or opinion in the same. For the second; Whether any scandal may arise out of this act? We are of opinion a scandal may be taken by the weak at home, and the malicious abroad, though most of us believe there was no scandal given by the said right reverend father. For the third; We are all agreed not only that a restitution or dispensation may be granted by your majesty, either immediately under the great seal, or (which most of us in all humility represent unto your majesty) by the hands of some clergyman delegated by your majesty for that purpose, or what other way your majesty shall be pleased to extend that favour, but withal we are of opinion that it is most fitting for the said reverend father, both in regard of his person, and the honour of the church, to sue unto your most gracious majesty for the said Dispensation in *majorum cautelam si qua forte sit irregularitas*. All which, craving pardon for our weakness, we do in all humbleness submit to the decision of your majesty's most profound and incomparable wisdom.”

Jo. Linc. elect, C. S.; Geo. London.; La. Winton.; \* Jo. Roffens.; Guil. Meneveus. elect; Valen. Exon. elect; Henr. Hubart, Jo. Doddridge, H. Marten, Ny. Stewarde."

The Archbishop governed by this advice, and applying to the king, his majesty directed a Commission to the bishop of Lincoln, lord keeper, to the bishops of London, Winchester, Norwich, Coventry, and Litchfield, to the bishop of Bath and Wells, Ely and Chichester, empowering them or any six of them, of which the bishops of Lincoln, London, Winchester and Norwich were to be of the quorum, to dispense with any irregularity, in case the late accident had drawn any such blemish or imputation upon the Archbishop. By this Instrument the canons, in case there was need, were over-ruled and dispensed with, the force of Abbot's character is revived, and he is fully restored to the exercises of his function. This is a wonderful relief from the crown; and supposes a patriarchal at least, if not a papal authority vested in the king. The Record lays the death of the Keeper upon his own rashness and want of care, makes the homicide perfectly casual, that the Archbishop was in no degree to blame for the misfortune: and that this requesting his majesty for a dispensation was only *ad cautelam ex superabundantiis*. And that the reader may better remark how far the dispensation reaches, he may please to observe, that irregularity lays the sacerdotal powers as it were asleep, forfeits all preferments, and makes the person incapable of any for the future.

To return: Besides the favourable report of the Archbishop's case in the commission, there was a learned Apology† drawn up for him. The author proves hunting for health allowed clergymen. This point he makes good from several authorities, and disables some objections from the canon law. From hence he advances to prove that casual homicide sticks no blemish,

\* Heylin, in his life of Laud, ascribes the inclination of bishop Andrews (between whom and Abbot there had been some disgust) towards the protection of Abbot, to two motives, 1st, an unwillingness too rigidly to construe the canons, lest afterwards a rigid construction of those canons might hurt himself or his brethren. 2d, An apprehension that if Abbot should be deprived Williams would succeed him, who Andrews thought would make a dangerous head of the church. In other respects all the historians agree that Andrews was no friend to Abbot. Of sir Henry Martin, Heylin says that he had received his offices and preferments from Abbot, and so was bound by gratitude to maintain his cause. He farther observes that it required not the gift of prophecy to foretel that Williams would be a dangerous head to the church. He was in 1641 the contriver of the injudicious and mischievous protestation of the bishops, and of their secession from parliament.

† This Apology and the Answer to it are inserted at the end of this Case.

nor incurs any irregularity, where the person committing it was engaged in no unlawful business or recreation, and took all necessary precaution to guard against accidents. That all this might be fairly pleaded in behalf of the Archbishop, is not only taken for granted in the Dispensation, but farther made out by this Apologist.\* For the purpose, he takes notice that the canon *de clerico venatore*, cited in the Decretum against the Archbishop, has a mark of censure and unauthenticness put upon it by Gratian: he brings the gloss for evidence, that whereas this canon is cited out of the 4th Council of Orleans, there is no such thing there to be found. Thirdly, the pretended canon is levelled only against *clamosa venatio*, but *quieta* or *modesta* is allowed by the canonists. Now this latter was the recreation in which the misfortune happened at Bramzil, as may be seen in the dispensing instrument. The Apologist reinforces his argument by observing that by 35 H. 8. cap. 16, no canon is in force in England, which clashes with the laws and statutes of this realm or the prerogative royal; and that the canon urged against Abbot is of this nature. For by Charta de Foresta, archbishops and bishops have express liberty to hunt; and that from 13 R. 2, cap. 13, it follows by necessary implication, that a clergyman who has 10*l.* per annum or upwards, may keep greyhounds or hounds to hunt. And to mention nothing farther from him, he argues, that Lindwood who was very well skilled in the English ecclesiastical constitutions, condemns only the excesses of hunting in clergymen, and the undue application of that liberty, but does no where pronounce it as absolutely unlawful for their profession: After this he gives several instances of bishops who have used this diversion without censure or imputation.

And, lastly, the famous sir Edward Coke, upon the question being put to him by sir Henry Saville, Whether a bishop may hunt in a part by the laws of the realm? answered affirmatively in these words: 'He may hunt by the laws of the realm, by this very token, that there is an old law, that a bishop when dying is to leave his pack of dogs (called *muta canum*, i. e. *muti de chiens*) to the king's free use and disposal.'

To this Apology there is an Answer returned, as it is said by sir Henry Spelman, but this discourse looks strained, and discovers something of a prosecuting humour, and I cannot help saying it falls short of that strength and candour customary to this learned gentleman, and therefore, being a posthumous work, I would willingly believe some part of it at least was the work of another hand.

But, notwithstanding the Archbishop's recreation, and his precaution against misfortune, was defensible, yet his being excused the forms of

\* Lord Coke 3 Inst. cap. 73. p. 309. All canons against the laws or customs of the realm are void and of none effect.

† See Acc. 3d. Inst. 308, 339; and the very ancient authorities there cited.

law, and not brought to a trial for this casual homicide, was something remarkable. His being thus screened from customary prosecution, is, I suppose, owing to the protection of the Dispensation above mentioned.

AN APOLOGY for Archbishop Abbot; touching the Death of Peter Hawkins the Keeper, wounded in the Park at Bramsall, July 24, 1621.

1. It is certain that *in foro conscientie*, this case may not only deservedly produce a fear and trembling in him who was the accidental cause thereof; but may justly make the tallest cedar in Lebanon to shake, in recounting with his inward man, what sin it is that hath provoked God to permit such a rare and unusual action to fall out by his hand: which maketh him, for the time, to be *fabula vulgi*, and giveth opportunity to the enemies of religion of all kinds, to rejoice, to speak their pleasure, to fill their books and libels, within the realm, and perhaps, beyond the seas. And that, concerning his calling as well as his person, not only for the present, but also in future ages; beside grief to his friends, and some scandal to the weak, who do not rightly apprehend things, but raise questions which few men can resolve. To all which may be added, the interpretation of it by his majesty, graciously or otherwise; and the forfeiture, that in rigorous construction of law may be put upon him, although held for no great delinquent; besides the providing for a widow and four fatherless children. All which may pierce a heart that is not senseless; and day and night yield him matter enough of troubled meditations.

2. And yet, lest he that intended no ill (much less to that person, a poor man and a stranger to him) should be swallowed up with sorrow; he is not devoid of some comfort, as that *consensus facit peccatum*, and *voluntas facit reatum*; and where those concur not, misdemeanours are properly *contra nullum decalogi præceptum*. And that when God, speaking of such casual death (Exod. 21. 13.) useth these words, 'If a man lie not in wait, but God deliver him (the slain man) into his hands; divines collect thereupon, that it is not *humanum* but *à Deo*, which no man's providence can absolutely prevent. For what God will have done, shall be; and no creature way dare to set him to school in what manner, or by what person he will have it performed. And Deuteronom. xix. 6, 10. God putting the case of the man slain by the iron of his neighbour's ax slipping off, appointeth cities of refuge, lest he should be slain also; who (as he saith) was not worthy of death: and again, that *innarius sanguis*, innocent blood be not shed in the land. Where we may collect, that such cases are foreseen and ordered by God himself; and that no calling, no not that of the priest, is free from that which God will have accomplished; since he must *communem hominum subire sortem*. *Homo sum, humani nihil à me alienum puto*. And, *Quod cuique contingere potest,*

*cuius potest*; although of all others, the priest should be most wary, what he attempt and how.

3. There is no text in the Old Testament which directly distinguisheth the priest from other men, in case of blood; but there are examples (which may not be applyed to evil, for that were to pervert them) resolving one scruple which is made. As Moses was no priest, yet he gave down the law; and he consecrated Aaron the high-priest, notwithstanding the time was that he had killed the Egyptian. The Levites slew 3000 of the Israelites, after the idolatry with the golden calf. Phineas, who was afterwards the high-priest, slew the Israelitish man with the Midianitish woman, and was blessed by God for it. Samuel hewed Agag to pieces. Jehoiaha the priest commanded Athaliah the usurper to be slain. The Muchabees fought for their country; and so took away the lives of many a man. Paul was consenting to the death of Stephen. Peter, although rebuked for it, cut off the ear of Malchus. Josephus the Jew, of the seed of the priests, was captain over Judah, and fought divers times. Out of all which, I do only make this collection; that the priest's restraint from blood, is not *ex jure divino*, but *ex jure positivo*; *Pontificio scilicet vel Canonico, or Ecclesiastico*, as we call it; out of caution, for purity and decency, and good congruity for so holy a calling, which cometh so near God, and attendeth at his altar.

4. See then in the ecclesiastical law, what grace is afforded to him, who against his will, hath casually been the death of another. There is in the decretals, a title *De Homicidio Voluntario vel Casuali*: concerning the latter of which, there be many rescripts; which demonstrateth, that in human life such things do frequently fall out. In these, there are five chapters, *Cap. Lator*: *Cap. Dilectis filiis*: *Cap. Ex Litteris*: *Cap. Ex Litteris tue*: *Cap. Johannes*: where the Rubrick is, 'Homicidium casuale non imputatur ei qui non fuit in culpa;' and 'Homicidium casuale non imputatur ei qui dedit operam rei licite, nec fuit in culpa.' And there the decision is evermore, that there is no irregularity 'in promovendo,' or 'in promotio ad sacros ordines.'

This is the more to be noted, because it is not the interpreters, but the body of the law. And the gloss thereupon hath; 'Nota, quod homicidium casu commissum, culpa non præcedente non est imputandum.' And, 'Sibi imputari non debet, quia fortuitos casus, qui prævideri non possunt, non prævidit.' And, 'De casu fortuito nullus tenetur, cum prævidere non possit.' And upon this the stream of the Canonists do run, as by a multitude of books may be shewed: with whom our Bracton, a great civilian and common lawyer too; 'Homicidium casuale non imputatur.'

5. The two heads whereto the law looketh, freeing a man from blame, and expressly from irregularity, are; that the person by whom the action is performed, do not *dare operam rei*,



*illicite*, and that he use diligence of his part that no hurt be committed. Azorius the Jesuite saith, 'Irregularitas, cum ob delictum constituitur, non nisi ex lethali peccato contrahitur: nisi ex homicidio fiat quis irregularis, eo quod det operam rei vetite et interdictæ; nam tunc quamvis homicidium causa sequatur, ob culpam nostram levem vel levissimam, multum est opinio irregularitatem contrahi.' And Ivo in his canons, some hundreds of years before him; 'Si quo fratres in sylva arbores acciderint, et appropinquante causa unius arboris, frater fratri dixerit Cave, et ille fugiens, in pressera arboris inciderit, ac mortuus fuerit, vivens frater innocens de sanguine germani dijudicatur.' Now, the case at Bramsil, is within the compass of these two conditions. For the party agent, was about no unlawful work: for what he did, was in the day, in the presence of forty or fifty persons, the lord Zouch, who was owner of the park, not standing by, but inviting to hunt and shoot; and all persons in the field were called upon to stand far off, partly for avoiding harm, and partly lest they should disturb the game; and all in the field performed what was desired. And this course did the lord archbishop use to take, when or wheresoever he did shoot; as all persons at any time present can witness: never any man being more solicitous than he evermore was. And the morning when the deed was done, the keeper was twice warned to stay behind, and not to run forward; but he carelessly did otherwise, when he that shot could take no notice of his galloping in before the bow; as may be seen by the verdict of the coroner's inquest.

6. This case at Bramsil is so favourable; that the strictest writers of these times, directly conclude, that if a clergy-man committing *cassate homicidium* be about a forbidden and interdicted act, yet he is not irregular. if the interdicted act be not therefore forbidden, because it may draw on homicide. And thereupon, inasmuch as hunting is forbidden in a clergy-man, not in respect of danger of life, but for decency, that he should not spend his time in exercises which may hinder him from the study fit for his calling, or for other such reasons; irregularity followeth not thereupon. And to this purpose, writeth at large Soto, Covarravias, and Suarez, who are great canonists and schoolmen. And if this be true, (as out of great reason it may be so held) how much further is the present case in question from irregularitie.

7. But some go directly to the point, and say, that the lord archbishop did *negare operam rei illicite*, because he was on hunting; for that was interdicted to a bishop by the canon *De Clerico Venatore*; and so by a consequent he must needs be irregular. To which objection, see how many clear and true answers there be. As first that the canon being taken out of the decrees, is by Gratian himself branded to be *pala*, no better than chaff. Secondly, it is cited out of the fourth council

of Orleans; and there is no such thing to be found, as the gloss well observeth. Thirdly, it forbiddeth hunting *cum canibus aut accipitribus*; and none of these were at Bramsil. And if you will enforce it by comparison or proportion, the rule of the law is, 'Favores sunt ampliandi, odia restringenda:' where mark, when hunting with dogs or hawks is forbidden, it is not for fear of slaughter, for there is no such danger in either of them. Fourthly, the canon forbiddeth hunting *obseptatis causa*, but not *recreationis* or *vulneribus gratis*, which the books say is permitted *etiam episcopo*. Fifthly, the canon hath, 'Si suppius dentatus fuerit,' if he make a life or occupation of it; which the world knoweth, is not the archbishop's case, but a little one time in the year, directed so by his physician, to avoid two diseases, whereunto he is subject, the stone and the goat. Sixthly, it is *clamor venantis* against which the canon speaketh, not *quies* or *modestia*, which the canonists allow; and this whereof the question ariseth, was most silent and quiet; saving that this accident, by the keeper's unadvised running in, hacht afterwards made a noise over all the country.

8. These exceptions, as they naturally and without any enforcing, give answer to this objection of the canon; so there is another thing that may stop the mouth of all gainers; if any reason will content them. And that is, that by the stat. of Hen. 8, 35. ca. 16, no canon is in force in England, which was not in use before that time, or is not contrary or derogatory to the laws or statutes of this realm, nor to the prerogatives of the royal crown: of which nature this is. For in *Charta de Foresta*, archbishops and bishops by name have liberty to hunt: and 13 Rich. 2, cap. 13, a clergy-man who hath 10*l.* by the year, may keep grey-hounds to hunt. And Linwood, who lived soon after that time, and understood the ecclesiastical constitutions and the laws of England very well, in treating of hunting, speaketh against clergy-men using that exercise unlawfully; us in places restrained or forbidden; but hath not one word against hunting simply. And the arch-bishop of Canterbury had formerly more than twenty parks and chases of his own, to use at his pleasure; and now by charter hath freewarren in all his lands. And by ancient record, the bishop of Rochester, at his death, was to render to the arch-bishop of Caunterbury his kennel of hounds as a mortuary, whereof (as I am credibly informed) the law taketh notice for the king *sede vacante*, under the name of *muta canum* and *muttura*. To this may be added, the perpetuated use of hunting by bishops in their parks, continued to this day without scruple or question. As that most reverend man the lord arch-bishop Whiggysse used in Hartlebury-park while he lived at Worcester; in Ford-park in Kent; in the park of the lord Cobham, near Caunterbury; where by the favour of that lord, he killed twenty bucks in one journey; using hounds, grey-hounds, or his bow, at his pleasure, al-

though he never shot well. And the same is credibly reported of the lord arch-bishop Sandes. And it is most true, that the deans and chapter of Winchester use it as they please in their franchise. To say nothing of Dr. Renard, whose hounds were long famous throughout all England; and yet he was by profession a canonist; and knew well what induced irregularity.

I will add two things more, which directly appertain to the arch-bishop of Canterbury. The one is the famous record, that at the coronation of queen Eleanor, wife to Hen. 3. the earl of Arundel (who was by his place cup-bearer for that day) was enforced to serve by a deputy, because he was excommunicated by the archbishop, for taking up his hounds coming into the earl's grounds to hunt; where the archbishop pleaded and alledged that it was lawful for him to hunt within any forest of England, whensoever he would. The other, is that which is written of archbishop Cranmer, in his life; where I will cite the very words: *Permisserat ei pater aucupium, venationem, equitationem, &c. Quibus quidem, cum jam archiepiscopus relaxare animum et abducere se à rebus gravius vellet, ita utebatur, ut in famulatu suo non fuerit quisquam qui in generosum equum salire ac tractare elegantius, aut aves ferasque aucupio aut venatione inaequi commodius intelligentisque potuisset: saepe etiam, etsi oculis infirmis esset, arcum tendens, sagitta percussit feram.* Out of all which, and many more records and cases that are to be shewed, the conclusion is clear, that howsoever the canon may touch bishops and clergymen beyond the seas, it meddleth not with the bishops of England, who by favour of princes and the state have baronies annexed to their sees. So that it doth arise out of true collection from these heads, that there is no danger of irregularity in the lord archbishop's case, either toward himself or other men. His majesty's princely grace giveth an end to all; and this he most humbly craveth. For other things, God being appeased (as he hopeth that he is) he dreadeth not the tongue or pen of any enemy: among whom, the popes and cardinals have wilfully committed many poisonings, murders, and outrageous acts; and yet they must believe that they are the head and chiefest members of the church.

An ANSWER to the foregoing Apology for Archbishop Abbot; By Sir Henry Spelman, kt.

TOUCHING the first, second, and third sections: It may be that the priests in the old law, whose ministry was altogether in blood, were not prohibited but that upon just occasion they might shed even the blood of man as well as of beasts; and put on an armour as well as an ephod. For the tabernacle was covered with red skins, to signify *'cruentum seculum, cruentum ministerium'*: and Moses, whose hands were dypt in blood, was not forbidden to be the chief founder thereof. But when the temple

came to be built, which was the image of the church of Christ, then the hands of David, though they had fought the battles of God, yet because they were seasoned with blood, they might not lay one stone in that foundation. Therefore, when the old law and this bloody priesthood were grown to an end, and going out of the world, and that the priests of the gospel were entering in their room into the world; our Saviour commanded Peter to put up his sword; for now, *'arma horrentia Martis rejicienda'*; and *'stola candida induenda fuit.'* Though then some priests in the old law and many thousand Levites were martialmen, yet for many hundred years in the time of the gospel, I read not of any: insomuch, that the succeeding ages desiring a martial saint, were driven to suppose St. George. Whether therefore these laws of the church, which at this day prohibit clergymen to meddle with matters of blood, be merely *ex jure positivo*, or *ex divino mixto*, I leave it to the determination of the reverend divines.

4. Concerning the cases alledged out of the decretals: it is true that the rubrick is, *'Homicidium casuale non imputatur ei qui non fuit in culpa'*; and *'Homicidium casuale non imputatur ei qui dedit operam rei licitæ, nec fuit in culpa.'* And so likewise, is that alledged out of the gloss thereupon, and out of Bracton. But let us parallel the case in these with them, which are as followeth.

A and P two clerks sporting together, A by chance threw P down, who having a knife by his side, the same happened to wound A that he died. Pope Alexander 3. commanded the bishop of Exeter in this case to admit P to holy orders; for sporting was lawful.

A sickly chaplain being gotten upon an unruly horse, and he checking him with bridle and spur to stay him, the horse brake his bridle, cast his master, and running over a woman coming by, killed a child in her arms! This chaplain was admitted to holy orders, for that neither in will nor act he committed homicide, but also did a lawful act.

One being to unlade a cart of hay, looked round about to see if any were near, and seeing none, threw a stack off the cart, and having unladed it, a boy was after found dead with a little stripe in his face. This priest after canonical purgation was admitted to his place.

A monk helping to take a bell down out of a steeple, casually thrust down a piece of timber, which bruised a boy to death. The monk is judged not incapable of further ecclesiastical preferment, for that the business was necessary, and the place not for ordinary resort.

A priest tolling a bell to prayers, the same fell and killed a boy. The bishop is commanded to suffer the priest to execute his function, for *'Nihil potuit imputari, si casus omnes fortuitos non prævidit.'*

Though there be many points in all these cases, and more in some than others, to excuse the parties agent; yet will I meddle only with those two which are most eminent, and offered



canon either *supposititium* or *paleam*; but rather to be, as it is indeed, *valde*, *antiquum*, or *ex antiquis*. According to which sense, the canons of like nature in the laws of the Wisigoths or Western-Goths are in every passage intitled by the very Latin word, not the Greek, *antiqua*. And Justinian himself seemeth to have had this distinction in his eye, when he called his later constitutions *Novæ*, i. e. *novellas*, that so they might be marked from those of old, which Cedrinus in Justinian's life calleth *res valde vetus, leges antiquas*.

His second objection is, That it is cited out of the fourth council of Orleans, and it is not there. This we have already answered, and shewed where it is.

Thirdly, he saith it forbiddeth hunting *cum canibus et accipitribus*, and none of these were there. It is strange, a keeper should go about to strike a deer, and not have his lime-hound to draw after him. But the canon goeth further, 'Canes ad venandum, aut accipitres, aut hujusmodi res habere non licet.' Where 'hujusmodi res,' seemeth to contain all instruments used in hunting.

Fourthly, *voluptatis causa*; not *recreationis* or *valetudinis*, which the books say is permitted *etiam episcopo*. What his books say, I know not; but my book saith thus: 'Dic breviter, quod venari causa voluptatis est mortale peccatum, et in laico; sed venari causa necessitatis vel indigentie corporis non est mortale peccatum; in clerico tamen potius prohibetur.' But he adjoineth, 'In venatione, potius delectatio quam actus attenditur.' Atho. in Othob. fol. 114, b. Neither is there here any mention of *recreatio*, unless *delectatio* and it be all one; as commonly we use it, and then forbidden. Besides, what action or recreation belonging to health is there, in letting off a cross-bow; wherein neither bend, hand, nor foot, no, not the nimblest member of the body, the eye, stirreth all that while.

Fifthly, the canon hath, 'Si sæpius detentus fuerit,' if he make a life or occupation of it, 'which his lordship did not.' Burchard saith *detectus*, and with more reason: and I suppose his lordship useth it very temperately: yet the apologist in his fifth section insinuateth, that his lordship doth it often.

Sixthly, whereas he saith that the canon speaketh against *clamosa venatio*, not *quieta* or *modesta*; I find no such word or distinction in the canon; yet is there no doubt, that if the deer be not killed out of hand; but in recovering him, there must be both *clamor* and *venatio*.

Thus he counteth the mouth of the canon to be stopt. Yet because it is good to make sure work with so dangerous an object, now he setteth law upon law, the common against the canon or at least the statute, which indeed hath cracked a great sort of canons. 'That by the statute of Henry 8, 35, ca. 16. No canon is in force in England, which was not in use, or is contrary or derogatory to the laws or statutes of this realm; or to the prerogatives of the royal crown.' Of which sort (he saith)

this is one, and gives his reasons: for in Charta de Foresta arch-bishops and bishops by name have liberty to hunt: and 13 Ric. 2, ca. 13. 'A clergy-man who hath 10*l.* by the year, may keep grey-hounds to hunt.'

The name of Charta de Foresta (and also of hunting,) is, 'Claro lachrimabile nomen.' For the first breach that ever was made into the freedom of clergy-men, and which gave passage to all that followed, rose from the occasion of clergy-mens hunting in forests: which Henry 2, greatly discontented with, never rested, till by assent of the pope's legate Hugo Petroliconis, he obtained a law in the 21st year of his reign, A. D. 1157, to convent them therefore before secular judges, and there to punish them.

But to our purpose: There is no contradiction (as I take it) between the canon de Clerico Venatore, and Charta or Statutum de Foresta. The canon doth say, they shall not hunt; and the statute doth not say they shall. The words of the statute, ca. 17, are thus: 'An arch-bishop, bishop, earl, or baron coming to us upon our command and passing through our forest,' 'Licent ei capere unam bestiam vel duas, per visum forestarii, si præsens fuerit; sin autem, faciat cornare, ne videatur furtum facere.' Here is no word of hunting; but that they may take a deer; and this they will say cannot be but either with dogs or engine, and so consequently by hunting. But the very words of Charta de Foresta seem to shew, that it was not meant, the bishop should be an huntsman, for that it admitteth him not to have so much skill in hunting as to wind an horn, though that by no law or canon be forbidden to him. And therefore saith not *corniat ipse*, but *faciat corniare*, let him cause an horn to be blown, &c. I conceive the meaning to be, that the bishops and barons shall each of them take as they may; the barons by hunting (if they will) in their own persons; the bishops as they may, by the hands of their officers and servants. It is a common phrase in all old Charters, that the bishops shall have Sac and Soc, Toll and Team, &c. i. e. cognisance of plea, suit of court, toll, and such other customs: shall we intend, that he must take these in his own person? No; it was not Henry 3d's meaning, when he granted the charter of the forest, to break the laws of the church: for at the same time in Magna Charta, ca. 1, he granteth, that the church shall have 'Omnia jura sua intacta et libertates suas illæsas;' which could not possibly be, if by his charter he changed the canons of the church, especially in matters of doctrine and conscience: as, when the church teacheth that a clerk may not be a huntsman, for him to say that he shall be. Doubtless, if he would, the clergy would not then accept it.

In the person of a bishop there be three distinct faculties: his spiritual function, wherein he is a bishop; his legal ability, wherein he is a lay-man and hath liberty to contract, &c. and his temporal dignity, wherein he is a baron and peer of the realm, and participateth their privi-

ledges. I could put cases wherein every of these may be seen severed from the other; but I should then wander from my matter. Only, I present them thus anatomized, that it may appear what portion the church had in them, what the common-wealth, and what the king; that so it may also the better appear how the laws both of the church and kingdom are to be applied unto them respectively.

When therefore the king granted temporal lands unto them; though they took them as lay-barons, and in their temporal capacity, yet might they not otherwise use them than might stand with their spiritual function: no more than when he granted ecclesiastical possessions to a lay-man, the grantee might otherwise use them than as a lay-man. For example; it was a common thing in old time, that the king granted churches to lay-men, by the name of Ecclesiam de Dale and Ecclesiam de Sale; yet it was never intended that the grantee, though he had the churches to order and dispose, should (contrary to his vocation) meddle with the divine service, but present his clerk only. So in like manner, when the king granted to clergy-men, chaces, parks, and warrens; it was not intended that, contrary to the rules of their profession and laws of the church, they should or might become hunters and foresters.

My long stay upon this point, is a preparative to an answer to the next, which is the statute of Ric. 2, being in the negative, 'That no priest nor other clerk, not advanced to 10*l.* a year, shall have or keep any greyhound, nor other dog to hunt; nor they shall not use ferrets, haves, nets, hare-pipes, nor cords, nor other engines, for to take and destroy deer, hares, nor cones, &c. upon pain of one year's imprisonment.' The statute, I say, is in the negative, and saith that none under 10*l.* a year shall keep; but saith not in the affirmative, that it shall be lawful for them that have 10*l.* a year to keep, &c. I should therefore think, that this statute doth not discharge a priest, having 10*l.* a year using hunting, against the canon-law: no more than the statute of Usury, forbidding a man to take above 10*l.* loan for an 100*l.*, giveth him liberty to take that 10*l.* or doth discharge him against the canons of Usury.

Touching his inference, that Linwood speaketh not one word against hunting simply by clergy-men, but against their using it in places restrained; it is true, for the text of the canon led him no further; being only 'De Clerico, de transgressione Forestæ aut parci alijus diffamato,' and made to no other intent than to aggravate the censure of the ecclesiastical law, which before was not sharp enough against offenders in that kind. But Johannes de Athon, as great a canonist and somewhat elder, when Linwood often citeth and relieth upon as one well understanding the ecclesiastical constitutions and the laws of England, hath apparently condemned it in the place by me recited. Yet is it to be noted, that neither Athon nor Linwood intended to gloss upon all the

constitutions of the church of England; but Athon only upon those of Otho and Othobon; and Linwood, beginning where Athon left, upon those of Stephen arch-bishop of Canterbury and his successors. There are therefore a great number of canons and constitutions of the church of England, which neither of these canonists have either meddled with or so much as touched: as also there be many statutes in force, which are no where mentioned in any of the abridgements. But Jo. de Burgo (another English canonist and chancellor of Cambridge, who wrote in Richard 2d's time) taketh notice of this canon, and that hunting was thereby forbidden to our clergy-men, as appeareth in his *Pupilla Oculi*, part. 7. ca. 10, m.

To go on. The Apology saith, 'That the arch-bishop of Canterbury had formerly more than twenty parks and chases, to use at his pleasure, and by charter hath free-warren in all his lands.'

*Habuisse, lugubre*: it seemeth the wisdom of the latter times, the more pity, dissented from the former; yet did not the former approve that bishops should use them at their pleasure, but as the laws and canons of the church permitted. For as they had many parks and warrens; so had they many castles and fortresses, and might for their safety dwell in them: but as they might not be soldiers in the one, so might they not be hunt-men in the other. In like sort, the abbot and monks of St. Alban's (as Mat. Paris reporteth the case, in an. 1240, pa. 205.) had free-warren at St. Alban's, &c. by grant of the kings, and recovered damages against many that entered into the same and hunted; for the having of it was lawful, as appeareth in the Clementines *Tit. de Statu Monast. § Porro à Venatoribus*. But it is there expressly forbidden, that either they should hunt in it themselves, or be present when others do hunt, or that they should keep, 'Canes venaticos aut infra monasteria sedomus quas inhabitant, aut eorum clausuras, pa. 207.' Radulphus de Diceto in an. 1189, saith, that the bishops of that time affected to get into their hands 'Comitatus, vice-comitatus, vel castellarias,' Counties, sheriffwicks, and constable-ships of castles; but shall we think they either did or might use them in their own persons, us with banners displayed to lead forth the soldiers of their county, or with sword and target to defend the walls of their castles, or with a white wand to collect the king's revenues, &c. It is true, that Walter, bishop of Durham, having bought the county of Northumberland of William the conqueror, would needs sit himself in the county-court; but he paid dearly for it; for his country-men furiously slew him, even sitting there. Mat. Paris in an. 1075. So Hugh bi-hop of Coventry exercised the sheriff's place, but was excommunicate for it, as 'contra dignitatem episc.' and so acknowledged his error. Dicet. in an. 1190.

But every one will say, it was a common thing in old time for bishops to be judges in secular courts. I confess it; and think it godly

and lawful as it was used at the first. For the bishop and the earl sat together in the county court: the bishop as chancellor, to deliver *Dei rectum* and *populum docere*; the earl as secular judge, to deliver *rectum seculi* and *populum coercere*; as is manifest by the laws of king Edgar and others. But when the bishops began to supply both places, and to be meer judges of secular courts, then were they prohibited by many canons. And therefore Roger bishop of Salisbury being importuned by the king to be his justice; would by no means accept it, till he had obtained dispensation, not only from his metropolitan the archbishop of Canterbury, but from the pope himself, as Dicitur affirmeth in an. 1190, and no doubt but others of wisdom did the like. In those things therefore that bishops did against canons, we must take no example to follow them: for though their public actions be manifest, yet their dispensations and matter of excuse is for the most part secret. Neither doth every thing done against a canon produce irregularity, if some criminous mischance follow not thereon.

For the record that relateth that the bishop of Rochester was at his death to render to the archbishop of Canterbury his kennel of hounds as a mortuary, and that the law takes notice of it for the king *sede vacante*, under the name of *muta canum* and *multura*: I must (as they say in the law) demand Oyer of the record; we shall otherwise spend many words in vain. But that dogs should be given for a mortuary is against all likelihood. For a mortuary, is as an offering given (by him that dieth) unto the church, in recompence of his tithes forgotten; and it is a plain text, Deuter. xxviii. 18. 'Non offeres mercedem prostibuli, nec pretium canis in domo Domini.' But if there be no other word to signify a kennel of hounds, than *muta canum* and *multura*, the exposition may be doubtful, though it come somewhat near it. Freder. 2. emp. in the prologue to his second book de Venatione, speaking of an hawk-mue, saith, *Domicula quæ dicitur muta*; following the Italian vulgar, which cometh á *mutando*, because the hawk doth there change her coat. And for the affinity between dogs and hawks, it may be ~~not~~ transferred to a dog-kennel; and whether to the hounds themselves or no, it is not much material. For, no doubt, they that may have parks and warrens, may have dogs and hounds for hunting: but every body that may have hounds may not use them themselves, as appeareth by that which I said before out of the Clementines, and by the opinion of justice Brudnel, with the rest of the judges, 12 Hen. 8, fol. 5. where it is said, a man may keep hounds notwithstanding the statute of 13 R. 2, but he must not hunt; as he may keep apparel of cloth of gold, notwithstanding the statute of apparel, but he must not wear it. Besides, religious persons in ancient times were driven to have dog-kennels for the king's hounds: for Rad. Niger in an. . . . . saith, that king Henry 2, 'Abbatem, hypodromos et canum custodes fecit.'

After all this, his lordship is defended with

the perpetual use of hunting by bishops in their parks; and by the particular examples of some eminent men his predecessors, and others. This point of use and example I have in a manner answered before; speaking, as it fell in my way, of bishops being secular judges. One line serveth to level at them both: yet for further and more perspicuous resolution of the matter, see both the example and the use censured in the decret. 34. distinct. ca. 1. by pope Nicholas, ad Albinum archiepisc. alias Aluinum. 'Quemadmodum relatione fidelium nostris auribus intimatum est, quod Lanfredus episcopus, qui et juvenis esse dicitur, venationi sit deditus; quod vitium plurimos etiam de clericali catalogo, genere duntaxat Germanos et Gallos irreverenter implicat, verum iste (si ita est ut audivimus) merito juvenis dicitur, qui juvenilibus desideriis occupatus, nulla gravitate constringitur.' Et infra: 'Nam (ut Beatus dicit Hieronymus) Venatorem nunquam legimus sanctum.' Then blaming him also for being too familiar with his daughter, he saith, 'Oportet ergo fraternitatem tuam synodale cum episcopis et suffraganeis tuis convocare concilium, et hunc salutis tuis colloquiis episcopum convenire, atque illi pastoralis auctoritate precipere quatenus ab omnium bestiarum vel volucrum venatione penitus alienus existat: or (in short) to excommunicate him.

Here he sheweth hunting to be used both by a bishop and by a multitude of clerks, (*plurimos*.) But neither the person and dignity of the one, nor the multitude nor frequent use in the other, maketh the pope to abstain from condemning it. Howbeit, they whose example the Apologist alledgeth, little respected (as I think) the whole volume of canons.

Touching the record of the earl of Arundel's excommunication for taking up the archbishop of Canterbury's hounds coming into the earl's grounds to hunt; and the archbishop's pleading that it was lawful for him to hunt in any forest of England whensoever he would, we must (as we before said) pray Oyer of the record; for *parola font plea*, and their certainty appears not here, nor what became of the issue: which, though it fell out to be found for the archbishop, yet perhaps it discharged him not against the canon. And well might he be as bold with the canon, as he was with the law. For it is directly against the law both of England and France, to excommunicate a peer of the realm without the king's assent: and therefore Henry 3 was sore offended with the archbishop for this excommunication: (and the bishops of London and Norwich were called in question for the like in Henry the second's time; as Matthew Paris reporteth, p. 99.) But because his case aways the cause to the ground; I must dwell a little the longer upon it, to shew what became of it. The truth is, it was ended by compromise in the chapel at Slyndon upon Friday after the circumcision of our Lord, 1256, that is, 43 Hen. 3; in this manner: 'quod idem archiepiscopus et successores sui semel in quolibet anno et non plus, cum transierint per dictam forestam

‘(i. e. de Arundel) cum una lesia de sex leporaris sine aliis canibus et sine arcu habeant unum cursum in eundo et alium in redeundo; ita quod si capiant unam feram, illam habebunt; si nihil capiant in illo cursu, nihil habebunt. Si vero capiant plus quam unam feram, archiepiscopi qui pro tempore fuerint, habeant quam elegerint, et residuum habeant dictus Dominus Johannes et heredes ejus,’ &c. Then is it further awarded, that the said earl, his heirs, and assigns, shall yearly for ever pay unto the said archbishop and his successors, 13 bucks and 13 does, (*capias de jermysun* as the record saith) at times there appointed. And then followeth this close, which maketh all plain; ‘Et licet ista expresse inter partes de præcepto et ordinatione dictorum arbitratorum, quod dictæ partes procurabunt confirmationem domini papæ et domini regis super præsentis confirmatione.’

By this record it appeareth, that neither the earl could make this grant without licence from the king, (for that all forests are the king's, and no subject can have them otherwise than in custody) nor the archbishop could safely use the privilege of hunting without dispensation from the pope: and though I yet find not where the one was obtained from the pope, yet I find where the other was granted from the king; and namely from Edward the first in the 2nd year of his reign; where all the award and composition beforesaid, is (by way of *inseximus*) recited and confirmed. But the composition for the bucks and does, was after in Edward the third's time released by the archbishop Simon Islip, having taken for the same 240 marks; as witness *Antiqq. Britann. ca. 55.*

And it seemeth further by this record, that the archbishops of Canterbury had not at that time dispensation from the pope, to hunt where they liked in any forest of England; for then should he not have needed special dispensation in this case. But howsoever the dispensation or confirmation was hereupon obtained; it is apparent that it stretched no further than to hunt with grey-hounds; for the bow is expressly forbidden and excepted.

It may be, some will extend the word confirmation, to be meant of some right of hunting, which the arch-bishop (upon this arbitrement) was to disinherit his church of: which I leave to the judgment of lawyers. For it may contain both; though I never saw any precedent of the popes in that kind for so small a matter: but of the other kind, we have before made mention of one to Roger bishop of Salisbury, and a multitude of others are to be produced.

Again, if they have a dispensation for hunting, yet it hath some limitation either for the place or the manner; which his lordship (if he justify under that) must shew particularly.

To come now at last to the last point of the Apology, drawn from the particular example of arch-bishop Cranmer; who, in the description of his life (*Britannicarum Antiqq. ca. 68.*) is set forth to hunt, shoot, and ride a great or stirring horse with notable activity, even when he was

arch-bishop, and in the words recited by the apologist. But these be exercises of war, not of religion; fit for barons not for bishops; who in ancient time, following the example of our Saviour and his apostles, walked on foot, as appeareth by Bede, *Eccl. Hist. l. 3. ca. 14.* and lib 4. ca. 3. and beginning to ride, used here in England mares, as Bede also witnesseth, lib. 2. ca. 13. in other places mules, not horses; for ‘*Bellum hæc armenta minantur,*’ as not only the poet saith, but as the scripture also, *Prov. 21. ult.* ‘*Equus paratur ad diem belli.*’ And such belike, did this arch-bishop Cranmer mount upon and manage, as the word simply, ‘*ut in sauculatu suo non fuerit quisquam qui in generosum equum salire, ac tractare elegantius — potuisset.*’ Besides the shooting here mentioned seemeth not to be the long-bowe, which stirreth the body and is profitable to health, but that deadly engine (which imagineth mischief as a law) the cross-bowe, whose force a man cannot mitigate as in other weapons, and is properly numbered amongst the instruments of war; and therefore by a multitude of canons prohibited to clergy-men, so that they may not use them ‘*pro justitiâ exercenda*’ (as appeareth by the constit. of Othob. Tit.) ‘*de Clericis arma portan.*’ nor ‘*equitantes per loca periculosa,*’ as it is in the gloss upon the decret. of Gratian p. 992. where the text is, ‘*Clerici arma portantes et usurarii excommunicantur.*’ But I have gone the length of my tedder, I mean as far as the Apology leaith me; and therefore now ‘*mamum de tabula.*’

The case of this reverend and most worthy person deserveth great commiseration and tender handling: for who can prevent such unexpected casualties? Yet may the consequence prove so mischievous both to himself and those that are to receive their consecration from him, as of necessity it must be carefully looked into and provided for. Let me remember an ancient precedent, even in one of his own predecessors, Stigand, archbishop of Canterbury in the time of the conquest, who, because he had not canonically received his consecration, but from the hands of pope Benedict (who stood excommunicate and *sacris interdictus*) was not only deprived himself by authority of a council, but also the bishops and abbots which had taken their consecration from him. Therefore the bishops of Wells and Hereford fore-seeing that evil; to make all clear, fetch their consecration at Rome from pope Nicholas: *Vitabant enim* (saith Flor. Wigorn. in an. 1070.) ‘*à Stigando qui tunc Archiepiscopatu Doroberniæ præsedebat, ordinari: quia noverant illum non Canonice Pallium suscepisse.*’ It is good to follow the counsel of Gratian in the like matter: ‘*Consultius est in hujusmodi dubio abstinere quam celebrare,*’ ca. 24. 1716.

But because we are fallen into a case, wherein perhaps some extraordinary consecration may be required; let me also relate a strange consecration used in the entrance of the reign of Henry 1, an. 1100. where Eadmere a monk of Canterbury being elected by the clergy and

people of Scotland to be bishop of St. Andrews, with the great good liking of king Alexander and the nobility. Yet by reason of some discontentments the same king had conceived against the arch-bishop of York, within whose province Scotland then was, he would by no means agree that Eadmere should take his consecration from that arch-bishop; and after much consultation how then it might otherwise be performed, it was at last agreed, that the staff of the bishoprick should be solemnly laid upon the altar, and that Eadmere taking it from thence, should receive it as delivered him from God himself: which accordingly was done. This calleth to my mind another of like nature, somewhat more ancient: where Wulstan, the good bishop of Worcester, both resigned his bishoprick by laying the staff thereof upon the shrine of St. Edward the confessor (by the agreement of a council holden under Lanfranc) and in like manner received the same again from thence, in the presence of king William, the arch-bishop Lanfranc, and many others; not without some miracle, as Matthew Paris writeth in an. 1095. These as τῆρενα.

And thus, in this matter of shooting, If I have done as the proverb saith, shot like a gentleman, that is fair, though far off, it sufficeth. I humbly crave pardon.

DISPENSATIO cum Georgio Archiepiscopo Cantuariensi super Irregularitate.

“REVERENDISSIMO in Christo Patri Georgio providentia divina Cantuariensi archiepiscopo, totius Angliæ primati, et metropolitano, Johannes Lincoln. Georgius London. Lancelotus Winton. Samuel Norwicens. Thomas Coven. et Lich. Arthurus Bathon. et Wellen. Nicolaus Eliensis et Georgius Cicestrensis permissione divina respective episcopi de provincia Cantuar. Salutem et gratiam in Domino sempiternam. Itecipimus literas commissionales à serenissimo in Christo principe ac domino nostro domino Jacobo Dei gratia Angliæ, Scotiæ, Franciæ et Hiberniæ rege, fidei defensore, &c. sub magno sigillo Angliæ confectas et nobis directas; quarum tenor sequitur in hæc verba: ‘Jacobus Dei gratia Angliæ, Scotiæ, Franciæ, et Hiberniæ rex, fidei defensor, &c. Reverendo in Christo Patri et per dilecto et perquam fideli consiliario nostro Johanni episcopi Lincoln. custodi magni sigilli nostri Angliæ, ac reverendo in Christo Patri Georgio episcopo London. ac reverendo in Christo Patri ac per dilecto et perquam fideli consiliario nostro Lanceloto episcopo Winton. necnon reverendis in Christo patribus Samuele Norwicen. Thomæ Coven. et Lichen. Nicholao Elien. Arthuro Bathon. et Wellen. et Georgio Cicestren. respective episcopis, salutem et gratiam. Humili nobis supplicatione exposuit reverendissimus in Christo Pater, per dilecto et per fideles consiliarius noster Georgius Cantuar. archiepiscopus, quod cum nuper in parco quodam vocato Bramzil-park apud Bramzil in comitatu nostro Southamton. per honorandum virum ejusdem parci dominum

rogatus et invitatus damam sagitta figere destinaret, debita adhibitis diligentia ne quid inde periculi cuiquam eveniret; forte tamen accidit ut sagitta ab eo amissa et in feram directa, in quendam Petrum Hawkins adhuc parci prædicti custodem, improvide et temere se periculo ictus sagittæ exponerem, et per locum ubi à præfato archiepiscopo conspici non potuit cum impetu transcurrentem incidere, eique brachiam sauciaret; ex quo quidem vulnere infra unius horæ spacium exspirabat: et quamvis propter hujusmodi homicidium casuale, nulla præfati archiepiscopi culpa sed ipsius occisi temeritate contingens, idem reverendissimus pater bona fretus conscientia, se nullam omnino irregularitatem incurrisse, persuasissimum habeat; provida tamen animi circumspectione, et ut omnis infirmorum mentibus scrupulus eximatur, secum à nobis super omni et omnimoda irregularitate et irregularitatis nota aut suspicione, si quam præmissorum ratione contraxisse forsitan aliquibus videri possit, ad cautelam et ex superabundanti dispensari humiliter supplicavit: Sciat igitur quod nos petitionis hujusmodi vim et efficaciam regio animo et pio affectu ponderantes, et de veritate præmissorum sollicita indagatione certiores facti, et ut piam reverendissimi patris intentionem hac in re sequamur, et ad abundantiore cautelam, per fideles consiliarii nostri optimeque de ecclesia et republica meriti præsulis statum, famam, et dignitatem, nostri etiam patrocinii minime teneri et firmare dignoscamur, ad præsentem venimus dispositionem: Vobisque vel aliquibus sex vestrum, quorum vos præfat. Johannem Lincoln. Georgium London. Lancelotum Winton. et Samuelum Norwicen. respective episcopos, quatuor esse volumus, de quorum etiam fide, judicio, et industria plurimum confidimus, mandamus et de gratia nostra speciali et ex auctoritate nostra regia suprema, et ecclesiastica qua fungimur, pro nobis hæredibus, et successoribus nostris damus et plenam concedimus facultatem et potestatem per præsentem, quatenus vos vel aliqui sex vestrum; quorum vos præfatos, Johannem Lincoln. Georgium London. Lancelotum Winton. et Samuelem Norwicen. respective episcopos, quatuor esse volumus, cum præfato reverendissimo patre super omni et omnimod. juris vel facti defectu, censuro, sive pena aliqua canonica et ecclesiastica, præsertim vero irregularitate omni seu irregularitatis nota, si quæ forsitan ratione præmissorum contracta fuit, vel quibusdam contracta esse videantur, utque in susceptis ordinibus et jurisdictionibus secundum conceditam sibi ratione ordinis et archiepiscopatus sui potestatem libere ministrare, frui, exercere, et gaudere valeat, ad majorem cautelam dispensatis, ac cætera omnia et singula quæ ad statum, commodum, et honorem præfati reverendissimi patris conservandum et corroborandum in hoc parte necessaria fuerint seu quomodolibet opportuna faciatis, et dispensationem hujusmodi, cæteraque sic ut præfertur per vos aut aliquos &c.



‘vestrum, quorum vos præfatas, Johannem  
 ‘Lincoln. Georgium London. Lancelotum Win-  
 ‘ton. et Samuelem Norwicen. respective epis-  
 ‘copos, quatuor esse volumus, facienda in  
 ‘debita juris forma concepta, et inscripta, re-  
 ‘ducta, sigillisque vestris seu sigillo aliquo au-  
 ‘thentico munita, præfato archiepiscopo tradere  
 ‘non differatis. Quum quidem dispensationem,  
 ‘cæteraque sic ut præfertur per vos aut aliquos  
 ‘sex vestrum, quorum vos præfatos, Johannem  
 ‘Lincoln. Georgium London. Lancelotum Win-  
 ‘ton. et Samuelem Norwicen. respective epis-  
 ‘copos, quatuor esse volumus, pagenda sub  
 ‘magno insuper sigillo nostro Angliæ confirmari  
 ‘volumus, et super his præfati magni sigilli nos-  
 ‘tri custodi aliisque cancellariæ nostræ in iustis  
 ‘quibuscunque expresse mandamus, et plenam  
 ‘tenore præsentium concedimus potestatem.  
 ‘Teste meipso apud Westmon. vicesimo se-  
 ‘cundo die Novembris, anno regni nostri An-  
 ‘gliz, Franciæ, et Hiberniæ, decimo nono et  
 ‘Scotiæ lv.’ Secundum tenorem et exigentiam  
 ‘literarum commissionarium prærecitararum, et  
 ‘ad eximendum omnem scrupulum ab infirmo-  
 ‘rum mentibus, si quis forsitan sit aut fuerit in  
 ‘ea parte conceptus. Nos prædicti, Johannes  
 ‘Lincoln. Georgius London, Lancelotus Winton.  
 ‘Samuel Norwicen. Thomas Coven. et Lichtfeld.  
 ‘Arthurus Bathon. et Wellen. Richardus Elien.  
 ‘et Georgius Cicestrens. respective episcopi,  
 ‘nomine primitus invocato ac Deum patrem  
 ‘oculis solum habentes, et considerantes atque  
 ‘pro certo habentes quod dicta venatio cui per  
 ‘te data erat opero, quando dictum casuale  
 ‘homicidium, te nihil tale suspicante, accidebat,  
 ‘erat modesta, decens, et quieta, et quod debita  
 ‘per se adhibita erat diligentia in dicta venatione  
 ‘ad præcavendum ne quid periculi alicui inde  
 ‘eveniret, Tecum præfato Georgio archiepiscopo  
 ‘Cantuariensi super omni irregularitate et ir-  
 ‘regularitatis nota, si quam forsitan ratione casu-  
 ‘alis homicidii sive mortis præfati Petri Hawkins  
 ‘iacurristi vel aliquibus incurrisse videaris ad  
 ‘omnem et qualemcunque juris effectum dis-  
 ‘pensamus; teque præfatum Georgium archie-

‘piscopum Cantuariensem ac personam tuam  
 ‘ab omnibus et singulis inhabilitatibus, sus-  
 ‘pensionibus, irregularitatibus, aliisque poenis,  
 ‘impedimentis, censuris, et coercionibus quibus-  
 ‘cunque ecclesiasticis sive canonicis, si quam  
 ‘forsitan ratione præmissorum aut eorum alicujus  
 ‘incurristi aut aliquibus incurrisse videaris,  
 ‘ad omnem et qualemcunque juris effectum  
 ‘liberamus ac tenore præsentium pro liberato  
 ‘haberi decernimus et pronunciamus: quemque  
 ‘defectum, labem, notam, sive maculam, (si  
 ‘quam forsitan ratione præmissorum aut eorum  
 ‘alicujus contraxisti aut aliquibus contraxisse  
 ‘videaris, penitus abolemus ac pro abolitis haberi  
 ‘decernimus et pronunciamus: Teque etiam  
 ‘præfatum Georgium archiepiscopum Cantua-  
 ‘riensem ex superabundanti et ad majorem cas-  
 ‘telum, rehabilitamus et restituimus ad omnem  
 ‘et qualemcunque juris effectum: Et ut in se-  
 ‘ceptis ordinibus et archiepiscopatu prædicto,  
 ‘ac in omnibus et singulis jurisdictionibus, privi-  
 ‘legiis, præminentis, prærogativis, dignitatibus,  
 ‘atque aliis rebus quibuscunque, aliquo modo  
 ‘ad dictum archiepiscopatum spectantibus et  
 ‘pertinentibus libere ministrare valeas, concedi-  
 ‘mus et indulgemus, perinde ac si prædictum  
 ‘casuale homicidium commissum non fuisset;  
 ‘canonibus, legibus, decretis, ordinationibus, et  
 ‘constitutionibus ecclesiasticis quibuscunque con-  
 ‘trariis (si qua sint in ea parte contraria) in ali-  
 ‘quo non obstantibus. In cujus rei testimonium,  
 ‘sigilla nostra episcopalia hisce præsentibus ap-  
 ‘poni fecimus. Dat. duodecimo die Decembris,  
 ‘anno Domini millesimo sexcentesimo vicesimo  
 ‘primo.—Teste rege apud Westmon. 24. die  
 ‘Decembris anno regni regis Jacobi, &c. xix. et  
 ‘Scotiæ quinquagesimo quinto.”

The subsequent rustication of the Arch-  
 bishop to his house at Foord was altogether un-  
 connected with the unfortunate event which  
 gave rise to the proceedings related above, and  
 resulted, according to bishop Hackett, merely  
 from his refusal to license Dr. Sibthorpe's  
 Sermon.

122. Proceedings on the Impeachment of the Lord Treasurer MID-  
 DLESEX, for High Crimes and Misdemeanors: 22 JAMES I.  
 A. D. 1624. [Journal of both Houses of Parliament. 1 Cobb.  
 Parl. Hist. 1406.]

April 2, 1624.

THE Archbishop of Canterbury, (George Abbot) reported, That, in a Committee appointed to examine the Stores and Ammunitions of War, some speeches had past, the day before, which concerned the honour of a Lord of that House; and that the said lord desired Examinations might be taken, upon oath, for the clearing thereof. Whereupon the house ordered, That a sub-committee should be constituted to take such Examinations, and the witnesses to be sworn in court. Also, That the following offi-

cers of the crown should be sent for, to be examined on oath, relating to this affair, viz. sir Edw. Wardour, clerk of the pells, sir Rob. Pye, sir Thomas Mounson, sir Thomas Dallison, sir Rd. Morrison, sir John Keyes, sir A. Ingram, sir Thomas Cook, sir Thomas Morris, clerk of the ordnance, and sir John Male.

April 3. It appeared who the noble lord was whose conduct had been objected to; for, some orders being made this day, relating to the sittings of the Committee on Munitions, Stores, &c. we are told, by the Journal, that the Lord Treasurer (Middlesex) stood up and said,

"That he would desire no favour but expedition; and, when they had done, his lordship would shew a dangerous plot, conspiracy, and combination against him; which, if it was suffered, no man would be in safety in his place."

April 8. The Lords received from the Commons, the following Message: "That whereas they yesterday sent to desire a conference with them, for the better accommodating the bill of Monopolies, to be this morning at nine, which their house intended to have done accordingly: but, that now a great and weighty Affair, as ever yet came before them, intervening; and many of their committee being employed in the Examination and enquiry thereof, who were formerly appointed to attend their lordships at this Conference, they humbly desire to be spared at this time, and they will attend at any other which their lordships shall appoint."

April 9. The Lords being reminded of the words used by the Lord Treasurer, April 5, of "a dangerous plot, conspiracy, and combination against him;" and because the words were doubtful and generally spoken, his lordship was required to name the parties that had so conspired against him; for, otherwise, an imputation might rest upon that house, or some of the members, there being, at that time, a Committee on Munitions, &c. who had taken divers Examinations concerning his lordship as lord treasurer. Whereupon his lordship cleared the house, absolutely, from any combination against him; and further protested, that at that time, he did not name or mean any member of that house.

April 12. A Message came from the Commons in order to put off the intended conference again; because they said, That a lord of that house had desired to be heard, by his counsel, in theirs in the afternoon; which they had yielded to. On this a motion was made to consider, that it might trench deep into their privileges, for a lord of that house to answer an Accusation in the house of commons, either by his counsel, or by sending his answer in writing. But, upon the humble request of the Lord Treasurer, the house gave him leave to send his Answer to the complaint of the Commons if he pleased. However, an order was made, "That no lord of that house shall hereafter without licence, answer any complaint in the house of commons, either in person or by his counsel."

Then the arch-bishop of Canterbury reported, That a committee being appointed to consider of the Stores, Munitions, &c. somewhat had happened in their Examination thereof, which touched the honour of the Lord Treasurer. Whereupon the said lord desired, that the utmost truth thereof might be enquired into. Accordingly witnesses had been sworn here, and a sub-committee appointed to take their Examinations; which, being reduced into writing, his grace delivered to be read. But, before that was done, the Lord Keeper signified to the house that he had received a Petition from sir Tho. Dallison, delivered unto him by a member

VOL. II.

of this house, who desired it might be read before the said Report. Which Petition was addressed, "To the right hon. the lords spiritual and temporal in parliament assembled," and ran in these words:

"The humble Petition of sir Thomas Dallison, son of sir Roger Dallison, knt. and bart. deceased.

"Whereas there was an Examination, before a committee of your honours, concerning the lands of his said father, compounded for with my Lord Treasurer; whereupon there is an Account given to your lordships, by one Mayle, a scrivener, on his lordship's behalf, of 26,000*l.* or thereabouts, to be given by the said Lord Treasurer for the said lands, as Mayle reported; now, for that this petitioner and his mother were forced out of their estate therein by his lordship for a very small matter, by colour of his majesty's extent; and is able to make appear to your lordships that there hath not been much more than half the sum of 26,000*l.* really either in money or money's worth, given for the same by his lordship; and for that the said lands are of far greater value; and this petitioner ought, in all equity, to have the benefit of compounding his father's debts, and the benefit that should accrue by the surplusage of the estate: he most humbly desireth your honours to stay the Report, and grant your petitioner a copy of the account before the same pass from the lords of the committee; and that your petitioner may be allowed to make such just exceptions thereunto, as to the honourable lords of the committee shall seem reasonable.

THO. DALLISON."

A motion was made, Whether by the orders of the house, the Lord Treasurer may be present when the Report is read; because the same concerns his honour? It was agreed, That he might be present, at the first reading, but not when the same shall be debated by the house. Then the Attorney General read the Report *in hæc verba*:

"The State of the Business referred to the Sub-Committee for Munitions, &c.

"On the 28th of May, 6 Jac. 1608, a privy seal was directed to the Lord Treasurer and under treasurer of the exchequer, for the time being, for the issuing out such sums of money, not exceeding 6000*l.* per ann. as by quarter-books should appear to be due to the office of Ordnance for Wages or Provisions.—The allowance was duly paid until the 1st of April 1614; but then, or shortly after, by the default of sir Roger Dallison and the officers of the exchequer, sundry payments were unorderly made, whereby the office was unfurnished; and Dallison, who had received those moneys and not employed them as he ought, became indebted in great arrears to his majesty.—Upon complaint whereof, in Nov. 1617, his majesty made a reference to divers lords of the council; who, in Dec. 1617, returned under their hands a proposition of Supply, estimated at 54,078*l.* 8*s.* 8*d.*

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—In February 1619, his majesty's commission was awarded to the commissioners for the navy, whereof the now Lord Treasurer was one of the chief, to survey the Office of Ordnance; and they, in July 1620, made a Return hereof to the council, with their opinions how the Magazines might be furnished with a present supply of 13,640*l.* 1*4s.* 2*d.*; how the ordinary allowance of 6,000*l.* per ann. might be reduced to 3,000*l.* and how by cutting off many unnecessary charges and other means, his majesty might have yearly near 10,000*l.* And those propositions made by them, in Michaelmas term 1620, received allowance from the lords, and, at last, from his majesty himself.—In Dec. 1620, the lord viscount Mandeville became Treasurer; and in May 1621, a privy-seal was drawn by the officers of the Ordnance, for settling the said 3,000*l.* yearly, and for payment of the said 13,640*l.* 1*4s.* 2*d.* But the same, being considered of by the commissioners of the navy, was rejected, because it swerved from their propositions; and so, the lord Mandeville leaving the treasurership about Michaelmas 1621, nothing was done. In Oct. 1621, the earl of Middlesex became Lord Treasurer, and having continued in that place 2 years and 6 months, in all that time none of the three establishments, viz. that of 6 Jac. by the dormant privy-seal; that of 1617 by the lords; nor that of the commissioners of the navy in 1620, have been observed; whereas, if that of the commissioners of the navy (being the least chargeable to his majesty and in which the Lord Treasurer himself was principal agent,) had been observed, it is conceived, that the Stores had been in much better case, and a course had therein been settled to have retrenched a needless charge of near 10,000*l.* per ann. as aforesaid.—And whereas, in April 1621, a contract was made with Mr. Evelyn, to serve his majesty yearly with 80 lasts of Powder, at 7*d.* per lb. the want of the payment of about 500*l.* a month, hath deprived his majesty of the benefit of that contract; which, for 20 months of the time since that contract, hath been forborn for want of payment; which 20 months proportion, if it had been served in, there would have been in store at this present above 260 lasts of Powder, besides 60 lasts of Salt-Petre, which would have made 80 lasts of Powder more: but, by the want of due payment, not only the store is unfurnished of so considerable a proportion, but his majesty, it is conceived further, hath lost the benefit of 3*d.* in every lb. of 80 lasts, which hath been sold to the subject, amounting to 4,050*l.* or thereabouts.—And whereas it was intimated, that the Lord Treasurer hath made other payments, less importing the public, to the said Office of Ordnance for old arrears; which have a dependency upon another point referred to the sub-committees, touching the lands and debts of sir Roger Dallison: It appears that 28 July 1621, which was about 2 months before the earl of Middlesex became treasurer, he made an agreement with the officers of the Ordnance for buying their

extent and interest in the lands of sir Roger Dallison and sir Thomas Mounson, which they had by assignment from his majesty for a debt of 13,062*l.* and thereby his lordship did agree, so soon as conveniently he might, to do his best endeavour to procure from his majesty a certain assignment and order for the payment of the sum of 8,000*l.* to the use of the servants and creditors of the office of Ordnance, before the last day of Nov. next, for and towards the payment and clearing of all such sums of money, as, by the pay books of the said office, should appear to be due unto them, over and above the said 13,062*l.* and his lordship was, before the same last of Nov. to pay them 1,062*l.* and, at the Annunciation, in the year 1623, 500*l.* and afterwards, 500*l.* half-yearly, till the 13,062*l.* were paid: but his lordship before the prefixed last of Nov. becoming Lord Treasurer, did not procure any such order or assignment from his majesty; but, by warrant of the first-mentioned dormant privy-seal of 6 Jac. did, in the first Michaelmas term after he became treasurer; and the two terms of Easter and Michaelmas following, (being all within a little more than a year after his becoming treasurer) pay to them 9,131*l.* of arrears due to the office; and hath, at other times since, paid to them other sums; which make up the former payment of 19,034*l.* 8*s.* 11*d.* whereof was paid since the beginning of this parliament 2,480*l.* 11*s.* 2*d.* And touching the payment, which, by the aforesaid agreement, his lordship was to make unto them of his own money, it appeareth that, upon a second payment, those payments due from him were discharged; and, in lieu thereof, his lordship assigned to them his part in the petty-farms of the Wines and Currants; which they estimated to be worth for the first two years 1,000*l.* per ann. and for 7 years after 1,400*l.* per ann. and odd pounds. It also appeareth, that about the same time when he made the said agreement with the officers, he bargained with sir Tho. Mounson for his estate in Dallison's lands; for which he agreed to give him 3,000*l.* in money, the making of six baronets, and some fit suit from his majesty when sir Thomas could find it. This 3,000*l.* was duly paid by his lordship; and then it was agreed that the baronets were not to proceed, but, in lieu thereof, his lordship gave way to a suit, which sir Thomas made to his majesty, for the benefit of compounding with the copyholders of Wakefield, for reducing their fines to a certainty; which his lordship did estimate at 2,000*l.* and promised him further recompence; yet sir Tho. Mounson affirms, He had neither benefit thereby, nor further recompence.—In this bargain, nevertheless, there are some things favourable for the Lord Treasurer, especially two. 1st, That, by this bargain, his majesty is freed from all future demands from the officers of the Ordnance, concerning the debt of 13,062*l.* owing by Dallison; which his majesty upon the assigning those extents, had covenanted to satisfy, in case the incumbrances should hinder them of satisfaction; and this appeareth in

be true. 2ndly, some intimation hath been, that this bargain was no bargain of advantage, but of loss to the Lord Treasurer; and therefore not probable that he should have undertaken, but for his majesty's service, and the good of the office. And touching this point, it appears, by the good testimony of sir Tho. Dallison, that, before the troubles of his father, the lands and leases being of about 60 years to come, bought by the Lord Treasurer, were rented at 1,500*l.* per ann. or thereabouts; whereof the lease-lands are about 300*l.* per ann.: and that, besides the recompence given to the officers of ordnance and sir Thomas Mounson, there is allowed to him and his mother, for clearing their interests, 200*l.* per ann. for their lives: but sir Arthur Ingram offereth to lett the whole, for 40 or 50 years, or any other reasonable time, at 1,100*l.* per ann. And it appears, by the testimony of him, and Mr. Mayle, that the lands were incumbered with an annuity of 200*l.* per ann. to Mr. Beddingfield for life; for which, and the arrears, about 1,200*l.* hath been given, by way of computation; and with 140*l.* to Mr. Smith for life, for which, and the arrears hath been given, by way of composition, about the value of 800*l.* and with an assurance, on the part of sir R. Smith and sir J. Davey, for which is to be given 3,000*l.* besides many other incumbrances not yet brought in. But the certainty thereof appears not, nor that any of them, of any considerable value, are precedent to sir Roger Dallison's becoming officer."

This report being read, the Lord Treasurer put the house in mind of the imputation laid on him by sir Robert Pye, some time since, touching the extent of sir Roger Dallison's lands; and that therein they had desired witnesses to be sworn and examined, and he hoped he had fully satisfied their lordships in that cause. But, as for any other matter relating to the Ordnance, Munitions, &c. they never came into his thoughts, as yet, what answer to make; wherefore he desired he might have a copy thereof, in writing, with liberty to examine his witnesses, and he would answer the same fully in writing. He also desired that his actions might not be examined by pieces, but totally and together; and then he doubted not but that his care, touching the store for munitions, &c. would appear to be such that their lordships will clear his honour therein. This being said, the Lord Treasurer left the house whilst the matter of the report was in debate. After some time spent therein, it was agreed, That another committee should be appointed to draw up the heads of a charge against the Lord Treasurer, out of a brief of the last report, and examinations taken by the former committee.

April 15. A Message was brought from the commons to this effect; "That whereas they had received divers and sundry Complaints against a member of that house, which are of a high and grievous nature, they desire a Conference thereon to impart the same to their lordships. This was agreed to by the lords.

The Lord Keeper reported the said Conference held the day before, between the two houses, in this manner: At this conference,

Sir Edward Coke, on the behalf of the commons, shewed, "That in their inquisition the commons had met with, what they scarce ever found before, many great exorbitancies and heinous offences, against a member of this house, the earl of Middlesex, the Lord Treasurer; and they found him guilty after a strange manner; for, in all their house, not one man said "No, but concluded against him *nem. con.*"—Sir Edward said further, "The house had appointed him to present three Enormities to their lordships, much against his mind: others being far more sufficient, as well in regard of his great years as of other accidents; yet, he said, he would do it truly, plainly and shortly. There were two great offences in general, which they had distributed into two parts; one of which should be represented by him, and the other by his colleague: That which he should speak to was to consist of two charges. The 1st, gross and sordid bribery. The 2nd, for procuring the good orders of the court of wards to be altered; for that this was done by his principal procurement, to the deceit of the king, oppression of the subject, and the enriching of his own servants. He would begin with presenting to their lordships the bribery. Here he craved favour if he should seem long in touching some circumstances; for circumstances to things, he said, were like shadows to pictures, to set them out in fuller representations; but herein he promised to observe *seriem temporis.*

The first Charge against the Lord Treasurer for Bribery, opened by sir Edward Coke.

"By the Lord Treasurer's privity (for it concerned his skill properly which was merchandise) a lease of the subsidy and imposts of the French wines, was lett to the farmers of the petty farm, 17 Jac. at 44,000*l.* yearly rent, and for 50,000*l.* fine; with a covenant from the king that no more impost should be laid during their lease: because that they knew that the impost would overthrow their trade. Yet the farmers were not content with this covenant for their money and their trade, (for money is their plow, and trade their life) they desire the addition of the king's word for this covenant. Accordingly they had access to the king, and the covenant was confirmed and repeated by him, *verbo regio*, in the presence of the lord treasurer. Then they thought themselves *in tuto*, and that they did *in portis navigare*, free from all storms and tempests. But behold, anno 1621, the first thing my lord did in his office, was the laying of an extreme impost of 3*l.* per ton upon the French wines, which the king, by reason of his covenant, could not, and, by reason of his word, would not surely do. This imposition was against justice, the covenant, and the honour of the king. The king, surely, had he been rightly informed, would never have done it. Upon this the trade sunk, and they became suitors to his lordship

for relief, for 10 months together; but with no success. In Michaelmas, 1622, they petitioned his lordship that the trade was overburdened, and themselves quite undone. It is a rule, that a commodity overburdened enricheth not the king, but quite destroyeth the trade; but hereof they have no success.—Then they prefer a bill of right against the king in the exchequer, because of the breach of covenant; but to this they could obtain no answer in Michaelmas term. The king's attorney knew well enough of the bill, but could not for his heart devise an answer for it.—In December 22, 1622, the term is out, they are out of their money, and the trade is gone. They appeal, therefore to the fountain of justice, the king's majesty. The king is very gracious to them, and said, God forbid that any man should lose by him. He knew nothing of this. It was the Lord Treasurer's act and device. And so his majesty allowed them a deduction of 9,500*l.* to be made to them in 9 years time. Well, *verba sunt hæc*; these were but good and gracious words, but filled not their purses: they must have a warrant from the Lord Treasurer to put this favour of the king's into a public act; and this they could not obtain from December to the end of June. The men understand themselves very well, and look about them how this stay comes: one of them tells another, the business sticks, my lord looks for somewhat: and the man was in the right, for so the sequel proved. A 500*l.* bribe was paid to Jacob for my lord's use, and straightway all was well; the warrant went current, and all was passing well.—One thing remarkable: This was taken, out of the petty farms, set down in their monthly and yearly books, and called a gratuity *speciosoque nomina culpe*. Some great spice after this, there was a voice of a parliament (Oh! said sir Edward, parliaments work wonderful things.). Then the Lord Treasurer began to cast a circle, and fall to his conjuring. He calls upon Jacob and commands him to transfer it to the great farm. Here was observed, that *suppressio veri*, is, in law, an argument of guilt. Here sir Edward also observed in a parenthesis, That is a blessed thing of those that love parliaments; and that surely this lord, of all others, loved them not; because he cast himself into dark mists, when he should meet them; *'nescio quid peccati portat ista purgatio.'* This argues much guiltiness.—Then he nominated his witnesses: which he said were without exception. This bribe is proved by Hide, Daws, Bishop, and by Jacob; the last is a witness with a witness. For Jacob blanched this bribe as well as he could, and was taken in three notorious falsities. 1. Being charged, that the money was delivered to him by Hide, he vowed he had never received it; yet, being confronted with Hide, he confessed it: there was one. 2. He pretended he had received the money, but gave his bond for it. Hide affirming to his face, the bond was for other money, and no bond at all for this; then he likewise confessed this: there were two.

3. He said he never had any warrant to enter the same in the petty farm; yet afterward, he avowed he had: and this is the third falsity.—Here sir Edward observed, That Jacob was my lord's necessary creature and petty chapman, and had a son that was his secretary; and because he was a Jacob, that is a supplanter, he desired their lordships to take good care of him. About the beginning of this parliament my lord sent for this Jacob; asked him if he had entered this money in the petty farm? he said yea. Then said my lord, go about it presently, and see that the coquets, and all things else, be suppressed in the petty farms, and that this money be removed to the great farm; for I would have all hid and suppressed.—Here sir Edward observed, That sordid bribery is like Adam, and would fain get some fig leaves, if it could tell but where to gather them.

Upon the delivery of this Charge (as was desired by his friends) to the Lord Treasurer, they of the commons expected an answer of some rare wit: for so this nobleman was reputed in that house: but his lordship deceived their expectation; for he declared it was utterly, in every point, he would not say false, but surely untrue. Four things he denied as he was a christian; and these were all directly proved and made good against him. And so much was delivered against the first bribe.—The second bribe was of a strange strain: and both these bribes were received by him in the quality of a Treasurer. The farmers of the great Customs were to renew their farms, and put in security of 48,000*l.* rent, July 29, 1622. Here sir Edward said he would not enlarge himself; for the business lay in a narrow room. The bribe is the point. My lord liked the sureties well; but some of them fell off, and he would not accept of the rest; and 7,500*l.* of the rent was reserved for a year and a quarter. After delay of their lease, and 500*l.* in gold paid unto him by the hands of Jacob, then the security formerly rejected was now accepted: which act of his lordship the knight confuted by this syllogism. The sureties were sufficient, or insufficient: if sufficient, the bribe was too much, and the farmers oppressed; if insufficient, the bribe was too little, and the king was cozened. The second bribe was proved by Wolstenholme, Garroway, Williams, and, if you please, Abraham Jacob; and so much of these two bribes taken in the capacity of a Treasurer.

“Now he comes to the Court of Wards, and shewed, That the Lord Treasurer's offences herein are of a rare strain. First, the knight noted, by way of preface, That *honos*, the honour, must be given to him that deserved it. All the good artifice began under Treasurer Salisbury. Then were articles invented that helped the king to all his revenues, and tied the officers to their own fees and places. The king's revenues prospered well then: and these articles, by the advice of the judges, were confirmed under the great seal.—When this last lord came to be master of that court, (for now,

with the knight, he is not charged as a lord, but a master) he complained he had not elbow-room for those articles; he was too much bound by them: (and bound he was indeed), and therefore he projects new articles; and these new articles are charged with high extortion; for in them are raised double fees; one fee the surveyor formerly had, and still retains justly, another parallel fee to this my lord hath raised unjustly and oppressingly. For extortion is a grievous and consuming enormity in a commonwealth. It was the greatest evil the high God could foresee would befall the enemies of God. 'Let the extortioner consume what he hath, and the stranger devour his labour.' Psalm cix. v. 10.—In these Articles his lordship created a new officer, a secretary. The chief proceedings there go by way of petition. In the former articles these petitions were received by the court, and entered by the clerk without any fee, and so were to be found on record; but, in the new articles, this new officer is to receive these petitions, and may, for any rule to the contrary, suppress them; and for his fee he taketh what he pleaseth; and it is proved he hath taken 10*l.* 20*s.* 4*d.* 5*d.* three dishes of silver; and the like: he is altogether unlimited, unless, peradventure, his oath doth limit him.—Another Charge in this Court, is this Abuse, viz. The Lord Treasurer's place requires a whole man, and so doth the mastership of the Court of Wards; whereupon his lordship was fain (as unable to wield those two great places) to invent a new device, a stamp even with his own name, Middlesex. Now this hand moves and guides the seal of the court, and therefore, being turned by the hand of a young secretary, may produce strange consequences. Never any king did suffer a subject to use a Stamp. Old lord Burleigh had a Stamp, because of his gout, but never suffered it to be used but in his own presence. Henry 8, had also a Stamp; but, suffering it to be employed by another, an act of parliament was overthrown thereby. Sir Edward said, he would conclude with one example: if a ward be not found within one year, he is reputed concealed, and so falls within the dispose of the master of the Court of Wards: now, by the secretary's keeping of this Stamp and Petitions, he may so carry the matter, that any ward may prove concealed: and that is no remote possibility. He brought this instance, *à posse ad esse*. My lord's secretary hath put to, and used this stamp for, the deferring of an office for half a year; and it is possible it may be done for a whole year. The knight said he never knew any man before trust a stamp, in the hand of another man, to command the king's revenue. He concluded this point with this observation, That my lord was a man raised very high, and very lately, and for expectation of service: that the king had been very beneficial to him; and for him to be so supine in the king's revenue, and so vigilant in his own, was the highest ingratitude. 'Et si ingratum dixeris, omnia dixisti.'—Sir Edward

said, That all this he spake by command; and so he prayed their lordships to weigh it well with due consideration, and to give judgment according to the demerits of the cause."

Sir Edwin Sandys proceeded to this effect. "The Commons had commanded him (undesirous of any such employment) to second this Charge to their lordships; That he was undesirous thereof, for he had rather defend the innocent than discover the culpable: yet he was the son of obedience, and must perform what, by that house, he had received in command. To decypher out this great lord, upon whom the Charge lay, he would give of him this character to your lordships. 'Nescia mens hominum est, satique ignara futuri, et servare modum rebus sublata, secundis.'—The want of measure and moderation most men complain of in this great personage. That he would make his entrance with two protestations; which (as you know) are exclusions, not intended conclusions. His first Protestation, That in this crimination against new impositions, and impositions upon impositions, the Commons intended not to question the power of imposing claimed by the king's prerogative. This they touch not upon now; they continue only their claim, and when they shall have occasion to dispute it, they will do it with all due regard to his majesty's state and revenue.—For this time, he desired the word Imposition might be forborn, and the word Oppression taken up in lieu thereof; yet with a reference to the Lord Treasurer only, but in no means to the king. The second Protestation, That they intend to lay none, no not the least aspersion upon the council table, or any one member thereof, the Lord Treasurer only excepted. The Commons remain fully satisfied that he was the first propounder. These protestations premised, he branched the oppressions into three natures, used in the Wines, Sugars, and Grocery-Wares. And he promised to use this method to discover, first, some general matters, then fall to Particulars.—The Generals are two; 1. The Commons conceive, that my Lord Treasurer cannot be ignorant, that in the lay of the first Imposition, in the time of the earl of Salisbury, it was promised, That his majesty would never lay any more imposition upon commodities, without the consent of the people. 2. That my Lord Treasurer knew well that, in that assembly of parliament complaint was made in the lower house, that the overburthening of trade was the destroying it; and that he was himself employed by the house to the king to negotiate for redress therein; and he promised there, that he would make it his master-work. 'Quid dignum tanto foret hic promissor.' The issue of all was this, for his lordship to devise new burthens. These were the two generals, from these the knight descended to particulars, and began with the Wines. He put their lordships in remembrance, that the merchants had the king's covenant under seal, and promise by his royal word, to lay no further impositions: They had reason to desire it, for they paid a great fine

and rent for the farm, which your lordships knew best; yet for all this, 19 Jan. 19 Jac. there issued forth a privy seal of imposing 3*l*. per tun on the French Wines: a grievous imposition in the matter, yet worse in the manner: for if it had been just, yet, in equity, it should have been laid before the voyage undertaken, and the vintage made; then it had been known, and, if known, the merchants had stay'd at home, deserted and given up trading. But this imposition was not laid till 2700 Tun of Wine were arriv'd in the Thames; and yet the Lord Treasurer gave command, that no entry thereof be made in the custom-house until security was taken to pay this intolerable imposition.—He left your lordships there to consider these circumstances. 1. Ships all laden with this perishing commodity. 2. Great and excessive leaking, by being upon the river, and abuse in the passage. 3. 30 shillings per tun formerly imposed by the Rochelers. 4. 20*s*. per tun laid by the merchants, for their several Apparel taken away by the Rochelers. 5. This 3*l*. per tun to fill up the measure of their afflictions.—Yet, instead of compassion in this extremity, such as refused to pay, were cess'd at the double the imposts; others, who could not put in bonds, after asperity of language and petitioning to the king, were committed to pursuivants; yet the king's privy-council used the merchants honourably; for they sent for the vintners, and, to help the merchants, they raised the wine a penny in a quart.—Notwithstanding this the merchants fell into the hands of customers, who used them rigorously, and they lost great part of their principal: first, they paid half of this new imposition in hand, and gave security to pay the other half; afterwards, the payment was divided into 3 parts, and secured by the merchants accordingly. On the 20th of Aug. following, another privy-seal was issued to determine the former; yet 40*s*. only of this imposition was taken off thereby, and 20*s*. laid on the French Wines partially and without limitation; viz: 20*s*. the tun for London, and 13*s*. 4*d*. for the out-ports, whereof the Londoner complained; and it was inserted in the privy-seal, to be at the humble and voluntary assent of the merchants; which is absolutely deny'd, for they only consented to pay 20*s*. the tun, until the remainder of the former imposition, so secured as aforesaid, were paid, and no longer; yet they were haunted by pursuivants till they had paid: and they complain they are undone, unless their bonds be delivered up. They further complain, That they do pay for their trade cent. per cent. and shewed the particulars, viz. One merchant had paid 800*l*. to the king for his part in a short time, and now unable to pay any more.—Here the knight said, That he would willingly suppress what follows, for acerbity of speech is no breeder of good blood; but the Commons had commanded him to speak it, and to declare further, That the merchants compared their sufferings under these impositions, to the sufferings of the old Israelites in

Egypt, when they were commanded to make brick with less straw; and generally confess, that they would drive twice as much trade, if their trade were not overburthened. Hereupon they thought they had sufficient ground to complain; this being dishonourable to the king and oppressive to the people, the king's promise, word, and covenant being violated; these impositions, double the value, being grievous to the subject and fearful to posterity; for besides the old imposition, by statute, upon Wines, there are three more upon one another, 'et quis erit modus,' of feeding upon trade."

Here ended the Complaint touching the Imposition on Wines.

Then sir Edwin proceeded to the Complaint of the lease of Sugars procured by the Lord-Treasurer, viz. "That whereas George Heriot held the Farm of Sugars, upon a rent of 10,000 marks per ann. the Lord-Treasurer procured him to surrender that lease, and obtained a new lease thereof unto two of his lordships servants to his own use, at 2000*l*. per ann. for the same. What merits had his lordship in the great extreme want of money, as to draw from his majesty so great a reward as 4000*l*. per ann. for 21 years? but the Commons' Complaint herein is of a higher nature. That the king having granted, that the merchants importing any merchandize, and paying the duties for the same, if they export the same within 13 months, their imposition is restored: This is observed in all other merchandizes, save that of Sugars. The reason is plain, if your lordships know who is the farmer of it. The Commons further complained, That the Lord-Treasurer had turned the Composition for Groceries into an imposition; which his lordship did, without any warrant, whereby he usurped regal authority. That the city of London had yielded to a Composition for Groceries, but the out-ports refused, and especially the city of Bristol; and that in the Lord-Treasurer Salisbury's time, 11 Jac. that city had a decree in the exchequer, that they should be freed from any such Composition, upon condition to yield to purveyance in kind, when the king or queen comes within 20 miles of their city; which purveyance cost them 800*l*. when the queen's majesty was there. Nevertheless the Lord-Treasurer had directed his warrant to levy a composition upon the merchants of that city and the other out-ports, against their will, with commandment to stay the landing of their goods until it be paid. And this, he said, was the substance of their crying Complaint; what more can they say, but, with wise king Solomon, 'If thou seeest the oppression of the poor, and violent perverting of judgment and justice in a province, marvel not at it; for he that is higher than the highest regardeth, and there be higher than he. Eccl. v. 8.' Their Complaint is of an high lord, the Lord-Treasurer: but your lordships are higher than he; the king higher; and God higher than all; whose justice your lordships execute. This justice

they, humbly and instantly, demand of your lordships against these oppressions."

This Report being ended, the lords took into their consideration how to proceed in the business, and then referred the Examination thereof to the sub-committee on Manitions, &c. adding to the said committee the Lord-Keeper, the Lord-Steward, the bishop of Bath and Wells, the lords Wentworth and Spencer: and their lordships may divide themselves into several committees, if they please, for expediting this business; and may send for any witnesses to be sworn here in court, that may conduce to the Examination thereof.

April 24. The archbishop of Canterbury reported to the house, That the Committee appointed to examine into the Complaint against the Lord Treasurer, had met, and examined divers witnesses, who were sworn here in the house, and had made a collection of Part of the said Charge; which Mr. Attorney read in form following:—

"Part of the CHARGE against the Lord Treasurer.

"I. The farmers of the Petty Farms of Wines and Currants, having sustained great loss in their farm, by an impost of 3*l.* per tun of Wines newly set, were long and instant suitors to the Lord Treasurer for relief; but finding none, exhibited their bill into the exchequer, and afterwards a petition to the king, for reparation of their loss; to which having received a gracious answer from his majesty, the Lord Treasurer agreed with them upon a recompence of 9,500*l.* to be defalked by 1,000*l.* per ann. out of their rent; yet, after this agreement made, he protracted their warrant about six months, and, in the end, took of them a bribe of 500*l.* for their dispatch, which was set upon the account of the Petty Farms: but since the summons of the parliament the same was, by his lordship's direction, posted to the account of the Great Farms.—II. The Lord-Treasurer being presented with a tun of Wine, by the farmers of the Petty Customs, was not contented therewith, but exacted money of them also; who were thereupon drawn to give him 100*l.*—III. The farmers of the Great Farm having, by their lease, covenanted to give security for the payment of their rent, divided their farm into 32 parts, appointing every partner to give security of 1,500*l.* for every part. Five of the partners relinquishing their parts, the security fell short 7,500*l.* Whereupon the 4 patentees, resuming those five parties to themselves, tendered their own security; which his lordship agreed to accept, yet protracted about 3 quarters of a year, until they gave him 500*l.* for his dispatch. And whereas his lordship pretends, by his Answer to the house of commons, that he had this 500*l.* and the other 500*l.* first mentioned in one entire sum, for four 32 parts of that Great Farm, it appeareth his lordship had no parts at all in that farm.—IV. George Herriot having the farms of Sugars upon the rent of 1000 marks

per ann. the Lord Treasurer procured Herriot to surrender that lease; and, to effect the same, gives order for the payment of 14,865*l.* due to Herriot for jewels; all which was paid between the 15th Dec. 1621, and 10th Jan. following. The lease was no sooner surrendered, but the said treasurer procures a lease to two of his servants, by indenture, dated January 13, 1621, for 21 years, at 2,000*l.* rent per ann.; which rent his lordship paid so slowly, that there having only 4,000*l.* thereof grown due since the lease, 3,000*l.* thereof was paid out and since the 31st of December last: and whereas the merchants, importing any merchandize, and paying the duties, are freed to export within the year, without any new payments; that custom was observed in all other farms, but denied in this, for the said Lord Treasurer's benefit.—V. The city of London having yielded to a Composition for Grocery Ware, which the out-ports, particularly Bristol, refused; upon long debate and advisement, in the time of the Lord Treasurer Salisbury, it was resolved they should not be pressed thereto: nevertheless, the Lord Treasurer hath given warrant to levy that Composition upon the merchants of the out-ports against their wills, or else to stay the landing of their goods; which hath been put in execution accordingly.—VI. In December 1618, his majesty, upon great deliberation and advisement, did set forth instructions, very fitting and necessary for the well ordering of the Court of Wards; the Lord Treasurer becoming master of the wards: and, for his own private gains, aiming at an alteration of those instructions, first procured a reference to divers of the council to consider thereof, yet after waded that reference; and, by his own power and greatness with the officers of the court, (though much against their wills) and by misinformation of his majesty, (though much to the disadvantage of the king and subject) in the year 1622, procures new instructions; thereby taking the petitions from the clerk of the court, and appropriating them to himself and his secretary, who takes great rewards of the subject for procuring answers to the same; and, by colour of those new instructions, he doubles fees of continuance of liveries; and, having concealed the wardships to himself, he may easily make wardships concealed by the course of the new instructions.—Also he hath made a Stamp, and delivered the same to his secretary to be used; thereby, unlawfully, putting into the hands of his secretary the greatest part of the power and trust appertaining to the office of master of the wards. This the secretary hath used, stamping therewith, in the absence of the master, tenders, continuances, warrants to the great seal, grants of wardships and leases, indentures of liveries, &c. And whereas, by a privy seal of 6 Jacobi, there was an allowance settled for the ordinary of the Office of Ordnance; which, being put out of order in the time of sir Roger Dallison, in 1617, the lords, upon reference from his majesty, set, under their hands, a proportion, both for present supply and future upholding of that office: but his



lordship, being Treasurer for the space of 2½ years, hath observed none of these proportions or establishments; whereby the stores are, in effect, wholly unfurnished.—And there being a Contract made with Mr. Evelyn, by himself and other commissioners for his majesty, for serving his majesty with Gun Powder, being a bargain of high consequence to have been kept, his lordship hath also neglected and broken that bargain, to the hazard of the kingdom and prejudice of the king. He hath also made unlawful bargains for the lands of sir Roger Dallison; wherein, for compassing those lands, he has contracted to do his endeavour to procure payment of 8,000*l.* of old arrears, (which he performed when he became Treasurer) and to pay for the land with making of baronets and suits to the king; and, in particular, a suit, for compound- ing with his majesty's copyholders of Wakefeld by himself, worth 2,000*l.* And, having, agreed with sir Tho. Dallison and the officers of the Ordnance, he, to gain, indirectly, and by oppressive means, an estate which sir Roger Dal- lison had passed to sir R. Smith and sir John Davy, he setteth on foot an outlawry of sir Roger Dallison, and thereby dispossesseth sir Rd. Smith and sir John Davy, who had been in possession, by a trial at law; using the power of his place, and countenance of the king's ser- vice, to wrest them out of a lease and estate of great value."

After the reading of this, it was ordered, That the said part of the Lord Treasurer's Charge should be sent unto him to-day. And that he be warned to appear here at the bar, on the 28th inst. at 9 in the morning, to answer it. Like- wise, if he had Witnesses to be examined, he may present their names to the house to be sworn between this and the same day. And this is said to be Part of the Charge, because there are other things against him which are yet in examination; and, when reported to the house, he shall be charged therewith, if thought fit.

April 26. The messengers that were sent to deliver the Charge, &c. to the Lord Treasurer, declared they had done it; but he gave no other Answer to them than, "It is well."

April 27. A Petition from the Lord Treasurer to the House of Lords was read, in *hac verba*:

"The humble PETITION of the Lord Treasurer of England.

"Most humbly representing to this most honourable house the names of such persons (by the schedule annexed) as the Lord Treasurer humbly desireth may be sworn and examined for discovery of the truth, upon such Articles as he shall exhibit, touching the several matters con- tained in that part of his Charge, which has been delivered to him. For which purpose he humbly prayeth such warrant for calling in those witnesses, and such others as he shall give notice of to the clerk of the parliament, as the form of this high court requireth. And, withal, humbly propoundeth to the considera- tion of this most honourable house, Whether

your lordships will think fit to proceed to exa- mination of witnesses to be produced on his part, before he hath made his Answer; where- by it may first appear to your lordships what things he will deny and what confess and avow, and in what manner he will avow the same; upon which, as upon issue joined, he may par- ticularly examine his witnesses, and, after cop- ies of the Depositions taken both for and against him, the cause may be prepared for your lordships honourable judgments; which he pre- testeth to further, on his part, to a hearing with all possible expedition. Lastly, his most hum- ble suit is, That, in respect of the nature and multiplicity of the matters objected against him, which do necessarily require the assistance of learned counsel, this most honourable court will be pleased to assign the following gentlemen to be of counsel with him, in this cause of weight so much concerning him; viz. Mr. Dr. Stew- art, Mr. Rd. Hide, of the Middle Temple, Mr. W. Hackwell, of Lincoln's-inn.—M1202.2222.

Then follow the names of nearly forty wit- nesses.

This Petition being read, the lords appointed a special committee to consider what Answer should be made to it, consisting of the Lord Pre- sident, lord Rochford, the bishop of Rochester, and the lords Wentworth, Howard, and Say. These lords having withdrawn themselves some time, and being returned, the Lord President re- ported to the house the Answer agreed on, in these words:

"1. That warrants shall be given for calling in of such witnesses, whose names shall be ex- hibited in writing, and thought fit by the house to be examined; the interrogatories and wit- nesses names to be sent to the house to-morrow in the afternoon, and the witnesses themselves to appear, that such of them may be sworn and examined as the house shall think fit. 2. The house sees no cause, when the witnesses names and interrogatories are sent in, why the exami- nation of them should be deferred: but the day for his appearance and answer was to hold. 3. His lordship may use what counsel he pleases to advise for his defence; but it stands not with the orders of this house to allow counsel at the bar, in cases of this nature."

This Answer, being read and approved, was sent to the Lord Treasurer. A Memorandum is made, That the earl of Bridgewater, one of the committee to search precedents, &c. reported, That they could find none where a member of this house did answer, by his counsel, to a com- plaint exhibited against him: but that divers members of this house and others had answered in person and not by counsel; and that coun- sel was denied to Michael de la Pole, lord chan- cellor, 10 Ed. 2. when he required the same.

April 28. Another Petition from the Lord Treasurer to the house, was presented and read, in *hac verba*:

"The humble PETITION of the Earl of Middle- sex, Lord Treasurer of England.

"Most humbly sheweth, That, according to

your lordships' directions, in Answer to his Petition humbly presented yesterday, he had appointed the witnesses there named to attend the most honourable house this afternoon, to be sworn to answer such interrogatories as, on his behalf, shall be exhibited.—But, whereas your lordships did further direct that the said interrogatories should be presented this day: he most humbly desires your lordships to be truly informed, that having neglected no time since he received his Charge to prepare his Answer, he finds the matters objected so many and of such divers natures, that he cannot yet, possibly, furnish the same, in such perfect and particular manner, as he ought and desires to do for your lordships' best satisfaction, and the clearing the matters laid to his Charge in all points. And therefore, his Answer being not yet ready, upon which all the interrogatories must properly be grounded, and without which your lordships' judgments of the pertinencies of the interrogatories cannot be rightly informed, he humbly beseecheth your lordships to respite them, and as soon as his Answer is finished he will forward them with all possible speed. And, he doth, once again, humbly propound to the consideration of this most hon. house (because therein your lordships have not been pleased to give Answer unto his former Petition) whether your lordships will not, in your noble justice, permit him to have copies of the Depositions taken and to be taken in this cause, on both sides, without which he shall be utterly disabled to make that just defence, which a cause of that importance to him, doth necessarily require.—MIDDLESEX."

The lords, upon reading this Petition, did all agree, "That it is against the order of this court, as well as of all other courts, for a delinquent to have Copies of the Examinations before he answers." And, as to the rest of the Petition, the following Answer was agreed on to it; "The lords expected to be obeyed and not to have been directed; and hold for a disrespect unto the house. That witnesses should be produced and sworn, and no interrogatories sent whereon to examine them as was required. The Copies of Depositions already taken, for Proof of the Charge, was not directly prayed in the former Petition, therefore it was not precisely answered; but it is so unfit a desire that the lords think the petitioner ill-advised to make such a request. And, according to the former order of the house, the lords expect the Lord Treasurer's appearance to-morrow morning, to hear such Answers as he shall make."

April 29th. Another Petition from the Lord Treasurer was presented to the house, and read *in hæc verba*:

"Most humbly shewing, That besides the weighty cares of mind which now do lie upon him, by the Charge he hath received from that most honourable house, he is fallen into such an indisposition of body, as he is once more enforced to beseech your lordships, in your noble justice and favour, to grant him a farther day

for presenting his Answer and Interrogatories, which fall out to be much longer than he himself expected. It being no small addition to his sorrows, that in a case so nearly concerning him, he cannot conceive by their lordships former Answers to his former humble Petition, that they purposed to allow him Copies of the Depositions, where by, after his Answer delivered in writing, he shall prepare himself for his just defence against the hearing.—MIDDLESEX."

To back this Petition, the Prince moved "That in respect of the Lord Treasurer's great office, and sickness pretended by his lordship, he might have a longer day given him, and that day to be absolute." On which the following Answer to the Petition was agreed on. "That the lords, only in respect of the Lord Treasurer's indisposition of health, are pleased to respite his appearance this day; but do enjoin that on May 1, at 9 in the morning, if his health so permit, he bring his Answer; if not, that then he send his Answer to his Charge in writing, and all such Interrogatories as he would have his witnesses examined upon. Likewise, the lords do peremptorily assign the 7th of May next, for his appearance in person, and for the final hearing and determining the cause."

On the same day the Attorney General read the following

Additional ARTICLES to the Charge against the Lord Treasurer.

"I. He undertook the office of the Wardrobe, in the 16th year of his majesty's reign, and continued in the service of that place from Michaelmas, anno 16, to the same time, anno 19. This office he took upon him under pretence of doing his majesty special service; and for that purpose, obtained a certain assignment of 20,000*l.* per ann. or thereabouts, which was duly paid unto him by way of imprest. Instead of doing service, he hath brought that place into disorder and confusion; he hath not duly served the warrants which he should have served, nor paid the workmen and creditors; he hath neither kept orderly accounts, nor yielded any; but under colour of pretended service of great importance, hath procured gifts and discharges of great sums of money, which he received for the execution of that place, and for the queen's funeral. II. Whereas, in the former Charge delivered to his lordship it is mentioned that merchants, importing Sugars, have been denied to export the same without paying new duties; it appears, upon further consideration of that business, That the prejudice the merchants have sustained concerning their Sugars, is, that they have been denied, upon exportation of sugars, the imposts paid on importation; which is contrary to the direction given by his majesty's letters patents 5 Sept. 8 Jac."

May 1. The Lord Treasurer sent another Petition to the lords, with his Answer to his Charge, and the Interrogatories to four parts of the same; which being read, were referred to a

committee, who were to report to the house what interrogatories they reject. The tenor of the Petition was as follows :

"The Lord Treasurer, with most humble thanks, acknowledgeth the honourable favour of this house, by their noble order made in this house on Thursday last; and doth most humbly take hold of the liberty thereby granted him, in respect of his indisposition, (which yet continueth) most humbly to present to your lordships herewith all his Answer, in writing, as well to the Charge he received the 21th of April, as to the Additions thereto which he received the 29th of the same, together with as many of his interrogatories for Examination of Witnesses as he could possibly make ready by this time, which are full and perfect for four of the Articles of his Charge; most humbly desiring Mouday morning at the sitting of the court for the bringing in the rest; and that your lordships will pardon the length of his Answer; the variety and multiplicity of the particulars necessarily requiring it, as well for the readier informing of your lordships judgment as for relief of his own weak memory, whom as yet you have been pleased to appoint to stand alone without counsel at the hearing: he doth withal humbly explain his meaning in the former Petitions, which were not to desire Copies of the Depositions before his Answer were put in, and all Witnesses for and against him fully examined: but when that shall be done, he hopes it will stand with the honour and justice of that most honourable house to allow him Copies of the Depositions on both sides.—MIDDLESEX."

The tenor of the Lord Treasurer's Answer to his Charge followeth ;

"The humble ANSWER of the Earl of Middlesex, Lord Treasurer of England, to the part of the Charge which was delivered him from the most honourable Court of the higher House of Parliament, on Saturday the 21th of April 1624.

"To the 1st and 3rd Articles concerning the two pretended Bribes of 500l. a-piece. His Answer is that no such several sums were ever paid unto him, nor any money at all for any of the causes mentioned in the said Charge; but he acknowledgeth that, the 27th of June last past, he, by his servant, did receive at the hands of Jacob, one entire sum of 1,000l. in consideration of his interest in four 3rd parts of the Great Farm, which he had formerly reserved unto himself, upon settling the new lease thereof; and for no other cause, as he hath truly alledged in his Answer to the Commons: and, for better satisfaction of this most honourable house therein, he hath here set down a true and particular Declaration of the state and carriage of that business, as followeth:— He is very well assured that as his general course, in all bargains of the like nature for the king; hath been to look to his own duty and the king's service, as the husband of his majesty's estate; so in this particular, touch-

ing the 9,500l. allowed to the Petty Farms in recompence of their losses, he carried himself so carefully and strictly for the king, as he could no ways expect so much as thanks, much less any gratuity or reward from them: in though, at first, they demanded of his majesty a very great sum, pretending, that the interruption they complained of was 10,000l. disadvantage to them in their first year only; yet upon good reasons, shewed by the Lord Treasurer, on his majesty's behalf, they were brought to accept of 9,500l. whereof, though they earnestly pressed to have present satisfaction, yet he over-ruled them to take it in 9½ years, (which was not worth more than 5,000l. a hand) and that, also, to be in full satisfaction of all their demands, not for one year, but in the whole term of 9½ years; so, as, in that particular, the Lord Treasurer was so far from doing them favour, that he thinks, they have maliced him ever since, rather for looking them to hard to it, than for any regard to the king's service. And for the Great Farm, he said Treasurer saith, That the old farmers becoming suitors to renew their lease, proposed to leave the Silk-Farm upon his majesty's hands: and, withal, to have an abatement of the rent they then paid for the Great Farm: whereupon the Lord Treasurer, finding how much that offer tended to his majesty's disadvantage, desired sir A. Ingram, by himself and his friends, to get a better offer made to the king, which was done accordingly; and thereby his majesty's rent was not impaired (as at first was proposed), but increased 4,000l. per ann.; and the Silk Farm Rent was also made good; which otherwise, to have been left by itself, would not have yielded the old rent by 5. or 6,000l. per ann.; so that the bargain was better to the king than the old farmers first offered by 9, or 10,000l. per ann.; notwithstanding, it was thought fit by his majesty that the old farmers, coming to the rate offered by others within 1,000l. per ann. should have the preference of the bargain. But withal, the Lord Treasurer, to gratify those, who, by the said offers, had done the king service, by advancing the rent as aforesaid, did, at the instance of sir A. Ingram, on his and their behalf, reserve certain parts of the said Farm, with no other intention but to dispose the same among them; and then gave order for the lease to proceed to the patentees, who were named, in trust, for themselves, and all the partners. And afterwards, the said Lord Treasurer did dispose of the said parts, reserved to the said sir A. Ingram and others, according to the first intention; 4 of which parts, the parties which had them did afterwards, at several times, give up to the said Lord Treasurer, and left the same at his disposing. Some months after, sir Philip Carey, who had one of the Lord Treasurer's parts, and some others placed by the farmers, upon some mislike of carriages of that farm, did also relinquish and give up their parts; upon occasion whereof, the Lord Treasurer, being put in mind by sir A. Ingram of the said 4 parts,

which were returned unto him by those to whom he had formerly disposed them; and being asked what he would do with them, did, upon Jacob's next coming to him, ask him, how the farmers meant to use him for his four 32 parts of the farm? He answered, That because his lordship had formerly signed a warrant, for the king's security of all the 32 parts, and said nothing of those 4 parts, they thought his lordship had waived them: but he would speak with the partners about it, and then give him a full answer. Within few days after, Jacob returned to him, and very freely offered 1,000*l.* for his parts, according to the rate which, he said, they had lately given to Mr. Chancellor for his: which the Lord Treasurer was contented to accept: and within 4 days after he told Mr. Chancellor what bargain he had made with the farmers, for his interest in four 32 parts of the Great Farm, viz. That he had sold them to the Farmers for 1,000*l.*—This Agreement being thus made with Jacob, and the 1,000*l.* paid accordingly; it falls out, by that which was since discovered, That he and his partners which shared those 4 parts, agreed together, to ease themselves of that money, (which should have been properly borne upon their own private accounts,) by laying the same upon the general accounts of the Great and Petty Farms; (themselves being farmers in both) and thereupon, the 1,000*l.* as is since discovered, was by them divided into two parts; the one half entered upon the books of the Petty Farmers, and the other upon the general account of the Great Farm, as gratuities to the Lord Treasurer; who little knew of their unjust proceedings, both with himself and their partners, until about Christmas last; when he had first intimation of some such Charge laid upon the Petty Farms, not hearing then that which was done upon the Great Farm's account: hereupon he presently sent for Jacob, and was much offended with him, that he should suffer any such unjust thing to be done; who, at first, denied it; but, the next day, confessed it, and said, it was ill done; and said, he was over-ruled in it; and promised to set all straight again, according to the truth and right of the case: which, the Lord Treasurer understands, was done accordingly; not by posting the 500*l.* from the Petty Farm's Account to the Great Farm's, but by discharging both unjust charges out of both accounts; the patentees returning back the money which they had taken off the Petty Farmers, upon the Lord Treasurer's just exception thereto; and also making like restitution, of their own accord, to their partners in the Great Farm, whom they had likewise wronged; whereof the Lord Treasurer heard nothing till of late: so, he hopes, the proofs of this cause will make it evidently appear, that all this scandal hath fallen upon him, by this underhand working of the patentees for their own private gain; by wrongfully charging their partners in both farms, to ease themselves, without the Lord Treasurer's privity or knowledge: and though the patentees, to make their

own tale good, have lately denied that the Lord Treasurer had any part in the farm; yet it will manifestly appear upon proof, by the oaths of men of good reckoning, that themselves have acknowledged, that his lordship had reserved part of that farm at his disposing.—For the 100*l.* and the tun of wine, alledged, in the 2nd Article, to be received: the truth is this, That Jacob being with the Lord Treasurer about other business, told him, That the Farmers of the Petty Farms, had, or did intend, to present him with a tun of wine, for a new year's gift. The Lord Treasurer then answered him merrily, That other Lord Treasurers had been better respected by those farmers, and that he would have none of their wine; and shortly after, Bernard Hyde brought him 100*l.* for a new year's gift only, and for no other cause.—To the 3rd Article, concerning Herriot's Reckoning and the Sugar Farm, the Lord Treasurer makes this Answer, That in 1620, a lease was granted to Herriot, of the Impost upon Sugars for three years, not at the rent of 10,000 marks per ann. as is alledged in the Charge, but at less by 1000*l.* per ann. viz. 5,666*l.* 13*s.* 4*d.* rent. Afterwards, the 17th of Nov. 1620, in the time the Lord Mandeville was Treasurer, Herriot obtained a privy-seal of assignment, whereby he had power to pay himself out of the Sugar Farm-Rent, by way of retainer, a debt of 13,089*l.* 16*s.* formerly due to him, viz. for his free-arrear in the exchequer 187*l.* 10*s.* and upon six privy-seals for jewels, formerly bought of him, 12,902*l.* 6*s.* in which privy-seal of assignment, there was one special clause, That if the said three years rent would not suffice to pay the whole debt, by reason of defalcations which might fall out upon the farm, the rest should be made good out of the exchequer; and afterwards, in May and August 1621, in the viscount Mandeville's time, Herriot obtained two other privy-seals, for two other debts due to him, amounting to 1,962*l.* 15*s.* which, being added to the former debts by privy-seal, makes up the great sum of 14,865*l.* mentioned in the Lord Treasurer's Charge.—And whereas it is alledged, that this whole sum of 14,865*l.* was paid to Herriot by the now Lord Treasurer's order within the space of 26 days of Nov. the truth is, There was not one penny paid at all in money, but Herriot being indebted to his majesty 7,799*l.* upon account of the rents and profits of the Sugar-Farm until Christmas 1621, the same was allowed in discharge of so much of his debt of 14,865*l.* viz. 5,666*l.* 13*s.* 4*d.* which he had power to pay himself, by virtue of the said privy-seal of assignment; and 2,122*l.* 6*s.* 8*d.* which was done by him upon his account before the lease of the Sugar-Farm began. And whereas he might, by the said privy-seal of assignment, have paid himself the other 7,066*l.* within less than 15 months; the Lord Treasurer did, by Herriot's consent, transfer the same to be paid out of the Tobacco Farm, viz. 4,000*l.* at Michaelmas 1622, and the rest at Michaelmas 1623, which was a longer time and more advantageous assignment for the king

than the former was: so, although there were several orders signed, as if the money had been paid immediately out of the exchequer; yet that was done, of necessity, to enable the striking tallies, for the tellers charge and discharge, as the form of the exchequer required, without issuing any money at all: so that it will appear upon record, this Charge upon the Lord Treasurer is wholly mistaken; and that he was so far from paying so much ready money as he is charged with, that he paid no ready money at all, but by assignment; which he made at longer days, than it was formerly settled in his predecessor's time. And thereupon Herriot, having his debt thus settled and paid to his content, did surrender up his lease; which he had procured to no other end, but to secure the payment of the debts owing to him by the king. Afterwards, it is true, his majesty granted a new lease of the Sugar-Farm to the Lord Treasurer's use, at the rent of 2,000*l.* per ann.; in the granting whereof his majesty was truly informed of the state of the same, and particularly made acquainted, That the said Farm of Sugars might be improved to 6,000*l.* per annum, though Herriot had it but at 5,666*l.* 13*s.* 4*d.* it being his majesty's pleasure, out of his own grace and goodness, to grant the same, in form aforesaid, to the Lord Treasurer, for his many services, and for considerations best known to himself.—For the slow paying his rent, it is true, that one of the 3,000*l.* was paid three or four days after the rent-day, and the other two half-years rents were forborne in respect of some private disbursements of his lordship's for the king; upon bills of exchange to the commissioners for Ireland; and other engagements for his majesty; which his lordship intended should be discharged and cleared by the said rent.—And, lastly, The liberty of transporting Merchant's Sugars, formerly imported, remaineth now in the same estate and condition, without any alteration, since the Lord Treasurer's lease, as it did at any time before; neither is there any such restraint or denial made by him, or under him, to the merchant's prejudice or his own profit, as is alledged in the Charge.—To the 4th Article, touching the Composition for Grocery-Wares in Bristol and the out-ports; the Lord Treasurer saith, That complaint being made unto him on his majesty's behalf, That the said Composition-Money being no less due in the out-ports than in the port of London, no certain course was settled for the receiving of it, or bringing it to account for his majesty's use, so as little or no benefit thereof came to the king: he thereupon thought fit to send a general warrant to the out-ports, to authorize Jacob to take care of that collection; and receive such duties of that nature, as had been formerly used to have been paid; to the end the whole collection thereof might come in upon one man's account; with no intention to raise a new charge upon the subject, but only to settle the collections of the king's duties in order: and, as soon as the said Lord Treasurer had notice, That the citizens of

Bristol had formerly yielded to furnish his majesty's household with grocery in specie, upon purveyance, at the king's coming into those parts; and, thereupon, had obtained an order in the exchequer, to exempt them from the payment of the composition; the Lord Treasurer did presently discharge the former warrant sent thither before, and referred the merchants (who acquainted them with it) to sir Simon Harvey, one of the officers of the Green-Cloth, who certified his lordship, that he had agreed with them to their good contentment.—To the 5th Article, concerning the business of the Court of Wards, the Lord Treasurer makes this humble Answer, That in Dec. 1618, his majesty did set forth instructions for the ordering of the Court of Wards; which orders were set forth by the procurement and solicitation of some of the officers, without the privity of the lord Wallingford, then master, and some other of the council of that court, and near about the time of his lordship's leaving the place: divers of which articles tended to the abridgement of the antient authority and profits of the master's place, and for the profit of others of the officers of the court.—Whereupon the Lord Treasurer, being made master, was an humble suitor to his majesty to restore him to the former rights of the place, by altering the said instructions in some points, not prejudicial to his majesty's profits, nor grievous to his subjects; upon which it pleased his majesty to refer the same to some privy counsellors, as is mentioned in the Charge: after which time, and before any thing was done, upon the humble motion of the Lord Treasurer, his majesty was pleased to direct, That the master and officers should first confer and agree (if they could) among themselves, and resort to the referees, if they agreed not; whereupon the master and all the officers, upon sundry meetings and debates, agreed among themselves for the new Instructions, and thereupon voluntarily subscribed their names. There was no misinformation used to his majesty, neither are the points contained in the new Instructions disadvantageous to the king or subjects more than the former, and, in some points, of much more advantage both to the king and subject. Touching the taking Petitions from the Clerk of the court; and appropriating them to himself and the secretary, who is charged with taking great rewards for procuring answers to the same, he saith, That, until the said Instructions of 1618, all Petitions were delivered to the master; which, by the said Instructions of 1618, were (to the great prejudice of the subject, and delay of his majesty's service) delivered to the clerk of the court, who was to present it at the sitting of the Council, which could be only in term time; whereas, by the former antient course, and by the last Instructions, the Petition being delivered to the master, he only giveth order for finding and returning an office, which must also be entered with the clerk; and, the office being returned, the grant is made by the master and council, at the council table. By this

course the suitor hath expedition at all times, and the master no profit at all; and the secretary neither hath taken, nor exacted, any reward of the subject for procuring Answers, to the knowledge of him, the Lord Treasurer. Touching the doubling fees for Continuance of Liveries, by the new Instructions, he saith, That, ever till the Instructions of 1618, the suitor might continue his livery, either with the master, or surveyor; and the master's fees for such continuance was ever 10s. The Instructions of 1618 appropriated the Continuance only to the surveyor, which was an encroachment by the surveyor upon the master; now the new Instructions enjoin the Continuances to be with both, for which the master taketh no other fee than 10s. which was the ancient fee for Continuances taken by all masters before him: and, for tenders, the master doth now take but 5s. whereas the ancient fee is 10s.—By the Continuance before both houses, men are rather forced to sue out their liveries to the benefit of the king, and good of such as have cause to sue against them. Touching the having of concealed Wardships, and, to that point, that the master may easily make wardships concealed by the course of the new Instructions, the Lord Treasurer saith, That although he hath the disposing of concealed wardships, yet the benefit of them is to the king's own use; and it is not in his power to make a concealed wardship: for if the petition should be suppressed, or not answered, yet it is no concealment, by the new Instructions, if any suit be made for it within a year after the death of the tenant; neither is the Lord Treasurer charged to have done, or so much as to have attempted any such act.—Touching the Stamp, which he is charged with having delivered to the secretary, he doth humbly acknowledge the same; but, withal, desireth your lordships to take into consideration, that the whole purpose and scope of doing thereof was only for the present dispatch of suitors in ordinary matters of course; and for such business as could not be effected by the Stamp alone, without the assistance or joining of other officers therewith, either before or after putting the Stamp: and the Lord Treasurer was rather induced to give way thereto, because he had understood that the lord Burleigh, when Lord Treasurer, made use of the like; and for that Stamps are in use in other offices at present: yet, if the Lord Treasurer had ever conceived, or been informed, that it had been unlawful or unfit, he should not have used it: also he directly affirmeth, That, by the use thereof, neither his majesty nor the subject, hath hitherto any charge or prejudice, but much ease in their dispatch.—And as to Dallison's unsettling the Office of Ordnance, that fell out 8 or 9 years since; and the supply set down by the lords, in 1617, was 4 years before the Lord Treasurer was in office; neither did the commission of the treasury, nor his predecessors, pursue any point thereby directed; but it lay wholly neglected, and now only revived against the Lord Treasurer, who

never saw it but in this parliament: and for the book made up by the commissioners of the navy, in 1620, for supplying the Stores and furniture upholding of the Office of Ordnance, (though, being the last of the three settlements mentioned in the Articles, it might be sufficient to suspend both the former) it was so far from being an establishment to govern the office by, that all the officers have, and still do oppose it, and protest against it to this day; so as there being only propositions without resolutions, and no settled rule of establishment and direction, why should the Lord Treasurer be bound to keep it? or why the breach thereof be made his fault now, when it was broken and neglected in his predecessor's time, who was then the only proper officer to have put it in execution, the now Lord Treasurer being but one of the propounders of it.—Notwithstanding, he humbly conceives, and hopes to prove clearly, that there hath been no such wilful negligence as is alledged; for though it be true, that the officers of the Ordnance, always opposing that Book of the commissioners, would never sue out the two warrants thereby required, the one of 13,640*l.* 14*s.* 2*d.* for Supply of the Stores, and the other of 3,000*l.* per ann. for the Ordinary; yet there have been other privy seals of the same nature sued out, whereupon hath been issued to that office, since that book of the commissioners was delivered, as follows, viz. for the supply of the Stores, 11,096*l.* 17*s.* 6*d.* which sums want not much of the commissioners preparations, considering that the ordinary quarter-books are yet unpaid for a year and a quarter; all which argue no wilful negligence in the payments, howsoever the officers have disposed of the monies; nor any great unfurnishing of the stores, which, if they have less proportion of some stores of provisions than were set down in the commissioners books, yet they have more of other stores of provisions, which have since been thought more useful and more necessary.—As to what concerns neglecting the supplies for Gun-powder, the Lord Treasurer saith, 'That the bargains with Evelyn were made in the lord Mandeville's time, who continued in the office the first 5 months after; in which time Evelyn served in Powder for the first 3 months; but, getting no money for it, made a stop of his delivery, according to the liberty of his contract: so that the same was broken in the lord Mandeville's time, and left wholly in distraction to the now Lord Treasurer, with a debt for three months powder, delivered as aforesaid; his predecessor not paying one penny upon that contract in all that time.—Neither did that bargain with Evelyn suffer any small interruption, by the continual complaints stirred up against him by Mr. Sadler, and new propositions made by him for settling the powder-making otherwise; whereby Evelyn's contract stood under question, and both the Lord Treasurer, and Mr. Chancellor, and the commissioners of the navy, had several times the trouble to examine the same; the Lord Treasurer having a purpose to bring Evelyn

to account for the profit, made by him, of the surplusage of the price of the powder put to sale: by this means, and by reason of other mishaps, of blowing up the powder-mills by fire, Evelyn grew discouraged; and the service was neglected, till Sudler's suggestions were found frivolous, which was near a year's interruption of the service.—Besides, when the Lord Treasurer entered, he found in the Stores but 116 lasts odd hundreds of powder; and, the 20th of March last, he left in store above 111 lasts, notwithstanding the great expence of powder, upon extraordinaries, in the now Lord Treasurer's time, which also might have been 194 lasts, if the lord Mandeville had settled and maintained the contract in his time, by addition of his 5 months provision, and the 3 months which he left the now Lord Treasurer to pay for; whereas the whole proportion of Gun-Powder, assigned by the commissioners of the navy's book to be in store, was but 143 lasts of powder; and good reasons given wherefore there should be no more.—Lastly, It will appear, by comparing the quantity of Powder, paid for by the now Lord Treasurer, with the time before, that his lordship had paid for as much, in this short term of 2½ years, as hath been paid for in the next 7 years before; so as never, in the king's time, were the Stores so well furnished with powder for quantity and goodness, as they are now; and yet never more want of money in the Exchequer these 20 years, than hath been in the now Lord Treasurer's time.—To the last Article of the Charge, about the bargain for the land which was sir Roger Dallison's, the Lord Treasurer saith, That he hath not made any unlawful bargain for the lands of the said Dallison; neither hath he paid for the said lands with making of baronets, or freeing copyholders, or any other suit to the king, as by that Article is pretended; but hath really paid for the same in money and money's worth, out of his own estate, to the full value of the lands and more: and, for more full declaration of the truth, he saith, That the said sir Roger being indebted to the king in 13,062*l.* 4*s.* 10½*d.* whereof sir Tho. Mounson, his surety, was found debtor 3,100*l.* the said Dallison's lands were extended for 9,962*l.* 4*s.* 10½*d.* thereof, and the said sir Tho. Mounson's lands for the said 3,100*l.* and these so extended, together with the said several debts, were granted by his majesty's letters patent the 20th of July, 16 Jacobi unto Francis Morrice, and other officers and creditors of the Ordnance for 13,062*l.* owing to them by his majesty; with a special command to the Lord Treasurer and Chancellor of the Exchequer, to make out such writs and process for the said debts as should be required; and, with a covenant, on the king's part, that if, by reason of incumbrances, they could not receive the same in convenient time, then it should be paid unto them out of the Exchequer.—These lands of the said sir Roger were so incumbered by former charges, that the said officers and creditors of the Ordnance could not raise, by the said extent thereof, near so much

as the bare interest of the said 9,962*l.* 4*s.* 10½*d.* parcel thereof; and therefore did not conceive how it could give satisfaction unto them for the said 9,962*l.* due debt, long forborne; but that they must of necessity have recourse to his majesty again for their better satisfaction according to his majesty's covenant contained in the said lease, made unto them in that behalf; and yet there was nothing allowed to relieve the poor distressed lady of the said sir Roger Dallison and her son: whereupon the now Lord Treasurer, in July, 1621, being then but one of his majesty's commissioners for his debts, was made acquainted by the said Francis Morrice, and other the said officers and creditors of the Ordnance, of their intent and purpose; and, being willing to do his majesty the best service he could therein, after divers conferences, did come to an agreement with them for their interest in the said extents, and to make them payment of the said 13,062*l.* for the same, as follows, v*z.* 1,062*l.* before the last day of November following 1621, and the rest by 500*l.* every 6 months, at and after the Annunciation, 1623: after which agreement made for the extents, he not perceiving how he could make any use thereof, unless he compounded also with such as had the inheritance and other estates in the said Dallison's lands, did deal with some of them for the same; and then came to a second agreement with the said Francis Morrice, and the rest of the officers and creditors of the Ordnance, to convey to them an estate, which he then had for 9 or 10 years to come, in the Petty Farms of Currants and Wines, of the yearly value of 1,400*l.* (and worth 7,000*l.* and more, to be sold) which he did grant, and they did accept in full satisfaction of the said 13,062*l.* 4*s.* 10½*d.* and for their interests in the said extents accordingly.—Not long afterwards, the Lord Treasurer, being desirous to free himself of any further trouble or care, by reason of many other the incumbrances which were upon the said lands, did, in or about November 1621, agree with sir Arthur Ingram, to deliver the said lands, with other lands then of him the said Lord Treasurer in the county of York unto the said sir Arthur, in exchange for other lands of his, and to give unto him 9,000*l.* in money, for the compounding and freeing the said estate and incumbrances, which were upon the said lands, late Dallison's, and of a lease he had of one Anthony Meers, of other lands, intermixed with the said Dallison's lands, esteemed of the yearly value of 400*l.* per ann.; of which 9,000*l.* the said Lord Treasurer, afterwards, in February and March 1621, by the consent of the said sir Arthur, did pay unto sir Thomas Mounson, for his interest in Dallison's lands, the sum of 3,000*l.* besides the freeing of his the said sir Thomas Mounson's own lands of the said other extent for the said 3,100*l.* and all the residue of the said 9,000*l.* he the said Lord Treasurer hath paid and satisfied, as it hath been required by the said sir A. Ingram accordingly; which said several sums of 7,000*l.* and 9,000*l.* amounting together to 16,000*l.* and

more than the said lease and lands are worth, at and from the time of the said agreement for the exchange so made between the said Lord Treasurer and the said sir Arthur: and thereupon the lady Dallison, and sir Thomas Dallison, her son, upon a composition made with them by the said sir Arthur, did, in February 1621, make an assignment of the said lease, to certain persons named by the said sir Arthur in trust for his use; and, since the said agreement and that time, the Lord Treasurer had no more to do therein than as the duty of the place requires, and, as he hath been advised by his majesty's learned council, convenient and fit to be done on his majesty's behalf: and therefore, as touching the rest of the said last Charge, That the Lord Treasurer having agreed with sir Thomas Dallison, and the officers of the Ordinance, he, to gain, indirectly, and by oppressive means, an estate which sir Roger Dallison had passed to sir Richard Smith and sir John Davey, did set on foot an outlawry of sir Roger Dallison's, and thereby dispossessed sir Richard Smith and sir John Davey, who had been in possession, by a trial at law, using the power of his place, and countenance of the king's service, to wrest them out of a lease and estate of great value, the Lord Treasurer saith, The same is wholly mistaken; and that the truth is, That the said sir Richard Smith, having a conveyance of all the freehold lands, which were the said sir Richard Dallison's in Scutten, as a mortgage for payment of 1,300*l*. and the said sir John Davey having an assignment of the said lease, as a mortgage for the payment of 600*l*. by year, for 10 years, upon a very hard contract for money, he the said sir Richard Smith, long before the said Treasurer had any thing to do with the said lands or lease, was dispossessed of freehold lands, by virtue of the said extent, for the king; and, after such time as the said Lord Treasurer had so bargained and agreed with the said sir A. Ingram, and had left the said whole business to him as aforesaid, it was found that the said sir Roger Dallison stood outlawed, after judgment, at divers several men's suits, whereby the same lease and interest was in his majesty, by means whereof some difference grew between the said sir Richard Smith, sir John Davey, and the said sir A. Ingram, which the said Treasurer used the best means he could to reconcile; and, to that end, endeavoured to have the same arbitrated and ended by sir Thomas Savage and sir Nicholas Fortescue: but their travel therein taking no effect, after some suits in the prerogative court, the exchequer, and common pleas, between sir Richard Smith, sir John Davey, and sir A. Ingram, in conclusion, by and with the consent of all parties, the said differences were heard and ended by sir Henry Hobart, lord chief justice of the common pleas, and by the rest of the justices of the same court; by whose mediation and order, there is to be paid to the said sir Richard Smith and sir John Davey, in satisfaction of their estates and interest in the said lands and lease, over and besides other

great sums of money by them formerly received, the sum of 3,000*l*. And touching the Charge of the Contract, about paying the 8,000*l*. old arrears, the Lord Treasurer saith, That all the 8,000*l*. was not old arrears, as is pretended, for that 3,800*l*. thereof was then newly due by quarter-book, for certain quarters ending at Midsommer, the next before the said year 1621. And also saith, That his promise therein was made before he became Lord Treasurer; and that promise was but to do his endeavour to get the 8,000*l*. paid; the same being a just and due debt owing to about 100 poor families, whose pressing necessities would have forced him, after he came to the place of Treasurer, to have given them satisfaction, if he had made no such uncertain promise before: and the said debt was paid at 18 several times, by several portions, as money could be best spared, between March 1621, and May 1623; and the king was so far from being prejudiced by the Lord Treasurer's dealing in this bargain, that his majesty was thereby eased from the repaying of the said 13,06*l*. 4*s*. 10*d*. according to the said covenant: and, to make it appear that no oppression or power was used in this purchase, for any private benefit, or otherwise, nor that the same was paid for by making of baronets, and suits to the king, as is pretended, the said Treasurer will undertake, and freely offereth, that the lands shall be conveyed again to whom this honourable house shall appoint, upon payment of the said 9,000*l*. and reassessing of his said leases and interests in the said Petty Farms, with repayment of the monies received upon the same. It being also apparent by his declaration, That if any such suits, oppressions, or other hard measure, had been offered touching the said lands or lease, as is alledged in the said Charge, the same were no way done by the Lord Treasurer, or by his privity or direction, or whilst the said lands remained in his hands, which was not for above 5 months; so as the same can in no manner concern the Lord Treasurer, neither doth he know of any thing done therein by any other, but what hath been just and lawful.— And as to the Baronets, the same nothing at all concerneth this matter; but was a grace of his majesty, upon the suit of a nobleman, who was assisted by the Lord Treasurer, which he was pleased to confer upon sir Thomas Mousson, in regard of the loss of his office of Hawkes; and the same taking no effect, his majesty upon the said sir Thomas Mousson's late Petition, was pleased, in lieu of the Baronets formerly intended him, to grant another suit for the compounding with certain of the copyholders in Wakefield, for the value of 50*l*. by the year; whereof as yet he hath received no fruit at all.

“The humble ANSWER of the said Lord Treasurer to the Addition of his CHARGE received from the most honourable court of the higher House of Parliament, on Thursday the 29th of April, 1624.”



"To that part which concerns him, as he was master of the Great Wardrobe, the said Treasurer saith, 'That he held that office for the 3 years mentioned in the Charge, and that, within that time, he did receive the ordinary assignment of 20,000*l.* per annum or thereabouts; wherein, he conceives, he did no ill service to the king when he did reduce the vast charge of that office to 20,000*l.* per ann. and, by 3 years experience, to shew his majesty the means how that 20,000*l.* might be again reduced to 12,000*l.* which he conceives, is no argument that he hath brought that place to any disorder or confusion, as, in a generality, is objected.—It is true that he made no account, for his time, neither for the Wardrobe, nor for the queen's Funeral; neither was there any cause why he should so do, for that, by his majesty's contract with him for the Wardrobe, he was to discharge the ordinary charges thereof for 20,000*l.* at his own hazard; and, for the said Funeral, having warrant, by privy seals, to receive 20,000*l.* he received but the sum of 13,500*l.* and yet saved some part thereof, besides what he yearly saved upon the ordinary allowance of the Wardrobe: with all which savings he, from time to time, truly and particularly acquainted his majesty, not being willing to gain so much by the same as he found he did, without his majesty's privy and gracious allowance; who, being rightly and truly informed of all the particulars, did, upon the said Lord Treasurer's voluntary surrendering of that beneficial Contract for the Wardrobe, for advancement of his majesty's service, having therein an estate for his life, grant him a general release and pardon, by indenture under the great seal of England, for all matters concerning the said Office of the Wardrobe and Funeral aforesaid.—'He further saith, 'That in the time of his being in that office, he paid divers extraordinary sums, which were not within his bargain, upon several warrants and privy seals; as, 3,000*l.* to the earl of Carlisle, about 2,000*l.* for new-furnishing Ely house for the Spanish ambassador, above 1,000*l.* for a new rich barge-cloth, and other extraordinary disbursements of about 1,000*l.* more; for all which, amounting to 7,000*l.* or thereabouts, he never yet received, or demanded, any allowance; and, if any man hath any thing owing to him, in the time that the said Lord Treasurer was officer, (as he is well assured there is none, except some small remains upon the foot of some private reckonings) the same are no way chargeable upon the king; the said Lord Treasurer being their proper debtor, and bound by that indenture, to discharge the same, which he hath been ever ready, upon their demand, to do accordingly; it being acknowledged by the creditors of the Wardrobe, that they have been better paid and used in his time, than either before or since. And, concerning the Charge of his not duly serving the Lord Chamberlain's Warrants for Supplies, it may well be that some few parcels, in some warrants, which could not then be suddenly provided,

were upon that occasion, or by some fault or negligence of his servants trusted in that business, left unserved: but that neither hath been, is, or shall be, any loss to the king; for he acknowledgeth it to be just and fit, that he should provide and furnish the same at his own charges: though the neglect of that kind is no great matter, considering he has disbursed so much for his majesty in extraordinary, as aforesaid, for which he never yet had any allowance.—To that explanation of the same Charge, concerning his not repaying the merchants the imposts due unto them, upon the exportation of sugars formerly imported, according to his majesty's letters patent, of the 5th of Sept. 1610, the Lord Treasurer saith, 'That the usage in that particular is such now, as hath been ever since the impost was first laid, without any alteration by him, or any for him, in his time: neither did any merchant bring his certificate, and make his demand for the allowance, according to the form prescribed by these letters patent, as the Lord Treasurer is informed by those that farm the impost of him; and therefore there could be no demand when there was no demand made. And, besides, this is so far from being a matter of benefit to the Lord Treasurer, that the farmers of the impost under him, (who should have that profit, if there be any) have been, and are willing to give the merchants content in their desire, if they will petition his majesty and see out a privy seal to warrant it; without which, it hath ever been understood, it could not be done in respect to the king's interest therein, and a regard it never hath been allowed heretofore.—All which the said Lord Treasurer doth aver to be true in all points, and shall be ready to justify and maintain the same, in such manner as this honourable court shall award.—M 1624. 22. 12.

After these affairs were all read, the Lord received a Message from the Commons, importing, 'That they desired a conference with their lordships, on the subject of two bills, then before them; and at the same time, they presented a Petition to the house from divers merchants, whose names are thereunto subscribed, containing a complaint against the Lord Treasurer, for an imposition on Hops: which complaint they humbly referred unto their lordships, and compared the same with the imposition laid on French wines, even when their merchandize was in the river of Thames; and affirmed that this had doubled the oppression on the merchants; for that the archduchess, out of whose country the Hops came, did thereupon lay new impositions upon the manufactures of this land. Lastly, The commons conceive, that this new imposition on Hops was laid, without any other warrant than the Lord Treasurer's letter."

This Petition from the merchants was ordered to be read, and was as follows:

The humble Petition of sundry Merchants whose names are here under subscribed.

"Most humble shew, That whereas in the

reign of the late queen Elizabeth continually, and until the 2nd year of the king's majesty's reign that now is, Hops were rated for the custom thereof at 12*d.* per every cwt. Afterwards, in the time when the earl of Salisbury was Lord Treasurer, there was imposed on hops 6*d.* upon every cwt. which was done by consent of the merchants; which said custom and impost hath continued so until October 1622. At the time, when your petitioners, and others, had brought into this kingdom, and into the river Thames, great quantities of Hops, the now Lord Treasurer wrote his letter to the Custom house, That no entries of any Hops should be taken till further order from him; so that your petitioners Hops lay long in ships and lighters, to their great charges, and damage of the said Hops; which was done without your petitioners knowledge, they nothing mistrusting any such composition; so that before your petitioners could be suffered to take up their goods, they were forced to pay 10*s.* for every cwt. of Hops, over and above the duty and impost aforesaid.—That divers strangers of Flanders, and others, have received up their goods upon bonds by reason of the archduchess's ambassadors; but divers of them have not yet paid their monies, nor entered to pay, as they themselves have given forth in speeches; notwithstanding the petitioners, most of them, were forced to pay in their monies, without any favour, to their great and intolerable loss and hindrance; and others have entered into bonds for the same, which are yet in force.—That, by reason of the said impost, so exacted from the petitioners, and others as aforesaid, there was a great impost laid on in Flanders, in the archduchess's country, from whence the said Hops came, upon fustians and other of our native commodities; which have been to the great loss of the petitioners, and to the great hurt and prejudice of the common wealth in general, and of no benefit to his majesty for the present; for that, since this great imposition there hath not come hither the 20th part of those commodities as formerly.—The petitioners humbly intreat the honourable assembly to take consideration of the premises, and to be a means unto his majesty that the said petitioners may be repaid the said money so exacted; and that the imposts upon the Hops as aforesaid, which are still continued, may be reduced unto the former rate of 12*d.* upon every hundred weight of the said Hops; whereby your petitioners may be the better enabled to continue their trade, which otherwise they must of necessity desert. And further, that their bonds, formerly entered into, may be re-delivered unto them to be cancelled."

May 5. The house waited upon his majesty at the Banqueting house at Whitehall, and on the 7th, the Lord Keeper made a report to the lords of his majesty's speech to them; but because the said speech, he said, was ruinable, his lordship desired that he might read the same, which he did in these words:

His Majesty's Speech at Whitehall, to the upper house of Parliament, May 5, 1624, concerning the Lord Treasurer.

"My Lords! Of mercy and of judgment both, my lords, my speech shall be unto you. There is a great officer of mine shortly to come before you, accused of divers misdemeanors. I am the judge in whose room you are to exercise judgment; for as I am under God in this throne, so you are under me: therefore I have been desirous that I might open myself unto you, anent this matter and occasion; and, as I have once said in a parliament before to you, so will I promise to shew you, as in a chrysal, my heart out of my mouth, in such sort as no false heart or tongue shall be able to blemish what I shall represent unto you.—It is my judgment, next under God, which you are to exercise at this time; and therefore, as a judge instructs the jury before the prisoner departs from the bar, so it becomes me to tell you how to carry yourselves in this great business; and the cause hereof is this, because I am bound in conscience to be careful of your carriage herein; for, if your judgments should fall contrary to my approbation, I protest to God it would be a great misery to me, and a greater grief unto your hearts.—Before the last parliament, I never saw any precedent of this nature: in the last, against another great officer of mine (lord Bacon) there needed no admonition from me, because ye had '*reum confitentem*;' in this the party stands upon his justification; and therefore ye have more need to take and examine it well. There is no doubt at all of your doing justice; you are most of you nobly born, the rest are noble by their places; you are the most honourable jury of England; nor do I intend further to instruct you, than to give your eyes, many eyes see more than one, some light into this matter. No king is the worse for the advice of his council, nor shall you be for receiving my advice and instruction.—In all matters of trial where are denials, two things are specially to be considered, the verity of the fact and greatness of the guilt. For the 1st, you cannot be too diligent in the search of the verity of the fact; for '*satius est reum dimittere quam innocentium damnare*.' For the 2nd, You are to consider duly the quality of the offence; for, if your punishment be far inferior to the crime, it is an invitation to commit new offences. And, if it be over and above the offence, it is plain injustice and tyranny: therefore your punishment must be ever bounded in measure and moderation, according to the quality of the offence. You will do, I am sure, what a jury doth, for you have taken a greater oath than they; you have sworn, upon your honour, to me; by your conscience, towards God.—And here I shall give a touch of two things; 1st, I shall speak of the Person of the Man, and then of my Opinion of the Course which you are to hold in your judicature at this time.—For the Person of the Man; the first acquaintance that I had with him was by the

lord of Northampton (who is with God, who often brought him unto me a private man, before he was so much as my servant. He then made so many projects for my profit, that Buckingham tell in liking with him, after the earl of Northampton's death, and brought him into my service. For I profess it here openly, and I am glad he is not by to hear me. That, besides him, I never saw young countier that was so careful for the king's profit, without my respect, as Buckingham was. He found this man so studious for my profits, that he backed him against great personages and men, without sparing any name. Buckingham laid the ground and bare the envy; he took the laborious and ministerial part upon him, and thus he came up to his preferment.—I was deceived if he was not a good officer; he was an instrument, under Buckingham, for reformation of the Household, the Navy, and the Exchequer; Buckingham setting him on, and taking upon himself the envy of all the officers. And he himself protested many a time to me, That he had not been able to do me any service, in the ministerial part, if Buckingham had not backed him in it. Hereupon I thought him the fittest man for this place; he had seen before the Abuses in the Exchequer, in the Navy, and in a thousand other particulars.—I must therefore put you in mind of one thing, and justice forceth me so to do: he cannot but have a many enemies; all Treasurers, if they do good service to their masters, must be generally hated, as M. Rosny was in France. And a Treasurer cannot oblige me more, than when I find suitors beg from me, and pray me not to send my reference to the Treasurer, because he gives them no good Answer. Two kinds of people are continually hated in court, Treasurers and Ushers; because this latter must of necessity put disgraces upon men, and the Treasurers must keep the king from importunity of many suitors. I pray judge not by the affections of the people, nor by the hatred of the people; you must avoid both these; and therefore judges of old were painted blind.—The 2nd thing I recommend to your consideration is, That you look upon a sound trial, so that the Offence be clear; and, in the next place, when you find a cause of punishment, let it be within and not without the limits of his desert.—Now I shall recommend to you some Generals; not for his respect or particular, but my own, my son's and posterity's, and your own, my lords, whose part God knows when it may fall unto. Let no man's particular ends bring forth a precedent, that may be prejudicial to you all and your heirs after you; precedents there are none of many years, before this and the last sessions. The inferior are the Lower House, and the Upper House are the judges. If the accusation come in by the party wronged, then you have a fair entrance for justice; if by men that search and hunt after other men's lives, beware of it, it is dangerous; it may be your own undoing. No man can stand upright before God and

man, if every act of his should be enquired after and hunted out by every man, though it concerns him not.—The main ground in reformation is this, The party complaining should say, This wrong he hath done me; if he take corrupted judicature in judgment, or take a Bribe to the hurt of the innocent; if, in Execution, he hath wrested, by violence, from the party; here is a just ground for an accusation. But for every busy fellow to turn inquisitor a thing insufferable; how far it falls thus, in this particular, I know not. Bribery, as I would define it, is where a judge receives reward against the innocent; Extortion is done, when money is wrung from the subject by the greatness of a man's power, and by the denial of justice; Misdemeanor is, when a man abseth his place, and oppresseth the poor subjects. I have discussed this point, and I do not doubt but, when he comes before you, you will hear him with temper and patience.—Now, my lords, I speak for justice; if this party had done so, after such an example shewed the last session, his fault is double; for he came upon a reformation, and he discovered the corruptions of others. This I would say to you, if I was to die this hour: errors by mistaking, God forbid that you should be rigorous in censuring them; but errors that are wilful, spare them not.—Some curious men may say, peradventure, he might, in some points, have done better; but this is not criminal in him: Let it be by deceit and cozenage, by helping himself, he hath hindered my estate, he is worse than a devil. Treasurers cannot be barred from seeing, and the king's liberality no man can controul. If he hath helped himself, with the king's loss, I speak not for him.—Lastly, there are divers things laid to his charge, which were done with my knowledge and approbation; let him bear no charge for that, for that is mine, and I must bear it. For if you question him for any such thing, you punish me; if any thing touches upon him in that kind, either meddle not with it, or stay and know the vent from me. I love my servants, God is my witness, but it is only for virtue's sake; and he is an unhappy master that doth not love a faithful servant. But, if there appear in any of them falshood and treachery, and deceit under trust, my love is gone. If, of an angel, he become a devil, I will never excuse him: I will never maintain any man in a bad cause: 'Et sic finitur fabula.'

The Report of the King's Speech being made, the lord keeper observed further, "That his majesty said, he did not deliver this speech out of any suspicion of their lordships, but only in discharge of his duty and conscience." Which the house ordered to be entered.—The Lord Treasurer being to appear this day at the bar, it was first reported, That when his lordship came he should kneel. And being brought to the bar, by the gentleman usher, not having his staff in his hand as Lord Treasurer, he was told that the lord keeper willed him to stand up.

The Attorney General opens the Charge against the Lord Treasurer as Master of the Wardrobe.

Then Mr. Serjeant Crewe came to the clerk's table, and opened the Charge against him to this effect:

"The Commons of England, being the general inquisitors of the sores and grievances of the kingdom, have presented their Complaint against this great lord and officer; whereof, and of other misdemeanors, their lordships have before taken cognizance. That he is to charge him the Lord Treasurer, with Violation and Breach of Trust, in defrauding the king who trusted him; and with Bribery and Oppression.—That he would begin with his lordship's misdemeanors in the office of the Wardrobe: and shew, That heretofore, that office being very expensive to his majesty by reason of the charge and provision of his majesty for the queen, for prince Henry, the queen of Bohemia, and the prince's highness that now is, he, the said Lord Treasurer, informed his majesty of the greatness of his charge, and that he would save his majesty a great part thereof; whereupon he procured the office to himself; but he stood charged with nothing, save the ordinary provision for his majesty.—He is made Master of the Wardrobe, Sept. 14, 16 Jac. And Dec. 26, 18 Jac. the king reciting, "Whereas we had certain notice that sir Lionel Cranfield, in the execution of the said office, hath so directly and carefully performed the said trust, in that behalf committed to him, as that, by the small time of his service there, great sums of money have been, and are likely, yearly, to be abated, in comparison of former expences therein for some years past: and also that, by the continuance of his care and good endeavours in the said service, our former great yearly expence of the Wardrobe hath been reduced within the sum of 20,000*l.* and yet with the maintenance of the former state thereof; and that of 20,000*l.* assigned for the queen's Funeral, he had received 15,500*l.* and no more: and that the said sir Lionel by his discreet and careful performance of that trust, hath, with the said 15,500*l.* discharged the said Funeral honourably, and in such sort as was requisite, and hath brought the said charge within the sum of 15,500*l.* and yet there were black cloths and stuffs to the value of 2,000*l.* or thereabouts, and some part also of the said money saved:" the king, thereupon, grants him all that he had saved of 20,000*l.* for the year ended at Michaelmas, 1619, and for another year ended at Michaelmas, 1620, the ordinary charges deducted; for which sums he agrees to discharge the ordinary charge of the Wardrobe; and the king grants the black cloths, stuffs, and monies unto the said sir Lionel, remaining of the said 15,500*l.* for the Funeral, for his disbursements for the ordinary of the Wardrobe, for which he was to account; but not for the surplusage, which he saved of the 20,000*l.*—Dec. 27, 18 Jac. the king makes the same Recital, *ut supra*; and, having given the surplusage for 2 years before,

doth now continue it for life, yearly at Michaelmas, upon his account, for the Wardrobe, the necessary disbursements deducted, and gives him the surplusage without further account.—Jan. 11, 19 Jac. the Lord Treasurer surrenders his Patent. Not, He got, in these last three years, 8,000*l.* per ann. and had 6,000*l.* given him at his farewell. *In toto*, 30,000*l.*—Jan. 18, 19 Jac. the king pardons him all sums of money received by him for the Funeral or Wardrobe; and he covenants to discharge the king of such debts as were due by him for the Wardrobe. By this it appears how the king trusts the Lord Treasurer, being master of the Wardrobe, and what expectation the king had of his extraordinary service; that the expences should be much abated and diminished, and yet the state of the Wardrobe maintained by competent and sufficient supplies, and that what the supplies were, should appear upon account; and thereupon the account was directed by the patent.—And now, see, my lords, how the Wardrobe is brought into confusion, and how far it is from the old state thereof: which by the patent of my lord, should have been maintained. And, in this, will appear unto your lordships plainly, Breach of Trust and Fraud.—The warrants to be served for the Wardrobe, came from my Lord Chamberlain, from the master of the household, and from the groom of the stole. The warrants and emptions thereupon were usually, heretofore, entered in the clerk of the Wardrobe's books, that the provisions and particulars supplied might appear; but, in my Lord Treasurer's time, no warrants are brought in or entered; no emptions entered, nor book of expences kept by the clerk, as it ought to be.—The clerk should have surveyed the parcels; but could not, through my lord's default: neither is there any Account made as ought to have been: and all this is contrary to the patent, to the prejudice of the king, and of the officers and workmen in the Wardrobe. And, to the end his proceedings in that office might not be discovered, this ensued further upon it, that the warrants were served short, and many not served at all; those that were served, were base and ill, stuffed with great delay and long suit; and yet the suitors for the same were slighted by my lord and his officers.—And although my lord had his money impressed to him, yet he made slack and slow payments with great abatements of the prices formerly allowed. And at my lord's departing from the office, in Jan. 19 Jac. he gets a pardon for all he hath received, without any account, and obtained a lease of the Sugars, for a recompence of his surrender of that office."

Mr. Serjeant Crew having thus far opened the Charge; the clerk by his direction, read the Depositions of Witnesses taken to prove the same: which Depositions will be found at length in the Lords' Journals, vol. 3. p. 345, after which the Lord Keeper moved, That the Lord Treasurer might answer his particular Charge touching the Wardrobe. His lordship thereupon demanded ink and paper, and had it.

The Lord Treasurer's ANSWER as to the Wardrobe.

Then the Lord Treasurer answered, "That his majesty used his service in many particulars touching his estate; as, in the Navy, the Household, and Wardrobe. That he found the expences of the Wardrobe of a vast sum; every one made what bills they would, and did set what prices they would. When he was master of that office, he sent for the artificers, and told them, That he would not look upon what was past; but that hereafter, the prices should be reasonable, and the king's money should be ready, and they duly paid. That there were many fees to be quarterly paid in the Wardrobe; all which were duly paid. As for Canning and Pulford, he gave them 2s. in the pound more than another would have said for: he bought little of those of the Wardrobe, but chiefly much of the merchants; and had a good merchants shop in the Wardrobe, and bought of the best.—That Pulford complains not of a hard price, but that he had not the ancient price.—As touching the not serving of divers warrants, That his business being many, he referred those to his servant Colebeck: That not above the value of 7 or 800*l.* remained unserved; whereas he hath laid out 6 or 7,000*l.* upon the extraordinaries of that office; as, for furnishing Fly-house for the Spanish ambassador, a rich barge cloth for the king, and many other things; and that he gave the earl of Carlisle, his predecessor in that office, 3,000*l.*—As touching the baseness of the stuff served in, he desired they might be compared with those formerly served in; and affirmed they were much better.—And whereas some complain they were slighted, when they were suitors for the warrants to be served, his lordship desired they might be examined, whether they were slighted by him or no.—As touching the Account, his lordship answered, That, by the patent, which was read, he was to account; but that he had another patent, if he be not deceived, without account; which his lordship delivered: and the clerk read the same; and also his majesty's explanation upon the lease of Sugars, granted to the Lord Treasurer, upon his surrender of the Wardrobe."

Then Mr. Serjeant Crew observed to the Lords, out of both those, "That his lordship was to account for the ordinary disbursements of the Wardrobe."—The Lord Treasurer answered, "That he conceived he was not to account: That he first reduced that office from the vast charge he told the king of; and whereas he was allowed 20,000*l.* per ann. for the same, he told the duke of Buckingham, 2 years since, that he got too much thereby; and that it might be defrayed for 12,000*l.* per ann.; and that he, having reduced that office from 30, nay 40,000*l.* per ann. unto 12,000*l.* is a good account."—Hereupon divers lords presently affirmed, That the duke of Buckingham had acknowledged, that the Lord Treasurer, when he was to surrender the Wardrobe to the earl of

Denbigh, did acquaint his grace with the greatness of gains in that office; but, to the end he might have a great recompence, first he named 4,000*l.* per ann. and afterwards 8,000*l.* and that this drew on the lease of Sugars to his lordship. Then Mr. Serjeant Crew observed, That the Charge against the Lord Treasurer is upon proof; his lordship's Answer upon averment, which he humbly referred to their lordships consideration. And thus ended the Charge touching the Wardrobe. And then the Lord Treasurer was withdrawn.

The Lord Keeper removed to the bench, to satisfy the house touching the Lord Treasurer's speech, That the duke of Buckingham knew of his gains in the Wardrobe; and told their lordships, "That he well remembers, that when the duke of Buckingham moved his majesty to place sir Lionel Cranfield Treasurer, (which he desired, though afterwards he seemed unwilling) that then the king required the surrender of the Wardrobe to the earl of Denbigh. That when the Lord Treasurer heard of it, he magnified the profits of the place; first to the duke, that it was 4,000*l.* per ann. and to the king, that it was worth 6 or 7,000*l.* per ann.; whereby he got the Lease of Sugars at 4,000*l.* per ann. less than they are worth; and his successor, the earl of Denbigh, had 4,000*l.* per ann. less than his lordship, for disbursements of that office of the Wardrobe. That the duke being moved at this, the Lord Treasurer then told his grace, that his gains in that office had been 8,000*l.* per annum; nay, more than he could well tell; and, till then, his grace knew not of the great gains of that office; and if his grace, who hath been ever careful for the king's profit, had known of it sooner, the Lord Treasurer had not held that place so long; for his grace is '*amicus usque ad aras*.'—Then it was ordered, That the Lord Treasurer be warranted to be here again, at two in the afternoon at the bar."

May 7, p. m. The Lord Treasurer being brought to the bar, as before, kneeled not until he was remembered thereof by the Lord Keeper; then he kneeled, and the Lord Keeper willed him presently to stand up. The king's Attorney being commanded to open the second Charge against the Lord Treasurer, his lordship said "He was unprovided in the morning for the Wardrobe; and besought their lordships to take into their consideration, that he is denied counsel to speak for him, being charged with great matters, for it may be their own case; and he hath precedents, as he is informed, that he might have counsel allowed him: that, however, he would speak out of his own strength; but desired their lordships, that, if he forget any thing, no advantage be taken against him," unto which their lordships agreed.—The Lord Treasurer made two other requests; the one "for that his witnesses have not fully answered touching the Wardrobe, that he might have a re-examination upon the same interrogatories."—This the house denied, as not usual to be granted in other courts, after publication, for that it might produce perjury. His lordship's other

request was, "That he might produce his proofs, or records, that the workmen of the Wardrobe were paid:" which was also denied; for that the non-payment of the workmen is but an accident to his Charge.

The Attorney General proceeds on the Charge of Bribery.

Then Mr. Attorney was willed to proceed: and he proceeded in this manner, viz.—"The second Charge wherewith the Lord Treasurer is charged, is for three several Corruptions; two of them disguised under the shadow and pretext of a bargain; and the third of a new year's gift. Concerning the two former: it cannot be denied, That, Feb. 6, 17 Jac. his majesty did lease unto sir Nich. Salter, and others, the customs and imposts of French and Rhenish Wines, from Michaelmas, 1622, for 9½ years; and did covenant with the lessees not to lett any new imposition upon the wines, during the continuance of that lease, without the assent of the lessees. And, Jan. 19 Jac. the king made a lease unto sir John Wolstenholme, and others, for divers years, of the great customs; in which lease there was a covenant, on the part of the farmers, that they should put in security for the payment of their rents; and, for performance of this covenant, they were to have the allowance and warrant of the Lord Treasurer, without which the king's remembrancer would not take their bonds. Jan. 14, 19 Jac. a new impost of 3*l.* per tun, was set upon the Wines; and the same being done without the consent of the farmers, and to their great damage, they were to expect recompence for the same upon their covenant. Upon these two occasions, the farmers of the several farms were necessarily occasioned to become suitors to the Lord Treasurer; the one for recompence and reparation of their loss, the other for allowance of their security, and his warrant to accept it.—The farmers of the Wines begin their suit to the Lord Treasurer about January or February, anno 19 Jacobi, and continued it with much instance until December, anno 20 Jacobi, ten or eleven months together without success; whereupon they found means to have access to the king himself, and represented their grief by an humble Petition: which his majesty answered most graciously, and gave straight charge to the Lord Treasurer to give them a speedy dispatch, and conclude with them upon such a recompence, as in honour and justice was fit. And thereupon, Dec. 31, 1622, the Lord Treasurer did agree with them, that they should be allowed 9,500*l.* to be defalked in 9½ years out of their rent, after the rate of 1,000*l.* per ann. This being agreed on, they were to have his lordship's warrant to the king's attorney, for drawing a book according to the agreement; which warrant was speedily prepared and drawn by his lordship's secretary; but delayed from Dec. 31, an. 20 Jac. until June 24, an. 21 Jac. And the farmers of the Great Customs having divided the farms into 32 parts, every of which part was to give his majesty security of 1,500*l.*

for payment of their rent, they presented their security to the Lord Treasurer, who allowed and gave warrant to the king's remembrancer to receive it; but the parties unto whom five of these 32 parts were allotted, falling off and relinquishing their parts, the four patentees of the farm resolved to resume those parts to themselves; and thereupon tendered the Lord Treasurer their own security for those five parts; which he agreed to accept, yet protracted them till June, an. 21 Jac.—The business of both farms thus delayed, and it being conceived that money was expected, the farmers of the Wines resolved to present the Lord Treasurer with 500*l.* and they of the Great Farm resolved of the like sum; and Mr. Abraham Jacob being a partner in either farm, was entrusted severally by the farmers of each farm, viz. 500*l.* a-piece, to be presented to the Lord Treasurer; which he paid in one entire sum of 1,000*l.* to Mr. Catchmay, the Lord Treasurer's steward, June 27, an. 21 Jac. by the Lord Treasurer's appointment; and thereupon the business of both farms had a dispatch by the Lord Treasurer's means.—But to palliate and disguise these two corrupt gifts, the Lord Treasurer then pretended to have 4 parts of the Great Farm divided into 32 parts; and, in his Answer touching these Corruptions, justifieth the taking of 1,000*l.* by way of bargain for those 4 parts from the farmers of the Great Customs: this Answer being disproved, and it being made plain that he had no part in that farm, it must needs follow that the money was taken corruptly, for the dispatch of the farmers business, and, for manifestation hereof, it stands proved.—That upon the treaty of the bargain for the Great Farm, the Lord Treasurer propounded to the farmers to have some parts in the farm, not for his own benefit, but to dispose of amongst his friends; but this was rather a proposition than any settled resolution or conclusion: for the farmers doubting, lest, by this pretence, some partners might be put on them with whom they were unwilling to join, desire the Lord Treasurer, that they might make choice of their own partners, and, if their farms prospered, they would be thankful unto his lordship.—This thankfulness was afterwards performed on their part, for they raised his usual new year's gift from 1,000 marks to 1,000*l.* and, upon this request of the merchants, the Lord Treasurer waved his proposition of having the disposal of any parts in the farm; which appeareth not only by the plain and express testimony of many witnesses, but by these proofs following, viz. 1. The lease of the Great Farm bears date, Jan. 1, an. 19 Jac. between which time and April 29, an. 20 Jac. the farmers divided the whole farm into 32 parts, allowing to each man his part, and reduced the same into writing, expressing therein the sum of the security which every man was to give, without mentioning therein any parts reserved to the Lord Treasurer, or his friends; and this writing, being tendered to the Lord Treasurer, April 29, 1622, was by him allowed, and warrant signed by him to the king's remem-

brancer to take security accordingly. 2. When the partners, to whom 5 of these parts were allotted, fell off, and would not give security, the patentees resolving to take those parts to themselves, tendered their own security to the Lord Treasurer, and he agreed to accept it; and, though he protracted it long, yet he did not, in that long time of delay, challenge any parts until about June, 1623. 3. The farmers resting secure about that proposition, did, after the 29th of April, 1622, divide the whole farm by indentures, allotting to each man his due part, without reserving any for the Lord Treasurer. 4. At Christmas, 1622, the first year of the farm ended; and this year's profit was, by account, in April 1623, divided among the partners, reserving no share to the Lord Treasurer. 5. But the truth is, That all this time the Lord Treasurer rested quiet, and neither did nor would challenge any parts; the farm being of that small expectation of benefit, as five partners gave over their parts, rather than they would give security; but, about June 1623, the farm being grown more hopeful by the return of some East India ships, the Lord Treasurer having in his hands the business of both farms, which he had so long delayed, meaning to make this a veil and cover for taking those corrupt gifts, then pretended to have four 32 parts, which he had waved so long before. 6. The Lord Treasurer appointing Catchmay, his servant, to receive the 1,000*l.* of Jacob, which was received the 27th June, 1623, forbade him to give any acquittance for the money, but to leave that to himself and Jacob; which, had it been paid upon a plain bargain, he never would have done. 7. This money was entered into the Accounts and Books of the said Farms; for in the Journal Books of the Petty Farms, July 31, 1623, there is 500*l.* entered to be paid and presented to the Lord Treasurer, by the hands of Mr. Jacob, for a gratification of his favour in accommodating an allowance of 1,000*l.* per ann. to be abated of their rent for the time to come; and the like entry was made in the ledger of the same farm. And, Dec. 20, 1623, upon the general Account of that farm, this 500*l.* is put to account, as a gratuity given to the Lord Treasurer, and is borne rateably by all the partners of the farm, of which account many copies were given out to the partners; and, for the other 500*l.* there is extant a warrant, dated July 29, 1623, subscribed by sir John Wolstenholme and Henry Garraway, two of the farmers of the Great Farm, directed to Williams, the cashier of that farm, to pay to Mr. Jacob 500*l.* given by him, by order of the farmers, to the Lord Treasurer, for a gratuity, and to put it to the account of the farm; which was done accordingly; and these Accounts stood in this manner till Feb. last, after the parliament was summoned; and then the Lord Treasurer caused Jacob to procure the 500*l.* that was set upon the Petty Farms, to be altered from thence, and to be charged upon the farmers of the Great Farm; and satisfaction to be given to the partners of the Petty Farms of

their proportionable parts they were charged with for that 500*l.* upon the aforesaid Account of the 20th Dec.; and as many as could of the dispersed copies of that Account to be gotten in. He also procures Jacob to write a letter to his lordship and to antedate the same in June before; by which Jacob did insinuate, that the 1,000*l.* was given his lordship for four 32 parts of the Great Farm; and himself made an acquittance to Jacob with the like antedate, acknowledging that 1,000*l.* to be received for those four parts; which indirect courses of changing the accounts, and antedating the said acquittance and letter, manifesteth that the former proceedings were not sincere, but were to be converted and blanched with these devices. Touching the said Corruption, shadowed under pretext of a New-Year's-Gift, it stands proved, That, at Christmas last, 1623, the farmers of the Petty Customs presented the Lord Treasurer with a tun of wine, intending to have added to it a pipe of Canary wine, or the best sack; but the Lord Treasurer mising the smallness of their present, urged them to a further gratuity in money, and thereby obtained from them, besides the wine, 100*l.* in money."—The Charge being thus opened by Mr. Attorney, the clerk read the Proofs, which will be found in vol. 3, p. 352, of the Lords' Journals.

#### The Lord Treasurer's Answer to the Charge of Corruption.

The Lord Treasurer answered, "That the greatest part of these proofs swear not that they of the Petty Farm gave him the 500*l.* That it is true the great farmers paid it to his lordship and laid it on the Petty Farm, and deceived them and abused his lordship thereby. He denied that the petty farmers were suitors to his majesty at such time as is affirmed; but they complained to his lordship and he directed them to exhibit their bill into the exchequer chamber, and ordered Mr. Attorney to answer it: that they liked it not; but, by some powerful means, delivered a Petition to the king (a very scandalous petition against his lordship) which the king referred to the chancellor and himself: that they demanded an allowance of 10,000*l.* to be presently made, and he allowed them but 9,500*l.* to be paid in 9½ years; for which he deserved no bribe: that his warrant to the Attorney was delayed for these two causes: 1. For that his lordship propounded to buy in their farm for the king. 2. For that their warrant was not drawn as it ought to be."—Touching the Great Farm, his lordship said, "He would make it appear, that he had reserved four 32 parts therein for himself and his friends; and alledged, That those farmers have confessed that, their farms prospering, he thereupon did demand a recompence for his part." Here his lordship read the Heads of his Proofs out of a paper, and then required that the examinations taken on his part might be read; which were read accordingly by the clerk.—See Lords' Journals, v. 3, p. 358.

Then the Lord Treasurer made a brief repe-

tition of his proofs of his interest in some 32 parts of the Great Farm; and took exception against the testimony of Jacob, for it varied in time of payment of his 1,000*l.* from the testimony of Hyde. And his lordship affirmed, "That the 500*l.* was misplaced by him, the said Jacob and two more, on the farmers of the Petty Farms; whereas he received the same only for his interest in four 32 parts of the Great Farm." And as touching the antedated letter, and the antedated acquittance, his lordship said, "That they were so done, lest Jacob should die, and so his testimony be lost." Unto which Mr. Attorney replied, "That it is sufficiently proved, that the said Lord Treasurer, neither when he received the 1,000*l.* nor long before, had any right to the said 32 parts:" and thereupon he stated the case as before, and rehearsed the seven reasons by him formerly alleged, to prove that the Lord Treasurer had waved his proposition of having the disposing of any part in the Great Farm. And, as touching the Lord Treasurer's exception to the testimonies of Jacob, for that it varied in time from Hyde, Mr. Attorney shewed, that Jacob deposed, that he paid the money to the Lord Treasurer on the 27th of June, 1623, by direction from the farmers, and Hyde swears, that the money was delivered to Jacob the 31st July, 1623; which was by way of allowance back again, so no contradiction between them.

Then the Lord Treasurer protested, "That, as he shall answer it at the fearful day of Judgment, he received that 1,000*l.* for no other consideration than for his share in the four 32 parts." And as touching the third Corruption, by way of a New-Year's-Gift, he said, "That nothing belongs to the Lord Treasurer's place but 20*s.* per diem, the sale of the places when they fall, and the New-Year's-Gifts; and denied, that he urged them to any certain sum. All which, he said, he would humbly leave to their lordships honourable consideration; and, withal, requested their lordships to forbear his further attendance here till Monday next, because he had spent his spirits so far, that his cause might otherwise suffer through his weakness." And so withdrew himself.—The Lords granted his request, and commanded the gentleman usher to signify so much to his lordship; and further ordered, that he should attend their lordships here again on Monday next, at eight in the morning, at the bar. An order was signed by the clerk accordingly, and sent to the Lord Treasurer.

May 8. The Lords received from the Commons this message "That the Commons do humbly desire to know, what time their lordships will please to appoint for a conference touching the bill on Monopolies. They do also desire a conference touching some Accusation against the lord bishop of Norwich, unto which his lordship has not yet been heard; humbly leaving the time and place to their appointment. And they do earnestly recommend to their lordships consideration, that general peace-maker of England, the bill of Conceal-

ments."—*Ans.* The Lords have appointed a conference concerning Monopolies this afternoon, at three in the Painted Chamber. They have not yet resolved of a time for the conference touching Accusations against the lord bishop of Norwich; for that divers of the lords are now absent: but, as soon as they can conveniently appoint a time for the same, their lordships will send to them by messengers of their own. As touching the bill of Concealments, their lordships have taken the same into their serious consideration; and it is only deferred for that all the king's council, who are appointed to attend the same, are, at this time, otherwise employed: but their lordships do promise all possible expedition therein.

#### Proceedings against the Lord Treasurer on the Lease for Sugars.

May 10. The Lord Keeper put the house in mind of the business concerning the Lord Treasurer, to be proceeded in this morning. And his lordship being brought to the bar, Mr. Serjeant Crew opened the Charge against him on the Lease of Sugars, in this manner:

"Quarto Decembris, 18 Jac. The king leaseth to George Herriot the impost on Sugars, to hold from Christmas following, for three years, at the rent of 5,666*l.* 13*s.* 4*d.* per ann. payable at Midsummer and Christmas. Duodecimo Jan. anno 19 Jac. The Lord Treasurer procures Herriot to surrender that lease; and, the next day, takes a lease thereof from the king, unto Nicholas Harman and Tho. Catchmay (two of his servants) unto his own use, at 2,000*l.* rent per ann. and lets the same unto the farmers at 6,000*l.* per ann. and, to effect this surrender, gives order, in a time of scarcity of money, for the payment of 14,865*l.* due unto the said Herriot for jewels, which was paid, between the 15th of Dec. 1621, and the 10th Jan. following, in this manner, viz. 7,000*l.* odd money, out of the arrears of the said Herriot's rents, and 7,000*l.* odd money, out of the Tobacco Farm, by way of anticipation.—The crime objected against the Lord Treasurer herein is this: had Herriot's lease continued, Herriot's debt had been paid out of his rent; and the said Treasurer has not only caused the said lease to be surrendered, and procured a new lease thereof unto his servants, to his own use, at a far less rent; but hath laid 7,000*l.* of that debt upon the Farm of Tobacco: and this he hath done in a time of scarcity of money, even then when he caused the impositions to be laid on the wines for a supply for the Palatinate: and further he hath paid the smaller rent of 2,000*l.* per ann. very slowly unto the king; an arrear of 3,000*l.* thereof being paid since the 31st of Dec. last, after the summons of this parliament. And whereas, for the advancement of trade, the merchants, upon the exportation of their merchandizes, are repaid their custom, which they formerly paid upon the importation, this is denied upon the exportation of Sugars, to the damage of the merchants, and for the Lord Treasurer's private



gain." Then the clerk read the Proofs; see *Lords' Journals*, v. 3, p. 364.

#### The Lord Treasurer's Defence.

As to this part of the Charge, the Lord Treasurer confessed, "That the lease to Herriot was at the rent of 5,666*l.* 13*s.* 4*d.* and the lease to his own use, (upon the surrender) at 2,000*l.* rent, and that he hath let the same at 6,000*l.* per ann. and affirmed, That his majesty was first acquainted with it, and well allowed thereof."—Hereupon the Lord Keeper signified to the house, that the king had commanded him to tell their lordships, That his majesty understood that the Lord Treasurer should gain by his lease 4,000*l.* per ann. So there was no further proceeding in that point of the charge.—The Lord Treasurer also confessed, "That he paid Herriot 14,000*l.* odd money;" but affirmed, "That it was a just debt, and that Herriot had a power to pay himself, by a privy seal, out of his rent." His lordship denied, "That he paid 7,000*l.* of that debt out of the Tobacco Farm, by way of anticipation; and said he only transferred it from the Sugars to the Tobacco, and justified the same; for that the king's meaning was, That he should have 4,000*l.* per ann. out of the impost for Sugars, presently upon his surrender of the Wardrobe: and the king lost not by it, for he, the Lord Treasurer, had, for the disbursements of the Wardrobe, 20,000*l.* per ann. which he hath now settled at 16,000*l.* per ann. and yet the king's state therein maintained and a noble gentleman rewarded."—Touching the slow payment of his rent, he denied it not; but said, "He had disbursed as much or more, before-hand, for the king in other matters."—As touching the impost not returned upon the exportation of Sugars, his lordship denied, That it was ever demanded of him; and affirmed, "that if it be due, then the farmers are tied by his lease to them to repay it; but if they be not so tied, that then he will pay it all, both for the time past and to come." And thus ended the Charge for the Sugars.

#### The Charge as to Groceries.

Then Mr. Serjeant Crew opened the Charge against the Lord Treasurer, touching his lordship's warrants to levy compositions for purveyance of Groceries in the out-ports, after this manner, viz. "That the city of London did compound with the king for Groceries: but the out-ports refused, especially Bristol, and yielded to purveyance in kind; and that Bristol had an order for this in the exchequer, in the time of Robert earl of Salisbury, late Lord Treasurer: yet, notwithstanding this, the Lord Treasurer directed his warrants to levy this composition; and, although it was not due to the king, nor any such composition entered into the compting-house, his lordship commanded their goods, then in the ports, to be stayed, and not entered, till it was paid, or bonds given for it; and thereby constrained some ports to pay it, and the merchants of Bristol, who denied it, to attend his

lordship ten weeks together, to be discharged; and yet bonds were exacted from the merchants of Bristol for the payment thereof, after the Lord Treasurer was acquainted with the said order in the exchequer, even till the summons of parliament; for which Mr. Serjeant Crew charged the Lord Treasurer with oppression and extortion, contrary to his lordship's oath, 'To do right to the poor and rich in all things as concern his office.'—Then the clerk read the proofs. See *Lords' Journals*, vol. 3, p. 365.

#### The Lord Treasurer's Answer.

The Lord Treasurer answered, "That true he did but his duty; and that if he had neglected it, he had not done his duty; that he required nothing to be done, by his Warrants, but what was accustomed in queen Elizabeth's time, and in all the king's time; that his Warrants were according to the usual form, as general to all the ports, not knowing that Bristol was exempted by the order in the last Treasurer Salisbury's time until afterwards, that when he knew of it, he yielded to their request, and Guy went away well satisfied with his Answer: and that none had benefit by the composition, but the king only." The Clerk read the Examinations taken on his lordship's behalf, after which,

Mr. Serjeant Crew replied, "That there is a table in the Custom-House, to shew any composition for the out-ports; and caused the Clerk to read the Examination of John Guy, on the part of the Lord Treasurer, taken May 12, 1624, which agrees, in effect, with his former Examination, taken for the king; and that six he, and others of Bristol, had long petitioned the Lord Treasurer to have their bond cancelled and delivered, which they had entered for the payment of the said composition, they could not obtain any thing, save some good hopes and fair words from sir Simon Harvey; and that their bonds are yet detained."

The Lord Treasurer affirmed to the Lords, "That himself knew this Composition to be paid by the out-ports, and that his warrant was only to levy the same, as formerly it had been paid; and promised to send Barret's books and some notes out of the compting-house, to prove the payments thereof heretofore by the out-ports."

#### The Charge as to unlawful bargaining for sir Roger Dallison's Lands.

May 10, p. m. Mr. Attorney General proceeded to the charge concerning the Office of the Ordinance, and the unlawful Bargain for sir R. Dallison's Lands, in this manner, viz. "That another Charge wherof the Lord Treasurer is accused, is concerning the Office of Ordinance, and the unlawful Bargain for Dallison's Lands; in which will appear that the Lord Treasurer, for his own private benefit, contrived and prosecuted divers unlawful bargains; and in the mean time neglected wholly that which concerned the public, which was the furnishing the

Office of Ordnance with emptions and stores, for the safety of the king and his kingdoms.—Concerning the Bargains, it stands proved, That sir Roger Dallison, being lieutenant of the Ordnance, became indebted to the king in 9,962*l.* for monies impressed for that office, but not employed; and that sir Roger Dallison and sir Tho. Mounson were indebted to the king by bonds to the value of 3,100*l.* which bonds were forfeited for not bringing certain stores to that office; both which debts amounted to 13,062*l.* and the lands of Dallison were extended for 9,962*l.* and the lands of Mounson for 3,100*l.* And that July 20, 18 Jac. the king assigned these extents to Francis Morrice, clerk of the Ordnance, and others, in trust for the officers and creditors of that office, towards satisfaction of so much of their debts. The Lord Treasurer, being a commissioner for his majesty's debts, July 28th, 1621, bargained for those extents; and by the articles under his hand agreed to give for them 1,062*l.* in hand, and 12,000*l.* more, by 1,000*l.* per ann. for 12 years, beginning at Lady-Day, 1623; and also to do his endeavour to procure payment of an arrear of 8,000*l.* more, due to that office from his majesty, but before this bargain was performed, at Michaelmas following, he became Lord Treasurer; and when they expected payment of the 1,062*l.* and security for the rest, he propounded that, in lieu of the 12,000*l.* to be secured, they should have his part in the Farms of the Petty Customs for 9 years, valued to be worth 1,000*l.* per ann. for the two first years, and afterwards 1,400*l.* per ann. which, according to that rate, would yield in 9 years 11,800*l.* but cost his lordship only 3,750*l.*—He being then Lord Treasurer, on whom they must depend both for the payment of the arrears, and for future favours, they accepted it; not meaning to lose their 1,062*l.* payable in hand, but it was then again directly agreed they should be paid their 8,000*l.* arrear out of his majesty's coffers. In 1621, Assurances were prepared, and the creditors required to seal, being promised to have at the sealing their 8,000*l.* arrears, and expecting their 1,062*l.* from the Lord Treasurer, whereof they never conceived a doubt; but so soon as they had sealed, they were sent away without any money, being promised to receive their 8,000*l.* within 3 or 4 days after, which was not performed in so short a time; but was, after, paid in divers several payments out of his majesty's money; but the 1,062*l.* which was to have come from himself was absolutely denied, the Lord Treasurer affirming, that as well that 1,062*l.* as the other 12,000*l.* was all concluded and recompensed by the interest in the Petty Farms; whereupon a new difference grew against them; but in the end they were enforced, in lieu of that 1,062*l.* to accept of a further interest, which his lordship had in the Petty Farms, for an half-year after the 9 years were expired, esteemed worth not above 400*l.* to be sold: and it was then further agreed that his lordship should then pay them out of the king's

VOL. II.

money 4,000*l.* due to the office over and besides the former 8,000*l.* of which 4,000*l.* his lordship hath since caused to be paid 3,303*l.* But whereas the Petty Customs were valued to them to be worth for the first 2 years 1,000*l.* per ann. it appeareth that, in the two first years, it yielded them but 1,419*l.* 7*s.* 7*d.* being all the money that grew due to them out of the profits of those farms at Michaelmas last; whereas if they had kept their extents of Dallison's and Mounson's lands, they should have received by Lady-Day last almost 7,000*l.* for part of their debt. In which bargain, (besides the oppressions and extremities put on the poor creditors and officers of the Ordnance, that might ill undergo a bargain of so much disadvantage and loss) are observed two corruptions; the one, in bargaining to pay the 8,000*l.* arrears, for though that was agreed before he was Lord Treasurer, yet he then was trusted as a commissioner for the king's debts; and, being after Lord Treasurer, performed that corrupt agreement made before.—The other Corruption was, in agreeing to pay the other 4,000*l.* for as it is a corruption in a treasurer to pay the king's due debt for money given unto himself; so it is to pay the king's debt, for gaining to himself a bargain by which he either had or did expect advantage; and though the Lord Treasurer, in his Answer, doth pretend he is a loser by Dallison's lands, it is certain that whatsoever his gain or loss prove upon the other bargains for the inheritance of the lands, this bargain with the officers, taken by itself alone, was beneficial; and if it were not, it is all one: for if a judge, or treasurer, bargain for a Bribe, though he never receive it, he is corrupt; for it skills not what he had, but what he aimed at and expected.—About the same time that the Lord Treasurer bargained for the extent aforementioned, viz. 28 July, 19 Jac. he contracted with sir Tho. Mounson, for the inheritance of the same lands.—For sir Roger Dallison, after he became lieutenant of the Ordnance, conveyed the inheritance of his lands to secure sir Thomas Mounson of divers great debts and engagements; so as the inheritance of those lands, after the king's extent, was in the dispose of sir Tho. Mounson, who bargained for it with the now Lord Treasurer; and upon that bargain, the Lord Treasurer agreed to free sir Tho. Mounson's own land of the 3,100*l.* debt, to pay in 3,000*l.* in money, and to procure the making of him six baronets and some other fit suit from the king; and when the baronets could not be obtained, the number being full then, the Lord Treasurer procured him another suit of 2,000*l.* value, as his lordship esteemed it, viz. For compounding with the king's copyholders of Wakefield, to reduce their fines to certainty, for which suit the Lord Treasurer was a referee from the king; and, for accomplishment of this bargain made for his own private gain, he gave way to that suit, whereby so much was to be taken for his majesty, yet there rested another bargain to be made, for sir Tho. Dallison, the son and heir of sir Roger Dallison, pretended title to those lands

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by an old entail; and the lady Dallison, widow of sir Roger Dallison, claimed to have the third as her dower; and the Lord Treasurer having entered into treaty with them, and finding their demand not suitable to his desires, he, to make them the more compliant, threatens them by his extent, to keep them without any thing for 100 years; to lay upon sir Tho. Dallison certain forfeited bonds, which, upon the agreement with the officers of the Ordnance, were transferred to him; and he sends for sir J. Wolstenholme, whose son had married sir Thomas Dallison's sister, and rebukes him as a hinderer of his lordship's proceedings with Dallison: and by these and other like means, for an annuity of 200*l.* per annum, procures a release of their title; and whereas sir Roger, being possessed of a lease of great value, had assigned the same to sir John Davis, for security of money owing to him and sir R. Smith, which lease, for non-payment, had been long forfeited, and the possession gotten by sir John Davis upon a trial and recovery at common law, which possession had continued divers years; the Lord Treasurer, by this agreement with sir Tho. Dallison and his mother, by way of unlawful maintenance and champarty, bought their title to this lease; and having hedged in those lands and the title to this lease, exchanged the same with sir Arthur Ingram for other lands; and then to gain the possession of those lease-lands from sir J. Davis, and sir R. Smith, and to make good this exchange, an old outlawry against sir Roger Dallison, before the assignment made by him to sir John Davis, is sought out, the debt being many years past satisfied; by colour of which outlawry, and the power and countenance of the Lord Treasurer, this lease was seized into the king's hands, and sir R. Smith and sir John Davis thrust out of possession; whereupon they endeavoured to reverse the outlawry in the Common Pleas, and the better to effect it, they procured an administration of the goods of sir Roger Dallison to be taken by one Camhen, a creditor of sir Roger's, to the intent the said administrator might sue to reverse this outlawry; but the Lord Treasurer to prevent them therein, interposeth in the king's name, and in his majesty's behalf, to revoke that administration; and the better to countenance the business, sends a case to the king's attorney grounded upon other matters without mentioning the outlawry, which was the chief thing in question; and having obtained his opinion in that case, sends a warrant to the king's advocate, to proceed in the ecclesiastical court as for the king; and in a matter much touching the king, to proceed for reversal of the administration; and in the end, by his means the administration was revoked; and afterwards, the matter coming in question in the Common Pleas, there also he interposed himself; and sent to the judges of that court, whereby sir R. Smith and sir John Davis were at last enforced to accept of a composition: now, in truth, this matter no ways concerned the king, for this lease was never extended for

Dallison's debt; and before the Lord Treasurer interposed in the ecclesiastical court he had caused a petition to be made in the name of sir Tho. Dallison and his mother to the king; and a reference thereupon to himself for the lease, among other things; it being secretly agreed between him and Dallison, that the whole benefit of this lease, when his majesty should be pleased to pass it, should be at the dispose of the Lord Treasurer.—And whereas the Lord Treasurer would excuse those proceedings, as being after he had transferred all to sir Arthur Ingram; it is evident that the Lord Treasurer thus interposed; which must be either for his own benefit, to support his own bargain, or merely by way of maintenance; and either way, his doings are most unwarrantable, to use such rigour in the king's name, either for himself or sir Arthur Ingram.—Mr. Attorney having thus opened the former part of this Charge, the clerk, by his directions, read the Proofs.

#### The Lord Treasurer's Answer.

The Lord Treasurer said, "It is true that he being a commissioner for the king's debts, he advise the said officers of the Ordnance to accept of a lease of the lands of sir Roger Dallison and sir Tho. Mounson, extended for the king for 13,062*l.* viz. Of sir Roger Dallison's lands, extended for 9,962*l.* and of sir T. Mounson's lands for 3,100*l.* and they did accept of them for payment of 13,062*l.* due to them by the king, with a covenant to resort to the king, if they were interrupted in the possession of those lands. And that he did then find, that there was due unto the said officers by the king, about 20,000*l.*—That the said lands of sir Tho. Mounson were worth 1,600*l.* per annum, and were extended but at 200*l.* per annum, sir Tho. Mounson hoping to have had the benefit thereof for himself: but, by sir Edward Coke's rule, it was passed over to the creditors. That sir Tho. Mounson often petitioned the king, and his majesty referred sir Tho. to the Lord President and him: that they treated with the officers, who answered, That they relied on sir Tho. Mounson's lands, for that sir Roger Dallison's lands were so much incumbered, that they would yield little; yet the Exchequer Chamber would have relieved sir Tho. Mounson, if he had paid the debt for which the lands were extended; and then the officers must have resorted to the king for recompense: and that if his lordship gained in that covenant, by his bargain with the said officers, so it was beneficial to his majesty. And his promise to the officers to help them to their 8,000*l.* arrear, being a just debt, was before he was Treasurer; and that it is Hebraic-Greek to him, how this should be prejudicial to the king."

To this Mr. Attorney replied, and affirmed the bargains to be unlawful as before; and that there was not 8,000*l.* arrear due by the king before his lordship was Treasurer; and then proceeded to the reading of the other Proofs.—

These being read, the Lord Treasurer again affirmed, "That his bargain with the officers of the Ordnance was beneficial for the king, for it gained in his majesty's covenant of resort from the officers." And said further, "That it was not prejudicial to the officers; for if his second bargain be not as beneficial to them as the first should have been, he is to make it good. And that sir Tho. Dallison, and his lady mother have relief thereby, and himself a great loser, at least 4,000*l.* having taken up 16,000*l.* for it, for which he pays interest at this day."—And his lordship denied, "That he drew the case, delivered to Mr. Attorney, touching the Administration of Dallison's goods;" and said, "He deserved to be hanged that drew it." And having spoken as much as he could, the clerk read the Heads of the Examinations taken on his part; and Mr. Attorney confessed them, and avoided them all; wherewith his lordship seemed to rest satisfied, for he did not require any thing else to be read: but said further, "That he had paid arrears to the officers of the Navy, as well as those of the Ordnance; which shews he did not pay them by way of a bargain only." And then saying, "He would add no more," he was withdrawn.

The Lord Treasurer's Petition for further Time, on account of Sickness.

May 11. A Petition of the Lord Treasurer to the Lords was read, *in hec verba*:

"With most humble and thankful acknowledgement of your lordships honourable patience, in hearing those parts of my Cause which are already opened, I am now most humbly to beseech your pardon of mine appearance before your lordships this day; finding myself so distempered in my body, and my spirits so weakened and spent, as, out of necessity, enforceth me to be an humble petitioner unto your lordships for this little respite of time; my end and desire herein being to enable myself to obey all your commands, and to hasten the end of this Cause of mine; whereof I doubt not but your lordships, in a true and noble sense of my Cause, will honourably consider accordingly.—MIDDLESEX."

The house having considered of this Petition, appointed the earls of Southampton and Essex, the bishop of Coventry and Litchfield, the bishop of Bangor, lord Cromwell, lord Say and Seale, to go presently to the Lord Treasurer's house, and to take a physician with them; and to signify to his lordship the displeasure of the house, for that he hath first taken leave of himself to be absent, and now craves pardon for it; whereas his lordship ought first to have craved leave to be absent. And also to signify unto his lordship (unless they shall see cause to the contrary by reason of his sickness) that the pleasure of the house is, That his lordship appear here this afternoon, at 2 o'clock; and that if his lordship shall fail to come accordingly, that the house will proceed, as well touching such parts of his Charge as are already opened, as for the rest

of his Charge also.—These lords being returned from Chelsea, where the Lord Treasurer then lay, the earl of Southampton reported, That they delivered the said Message unto his lordship, whom they found in his bed, but not sick, for ought their lordships or the physician could perceive; neither did his lordship pretend any sickness. And their lordships having delivered their Message unto him, he excused his not asking of leave first to be absent; "for that he had not warning to be here this morning until after the house was risen the last night; and since the pleasure of the house is such, he will attend this afternoon, if he hears not, by some Message from their lordships, that they will be pleased to respite him till tomorrow morning."—And the earl of Essex made this further report, viz. "Having this day delivered to the Lord Treasurer the Message we were commanded by the house, his lordship (besides the answer that hath been returned to the house) did let fall these speeches in substance; "for a man to be thus followed, morning and afternoon, standing 8 hours at the bar, till some of the lords might see him ready to fall down; two lawyers against him, and no man of his part, was such proceedings as never were heard of; and he knew not what it meant, for it was unchristian-like and without example; and desired they would deal with him as he would deal with one of them; for it was his case to-day and might be their's tomorrow." This answer was signed by these lords, viz. H. Southampton, Ro. Essex, Tho. Cov. and Lich. Lewis Bangor, Tho. Cromwell, W. Say and Seale.

The Charge as to Munitions.

May 11, p. m. The Lord Treasurer being brought to the bar, as before, the clerk read that part of the charge against his lordship that concerned the Munitions. The Lord Keeper moved that Mr. Attorney do keep himself to that charge. Mr. Attorney then proceeded in this manner, viz.

"As in the bargains and proceedings, which were opened yesterday, the Lord Treasurer was over much attentive to his own private profit, so in the supply of the office of ordnance (a matter of high importance for the safety of the king and his kingdoms, and in a time when all christendom besides ourselves was in a combustion) he was wholly remiss: For whereas, by a privy seal in 6 Jac. there was a private establishment of 6,000*l.* per ann. for the office of ordnance, which being put out of order in the time of sir Roger Dallison, about 12 Jac. the lords of the council, in November 1617, upon reference from the king, set down a proportion of supply, amounting to 54,078*l.* 8*s.* 8*d.* and the standing allowance of 6,000*l.* per ann. to continue. And after in February 1619 there being a commission awarded to the commissioners of the navy to survey the Office of Ordnance, the said commissioners (the Lord Treasurer himself being a chief man among them) set down a proportion of supply amounting to

but 13,640*l.* 14*s.* 2*d.* and a yearly allowance of 3,000*l.* retrenching it to that rate from 6,000*l.* and did set down a course that this being observed a needless charge of about 10,000*l.* per ann. should be cut off, and this was allowed both by the lords and by the king himself.—The earl of Middlesex becoming Treasurer about Michaelmas 1621, and having continued in that office about two years and a half, did observe none of these establishments; whereby the office is at this present both unpaired and unsupplied, and the kingdom of Ireland destitute of any considerable quantity of arms and munition: for it appears by the records of the king's receipt, That all the monies which the Lord Treasurer in his time issued for a supply of the ordinary of the office of Ordnance, was but 13,034*l.* 8*s.* 11*d.* of which 8,000*l.* and odd pounds was for old arrears, 3,300*l.* more grew due of latter time, but were paid, not out of duty, or care of the public, but by bargain and contract, and most of these monies issued (beside old arrears) were for wages and allowances of officers, and little or nothing for stores and provisions. For upon the quarter-books paid by his lordship beginning at the quarter-book ended ultimo Junii 1620, unto the quarter-book ended ultimo Decembris 1622, there being about 5,500*l.* paid, 4,600*l.* and odd the rest went to the officers, but the stores and provisions amounted to but 90*l.* and odd pounds: a weak supply in so long time.—And whereas in April 1621, a contract was made with Mr. Evelyn for serving his majesty with 80 lasts of powder yearly, by monthly proportion, at 7*d.* the lb. which proportion being kept would have yielded a plentiful supply into the office of Ordnance, and the overplus might have been sold at 3*d.* the lb. profit to his majesty. The Lord Treasurer (though he was continually solicited by Evelyn) did not make the payment, which should have been made upon that contract; whereby Evelyn, according to the liberty that was allowed by his contract, sold his powder to others; and, in 35 months after that contract, served into the stores but 15 months proportion; and upon breach of this contract did ensue these inconveniences, viz. That the stores which, for the service of all his majesty's kingdoms, might have had in readiness 266 lasts of powder, and 60 lasts of saltpetre, which would have really made 80 lasts of powder more (in all 346 lasts), are greatly injured by this neglect: for upon a late survey there were in all but 130 lasts in the stores, and yet Ireland wholly deservish'd: and besides, his majesty by sale of the overplus of the powder alone, above the proportion thought fit to be kept by the commissioners of the navy, might have gained 3*d.* in every lb. which would have amounted to 4,050*l.* and above, all which his majesty lost by this default of the Lord Treasurer. And whereas his lordship excuseth these things by pretence of Sadler's complaints, it appeareth that those complaints grew by occasion of Evelyn's selling of powder to others, not to the king: which had never been if he had had

due payment: and the Lord Treasurer was warned, both by the Lord Crew and by the commissioners of the navy, to have special care of these points, to save the contract, it being of high consequence."

The proofs being read, the Lord Treasurer answered, "I had need, in the first place, to pray for patience, so much pains being taken by Mr. Attorney to make me appear faulty man." Unto which the Lord Keeper replied, "That the lords conceive that these words are a wrong done unto them; and he conceived, that they are a greater unto his lordship, the Lord Treasurer who being a judge, makes no difference of a charge. The Lord Treasurer answered, "That he is injuriously dealt withal, and that no peer hath been charged in his place before by the king's counsel."—And being demanded by the Lord Keeper, wherein he is injuriously dealt withal, he answered "by Mr. Attorney's opening the proofs by parcels, and by directing parts of the depositions to be read, which should have been done wholly and together."—The Lords conceived themselves to be wronged by these words, for that Mr. Attorney had done nothing but as attendant to the house, and by their direction; and therefore the prince his highness willed him (the Lord Treasurer) to clear Mr. Attorney, or else this aspersion might very heavy upon him. And the house did acquit Mr. Attorney for any thing he had said or done herein.

Then Mr. Attorney opened the heads of the Charge again, viz. The 1st settlement of the Office of the Ordnance, anno 6 Jac. The 2d settlement by the Lord Treasurer Salisbury, in 1617. And the 3rd settlement by the Commissioners of the Navy, 1620. And that the Lord Treasurer had observed none of them.

The Lord Treasurer answered, as touching the second settlement, "Nothing hath been done upon it to this day; and yet it was made 4 years before he was Treasurer." As touching the 3rd settlement, "It was propounded only, and opposed, but never allowed; if allowed, it was 15 months before he was Treasurer, and yet nothing done in it, as by Cook's own oath: That he had no privy seal for it. And how then can he be charged for the breach of that settlement which was never settled? but he will not give that for Answer." And then his lordship affirmed, "That the stores are furnished, and that he had paid all the said ordinary of 3,000*l.* per ann. save 300*l.* though no privy seal was issued out upon that book presented by the Commissioners of the Navy; and paid divers other sums of money for provisions of the stores; whereof his lordship received the particular sums: and whereas that office was unsettled by sir Roger Dallison, he, being a Commissioner for the king's debts, found due to the office 18,000*l.* and caused 13,000*l.* of it to be paid by Dallison's lands, and the rest to be paid also afterwards; so that a small sum will now settle that office, which was then so unsettled."—As touching the powder, "That when he came to be Treasurer, he found but 116 lasts

powder, whereof 21 lasts, delivered by Evelyn, were left unpaid for; and that he paid him £,000*l.* arrears: though 60 lasts of salt petre be not in the king's stores, yet there is so much in Evelyn's warehouse; and then it is the king's. Neither can the king receive such detriment or loss; for when Evelyn is paid, he is to make allowance of the powder by him sold.' And affirmed, 'That he had paid more for powder than was paid for 7 years before.'

#### The Charge as to the Court of Wards.

Mr. Serjeant Crew next opened the Charge of the Court of Wards, viz. "That whereas, in Dec. 1618, Instructions for the Court of Wards were set out, (upon great advisement with the lord chancellor of England, the two lord chief justices, and the officers of that court) the Lord Treasurer, by his importunity and power with the officers, and by his misinformation to the king, (waving a reference to divers lords of the council) procured those instructions to be altered, to the prejudice of the king, and oppression of the subject.—For, by the former instructions, anno 1618, petitions for Wardships were to be delivered to the clerk of the court, who was to enter them without fee: but, by these instructions, anno 1622, the petitions are first to be delivered to the master, to the end he may subscribe his directions, and then the master's secretary to make entry thereof the same day it is delivered, and return it to the suitor, who is to present it to the clerk, and the clerk to enter it without fee.—So the clerk of the court stands still restrained by these latter instructions to take any fees for entering of petitions, but the master's secretary is not restrained; and, being unlimited, he hath taken great fees for entering of these petitions.—And whereas, by the former instructions, anno 1618, all tenders and continuances of liveries were to be made unto the surveyor of that court: now, by these latter instructions, they are to be made to the master first, and afterwards to the surveyor; whereby the fees for continuance of liveries are raised from 10*s.* the term, to 20*s.* the term.—And whereas, before, no ward was esteemed a concealed ward, unless no suit had been made within 3 years after the death of the tenant: now, by these latter instructions, the master hath power, alone, to dispose of Wardships concealed but one year; so that the master may make any a concealed ward, by concealing the petition, and not entering it with the clerk; the petition being hereby appointed to be delivered to the master first.—And that the master of this Court of Wards, the Lord Treasurer, hath committed unto his secretary a stamp of his name, and hath hereby put his own power into the hands of his secretary: for his secretary hath used his stamp, in the absence of the master, for signing of tenders and continuances for warrants to the great seal for liveries; and warrants to find offices, for grants of wardships, leases, indentures, and the like; and for expediting of judicial acts in the court: and that this stamp may be a ready way to

make concealed Wardships, and may take away mean processes due to the king for want of livery; and may antedate tenders, continuances, and petitions; by reason whereof the king may be prejudiced great sums, by preferring one before another by Wardships."

This being said, the clerk was directed to read the Proofs. And for that, in opening of this Charge, the lord keeper delivered to the lords a message from the king, viz. "That the alteration of these Instructions was debated before his majesty at Wansted, by the master and officers of that court; and that his majesty understood that the alteration was for the honour and profit of the master, and intended that the master should enjoy that office as amply as the earl of Salisbury, or the lord Wallingford: but if any new fees are exacted since, his majesty disavows that; and if the master hath used the new Instructions to the prejudice of the king or subject, he disavows that also; but allows his precise knowledge of the alteration of the said Instructions."—Therefore no Examinations were read to prove the Lord Treasurer's importunity and pressure to have those Instructions altered.

#### The Lord Treasurer's Answer.

After the other Examinations were read, the Lord Treasurer answered unto this Charge, "That he is not to be blamed for putting his office into such plight as it was before an encroachment. As touching his secretary's fees, as he is not restrained, so nothing is allowed; and if he hath exacted any thing, his lordship will be the severest censurer of him. He never heard of any till now. That the secretary to former masters received whatsoever any man gave voluntarily, so it was lawful for his.—As touching the Fee for Continuances, Why should he lose any thing due for a favour to the subject? by this means there be fewer Continuances; and so the king has his moneys sooner, and the party is free for the subjects suit the sooner.—As for concealed Wardships within a year, it is beneficial to the king; otherwise, within 3 years, the ward might die, and the king lose the wardship. Neither hath the master such power, alone, therein by these new Instructions: he is only trusted with the direction unto whom the concealed wardship shall be granted; the composition is left to the council-board: but it is not shewed that he ever made one concealed wardship. They say this may be done, but do not shew what was done amiss."—And his lordship justified, "That these new Instructions were more beneficial to the king and subject than the former, and not prejudicial; for as touching the petitions, if the ward happen in a vacation, the petition must be delivered within a month; if to the clerk, perhaps he is out of town: now they are to be delivered to the master first, and he may direct the finding of the office in the interim; but it is of no force till the petition be afterwards entered by the clerk, and composition is made by all the officers. Indeed the

officers yielded, hardly, to the new Instructions; because they had, by the former, shared the master's power and authority among themselves." His lordship confessed, "That he yielded to have a Stamp made by the precedent of the lord Burleigh's Stamp: which, he said, he could not prove but by hear-say: and Stamps are used in the Subpena Office and the Outlawries. And that it is no more prejudicial to commit a Stamp to his secretary, than it hath been heretofore to leave the seal with the clerk. Neither is it shown that this Stamp hath been to the prejudice of any man, the same things that were stamped, being to pass other officers either first or last."

Before the Lord Treasurer was withdrawn, the earl of Carlisle remembered their lordships, That the Lord Treasurer the other day, had charged him with 3,000*l.* given him; whereas, about 12 months after the Lord Treasurer was made master of the wards, his lordship paid the earl of Carlisle 3,000*l.* in part of 20,000*l.* given him by the king. And whereas the Lord Treasurer spoke of the vast expences of the wardrobe in former times, the earl of Carlisle said, That the expences grew so great by reason of the extraordinary charges then happening; as, by the queen of Bohemia's Marriage, which came to 60,000*l.* alone; for furnishing divers of the king's houses; for many rich presents sent to foreign states; for the king's voyage to Scotland; and the like.

And the earl of Denbigh, now master of the wardrobe, shewed, That he cannot get any allowance for the extraordinaries of that office from the Lord Treasurer.—Whereunto his lordship answered, "That the king referred unto him the earl of Denbigh's demands of the extraordinaries, wherein his lordship was unwilling to meddle, for he could not conceive how they could amount to the sum demanded." And as touching the earl of Carlisle, "If he had said that he had given him that 3000*l.* he did his lordship wrong, for he had warrant from his majesty to pay it."

And then the Lord Treasurer desired he might be heard to clear some words that might pass from him this day, where it is reported that his lordship should say, That he had unchristian dealing: "He meant it not by their lordships, whose dealings he acknowledged to be to him both just and honourable; but he meant it by the king's counsel, who have dealt so unchristianly with him, as to make white black, and black white:" and humbly desired, "That this his acknowledgment of the justice of the house might be accepted of him, and to be understood only of the king's counsel." And said further, "That he had precedents, that he ought not to answer in this place, (at the bar) and that he ought to have counsel; and prayed that the next might not suffer by his example."

The Lord Treasurer being withdrawn, the house agreed, That he should appear here again to-morrow at 9 of the clock; and Mr. Maxwell, the gentleman usher, warned him to

appear accordingly.—The lord keeper cleared the proceedings of the king's counsel in their several Charges against the Lord Treasurer; and the house gave them thanks for their carriage therein.

The Lord Treasurer's general Defence against the whole Charge.

May 12. The Lord Treasurer being at the bar, and being admitted to speak in his Defence, his lordship first repeated the several heads of the matters wherewith he is charged, viz. 1. Touching the Wardrobe. 2. Touching two Bribes received of the Farmers of the Customs. 3. Compositions of the Out-Port for Groceries. 4. The Officers of the Ordnance. And, 5. The Court of Wards. As for the first, "That his omission of an account in the Wardrobe did neither add to nor diminish the charge the king was at: and that, although his lordship omitted to serve some of the lord chamberlain's warrants, amounting to a matter of 700*l.* yet he had laid out, in the Extraordinaries of that office, which he was not bound to do, about 6,000*l.* and that the good service which he had done his majesty in that office is well known. Touching the two Bribes, termed 'disguised Corruptions,' howsoever the farmers of the customs presented the same, he could not know their thoughts but by their words and deeds. And his lordship protested, that he received the same no otherwise than for his interest in four 32 parts of the Great Farm of the said Customs. As touching the Lease for Sugars, he will say no more than formerly he had spoken. Nor, for the Compositions for Groceries, save only, That his lordship had sent Burrel's son unto Mr. Serjeant Crew, to satisfy him that Barret had formerly collected the said compositions, by virtue of the warrant of former Treasurers. As touching the Office of the Ordnance, his lordship would speak no more touching the provision for arms and gun-powder, than he had done. But, as touching Dallison's business, his lordship said, It began originally before he was Treasurer: he therein settled the king's debt unto the officers, and hath parted with that estate, which he had from them in Dallison's lands, within a month after he was Treasurer; yet, if the second bargain made with these officers prove not as beneficial to them as the first should have been, they have his word to make it as good; which he would perform. And his lordship further proffered, That any one should have Dallison's lands again at a far less sum than they cost him. Then he desired their lordships to take into consideration his disability to answer, and the ability of those that did oppose him; and, if he had been as well able to speak for himself, as they that spoke against him, he doubted not but that he should have given their lordships very good satisfaction. His lordship spake much in excuse for those matters complained of against him as Lord Treasurer, saying, That the king's necessity and want of money was the cause of much thereof. He acknowledged, That the

king had been a good and bountiful master unto him; and avowed, That he had been a good and faithful servant unto his majesty, not for impositions, for, those two only excepted, which are presented by the commons, he ever stood against them, deeming them a partition-wall between the king and the subject. That his service has been in reformatiōns, viz. Of the household; of the navy; of the wardrobe; and of the kingdom of Ireland; which are things of that nature that they beget enemies; and if, in doing service to his majesty he hath procured to himself many enemies, their lordships will not impute that to him for a fault.— His lordship also affirmed, That he had done his majesty good service in the Palatinate, by advancing the exchange of the king's money thither, wherein he saved the king 60,000*l.* And affirmed, That he had advanced the profits of the crown at least 80,000*l.* though not by Impositions; these he meddled not with, the other two excepted, and they were agreed unto by the council-board. The ships indeed were in the river, but the vintners were sent for, and made to pay what was imposed on the merchants. That he offered to pay the arrear due for Ireland, a third part from the one deputy, and the one half from the other; wherewith he acquainted his majesty and turned it all to his majesty's profit. That he hath been a judge these 8 years, and no complaint brought against him for Corruption or Bribery; which he hoped would weigh much with their lordships." And as for the offence taken yesterday against him, touching the king's counsel, "whom he ever loved well, "He knew them to be of that loving nature, that he doubted not but that they would impute it to his rashness, and forgive him. Then he craved pardon of their lordships, if he had omitted any thing, or spoken ought that might discontent them; and so, with humble thanks for their favour to him, he concluded his speech."

The Lord Treasurer having ended his speech, he was answered by the Lord keeper, "That the council-table disavowed the Imposition on Wines to begin from them; it came from his lordship as belonging to his place of Lord Treasurer: the matter was his alone; the manner also was contradicted by the rest of the council, for that the merchant ships were then in the river; only they gave way to it, upon his lordship's undertaking that the merchants would yield thereunto, and that they should be no way prejudiced thereby." Whereunto the Lord Treasurer replied, "That this was no part of his Charge."

The Lords take into Consideration the several Articles of the Charge, and the Lord Treasurer's Answers.

The Lord Treasurer being withdrawn, and the house adjourned, *ad libitum*, Mr. Attorney General read that part of the Charge against the Lord Treasurer which concerned the Wardrobe. And the Lords having duly considered of the crimes objected against the Lord Treas-

urer, for not entering into a book of Accounts the warrants and emptiōns, as he ought to have done, whereby the settlement and antient institution of that office is altogether broken; and for not serving the warrants directed unto him for the king's own person, though he was often urged thereunto; nor paying divers of the creditors for such stuff as they served in, although he received 20,000*l.* per ann. by way of imprest, for the ordinary charge only of that office; which a far less sum would have fully defrayed; And for that he had not performed that good service, which he pretended unto his majesty, but, under pretence thereof, had procured to himself great and large gifts from his majesty and pardon of divers great sums of moneey. And the king's counsel having satisfied their lordships, That the said pardon to the Lord Treasurer did not pardon his lordship's not accounting; the house was resumed, and the question put; "Whether the Lord Treasurer, for his carriage in the office of the Wardrobe, be censurable, or no?" and it was agreed, *nem. diss.* "To be censured."

May 12, p. m. Mr. Attorney read that part of the Charge against the Lord Treasurer which concerned his taking of 500*l.* of the farmers of Wines and Currants for a Bribe, and 500*l.* of the farmers of the Great Customs, for a Bribe; and for exacting 100*l.* of the said farmers of Wines and Currants. And their lordships took into their consideration the Lord Treasurer's Answer unto the said two Bribes, viz. "That he accepted of 1,000*l.* paid him, at one entire payment, by the farmers of the Great Customs, upon a bargain of his four 32 parts of the Great Farm." And it appeared plainly unto them, by the examination of divers witnesses, as well of those taken 'ex parte domini regis,' as of those taken 'ex parte domini thesaurarii,' that 500*l.* of the said sum was given to the farmers of the wines and currants, called the Petty Customs, to procure his lordship's warrant for defalcation of 1,000*l.* per ann. of their rents, for 9½ years, in recompence of their loss, according to his lordship's farther agreement with them on the king's behalf, upon his majesty's reference unto his lordship, and that the other 500*l.* was given, by the farmers of the Great Customs, to procure his lordship's warrant unto the king's remembrancer, to take security for payment of the rent to his majesty of the 4 patentees of that farm, in lieu of 5 partners who had relinquished their parts therein: and that his lordship had not reserved to himself any parts of the said Great Farm, as his lordship pretends; and if he had, it had been a great deceit unto his majesty for the Lord Treasurer of England to contract with others for his majesty's customs, and secretly to reserve parts therein unto his own benefit; and when, as his lordship affirms, that he received the 100*l.* of the Farmers of the Wines and Currants, for a new-year's gift, it appeared also by the examinations, That the said farmers did present his lordship with a tun of wine for his new-year's gift, and his lordship exacted the 100*l.* of them



afterwards; which divers of their lordships conceive to be extortion.' All which being fully discussed, the house was resumed, and the question was put, "Whether, upon this whole Charge, the Lord Treasurer be censurable, or no?" and agreed generally, "To be censured."

The house being again adjourned *ad libitum*, Mr. Attorney General read that part of the Charge against the Lord Treasurer, which concerned his procuring of Herriot to surrender his lease of the farm of Sugars, which he held at the rent of 10,000 marks per ann. to the king, and for procuring a new lease thereof immediately to two of his lordship's servants, to his own use, at 2,000*l.* per ann. and for denying the merchants, upon their exportation of sugars, the imposts paid therefore upon the importation, as his lordship ought to have done by the directions of his majesty's letters patent of the 5th of December ann. 8 Jac.—Upon reading whereof the Lord Keeper signified to their lordships, That he had received a message from the king touching this charge, viz. "That his majesty did freely give unto the Lord Treasurer 4,000*l.* per ann. out of the said lease of Sugars, the same to begin presently after the date thereof."—Their lordships taking into consideration, that this was the king's free gift, they did not think it fit to censure the Lord Treasurer for the same; although his lordship had unduly informed his majesty of good services done in the office of the wardrobe, which his lordship performed not, for which this lease of sugars was given him. Neither did his lordship inform his majesty (for ought appears) that a debt of 7000*l.* was installed upon that lease; the which his lordship transferred to the farm of tobacco.—And as touching the denial of the impost unto the merchants, upon the exportation of sugars, for that his lordship affirms, That the under-farmers of the said sugars from him are liable to the re-payment of the said imposts, if any be due, their lordships did not think it fit to censure the Lord Treasurer for the same. And the house being resumed, the question was put, "Whether the Lord Treasurer shall be freed from any censure in this particular charge, or no?" And generally agreed, "To be freed."

The house was again adjourned *ad libitum*, and Mr. Attorney General read that part of the charge against the Lord Treasurer, which concerns the composition for grocery wares in the city of Bristol, which city had refused to yield unto any composition for the same; and yet the Lord Treasurer had given warrant to levy the same against their wills, and to stay the entering of their goods until the same was paid accordingly. But for that it appeared, that the Lord Treasurer Dorset's letter, dated 1610, for levying the same composition, agreeth with the letter written by this Lord Treasurer; and for that divers of Bristol had paid the like composition; and for that it did not appear that the Lord Treasurer did thereby seek any benefit to himself, the lords did not think him fit to be censured for the same. Wherefore the

house being resumed, it was put to the question, "Whether the Lord Treasurer shall be free of censure, in this Charge of Grocery, or no?" And agreed, "To be freed."

The house being again adjourned *ad libitum*, Mr. Attorney General read another part of the Lord Treasurer's Charge, viz. the charge against him by the officers of the Ordnance. And their lordships having fully discussed the great neglect of the Lord Treasurer to issue the king's money for the furnishing of the king's stores of munitions, with armour and powder; and that yet he paid the arrear of debts to that office for his own particular profit upon a contract with the said officers: and having considered his lordship's great means in the bargains for the said lands of sir Roger Dallison extended for that debt; and his lordship's propounding, for part of payment thereof, the making of baronets and a suit for compounding with his majesty's copyholders of Wakefield. And his lordship's answer, "That he preferred this suit unto the king, in pity of sir Tho. Mounson's estate, a man heretofore of good account in his country, and now decayed;" which their lordships thought most sordid for a Lord Treasurer to make use of to his own benefit: And it appearing unto their lordships, That the said Lord Treasurer had set on foot an old outlawry, upon a debt long time since paid by the said sir Roger Dallison; and that his lordship upon pretence of a debt to the king where there was none, procured a revocation of letters of administration granted of sir Roger Dallison's goods; and had written his letter to the judges of the common pleas for the countenancing of this indirect course, to wrest the said lease from the said sir Rd. Smith and sir John Davy, formerly granted unto them by the said sir Roger: All this being fully debated, the house was resumed and it was put to the question, "Whether the Lord Treasurer be worthy of censure in regard of this whole charge, both for the three bargains, and for not supplying, the office of the Ordnance?" and generally agreed "To be censured."

The house was again adjourned *ad libitum*, and Mr. Attorney read the rest of the Charge against the Lord Treasurer touching the Court of Wards. And their lordships considering, that it was not proved by the examination of witnesses, that the secretary was appointed to take any fees for the said petitions, either for himself or for the Lord Treasurer; nor that the Lord Treasurer had made any benefit to himself for concealed wards by virtue of the said new instructions: Therefore their lordships thought his lordship not censurable for those two points of his charge. But as touching the doubling of fees of continuances of liveries, they thought his lordship worthy to be censured, both in respect of the grievance of the subject, and of his lordship's answer unto the same, viz. "It is the king's grace to the people, let them pay for it." And for that he delivered a stamp, unto his secretary, whereby he committed the great trust, reposed in him by his

majesty, unto his servant, not deigning to sign the petitions, liveries, and warrants, to the great seal, with his own hand, their lordships thought him worthy to be highly censured for the same. And thereupon the house being resumed, the question was put, "Whether the Lord Treasurer deserves a censure upon the whole Charge or no?" and agreed, nem. dis. "To be censured for the same."

May 13. The lords ordered the gentleman usher and the serjeant at arms, attending on that house, to summon the earl of Middlesex, Lord Treasurer of England, to appear presently before their lordships. The house being adjourned *ad libitum*, the clerk read the heads of the six Charges against the Lord Treasurer, and the six several votes of the house which were yesterday past upon the same. And their lordships having duly considered upon the proofs of bribery, extortions, oppressions, wrongs and deceits, objected against the Lord Treasurer, found the same to be most apparently proved. And, as to the allegations of the Lord Treasurer of his good and profitable services to the king; in the reformation of the king's household; of the navy, of the wardrobe, and the kingdom of Ireland, their lordships entering into debate thereof, it was made manifest to them, by many particulars then declared, That, as touching the reformation of the king's household, wardrobe, Ireland, he, the Lord Treasurer, had deserved very ill of his majesty, and, as touching the navy, though his lordship was but a commissioner with others, who were more skilful, and did more good than he, yet, he assumed to himself the whole glory thereof; and his manner was so to do, in all other business wherein his lordship and others were joined.

The Lords also considered of the Lord Treasurer's allegation of his advancing the exchange of the king's money, sent to the Palatinate, for payment of the king's forces there; and it appeared unto them plainly, That his services therein deserved no such respect, as his lordship assumed unto himself; the soldiers of Frankendale being yet unpaid. Then the house being resumed, the first question was put, 1. "Whether the Lord Treasurer, in regard of these misdemeanors proved against him, shall lose all his offices which he holds in the kingdom, or no?" It was unanimously agreed, "That he should lose them all." 2. "Whether the Lord Treasurer shall for ever, hereafter, be incapable of any office, place or employment, in the state or common-wealth, or no?" Agreed, "That he should be incapable of them all." 3. "Whether he shall be imprisoned in the Tower of London, during his majesty's pleasure, or no." Agreed, "For Imprisonment." 4. "Whether the Lord Treasurer for these offences shall pay a fine to the king, or no?" Agreed "to pay a fine."—Then the house was adjourned *ad libitum*, that the lords might more freely discuss what fine to impose on the Lord Treasurer. And, being resumed, the fifth question was put by the lord keeper, 5. "Whether a fine of

50,000*l.* be sufficient to be imposed on the Lord Treasurer, or no?" Agreed to this Article. 6. "Whether he shall, hereafter, sit in parliament, or no?" Agreed, "That he shall never sit again in parliament." 7. "Whether the Lord Treasurer shall come within the verge of the court, or no?" These questions being all put and agreed to, the whole censure against him was drawn up in form, read by the lord keeper, and passed by a general vote of the house.

#### SENTENCE against the Lord Treasurer.

Then a Message was sent to the Commons, That the Lords were now ready to give Judgment against the Lord Treasurer, if they, with their Speaker, will come and demand the same. *Ans<sup>w</sup>*. That they will attend, presently, as the manner is. Accordingly, the Lords being all in their robes, to the number of 62, the Lord Treasurer was brought to the bar, by the gentleman usher and the serjeant at arms; when his lordship making a low reverence, kneeled, until the lord keeper willed him to stand up. The Commons came in with their Speaker, and the serjeant attending him let down his mace, when the Speaker addressed himself to the lords as follows:

"The knights, citizens, and burghesses in this parliament assembled, have, heretofore, transmitted unto your lordships several offences against the right honourable Lionel, earl of Middlesex, Lord High Treasurer of England, for Bribery, Extortions, Oppressions, and other grievous Misdemeanors committed by his lordship; and now the Commons, by me their Speaker, demand Judgment against him for the same."

The Lord Keeper answered, "This high court of parliament doth adjudge, That Lionel earl of Middlesex, now Lord Treasurer of England, shall lose all his offices which he holds in this kingdom; and shall, hereafter, be made incapable of any office, place, or employment in the state and commonwealth. That he shall be imprisoned in the Tower of London during the king's pleasure. That he shall pay unto our sovereign lord the king a fine of 50,000*l.* That he shall never sit in parliament any more, and that he shall never come within the verge of the court."

May 14. A committee of lords was appointed by the house to attend the king, and to acquaint him with the Judgment awarded by the lords against the earl of Middlesex, and to desire his majesty to take away the staff and the seal of the Court of Wards from him.—Ordered also, "That the king's counsel do draw up a bill, and present the same to the house, to make the lands of the earl of Middlesex liable unto his debts; unto his fine to the king; unto accounts to the king hereafter; and to restitution to such whom he had wronged, as shall be allowed by the house." Which bill afterwards passed into a law.

Lionel Cranfield, earl of Middlesex, who, from a low beginning, was, for his eminent qua-

he was looked upon by the parliament to be one of the great grievances of the kingdom." Wilson's Account of sir-L. Cranfield in his History of James I. 2 Kennett's Comp. Hist. 727, 729.

"The marquis of Buckingham continueth still in fullness of grace and favour; the countess, his mother, sways also much at court. She brought sir Henry Montague from delivering law on the King's-bench to look to his bags in the Exchequer, for she made him Lord High Treasurer of England, but he parted with his white staff before the year's end, though his purse had bled deeply for it (above 20,000*l.*)

which made a lord of this land to ask him at his return from court, whether he did not find that wood was extreme dear at Newmarket, for there he received the white staff. There is now a notable stirring man in the place, my lord Cranfield, who, from walking about the Exchange, is come to sit Chief Justice in the Chequer-chamber, and to have one of the highest places at the council-table. He is married to one of the tribe of fortune, a kinswoman of the marquis of Buckingham." James Howell to his Father, March 22, 1622, Letters, Book I, § 3, letter 1.

123. Proceedings in Parliament against SAMUEL HARSNET, Bishop of Norwich, for Extortion and other Misdemeanors: 22 JAMES I. A. D. 1624. [Lords Journals. 1 Cobb. Parl. Hist. 1478.]

May 14, 1624.

THE Bishop of Norwich besought the Lords to remember the Message from the Commons, on the 8th instant, for a Conference touching some Accusations against his lordship, which their lordships then deferred, by reason of the thinness of the house; and desired them to appoint a time for the same, with what expedition they conveniently may; whereupon a Committee was then named for that purpose.

May 19. A Report was made by the arch-bishop of Canterbury, of a Conference with the Commons, touching a Complaint against the bishop of Norwich, to this effect: "That the Commons had received a Complaint exhibited against the said lord bishop, by the citizens of Norwich: and to shew, that it was ordinary for the Commons to complain against the governors of the church, divers records of parliament were cited; annis, 18 Ed. 3, 35 Ed. 3, 50 Ed. 3, 17 Rich. 2, and 11 Hen. 4, which were cited to satisfy tacit objections for their meddling with a cause of this nature.—That the Charge against the said bishop consisted of six parts: I. That he inhibited or disheartened preachers on the Sabbath day in the forenoon. II. That images were set up in the churches, and one of the Holy Ghost fluttering over the font; that a marble tomb was pulled down, and images set up in its room, and the bishop blessed them that did it. III. That he punished those who prayed not towards the east. IV. That he punished a minister for catechizing his family, and singing of psalms. V. That he used extortion many ways. VI. That he did not enter Institutions, to the prejudice of patrons. To the 1st Article it was said, That there were 34 churches in Norwich; and in those parishes 30 or 40,000 people: That the lord bishop sent for the preachers, by the apparitors, and told them, there was no need of preaching on Sunday in the forenoon, except in the cathedral church; although 2 or 3000 could only hear there; many dwelling three quarters of a mile

off, and many were old, and not able, for their age, to come so far. That this inhibition was when the king had commanded more preaching. That his lordship connived at Recusants, all which was the disheartening of the good professors. It may be objected he allowed of catechizing; *ergo*, no preaching necessary: but he commanded to ask bare questions, and nothing else; *ergo*, no instructions. That this is done against the canons of the church, and that there is no obedience without knowledge. The outward man is not confirmed, unless the inward man be reformed; and cited the canon, 'quicumque contristaverit doctorem veritatis peccat in Christum;' with the canon, 1 Jac. c. 45; for commanding preaching.—For the 2nd touching the setting up of Images: It was said to be against acts of parliament, against the canons of the convocation, the book allowed in the time of Hen. 8, 28 Hen. 8, c. 30, against Images, Pilgrimages, &c. against the 3 Edw. 6, and the Homilies approved, anno 1 Eliz. forbidding images in churches.—The 3rd, for prayer to the east. Which Gratian affirms came by tradition, pars 1, dict. 11, and that it is superstitious, Linwood in the Glosses, lib. 2, tit. de Feriis, 'non refert si versus Orientem,' &c. That the bishop excommunicated many, and enjoined penance unto divers, for praying to the east; and some did their penance with a withy rod in their hand; the proof thereof is under the bishop's hand.—The 4th, one Peck, a minister, catechized his family, and sung psalms, his neighbours coming in, of a Sunday after evening prayers. The bishop enjoined them to do penance, for this their resorting to catechize and sing psalms, and to say, 'I confess my errors, &c.' which acknowledgment is under the bishop's hand. They who refused, were excommunicated, and paid 7*l.* charges. And it was particularly observed by the Commons, that this Peck was a conformable preacher.—5thly, Touching Extortion. It was shewn, That, in the Table of Fees is set down, for Institution 3*s.* 8*d.* whereof to the bishop

he had been sifted through the whole course of his life; that this Peck was sent to him by the justices of the peace, for keeping an assembly late at night at his house; his catechizing being but a colour to draw them thither. That this Peck had infected the parish with strange opinions; as not to kneel when they came to church; that the name of Jesus is no more than a common name, and that it is superstition to bow down at it. His lordship affirmed, that this Peck had formerly been convicted of nonconformity, annis 1615 et 1617; also, for simony and conventicles in his neighbour's house, as appears by an act in the register. And that anno 1622, he was taken in his house with 22 of his neighbours, at a conventicle; that he was then bound over by a justice and brought to his lordship, and his sentence against him was, only, that he should confess his fault. The others, mentioned in this part of the Charge, were punished for their opinions also; making no difference between an alehouse and the church, till the preacher was in the pulpit. He said, he must confess his fault, That in the penance which he enjoined, he caused them to confess their errors, omitting their resort to conventicles, which he did at their own earnest suit. V. His lordship absolutely denied that he imposed any Fees, and affirmed that he had not any of those fees which were complained of; only the fees for Institution, which he took as his predecessors did. If therein he had committed any error, *erratum cum patribus*; and denied that he had ever seen that Table of Fees which is spoke of by the Commons. VI. His lordship affirmed, That he had registered all the Institutions."

When the bishop had ended his Defence, his royal highness the Prince stood up and told him, "That he had not answered concerning the Paraphrase of the Catechism which he had taken away." To which the Bishop replied, "That the preachers used to chuse a text from the Creed, &c. and to ask the child some one question, and then to dilate very long upon it, but never descended to the capacity of the child. That he did not forbid the explanation, but ordered that it should be done catechetically."

Thus ended the bishop of Norwich's Answer

to the said Complaint. Immediately after which, an Order is entered in the Lord's Journals, "That in respect to the shortness of time and the multiplicity of business, now depending to be determined, the complaint of the Commons, against the bishop of Norwich, shall be referred to the High Commission, to be examined by them; and they to make report thereof to the house, and then the house will judge of it."

The same day the bishop exhibited a Complaint to the house against one Thomas Stokes, clerk, "That whereas the said Thomas Stokes had preferred a Petition to the Commons against his lordship, for excessive fees, pretended to be taken by his lordship, and for other grievances therein mentioned. He acknowledged the proceedings of the said Stokes to be legal, and humbly submitted himself to an examination and strict trial. However, he complained that the said Stokes had sent his lordship this message: 'That if he would suffer a judgment in the court of common pleas for him, the said Stokes, to be archdeacon of Norfolk, that then Stokes would prosecute no further against his lordship: otherwise, he would smoke him with more Complaints.' Moreover, that the said Stokes reported that his lordship did drink a health to Spinola, and refused to pledge a health to the prince of Orange, for that the said prince was a general unto traitors. And that Stokes affirmed his lordship did take 30*l.* of every one of the archdeacons when he came first to his see. All which his lordship affirmed to be false."

This Complaint, with the witnesses the bishop produced to prove it, was referred to the examination of the archbishop of Canterbury, who was to make report thereof to the house for their judgment of the matter. But we hear no more of this, or the former affair, in the Journals or elsewhere; for neither Wilson nor Rushworth mention one word of it.\*

\* This bishop of Norwich, Le Neve tells us, had been guilty of several scandalous practices, whilst he was master of Pembroke hall in Cambridge. He came into high favour, at court, in the next reign; for in 1628, he was made archbishop of York.

#### 124. Proceedings in Parliament against RICHARD MOUNTAGUE,\* Clerk, for publishing a factious and seditious Book: 1 CHARLES I. A. D. 1625. [3 Kenn. Compl. Hist. 1 Rushw. Coll. 2 Cobb. Parl. Hist. 6.]

July 7, 1625.

MR. Richard Mountague, canon of Windsor, and fellow of Eaton, rector of Stamford Rivers, and chaplain in ordinary to his majesty, was

\* Other particulars of this man and his books are to be found in 1 Rushw. Coll. 173, 176, 199, 634. 2 Cobb. Parl. Hist. 6, 11, 78, 457 et seq. The king, in 1627, made him bp. of Chichester.

brought to the bar of the house of commons, to answer for his Book intituled 'An Appeal to Cæsar,' which was there charged upon him, to be contrived and published to put a jealousy between the king and his well affected subjects, and to contain many things contrary to the Articles of Religion established by parliament; and that the whole frame thereof was an encouragement to popery.

under his broad seal to handle the points in difference. But the church never submitted to any other judge, neither indeed can she though she would. And we humbly desire your grace to consider, and then to move his most gracious majesty (if you shall think fit) what dangerous consequences may follow upon it. For, first, If any other judge be allowed in matter of doctrine, we shall depart from the ordinance of Christ, and the continual course and practice of the church. Secondly, If the church be once brought down beneath herself, we cannot but fear what may be the next stroke at it. Thirdly, It will some way touch the honour of his majesty's dear father, and our most dread sovereign of glorious and ever blessed memory, king James, who saw and approved all the opinions of this book. And he in his rare wisdom and judgment, would never have allowed them, if they had crossed with truth and the Church of England. Fourthly, We must be bold to say, that we cannot conceive what use there can be of civil government in the commonwealth, or of preaching, or external ministry in the church, if such fatal opinions as some which are opposite and contrary to these delivered by Mr. Mountague are shall be publicly taught and maintained. Fifthly, We are certain that all or most of the contrary opinions were treated of at Lambeth, and ready to be published; but then queen Elizabeth of famous memory, upon notice given how little they agreed with the practice of piety and obedience to all government, caused them to be suppressed; and so they have continued ever since, till of late some of them have received countenance at the Synod of Dort. Now this was a synod of that nation, and can be of no authority in any other National Church till it be received there by publick authority. And our hope is, that the Church of England will be well advised, and more than once over, before she admit a foreign synod, especially of such a church as condemneth her discipline and manner of government; to say no more.

“ And further we are bold to commend to your grace's wisdom this one particular. His majesty (as we have been informed) hath already taken this business into his own care, and most worthily referred it in a right course to church consideration. And we well hoped, that without further trouble to the state, or breach of unity in the church, it might so have been well and orderly composed, as we still pray it may.

“ These things considered, we have little to say for Mr. Mountague's person: only thus much we know, he is a very good scholar, and a right honest man: a man every way able to do God, his majesty, and the Church of England great service. We fear he may receive discouragement; and (which is far worse) we have some cause to doubt this may breed a great backwardness in able men to write in the defence of the Church of England, against either home or foreign adversaries, if they shall see him sink in fortune's reputation, or wealth,

upon occasion of his book. And this we most humbly submit to your grace's judgment, and care of the church's peace and welfare. So commending your grace to the protection of Almighty God, we shall ever rest at your grace's service, Jo. ROFFEN. Jo. OXON. GUIL. MENNERA. Apr. 2, 1625.”

The duke's espousing this cause, and the king's reproving the house of commons for meddling in it, did but more exasperate the adverse party, who were now enemies to Mountague not as an Arminian, but as an instrument (in their thoughts) of arbitrary power. And it was indeed the state interest that gave the great distinction to the school opinions. Those divines who adhered to the more rigid opinions of St. Austin, Calvin, and the synod of Dort, they were at this time of the country party, in favour with the people, and with the prevailing side in parliament; so they established to themselves the reputation of being sound and orthodox Protestants: while the other divines who went back to the foundations of religion, and to the import of the Scriptures, and to the sense of the primitive fathers, in rejecting the hard decrees of reprobation, and in reconciling the will of man with the grace of God; they were eminently of the court-party, and favourites of the king and the duke: and under a prejudice upon this civil more than a religious account, they were charged with Popery and Arminianism, only to make them the more odious to the common people. Even the Arminians in Holland suffered more as a state faction than as a religious sect; they were found adversaries to the rights and liberties of the people; and it was under that character they were made heretics, rather than for their abstracted notions in divinity. And it was the same now in England; the doctrinal controversy would have created no great difference, if there had not been a political division in it.

It was this very reason that now inflamed the commons against Mr. Mountague; and they would have shewn their indignation at his having such an interest at court, if this parliament had not been so very abruptly dissolved. And this again increased the prejudice against what they now called the Arminian party; and the cry against them was so popular, that many divines were encouraged to confute the principles of Mr. Mountague's Book, and to represent them as false and pernicious. In this design Dr. Sutcliff, Mr. Burton, Mr. Rowse, Mr. Yates, Mr. Wotton, and even a bishop of the church, Dr. Carleton, engaged themselves. Their writings served to heighten the jealousies of the wiser, and to confirm the prejudices of the weaker men. This was soon improved into such a universal dislike of the dreadful name of Arminianism, that even the king and the duke began to think it not safe and honourable to support a cause that was generally run down by the voice of the people: and therefore at the opening of the second parliament, summoned to meet Feb. 1625-6, the duke seemed inclinable to drop his concern for

out any danger of his soul at all; a man may resolve to oppose this or that without peril of perishing for ever.

IV. "Whereas in the 2d Homily entitled 'Against peril of Idolatry,' contained in the aforesaid book of Homilies, approved by the 35th article aforementioned, it is declared, that 'Images teach no good lesson neither of God nor godliness, but all error and wickedness;' he the said Richard Mountague, in the book 'Gugg' aforesaid, doth affirm and maintain, that 'Images may be used for the instruction of the ignorant, and excitation of devotion.'

V. "That in the same Homily it is plainly expressed, that 'the attributing the defence of certain countries to saints is a spoiling God of his honour, and that such saints are but *dii tutelares* of the Gentile Idolaters;' the said Richard Mountague hath notwithstanding, in his said book entitled 'A Treatise concerning the Invocation of Saints;' affirmed and maintained, 'That saints have not only a memory, but a more peculiar charge of their friends, and that 'it may be admitted that some saints have a peculiar patronage, custody, protection and power, as angels also have, over certain persons and countries by special deputation,' and that it is no impiety so to believe.

VI. "Whereas in the 17th of the said Articles it is resolved, 'that God hath certainly decreed by his counsel, secret to us, to deliver from curse and damnation those whom he hath chosen in Christ out of mankind, and to bring them by Christ to everlasting salvation; wherefore they which be endued with so excellent a benefit of God, be called according to God's purpose working in due season, they through grace obey the calling, they be justified freely, walk religiously in good works, and at length, by God's mercy, attain to everlasting felicity.' He the said Richard Mountague, in the said book called 'The Appeal,' doth maintain and affirm, that 'Men justified may fall away, and depart from the state which once they had; they may arise again and become new men possibly, but not certainly nor necessarily;' and the better to countenance this his opinion, he hath in the same book wilfully added, falsified, and changed divers words of the 16th of the Articles before mentioned, and divers other words both in the book of Homilies and in the book of common prayer, and so miscited and changed the said places. He doth alledge in the said book called 'The Appeal,' endeavouring thereby to lay a most wicked and malicious scandal upon the church of England, as if she did herein differ from the reformed churches of England, and from the reformed churches beyond the seas; and did consent to those pernicious errors which are commonly called Arminianism, and which the late famous queen Elizabeth and king James of happy memory did so piously and diligently labour to suppress.

VII. "That the said Rd. Mountague, contrary to his duty and allegiance, hath endeavoured to raise great factions and divisions in

this commonwealth, by casting the odious and scandalous name of Puritans upon such his majesty's loving subjects as conform themselves to the doctrine and ceremony of the church of England, under that name laying upon them divers false and malicious imputations, so to bring them into jealousy and displeasure with his most excellent majesty, and into reproach and ignominy with the rest of the people, to the great danger of sedition and disturbance in the state, if it be not timely prevented.

VIII. "That the scope and end of the said Rd. Mountague, in the books before mentioned, is to give encouragement to popery, and to withdraw his majesty's subjects from the true religion established to the Roman superstition, and consequently to be reconciled to the see of Rome: all which he laboureth by subtle and cunning ways, whereby God's true religion hath been much scandalized, those mischiefs introduced which the wisdom of many laws hath endeavoured to prevent, the devices and practices of his majesty's enemies have been furthered and advanced, to the great peril and hazard of our sovereign lord the king, and of all his dominions and loving subjects.

IX. "That the said Rd. Mountague hath inserted into the said book called 'The Appeal,' divers passages dishonourable to the late king his majesty's father of famous memory, full of bitterness, railing, and injurious speeches to other persons, disgraceful and contemptible to many worthy divines both of this kingdom and of other reformed churches beyond the seas, impious and profane in scoffing at preaching, meditating, and conferring pulpits, lectures, bible, and all shew of religion: All which do aggravate his former offences, having proceeded from malicious and envenomed heat against the peace of the church, and the sincerity of the reformed religion publicly professed and by law established in this kingdom.

"All which offences being to the dishonour of God, and of most mischievous effect and consequence against the good of this church and commonwealth of England, and of other his majesty's realms and dominions; the commons assembled in parliament do hereby pray, that the said Rd. Mountague may be punished according to his demerits, in such exemplary manner, as may deter others from attempting so presumptuously to disturb the peace of church and state, and the book aforesaid may be suppressed and burnt."

It does not appear whether these Articles were presented to the king or preferred in any judicial manner, or whether Mr. Mountague gave in any Answer, or made any other public Vindication. It is most probable that the commons were so immersed in the Impeachment of the duke of Buckingham, that they had not leisure to prosecute this inferior cause before their dissolution: Nor did the king take any notice of this Complaint, or suffer it to be debated in convocation. He thought it a dispute fitter to be silenced than to be determined;

pensions from the king, and having employed the subsidies to other ends than the grant intended. His grand-child, William duke of Suffolk, for the like was censured 28 Henry 6. The great bishop of Winchester, 50 Edward 3, was put upon the king's mercy by parliament, for wasting in time of peace, the revenues of the crown, and gifts of the people; to the yearly oppression of the commonwealth. Offences of this nature were urged, to the razing of the last duke of Somerset in the time of Edward 6. More fearful examples may be found, too frequent in records. Such improvidence and ill counsel led Henry 3 into so great a strait, as after he had pawned some part of his foreign territories, broke up his house, and sought his diet at abbeys and religious houses, engaged not only his own jewels, but those of the shrine of St. Edward at Westminster; he was in the end not content, but constrained to lay to pawn (as some of his successors after did) *magnam coronam Anglie*, the crown of England. To draw you out to life the image of former kings' extremities, I will tell you what I found since this assembly at Oxford, written by a reverend man, twice vice chancellor of this place; his name was Gascoign; a man that saw the tragedy of De la Pole: he tells you that the revenues of the crown were so rent away by ill counsel, that the king was enforced to live 'de tallagis populi:' that the king was grown in debt 'quinque centena millia librarum:' that his great favourite, in treating of a foreign marriage, had lost his master a foreign duchy: that to work his ends, he had caused the king to adjourn the parliament 'in villis et remotis partibus regni,' where few people, 'propter defectum hospitii et victualium,' could attend; and by shifting that assembly from place to place, to enforce, I will use the author's own word, 'illos paucos, qui remanebant de comunitate regni, concedere regi quamvis pessima.' When the parliament endeavoured by an act of resumption, the just and frequent way to repair the languishing state of the crown, for all from Henry 3, but one, till the 6 Henry 8, have used it, this great man told the king it was 'ad dedecus regis,' and forced him from it: to which the Commons answered, although 'vexati laboribus et expensis, nunquam concederent taxam regi,' until by authority of parliament, 'resumeret actualiter omnia pertinentia coronæ Angliæ:' and that it was 'magis ad dedecus regis,' to leave so many poor men in intolerable want, to whom the king stood then indebted. Yet nought could all good counsel work, until by parliament that bad great man was banished; which was no sooner done, but an act of resumption followed the inrollment of the act of his exilement. That was a speeding article against the bishop of Winchester and his brother, in the time of Edward 3, that they had ingrossed the person of the king from his other lords. It was not forgotten against Gaveston and the Spencers, in the time of Edward 2. The unhappy ministers of Rd. 2, Hen. 6, and Edw. 6, felt the weight,

to their ruin, of the like errors. I hope we shall not complain in parliament again of such.

"I am glad we have neither just cause, or undutiful dispositions, to appoint the king a counsel to redress those errors in parliament, as those 42 Hen. 3. We do not desire, as 5 Hen. 4, or 29 Hen. 6, the removing from about the king any evil counsellors. We do not request a choice by name, as 14 Edw. 2. 3. 5. 11. Rd. 2, 8 Hen. 4, or 31 Hen. 6, nor to swear them in parliament, as 35 Edw. 1, 9 Edw. 2, or 5 Rd. 2, or to line them out their directions of rule, as 43 Hen. 3, and 8 Hen. 6, or desire that which Hen. 3 did promise in his 42d year, 'se acta omnia per assensum magnatum de concilio suo electorum, et sine eorum assensu nihil.' We only in loyal duty offer up our humble desires, that since his majesty hath, with advised judgment, elected so wise, religious, and worthy servants, to attend him in that high employment; he will be pleased to advise, with them together, a way of remedy for those disasters in state, brought on by long security and happy peace; and not be led with young and single counsel."

On the 12th of August, less than a week after the delivery of this Speech, this first parliament of King Charles was dissolved. He soon afterwards convened a second, which assembled on Feb. 6th, 1636, presently after which the house of commons busied itself in getting materials for exhibiting Articles against the duke of Buckingham. Their Committee on Grievances made several reports, "That they had learned the reason why our merchant ships and goods were seized in France, was because our admirals had seized the goods of that nation in several ports of England, particularly in the ship called the Peter of Newhaven; which was brought into Plymouth by order of the duke, after the king and council had ordered it to be restored upon a just claim, and the court of admiralty had also released her: that 23 bags of silver and 8 bags of gold, taken out of this ship, were, by sir Francis Stewart, delivered to the lord duke: that till this action, the French did not begin to seize any English ships or goods; and that the duke, having notice of it, said, he would justify the stay of the ship by an express order from the king."

The king in a speech expressed his strong attachment to Buckingham, \* but the spirit

\* "Some men," says May, "wondered to see the new king suddenly linked in such an intimate friendship with the duke of Buckingham, for extraordinary favourites do usually eclipse and much depress the heir apparent of a crown, or else they are conceived so to do, and upon that reason hated and ruined by the succeeding prince, in which kind all ancient and modern histories are full of examples. In the beginning of king Charles his reign a parliament was called and adjourned to Oxford, the plague raging extremely at London, where the duke of Buckingham was highly questioned, not without the grief and sad presage of many people

raised against the minister could not be suppressed by any thing the king could do; and no Supply was to be expected till the Duke was given up to the public vengeance. The Commons followed the chace very warmly against him; and, in some of their Debates, very severe expressions were used against the court; particularly Mr. Clement Coke (son of sir Edward Coke,) said, "That it was better to die by an enemy than to suffer at home." And another member, Dr. Turner, a physician, proposed to the house the following Queries, against the Duke, grounded upon Public Fame.

1. "Whether the Duke, being Admiral, be not the cause of the loss of the king's royalty in the narrow seas? 2. Whether the unreasonable, exorbitant, and immense gift of money and lands, on the Duke and his relations, be not the cause of impairing the king's revenue, and impoverishing the crown? 3. Whether the multiplicity of Offices conferred upon the Duke, and others depending upon him, whereof they were not capable, be not the cause of the evil government of this kingdom? 4. Whether Recusants, in general, by a kind of connivancy, be not borne out and increased, by reason the duke's murther and father-in law were known papists? 5. Whether the Sale of Offices, Honours, and places of judicature, with ecclesiastical livings and promotions, a scandal and hurt to the kingdom, be not through the Duke? 6. Whether the Duke's staying at home, being Admiral and General in chief of the sea and land army, was not the cause of the bad success and overthrow of the late action; and whether he gave good direction for the conduct of that design?"

Upon occasion of this Speech of Mr. Coke, and these Queries of Dr. Turner, the king thought fit to send a reprehensive Message to the House of Commons. These transactions gave rise to Debates reported in 2 Cobb. Parl. Hist. in which part was taken by Selden, Rolle, Wentworth, Wyld, and other eminent persons, among whom the notable Mr. Noy spoke in the Duke's disfavour. Other parliamentary proceedings respecting Buckingham are reported in 2 Cobb. Parl. Hist. and Rushw. Coll. but they do not assume the character of a State Trial, till we find Digby Earl of Bristol, so much concerned in the late Negotiations in Spain, about the Match, &c. on his return from thence, committed prisoner to the Tower. This Earl had been also examined by a Committee of lords, appointed by the king, touching those affairs; and certain Propositions were made to him in order to his release, and composing the differ-

that private affections would too much prevail on him against the public. He was protected against the parliament, which for that only purpose was dissolved, after two Subsidies had been given, and before the kingdom received relief in any one Grievance, as is expressed in the first and general Remonstrance of this present parliament, where many other unhappy passages of those times are briefly touched."

ences between the duke of Buckingham and him. On his refusal, in some measure, to comply with the terms, the lord Conway, secretary of state, wrote to him the following Letter, and received his Answer to it:

The Lord Conway to the Earl of Bristol.

"My lord; I received a letter from your lordship, dated the 4th of this month, written in answer to a former letter which I directed to your lordship, by his majesty's commandment. This last letter, according to my duty, I have shewed unto his majesty, who hath perused it, and hath commanded me to write back to you again, that he finds himself nothing satisfied therewith. The question propounded to your lordship, from his majesty, was plain and clear, Whether you did rather chuse to sit still without being questioned for any errors passed in your Negotiations in Spain, and enjoy the benefit of the late gracious pardon granted in parliament, whereof you may have the benefit: or whether, for the clearing of your innocency, (whereof yourself, and your friends and followers, are so confident) you will be content to waive the advantage of that pardon, and put yourself into a legal way of examination for the trial thereof. His majesty's purpose thereby, is not to prevent you of any favours the law hath given you; but if your assurance be such as your words and letters import, he conceives it stands not with that public and resolute profession of your integrity to decline your trial. His majesty leaves the choice to yourself, and requires from you a direct answer, without circumlocution or bargaining with him for future favours before hand; but if you have a desire to make use of that pardon which cannot be denied you, nor is any way desired to be taken from you, his majesty expects you should at the least forbear to magnify your service, and, out of an opinion of your innocency, cast an aspersion upon his majesty's justice, in not affording you that present fulness of liberty and favour which cannot be drawn from him, but in his good time, and according to his good pleasure. Thus much I have in commandment to write to your lordship, and to require your answer clearly and plainly by this messenger, sent on purpose for it, and so remain,

Your lordship's humble servant,  
*Whitehall, March 24, 1626.* "CONWAY."

The Earl of Bristol to the Lord Conway.

"My lord; I have received your Letter of the 24th of March, the 28th, and I am infinitely grieved to understand, that my former answer to yours of the 4th of March hath not satisfied his majesty, which I will endeavour to do to the best of my understanding; and, to that end, shall answer to the particular points of your present letter with the greatest clearness I am able. First, Whereas you say in your letter, That the question propounded to me was plain and clear, viz. Whether I would chuse to sit still without being questioned for any errors passed in my negotiations in Spain,



and enjoy the benefit of the late gracious pardon, whereof I may take the benefit? Or whether, being content to wave the advantage of that pardon, I should put myself into a legal way of examination for the trial thereof? &c.

1st, Your lordship may be pleased to remember your last proposition was, Whether I desired to rest in the security I was in? which you now express, Whether I will chuse to sit still?

2ndly, Your proposition was, Whether I would acknowledge the gracious favour of his majesty that now is, who had been pleased not to question my actions? When it is best known to your lordship, That, by a commission of the lords, I was questioned upon 20 Articles, divers involving felony and treason: although it be true, That, when I had so answered (as I am confident their lordships would have cleared me) I was so unhappy as their lordships never met more about that business.—But now your proposition is, Whether I will now chuse to sit still without being further questioned for errors passed? Whereas before it was required I should acknowledge that I have not been questioned at all; which is a different thing. But conferring both your letters together, and gathering the sense and meaning, by making the latter an explanation of the former, which I could have wished your lordship would have more clearly explained, I return unto your lordship this plain and direct answer. That I understand, by the security I am in, and sitting still, and not being further questioned, that I am restored to the bare freedom and liberty of a subject and peer: for if a man be called in question by his majesty, yet afterwards his majesty shall be pleased, out of his goodness, that he rest quiet and secure, and that he shall not be further questioned; I conceive that it is not apparent that his liberty naturally revolveth unto him, when by his majesty's grace he is pleased to declare he shall not be further questioned, but may live in further security. So that, understanding your letter in this sort, (for no direct answer can be made, until the sense of the question be truly stated) I do most humbly acknowledge and accept his majesty's grace and favour, and shall not wave any thing that shall come to me by the pardon of the 21 Jac. nor by the pardon of his majesty's coronation. And am so far from bargaining, as you are pleased to express it, for future favour (though I hope my humble and submissive courses of petitioning his majesty neither hath nor shall deserve so hard an expression) that I shall not presume so much as to press for any favour, until my dutiful and loyal behaviour may move his majesty's royal and gracious heart thereunto; but receive, with all humbleness, this my freedom and liberty, the which I shall only make use of in such sort, as I shall judge may be most agreeable to his majesty's pleasure. As for the 2nd part of your letter, wherein you say, That if I desire to make use of that pardon, his majesty expects that I should at least forbear to magnify my services; or, out of an opinion of my own innocency, cast an aspersion upon

his majesty's justice; to this point I answer, That as I hope I shall never err in that sort of immodesty, of valuing my services, which I acknowledge to have been accompanied with infinite weakness and disabilities; so I trust it shall not displease, that I make use, to mine own comfort, and the honour of my posterity, of those many written testimonies, which my late most blessed master hath left me, of his gracious acceptance of my services for the space of 20 years; And likewise I hope the modest avowing of mine innocency will not be thought to cast any aspersion upon his majesty's honour or justice. I must freely confess unto your lordship, I am much afflicted to see inferences of this nature made, both in your lordship's last letter and in this. For if it shall be inferred, as a thing reflecting upon the king's honour, then a man questioned shall not endeavour to defend his own innocency before he be convicted, it will be impossible for any man to be safe; for the honour of his majesty is too sacred a thing for any subject, how innocent soever, to contest against. So likewise, God forbid that it should be brought into consequences, as in your former letter, as a tax upon the government and justice of his late majesty, and majesty that now is, that I should have suffered so long time, not being guilty. For as I never have been heard so much as to repine of injustice in their majesties, in all my sufferings, so I well know, that the long continuance of my troubles may well be attributed unto other causes, as to my own errors of passion, or other accidents; for your lordship may well remember, that my affairs were, almost two years since, upon the point of a happy accommodation, had it not been interrupted by the unfortunate mistaking of the speeches I used to Mr. Clark. I shall conclude by intreating your lordship's favour, that I may understand from you, as I hope for my comfort, that this letter hath given his majesty satisfaction; or if there should yet remain any scruple, that I may have a clear and plain signification of the king's pleasure; which I shall obey with all humility. Your Lordship's humble servant, **BAISTOL.**"

After this the Earl petitioned the house of lords, and shewed, "That he, being a peer of this realm, had not received a summons to parliament, and desired their lordships to mediate with the king, that he might enjoy the liberty of a subject and the privilege of his peerage, after almost two years restraint without being brought to a trial: and, if any charge was brought against him, he prayed that he might be tried by parliament." Upon the receipt of this petition, the lords referred it to the committee of privileges: from whom the earl of Hertford reported, "That it was necessary for their lordships humbly to beseech his majesty to send a writ of summons to the earl of Bristol; as also to such other lords whose writs are stopped, except such as are made incapable to sit there by judgment of parliament, or some other legal course." Hereupon the duke of Buckingham signified to the house, That

upon the earl's Petition to the king, his majesty had sent him his writ of summons; and, withal, shewed the lords a copy of a letter, wrote from the king to the said earl, dated Jan. 20, 1625, the tenor of which followeth:

"We have read your letter addressed unto us by Buckingham, and cannot but wonder that you should, through forgetfulness, make request to us of favour, as if you stood evenly capable of it, when you know what your behaviour in Spain deserved of us, which you are to examine by the observations we made, and know you well remember; how, at our first coming in Spain, taking upon you to be so wise, as to foresee our intention to change our religion, you were so far from dissuading us, that you offered your advice and secrecy to concur in it: and, in many other conferences, pressing to shew how convenient it was to be a Roman Catholic, it being impossible, in your opinion, to do any great action otherwise; and how much wrong, disadvantage, and disservice you did to the Treaty, and to the right and interest of our dear brother and sister, and their children; what disadvantage, inconvenience, and hazard you intangled us in by your artifices, putting off and delaying our return home; the great estimation you made of that state, and the low price you set this kingdom at; still maintaining, that we, under colour of friendship to Spain, did what was in our power against them, which they said you very well knew: And, last of all, your approving of those conditions, that our nephew should be brought up in the emperor's court; to which sir Walter Aston then said, That he durst not give his consent for fear of his head: Your replying unto him, That without some such great action, neither marriage nor peace could be had."

There is no Answer to this Letter in the Journals; but, instead of it, we find another Petition from the Earl, addressed to the lords, on his receiving his writ of summons; to which he annexed the Lord Keeper's Letter and his Answer, and desired to be heard in Accusation of the Duke.

The Humble Petition of John, Earl of Bristol.

"Humbly shewing unto your lordships, That he hath lately received his writ of summons to parliament, for which he returned unto your lordships most humble thanks; but, jointly with it, a Letter from my Lord Keeper, commanding him, in his majesty's name, to forbear his personal attendance; and although he shall ever obey the least intimation of his majesty's pleasure, yet he most humbly offereth unto your lordships wise considerations, as too high a point for him, how far this may trench upon the liberty and safety of the peers, and the authority of their letters patents, to be in this sort discharged by a letter missive of any subject, without the king's hand; and, for your lordships due information, he hath annexed a copy of the said Lord Keeper's Letter, and his Answer thereunto.—He farther humbly peti-

tioneth your lordships, That having been, for the space of two years, highly wronged in point of his liberty and of his honour, by many sinister aspersions which have been cast upon him, without being permitted to answer for himself; which hath been done by the power and industry of the duke of Buckingham, to keep him from the presence of his majesty and the parliament, lest he should discover many crimes concerning the said duke:—He therefore most humbly beseecheth, That he may be heard, both in the point of his Wrong, and of his Accusation of the said duke: Wherein he will make it appear, how infinitely the said duke hath abused their majesties, the state, and both the houses of parliament. And this, he is most confident, will not be denied, since the court of parliament never refuseth to hear the poorest subject seeking for redress of wrongs, nor the accusation against any, be he never so powerful. And herein he beseecheth your lordships to mediate to his majesty for your suppliant's coming to the house, in such sort as you shall think fitting; assuring his majesty that all he shall say, shall not only tend to the service of his majesty and the state, but highly to the honour of his majesty's royal person, and of his princely virtues: and your suppliant shall ever pray for your lordships prosperity. BRISTOL."

The Lord Keeper to the Earl of Bristol; dated Dorset-court, March 31, 1626.

"My very good lord; By his majesty's commandment, I herewith send unto your lordship your writ of summons for the parliament; but withal signify his majesty's pleasure herein further, That howsoever he gives way to the awarding of the writ, yet his meaning is thereby not to discharge any former directions for restraint of your lordship's coming hither; but that you continue under the same restriction as you did before; so as your lordship's personal attendance here is to be forborn. And herein I doubt not but your lordship will readily give his majesty satisfaction: And so I commend my service very heartily unto your lordship, and remain, your lordship's assured friend and servant,  
THOMAS COVENTRY, C. S."

The Earl of Bristol's Answer to the Lord Keeper; dated Sherborn, April 12, 1626.

"May it please your lordship; I have received your lordship's letter of the 31st of March, and with it, his majesty's writ of summons for the parliament. In the one his majesty commandeth me, that all excuses set aside, upon my faith and allegiance I fail not to come and attend his majesty; and this under the great seal of England. In the other, as in a letter missive, his majesty's pleasure is intimated by your lordship that my personal attendance should be forborn. I must crave leave ingenuously to confess unto your lordship that I want judgment rightly to direct myself in this case; as likewise, that I am ignorant how far this may trench upon the privileges of the peers of this land, and upon mine and their

General to charge his lordship with High Treason, and other Offences and Misdemeanors of a very high nature, that they might proceed in a legal course against him, according to the justice and usual proceedings of parliament."

Then the Attorney General, sir Rob. Heath, exhibited the following Articles, as a Charge against the said Earl.—But when he had begun to read the said Charge, the Earl interrupted him, and said, "That he had exhibited his Petition to the house, that he might come up and be heard in his Accusation against, the duke of Buckingham; and that, thereupon, he, being a peer of this realm, was charged with High Treason. That he had heretofore informed the late king, of blessed memory, of the unfaithful service of the said duke; and thereupon the duke laboured that he might be clapped up in the Tower, presently after his return out of Spain: and called upon the lord chamberlain to testify whether the lord marquis Hamilton had not told him as much. That the duke had, since, laboured to keep him from this king's presence, and now he was charged with Treason. That he had been often employed, as ambassador, in weighty affairs, and never came home tainted; and, at his last coming out of Spain, he laboured the late king James, that he might be heard before himself, and his majesty promised it. I pray God, (said the Earl) that promise did him no hurt, for he died soon after. For the said king's promise, he vouched the lord chamberlain: and earnestly desired their lordships to take all these into their considerations; and to consider, also, that this house is already possessed of his said Petition and his Accusation of the said duke; and required that their lordships would first receive his Charge against the lord Conway, and not to invalidate his testimony against them by the king's charge against him. He protested, that he spoke for the king; that he was a peer and a free man of the realm; and desired not to be impeached until his Charge, which was of so high a nature, was first heard."

ARTICLES OF IMPEACHMENT AGAINST THE EARL OF BRISTOL.

The Earl then tendered to the house his Articles, in writing, against the lord Conway, which the lords received; and, being withdrawn, the Petition of the said Earl presented to the house on the 10th of April, wherein he desired he might be heard in his Accusation against the Duke, was read; and, after a long debate, it was agreed upon the question, That the Earl's Charge against the Duke and against the lord Conway, should be presently read; all which were read by the Attorney General, as follows:

"ARTICLES of several High Treasons, and other great and enormous Crimes, Offences, and Contempts, committed by John Earl of Bristol, against our late Sovereign Lord King James, of blessed memory, deceased, and our Sovereign Lord the King's Majesty, which now is; wherein the said

VOL. II.

Earl is charged, by his Majesty's Attorney General, on his Majesty's behalf, in the most High and Honourable Court of Parliament, before the King and his Lords there.

"OFFENCES done and committed by the Earl of Bristol, before his majesty's going into Spain when he was Prince.

I. "That the said earl being trusted and employed by the said late king as his ambassador to Ferdinando, then and now emperor of Germany: to Philip 4, then and now king of Spain, in annis 1621, 2, and 3. And having commission, and particular and special direction, to treat with the said emperor and the king of Spain, for the plenary restoring of such parts of the dominions, territories, and possessions of the count Palatine of the Rhine, who married the most excellent lady Elizabeth his now royal consort, the only daughter of the late king James; which were then wrongfully, and in hostile manner taken, and possessed with and by the armies of the said emperor, and king of Spain, or any other: and for preserving and keeping such other parts thereof, as were not then lost but were then in the protection of the said late king James; and to the use of the said count Palatine and his children: and for the restoring of the electoral dignity unto them: and also to treat with the said king of Spain, for a Marriage to be had between the most high and excellent prince Charles, then Prince of Wales, the only son and heir apparent of the said king James, and now our most sovereign lord, and the most illustrious lady Donna Maria the Infanta of Spain, sister to the now king of Spain: he the said earl, contrary to his duty and allegiance, and contrary to the trust and duty of an ambassador, at Madrid in the kingdom of Spain, to advance and further the designs of the said king of Spain, against our said sovereign lord, his children, friends, and allies; falsely, wilfully, and traiterously, and as a traitor to our said late sovereign lord the king, by sundry letters and other messages sent by the said earl from Madrid, in the years aforesaid, unto king James and his ministers of state of England, did confidently and resolutely inform, advise, and assure the said late king, that the said emperor and king of Spain would really, fully, and effectually make restitution and plenary restoration to the said count Palatine and his children of the said dominions, territories, and possessions of the said count Palatine, and of the said electoral dignity: and that the said king of Spain did really, fully, and effectually intend the said Marriage between the said lady his sister, and the said prince our now sovereign lord, according to articles formerly propounded between the said kings: whereas in truth, the said emperor and king of Spain, or either of them, never really intended such restitution as aforesaid: and whereas the said king of Spain never really intended the marriage according to those articles propounded; but the said emperors

4 2

free toleration, and silencing of all laws made, and standing in force against them.

VI. "That by the false Informations and Intelligence of the said earl of Bristol, during the time aforesaid, unto his said late majesty and to his majesty that now is, being then prince, concerning the said Treaties, and by the assurances aforesaid given by the said earl: his said late majesty, and the prince, his now majesty, being put in hopes, and by the said long delay used, without producing any effect, their majesties being put into jealousies, and just suspicion that there was no such sincerity used towards them as they expected, though so many assurances from the earl on their part had been undertaken; the said prince, our now gracious sovereign, was enforced, out of his love to his country, to his allies, friends, and confederates, and to the peace of Christendom, who all suffered by such intolerable delay, to undertake in his own person, his long and dangerous journey into Spain; that thereby he might either speedily conclude those Treaties, or perfectly discover that, on the emperor's and the king of Spain's part, there was no true and real intention to bring the same to conclusion, upon any fit and honourable terms and conditions: and did accordingly and speedily break them off. By which journey, the person of the said prince, being then heir apparent to the crown of this realm, and in his person, the peace and safety of this kingdom, did undergo such apparent and such inevitable danger, as at the very remembrance thereof, the hearts of all good subjects do even tremble.

OFFENCES done and committed by the said Earl, during the Time of the Prince's being in Spain.

VII. "That at the Prince's coming into Spain during the time aforesaid, the earl of Bristol, cunningly, falsely, and traitorously, moved and persuaded the prince, being then in the power of a foreign king of the Romish religion, to change his religion, which was done in this manner. At the prince's first coming to the said earl, he asked the prince for what he came thither; the prince, at first not conceiving the earl's meaning, answered, 'You know as well as I.' The earl replied, 'Sir, servants can never serve their masters industriously, although they do it faithfully, unless they know their meanings fully. Give me leave therefore to tell you what they say in the town is the cause of your coming, That you mean to change your religion, and to declare it here.' And yet cunningly to disguise it, the earl added further; 'Sir, I do not speak this that I will persuade you to do it, or that I will promise you to follow your example, though you will do it; but, as your faithful servant, if you will trust me with so great a secret, I will endeavour to carry it the discreetest way I can.' The prince being moved at this unexpected motion again, said unto him, 'I wonder what you have ever found in me, that you should conceive I would be so base and unworthy, as

'for a wife to change my religion.' The said earl replying, 'He desired the prince to pardon him, if he had offended him, it was but out of his desire to serve him.' Which persuasions of the said earl were the more dangerous, because the more subtle; whereas it had been the duty of a faithful servant to God and his master, if he had found the prince staggering in his religion, to have prevented so great an error, and to have persuaded him against it, so to have avoided the dangerous consequence thereof, to the true religion and to this state, if such a thing should have happened.

VIII. "That afterward, during the Prince's being in Spain, the said earl having conference with the said prince about the Romish religion, he endeavoured, falsely and traitorously, to persuade the prince to change his religion as aforesaid, and become a Romish Catholic, and to become obedient to the usurped authority of the pope of Rome; and, to that end and purpose, the said earl traitorously used these words unto the said prince: 'That the state of England did never any great thing, but when they were under the obedience of the pope of Rome; and that it was impossible they could do any thing of note otherwise.'

IX. "That, during the time of the Prince's being in Spain as aforesaid, the prince consulting and advising with the said Earl and others about a new offer made by the king of Spain, touching the Palatinate; which was, that the eldest son of the prince Palatine should marry with the emperor's daughter, but must be bred up in the emperor's court; the said Earl delivered his opinion, that the proposition was reasonable; whereat when sir Walter Aston, then present, falling into some passion, said, that he durst not for his head consent unto it, the earl of Bristol replied, that he saw no such great inconvenience in it, for that he might be bred up in the emperor's court in our religion. But, when the extreme danger, and in a manner the impossibility thereof, was pressed unto the said Earl, he said again, that, without some such great action, the peace of Christendom would never be had; which was so dangerous and desperate a counsel, that one so near to the crown of England should be poisoned in his religion, and put into the power of a foreign prince, enemy to our religion, and an unfriend to our state, that the consequence thereof, both for the present and future times, were infinitely dangerous: And yet hereunto did his disaffection to our religion, the blindness in his judgment, misled by sinister respects, and the too much regard he had to the house of Austria, lead him.

X. "That, when the Prince had clearly found himself and his father deluded in these Treaties, and thereupon resolved to return from the court of Spain; and yet, because it behoved him to part fairly, he left the powers of the desposorios with the said earl of Bristol, to be delivered upon the return of the dispensation from Rome (which the king of Spain

insisted upon, and without which, as he pretended, he would not conclude the marriage); the Prince, foreseeing and fearing lest, after the desposorios, the infanta, which should then be his wife, might be put into a monastery, wrote a letter back to the said earl from Segovia, thereby commanding him not to make use of the said powers, until he could give him assurance that a monastery might not rob him of his wife; which letter the said earl received, and with speed returned an answer thereunto into England, persuading against this direction, yet promising obedience thereunto. Shortly after which, the prince sent another letter to the said earl into Spain, discharging him of his former command; but his late majesty, by the same messenger, sent him a more express direction, not to dispatch the desposorios, until a full conclusion were had of the other Treaty of the Palatinate, with this of the Marriage; for his majesty said, 'That he would not have one daughter to laugh, and leave the other daughter weeping.' In which dispatch, although there were some mistaking, yet in the next following, the same was corrected, and the earl of Bristol tied to the same restriction; which himself confessed in one of his dispatches afterwards, and promised to obey punctually the king's command therein; yet, nevertheless, contrary to his duty and allegiance, in another letter sent immediately after, he declared, 'That he had set a day for the desposorios,' but without any assurance, or so much as a treating of those things which were commanded to him as restrictions; and that so short a day, that if extraordinary diligence, with good success in the journey, had not concurred, the prince's hands might have been bound up; and yet he neither sure of a wife, nor any assurances given of the temporal articles. All which, in his high presumption, he adventured to do, being an express breach of his instructions; and, if the same had not been prevented by his late majesty's vigilancy, it might have turned to the infinite dishonour and prejudice of his majesty.

XI. "Lastly, That he hath offended in a high and contemptuous manner, in preferring a scandalous Petition to this honourable house, to the dishonour of his majesty of blessed memory deceased, and of his sacred majesty that now is, which are no way sufferable in a subject towards his sovereign; and in one Article of that Petition specially, wherein he gives his now majesty the lie, in denying and offering to falsify that relation which his majesty affirmed, and thereunto added many things of his own remembrance to both houses of parliament.

ROBERT HEATH."

The Duke of BUCKINGHAM impeached by the Earl of Bristol.

ARTICLES of the Earl of Bristol, whereby he chargeth the Duke of Buckingham; bearing date the 1st day of May 1626.

I. "That the Duke of Buckingham did secretly combine and conspire with the Conde

of Gondamar, ambassador for the king of Spain, before his the said ambassador's last return into Spain, in the summer 1622, to carry his majesty (then prince) into Spain, to the end that he might be informed and instructed in the Roman religion, and thereby have perverted the prince, and subverted the true religion established in England; from which misery this kingdom (next under God's mercy) hath, by the wise, religious, and constant carriage of his majesty, been almost miraculously delivered, considering the many bold and subtle attempts of the said duke in that kind.

II. "That Mr. Porter was made acquainted therewith, and sent into Spain; and such messages at his return framed, as might serve for a ground to set on foot this conspiracy; the which was done accordingly, and thereby the king and prince highly abused, and their consents thereby first gotten to the said Journey; that is to say, after the return of the said Mr. Porter, which was about the end of Dec. or the beginning of January, 1622; whereas the said duke had plotted it many months before.

III. "That the said Duke, at his arrival in Spain, nourished the Spanish ministers, not only in the belief of his own being popishly affected; but did (both by absenting himself from all exercises of religion, constantly used in the earl of Bristol's house, and frequented by all other Protestant English, and by conforming himself, to please the Spaniards, in divers rites of their religion, even so far as to kneel and adore their Sacrament) from time to time give the Spaniards hope of the prince's conversion; the which conversion he endeavoured to procure by all means possible; and thereby caused the Spanish ministers to propound far worse conditions for religion than had been formerly by the earl of Bristol and sir Walter Aston settled, and signed under their majesties hands; with a clause, in the king of Spain's Answer, of the 12th of December 1622, that they held the article agreed upon sufficient, and such as ought to induce the pope to the granting of the dispensation.\*

\* Wilson after mentioning how highly Buckingham had been esteemed, adds, "But when Bristol came over, and (as afterwards he) did discover, that the duke carried the prince purposely into Spain to be the better instructed in popery: that he gave hope to the Spanish ministers of state of the prince's conversion, which made them propound far worse conditions for religion than had been formerly agreed on: that he professed himself a papist there, going to mass, kneeling to and adoring their Sacraments; which the pope being informed of, sent the duke a Bull, to persuade and encourage him to pervert the king and prince, with other pernicious crimes laid to his charge in the next king's reign, (as may appear in due time) none can blame the people for mutable affections: for when falshood is so impudent as to hoodwink such an assembly, with the veil that truth herself is wont to put on, who can at an

IV. "That the duke of Buckingham, having several times, in the presence of the earl of Bristol, moved and pressed his late majesty, at the instance of the Conde of Gondomar, to write a letter unto the pope; and to that purpose having once brought a letter ready drawn, wherewith the earl of Bristol, by his majesty being made acquainted, did so strongly oppose the writing of any such letter, that, during the abode of the said earl of Bristol in England, the said duke could not obtain it; yet, not long after the earl was gone, he procured such a letter to be written from his late majesty unto the pope, and to have him styled *Sanctissime Pater*.

V. "That the pope, being informed of the duke of Buckingham's inclination and intention in point of religion, sent unto the said duke a particular Bull, in parchment, for to persuade and encourage him in the perversion of his majesty, then prince.

VI. "That the said duke's behaviour in Spain was such, that he thereby so incensed the king of Spain and his ministers, as they would admit of no reconciliation, nor further dealing with him; whereupon, the said duke seeing that the match would be now to his disadvantage, he endeavoured to break it; not for any service to the kingdom, nor dislike of the match in itself, nor for that he found (as since he hath pretended) that the Spaniards did not really intend the said match, but out of his particular ends and his indignation.

VII. "That, after that he intended to cross the marriage, he put in practice divers undue courses; as namely, making use of the letters of his majesty (then prince) to his own ends, and not to what they were intended, as likewise concealing divers things of high importance from his late majesty, and thereby overthrew his majesty's purposes, and advanced his own ends.

VIII. "That the said duke, as he had with his skill and artifices formerly abused their majesties; so, to the same end, he afterwards abused both houses of parliament, by his sinister relation of the carriage of affairs, as shall be made appear almost in every particular that he spake unto the said houses.

IX. "As for the scandal given by his personal behaviour, as also the employing of his power with the king of Spain for the procuring of favours and offices, which he bestowed upon base and unworthy persons, for the recompence and hire of his lust: these things, as neither fit for the earl of Bristol to speak, nor indeed for the house to hear, he leaveth to your lordships wisdoms how far you will be pleased to have them examined; it having been indeed a great

instant discover it?" Upon which Hume observes, "Wilson says, that Buckingham lost his popularity after Bristol arrived, not because that nobleman discovered the falshood of his narrative, but because he proved that Buckingham, while in Spain, had professed himself a papist; which is false, and which was never said by Bristol."

infamy and dishonour to this nation, that a person of the duke's great quality and employments, a privy counsellor, an ambassador, eminent in his master's favour, and solely trusted with the person of the prince, should leave behind him in a foreign court so much scandal as he did by his behaviour.

X. "That the said duke hath been, in great part, the cause of the ruin and misfortune of the prince Palatine, and his estates, in as much as those affairs had relation unto this kingdom.

XI. "That the duke of Buckingham hath, in his relations, to both houses of parliament, wronged the earl of Bristol, in point of his honour, by many sinister aspersions which he hath laid upon him; and in point of his liberty, by many undue courses, through his power and practices.

XII. "That the earl of Bristol did reveal unto his late majesty, both by word and letter, in what sort the said duke had disserved him, and abused his trust; and that the king, by several ways, sent him word, that he should rest assured he would hear the said earl; but that he should leave it to him to take his own time. And thereupon, few days before his sickness, he sent the earl word, that he would hear him against the said duke, as well as he had heard the said duke against him; which the duke himself heard, and not long after his blessed majesty sickened and died, having been in the interim much vexed and pressed by the said duke. BRISTOL."

Lord CONWAY impeached by the Earl of Bristol.

ARTICLES of the Earl of Bristol concerning the lord CONWAY, bearing date the 1st of May 1696.

I. "That the lord Conway is so great a servant of the duke of Buckingham's, that he hath not stook to send the earl of Bristol plain word, that if businesses could not be accommodated betwixt him and the duke, he must then adhere and declare himself for the said duke, and therefore unfit to be a judge in any thing that concerneth the duke or the earl.

II. "That the said lord Conway professeth himself to be a secretary of the duke of Buckingham's creation, and so acknowledgeth it under his own hand; and, although he be the king's secretary of state, and a privy counsellor, he usually beginneth his letters to the duke, 'Most gracious patron.'

III. "That, as a creature of the said duke's, the said lord Conway hath been made the instrument of keeping the earl of Bristol from the king's presence, and of imprisoning of him, by warrants only under his own hand, for which he cannot (as the earl conceiveth) produce any sufficient warrant.

IV. "That, by the space of 12 months last past, the said lord Conway hath been the cause of the earl's restraint, only by misinforming his majesty, and procuring a letter of restraint upon undue grounds; and when it was made apparent unto him that the said earl was restored to his liberty, freely to follow his own

affairs, by his late majesty of blessed memory, he replied, That that liberty, given him by his majesty, expired with the king's death.

V. "That the earl of Bristol's mother, lying sick, upon her death-bed, desired, for her comfort, to see her son, and to give him her last blessing; whereupon the earl wrote to the said lord Conway, to desire him to move the king for his leave; which he putting off from day to day, told the person employed, that, by reason of the duke's sickness, he could not find opportunity to get the duke's leave to move the king; and having spoken with the duke, he made a negative answer in the king's name; wherewith the earl acquainting the king by some of his bed-chamber, his majesty was in a very great anger, swearing the secretary had never moved him; and that to deny the said earl leave was a barbarous part; and thereupon sent him presently free leave; which the secretary hearing of, sent likewise afterwards a letter of leave, but with divers clauses and limitations, differing from the leave sent him from the king's own mouth.

VI. "That having the businesses of the earl of Bristol in his hands, and the earl being commanded by the king to address himself, in his occasions, unto his lordship, he would never deliver any message from the said earl, without first acquainting the said duke, and receiving his directions; and, in a noble manner of freeness, stuck not to send him word.

VII. "That the earl of Bristol having received from the lord Conway twenty Interrogatories, in his late majesty's name, drawn up by a commission of the lords appointed to search into the proceedings and employments of the said earl; in which search there was more than two months spent, divers of the said Interrogatories involving felony and treason; and his majesty having been pleased to assure the said earl, both, by message and letters, that, upon satisfaction given to himself and the commissioners by his answers, he would presently put an end to the earl of Bristol's business; the earl of Bristol having so fully answered as would admit of no reply, and that many of the commissioners declared themselves to be fully satisfied; the said lord Conway being the secretary in the commission (to whom it properly belonged to call the lords to assemble), perceiving that the earl of Bristol was like to be cleared, never moved for any further meeting; neither have they ever been permitted to meet until this day, whereby the troubles of the earl of Bristol have been kept on foot: till this present, and the said earl's imprisonment hath been enlarged twenty months: and, by the artifices of the said duke of Buckingham and the said lord Conway (as shall be made appear), the said earl hath been insensibly involved and stalked into the troubles he is now in, which he doubteth not but your lordships will judge to be a very considerable case.

VIII. "That for a colour of keeping the earl from his late majesty's presence, it being pretended after the answer to the 20 Interrogato-

ries, that there were some few questions more to be added, whereunto when he should have answered, his majesty swore solemnly, that without any delay, he should be admitted to his presence, and that within 2 or 3 days he should have the said questions sent unto him; the lord Conway, notwithstanding he acknowledged under his hand, that he had received his majesty's directions for the sending of the said articles, and was often thereunto solicited on the behalf of the said earl, would never send the said questions; and at last answered, That he had no more to do with the earl's business.

IX. "That the earl of Bristol being set free by his late majesty to come to London, to follow his own affairs as he pleased, and thereupon having his writ of parliament sent unto him, without any letters of prohibition; yet the earl of Bristol, out of his great desire to conform all his actions to that which he should understand would best please his majesty, sent to know, 'Whether his coming or stay would be most agreeable unto his majesty?' Who was pleased to answer by a letter from my lord duke of Buckingham, 'That he took in very good part the said earl's respect unto him: but wished him to make some excuse for the present.' The which accordingly he did, and moved, 'That he might have a letter under the king's hand, to warrant his absence;' but under colour of this letter of leave, upon the earl of Bristol's own motion and desire, the lord Conway sent a letter from his majesty absolutely forbidding his coming to parliament; and therein likewise was inserted a clause, 'That the earl should remain restrained as he was in the time of his late majesty,' and so thereby a colour of restraint, under his majesty's hand, was gotten, which could never be procured in his late majesty's time: whereby the earl of Bristol hath been unduly restrained ever since, without being able to procure any redress, or to make the lord Conway willing to understand his case, although he sent him all the papers, whereby he might clearly see, that the earl was not under restraint in his late majesty's time; but never other answer could be procured from him, but, 'That he judged the said earl to be under restraint, and that his liberty was expired by the late king's death, as is aforesaid.'

X. "That the lord Conway, knowing that the Match for the marrying of the king of Bohemia's eldest son with the emperor's daughter, and being bred in the emperor's court, was allowed and propounded by his late majesty: and that his majesty by his letters to his son-in-law, declareth, 'That he thinketh it the fairest and clearest way for the accommodation of his affairs, and that he will take sufficient care of his breeding in true religion.' And notwithstanding that the said earl received a copy of the said letter by the said late king's order, with other papers, setting down all that had been done in the said business, and his majesty's assent thereunto, from the lord Conway himself; yet hath he suffered it to be charged as a crime against the earl of Bristol, both in the

20th Interrogatory and in his majesty's last letter, that he should consent to the breeding of the young prince in the emperor's court. And, further in the Interrogatory, he alledged it as an aggravation against the said earl, That the breeding of the said prince in the emperor's court, referred to the perversion of his religion, when he knew that his said breeding was never thought nor spoken of by the king, nor any other, but with that express clause and condition, 'That he should be bred in his own religion, and have such tutors and servants as his father should appoint.

XI. "That the lord Conway hath been the cause of all the earl of Bristol's troubles, by his dubious and intrapping dispatches, and inferring, That the said earl hath failed in his directions, when it shall be made appear, that his dispatches contained no such directions as he hath alledged were given. BRISTOL."

After the reading of these very different Accusations, the house not being satisfied to commit the Earl to the Tower, let him remain where he was before, with the gentleman usher; and further ordered, "That the king's Charge against the Earl of Bristol be first heard, and then the Charge of the said Earl against the Duke: yet so that the Earl's testimony against the Duke be not prevented, prejudiced, nor impeached."

May 2. The Lord-Keeper delivered a Message from the King to the Lords: viz.

"That his majesty taketh notice of the Articles exhibited against the duke of Bucks by the earl of Bristol; and he observeth, That many of them are such, as himself is able to say more of his own knowledge than any man, for the duke's sincere carriage in them: that one of them touching the Narrative made in parliament in the 21st of king James, trencheth as far upon himself, as the duke: for that his majesty went as far as the duke in that declaration: and that all of them have been closed in the Earl's own breast, now for these two years, contrary to his duty, if he had known any crime of that nature by the duke; and now he vents it by way of recrimination against the duke, whom he knows to be a principal witness to prove his majesty's Charge.—And therefore, That his majesty gave them thanks, that they gave no way to the earl of Bristol's unreasonable motion, of putting the duke under the same restraint that they had put the earl; thereby eschewing what the earl aimeth at, to alter their dutiful proceedings toward his majesty so often in this parliament expressed. That thereby they had made his majesty confident, that as they have, so they will put a difference between his majesty's Charge against one that appeareth as a delinquent, and the recrimination of the earl of Bristol against his majesty's witness; and not to equal them by a proceeding *pari passu*; nor to match the imprisonment of the one with the other, as the earl of Bristol desired; the ground being so different and unequal."

#### The Earl of Bristol's Defence.

Mr. Attorney having read the Charge, and the earl of Bristol permitted to speak for himself; he first craved pardon of their lordships for his earnest speeches here the other day; confessing he spake in passion; saying, "That an unexpected Accusation of high treason would warm an honest heart; and I like my heart never the worse for it; but he would hereafter amend that fault."

Then he rendered their lordships all most humble thanks for this manner of proceeding against him, and desired to know from Mr. Attorney, "Whether this be his whole Charge or no?"

Mr. Attorney answered, "That he hath commandment to open no more against him; peradventure, in the opening of the Charge, upon some incidents of his Answer, some other Particulars may arise, and be urged; but no new matter should."

Then the Earl desired to know of Mr. Attorney the relator, as he might understand who is his accuser. And Mr. Attorney answered, "That the king himself, out of his own mouth, had given him directions for his own relation against the Earl, and corrected many things which were added."

Unto which the Earl replied, and said to this effect: viz.

"I will not contest with the king; neither doth it beseech me so to do; neither esteem I my life or my fortunes so much as to save them by contesting with my sovereign; and therefore I would make no reply nor answer, were it not that my honour and religion were jointly questioned with my life; but, they being to descend to my posterity, for their sake I am an humble suitor to his majesty, that he would not take indignation at my own just defence. Yet I will be ready to make any humble submission to his majesty; and I heartily desire that some means may be made that I may make it personally unto himself; wherein I will submit myself most willingly to any act of humiliation and submission (not wronging my innocency,) that ever subject did towards his sovereign; and I also desire that his majesty would be pleased to set himself here on his throne of justice, and declare that, out of his royal justice, he leaves the duke of Buckingham and me upon equal terms; and that neither of their causes shall be advanced before the other.

"These my humble Petitions I beseech your lordships to present unto his majesty, on my behalf; and withal what a disservice it will be unto his majesty hereafter, in embassages, if my accuser shall be my judge, his own witness, and have my confiscation.

"As touching the Charge itself, I have once answered it all (except that of my Petition); and I doubt not but to clear myself of every particular thereof. I expected not to have heard of these again. I expected a remonstrance of some practice with Spain against the state; or to be charged with the receipt of 10



unto me; what fair propositions I should make; only to retire into the country, and not come to the court; but permit his grace to dispose of the vice-chamberlain's place. And I shewing Mr. Clerke, by way of private conference, what papers I had to produce against the duke, his grace then required a retraction; which I denied; and so all reconciliation brake off. Afterwards the duke sent me a certain proposition in a letter, which I should acknowledge; and the preface of that proposition saith, 'It is not granted that the earl of Bristol hath, by his Answer, satisfied either the king, the prince, or me, of his innocency' (a strange conjunction of a subject!); and the duke would not be satisfied with less than a direct acknowledgment.

"Upon this, I petitioned the late king, that I might be at liberty to follow my affairs freely; which his majesty condescended unto, and signified his pleasure by the duke, that he was satisfied; and that therefore I had my freedom. But, when I had an intent to come to my lodging at Whitehall, and made the duke acquainted therewith, he seemed much displeas'd thereat; and moved his majesty that I might first make an acknowledgment of my fault, which his majesty refused to compel me unto; saying, He might then be thought a tyrant; to force a man to acknowledge that which he was not guilty of; and his majesty sent me word, that I should make no acknowledgment unless I would freely confess myself guilty. Yet the duke caused a message to be sent me, that his majesty expected that I should make the said acknowledgment, and confess myself guilty. And thus it stood with me when the late king, my blessed master, sickened and died.

"When his majesty that now is came to the crown, he was pleas'd to send me a gracious message, upon the occasion of a great sickness I had; and my writ of parliament was freely sent me; but, out of respect, I desired to know what would best please the king, my consing, or my stay from the parliament. And the duke of Buckingham did write unto me, that his majesty took that respect very well at my hands, but would have me excuse my coming; for which I crav'd a letter of licence from the parliament; instead whereof I received from the lord Conway a letter of prohibition, and restraint and confinement, under the king's own hand, whereas before I was restrained only by the lord Conway.

"After this, I continued quiet almost a year in the country, until the coronation; and then I wrote a most humble letter unto his majesty, and to the duke of Buckingham; but received a letter from his majesty, written in a great Roman hand, inclosed in one from the duke, so differing from those gracious messages his majesty had formerly sent me, and several professions his majesty had made to my wife and others, that I knew not what judgment to make of the said letters; and divers copies of them were divulged abroad.

"Then, my writ of parliament being denied, I several times caused the Lord Keeper to be

moved for it; but could procure no redress. And when I petitioned the house for my writ, the duke thereupon took occasion, to my great disgrace, to read the above-specified letter in the open house; and a letter of prohibition was sent me, with my writ, to stay me from the parliament. Upon this I petitioned the house for redress against the duke of Buckingham's wrongs unto me, and accused him of divers crimes; and, since the house was possessed of this my petition, I have been charged with treason; having been offered from his majesty but few days before to rest in security, and not to be questioned; but I, thinking it fit for the clearing of mine honour, to have recourse unto this house, do find myself a restrained man, and the duke at liberty, sitting as one of my judges; which I hope your lordships will speedily redress. And I humbly desire your lordships to take my cause into your lordships consideration, having put myself wholly into your hands."

This being spoken by the Earl of Bristol, he was withdrawn.—Then the Lord Chamberlain being required by the house to deliver his knowledge of that which the earl had vouch'd of him, he said, "The marquis Hamilton told me, in a speech which he the said marquis had with the duke of Buckingham, that the duke told him, that his niceness, the duke of Richmond's and mine, in not giving way to the earl of Bristol's commitment to the Tower, would prejudice the cause; for if he came to the king, he would put new hopes into his majesty, whereby the breach of Treaties with Spain, touching the Marriage and the Palatinate, would be hindered."

The house having debated and agreed, how far to allow of the Earl's requests, he was brought to the bar again, and the Lord Keeper signified unto him, That their lordships require him the said earl to put in writing the short Heads of those Petitions, which he desires this house to present unto the king on his behalf, and of what else he will desire their lordships to be mediators for him to his majesty; Which the earl promised to do on Monday next. The Lord Keeper further told him, "That the house had granted him a copy of the king's Charge against him, and that he should have counsel allowed him to plead his cause. And that he is to let their lordships know at what time he shall be ready to make his Answer." The Earl desired to have time till this day's evening, for that many of his dispatches are in the country, which he would send for up in all speed.

Mr. Attorney signified to their lordships (being demanded from what time he would charge the said Earl) that he had directions to charge him no further than with the dispatches of 1621, and downwards; whereupon the Earl besought their lordships, that on Monday next he might signify when he may be ready to make his Answer, which being granted by the house, he rendered their lordships most humble and hearty thanks for their honourable proceedings; and so he was withdrawn.

interim may happen wherein he may need your lordships further order, that your lordships would be pleased now to order, that Mr. Maxwell may present unto your lordships such further petitions or requests, on the behalf of the said earl, as he shall have occasion to prefer unto your lordships.

Bristol.

Hereupon it was ordered, That Mr. Maxwell may present unto the house any Petition which the Earl shall have occasion to make hereafter. Then the house was put into a Committee, that their lordships might the more freely debate the contents of this Petition; and the petitions were read in parts, and each part considered of by itself; but before any conclusion was had thereof, a Message came from the commons, whereupon their lordships proceeded no further herein at this time, and the house was resumed.

Message from the commons, by Mr. Vice-Chamberlain and others, "That the Commons desire a Conference between a Committee of both houses, if it shall so please their lordships, and at such time after this morning as their lordships shall appoint." *Answer.* "A committee of this whole house will meet a committee of the whole house of commons at two this afternoon, in the Painted Chamber, to receive what shall be propounded to their lordships." The messengers being departed, the house appointed these lords to report what the commons should propound at this Committee, viz. The Lord President; the Lord Chamberlain; the earls of Dorset, Bridgwater, Devonshire, Clare; lord visc. Say and Seale; lord bishop of Norwich. And it was agreed, that these eight lords should have the first and most convenient places at this committee.—We shall now go back a little, in order to take a view of the duke of Buckingham's affair in the house of commons.

April 22. The commons had perfected their Charge against the Duke, and sent him notice of it by sir John Hippley and Mr. Giffard, two of their members. The heads of it, from the clerk's books, they were allowed to deliver to him, verbatim, but to leave no notes of them with him. His Answer was also required in two days time, before them, if he pleased.

April 24. The gentlemen sent to the Duke made this report to the house, "That they had acquainted the Duke with the Message, who told them he could not give Answer to it, till he had informed the lords about it." That this forenoon having asked leave of the lords, they would by no means consent to it. However, he dictated some Answer to them, which being put into writing was read to the house, as follows:

"That he should, with great care, make all due acknowledgment of your respect and favours in giving him this notice; which though it do invite him to render unto you such a satisfaction that, he hopes, may acquit and restore him to your good opinions, and might prevent your proceedings, which otherwise by a parliamentary course are like to follow: yet

according to his duty, he moved the lords of the Upper House, upon your notice given him; who would by no means, as things now stand, give him leave to answer, in regard he is not ignorant you are presently to enter into consideration of his majesty's Message; and that by a delay therein your own purposes will be in some sort disappointed, and the affairs of Christendom much prejudiced; but for that, upon a resolution, you have deferred and respited that service until those things depending against him be first determined, he, out of fear that his necessary defence would spin out a great deal of time, which is more precious, is the willinger to obey their lordships; that so he might hasten, without obstacle or interruption given unto him, to keep day with his majesty; and this he doth, as he conceives, to his own infinite prejudice, knowing how grievous it is to be transmitted as a grievance by the voice of this house; but he doth profess he will rather hazard the safety of his fortune, reputation and himself, than to be the least occasion of any thing that may work disaffection or misunderstanding between the king and his people; and it is his protestation, that whatsoever interpretation is made of his actions, his endeavours shall be, as long as he hath any favour with his gracious master, to take opportunity of doing good offices to this house, and of rendering all that he can be able for the safety of the state, and the general good of the common-wealth. And this he saith you may the easier believe, because his majesty can witness that he hazarded in his father's time the loss of the best affection of the best of masters to obtain for them their desire. In this zeal he was desirous to have appeared unto you ever since the beginning of this parliament, and in this zeal he doth now present himself unto you. But to return to the main point, he, lest we should be mistaken, gave us occasion, in plain words, to remember you, that it is not he that doth refuse to answer, but the lords commanded him not to answer; which he the cheerfullier obeyed, in respect of his fidelity to prefer the universal weal before his own particular; and, in the mean time, he desireth the charitable opinion of this noble house, until he be convinced that he shall appear not worthy of it, which his own innocency maketh him confident that he shall not."

A further Charge against the Duke of Buckingham.

April 27. A new matter was started against the duke of Buckingham, concerning a Plaister and a Posset given to the late king James, in his last sickness. Mr. Glanville made the Report of it from the committee of Examinations into the Duke's conduct: and said, That the sworn physicians had testified before them, that they had agreed upon certain directions in the king's sickness, particularly that he should have neither meat nor drink for some hours before his fit. That upon this and other matters, the committee were of opinion this should be aa-

innocency. For as touching the occasions against him, I myself can be a witness to clear him in every one of them. I speak not this to take any thing out of your hands; but to shew the reason why I have not hitherto punished those insolent speeches against myself. And now I hope ye will be as tender of my honour, when time shall serve, as I have been sensible of yours."

After which his majesty departed. The king's coming to the house and making this speech, was occasioned by the behaviour of two of the managers for the commons against the duke; who in their Speeches had let fall some expressions, as was reported, that were highly resented by his majesty; and he had accordingly committed them both to the Tower. The consequence of which will fall better in another place.

**The Commons desire the Duke of Buckingham may be committed to safe Custody.**

The same day a Message came from the commons, brought by sir Nath. Rich and others, which was to this purport:

"The knights, citizens, and burgesses of the commons house of parliament; taking into their serious consideration the main mischiefs and inconveniences which this renowned kingdom doth now suffer, threatening apparent danger to the king and commonwealth, have by search and disquisition into the causes thereof, found that they do principally flow from the exorbitant power and abusive carriage of the duke of Buckingham; whereof he hath in this parliament been impeached before their lordships by the commons, besides an accusation of a peer in their own house, who hath charged him (as they are informed) of high treason: They therefore with one voice make an entire declaration, That they hold it a thing of dangerous consequence both for the present and future times, that a man of so great eminence, power, and authority, being impeached and accused of such high crimes and offences, should yet enjoy his liberty, hold so great a part of the strength of the kingdom in his hands, sit as a peer in parliament, and be acquainted with the counsels thereof, whereby inevitable mischief may suddenly fall upon the kingdom. Wherefore they have thought it their duty to recommend this their unanimous desire to their lordships, as agreeable to law and reason, That they would be pleased forthwith to commit the person of the said duke to safe custody."

**The Duke of Buckingham's DEFENCE.**

The reply the lords made to the messengers was, That they would take their Message into consideration, and return an Answer to it in convenient time. And, after the commons were withdrawn, the duke of Buckingham got up and spake as follows:

"My Lords; If I hold my peace, it will argue guilt, and if I should speak, it may argue boldness; being so foully accused. Your lordships see what complaints are made against me, by the house of commons; how well I stood in

their opinions, not long since, your lordships know; and, what I have done since to lose their good opinion, I protest, I know not.—I cannot so distrust my own innocency and heart, which abhors guilt, as to offer to decline any course or court of justice; and, had they not brought my cause to your lordships, I so much trust in the justice and equity of this house, that it should have been my work to have done it. So as in this, only, they have done me a favour, to deliver me out of their hands into your lordships.—And now, my lords, whilst I protest mine innocency, I do not justify myself from all errors, as if I was an angel amongst men; I know, very well, that offices and places of high trust and eminence, may be discharged by men whose abilities are better than the best of mine, and still the management of them may lay open to exceptions.—The king and the state shall have few to serve them, if for their reward of service, if for every particular that may happen in the success of things, or for doing things better than some could wish, for refusing to do all they wish, they shall be given up, in the time of their master's wants, for a grievance, or a sacrifice. But, for this I shall confidently speak, from such crimes as truly deserve punishment from the state, I hope I shall ever prove myself free, either in intention or act. My lords, I speak not this arrogantly; nor will I speak any thing else to cast dirt at those who have taken pains to make me so foul; but, to protest mine innocency, in that measure, which I shall ever hope to prove, nay, am confident of, being before such just judges.—I humbly beseech your lordships to be sensible of me in this point, what dishonour I have sustained, not only at home but abroad; wherefore, I humbly desire your lordships to hasten my trial, as soon as may be, that I may no longer suffer than I must needs; and yet I further desire of your lordships that no such precipitation may be used, as may disadvantage or may prejudice my cause.—And here, my lords, I had a purpose to offer unto your lordships my voluntary absence from this place, even now in the beginning of the handling of my cause; as your lordships may perceive in part, by my former carriage towards the earl of Bristol. For, doubting lest my presence might any way disturb him and put him into passion, or any other way disadvantage him in his cause, I did voluntarily, as your lordships saw, absent myself. But, now that my accusers have, not only, been content to make my process, but to prescribe to your lordships the manner of my judgment, and to judge me before I am heard; I shall not give way, in my own particular, to any of their unjust demands; but yet, I do submit myself in this, and in all things else, to your lordships consideration."

The lords took no further notice of the Message that day; and only ordered, that the eight lords, appointed to report what was delivered by the commons, against the Duke, at the conference, should do it fully and entirely. And, to that end, if they pleased, they were to read the same out of their notes; and it was further

agreed that each lord is and ought to report all to the house, not to qualify the same in any part; and that nothing, so spoken and delivered, should be imputed to the reporter. Also, that they might help their memories with the gentlemen of the house of commons, who spoke at that conference.

The Judges forbid by the King to give their Opinions in the Earl of Bristol's Case.

May 13. An order of the house was read, concerning the Judges Opinions, of the two Questions in the Earl of Bristol's Case before-mentioned; whereupon they were called on for that purpose. When the Lord Chief Justice said:

“ May it please your lordships; According to your commands, we appointed a time to have taken into our consideration the two Questions propounded by your lordships, 1st, ‘ Whether in case of treason and of felony the king's testimony is to be admitted? ’ 2ndly, ‘ Whether words spoken to the prince, being afterwards king, made any difference in the case? ’ But, before our meeting, Mr. Attorney General, to whom it belongs, according to the duty of his place, to have an eye of care and vigilancy in cases concerning the king, desired to know the time of our meeting, and we told him accordingly. But, before that time, he brought unto us a message from the king, signifying his pleasure to this effect: That his majesty was resolved, in this and all other causes, to proceed justly and with that moderation as became a just and gracious king. And that his majesty was so sensible of his honour, that he would not suffer the right of his crown, which may justly be preserved, to be diminished in his time. Therefore, his majesty's pleasure was, That in any particular case or question, which may arise in the Cause of the earl of Bristol, and wherein the lords desired our opinions, that, upon mature deliberation, we should deliver the same according to our consciences. His majesty assuring himself, that in all things we will deliver ourselves, with that justice and evenness, between the king and his people, as shall be worthy of our places. That to these general Questions, of which his majesty could not discern the consequence which might happen to the prejudice of his crown, each particular case varying according to circumstances, so as it was very hard and dangerous to give a general rule, according to the latitude of those Questions; his majesty's pleasure was, therefore, that we should forbear to give an answer thereto.”

#### ARTICLES OF IMPEACHMENT AGAINST THE DUKE OF BUCKINGHAM.

May 8. The Commons brought up their Articles of Impeachment against the duke of Buckingham, which Articles are as follow:

“ For the speedy redress of great evils and mischiefs, and of the chief cause of these evils and mischiefs, which this kingdom of England now grievously suffereth, and of late years hath suffered, and to the honour

and safety of our sovereign lord the king, and of his crown and dignity, and to the good and welfare of his people; the Commons in this present parliament, by the authority of our said sovereign lord the king assembled, do, by this their Bill, shew and declare against George, duke, marquis, and earl of Buckingham, earl of Coventry, viscount Villiers, baron of Whaddon, great admiral of the kingdoms of England and Ireland, and of the principality of Wales, and of the dominions and islands of the same, of the town of Calais, and of the marches of the same, and of Normandy, Gascoigne, and Guienne, general governor of the seas and ships of the said kingdoms, lieutenant general, admiral, captain general and governor of his majesty's royal fleet and army lately set forth, master of the horse of our sovereign lord the king, lord warden, chancellor, and admiral of the cinque ports, and of the members thereof, constable of Dover castle, justice in eyre of all the forests and chases on this side the river of Trent, constable of the castle of Windsor, gentleman of his majesty's bed-chamber, one of his majesty's most honourable privy council in his realms both in England, Scotland, and Ireland, and knight of the most honourable order of the garter; the Misdemeanors, Misprisions, Offences, Crimes, and other matters, comprised in the Articles hereafter following; and him the said duke do accuse and impeach of the said Misdemeanors, Misprisions, Offences, and Crimes.

#### Plurality of Offices.

I. “ First, that whereas the great Offices expressed in the said duke's stile and title heretofore have been the singular preferments of several persons eminent in wisdom and trust, and fully able for the weighty service and greatest employment of the state, whereby the said offices were both carefully and sufficiently executed, by several persons of such wisdom, trust, and ability; and others also that were employed by the royal progenitors of our sovereign lord the king, in places of less dignity, were much encouraged with the hopes of advancement; and whereas divers of the said places, severally of themselves, and necessarily, require the whole care, industry, and attendance of a most provident and most able person; he the said duke, being young and unexperienced, hath, of late years, with exorbitant ambition, and for his own profit and advantage, procured and engrossed into his own hands the said several offices, both to the danger of the state, the prejudice of that service which should have been performed in them, and to the great discouragement of others, that, by this procuring and engrossing of the said offices, are precluded from such hopes, as their virtues, abilities, and public employments, might otherwise have given them.

#### Buying the Admirals Place.

II. “ Whereas, by the laws and statutes of this kingdom of England, if any person what

soever give or pay any sum of money, fee, or reward, directly or indirectly, for any office or offices, which in any wise touch or concern the administration or execution of justice, or the keeping of any of the king's majesty's towns, fortresses, or castles, being used, occupied, or appointed for places of strength and defence, the same person is immediately, upon the same fee, money, or reward, given or paid, to be adjudged a disabled person in the law, to all intents and purposes, to have, occupy, and enjoy the said office or offices, for the which he so giveth or payeth any sum of money, fee, or reward; he the said duke did, in or about the month of January, in the 16th year of the late king James, of famous memory, give and pay unto the right hon. Charles then earl of Nottingham, for the office of great admiral of England and Ireland, and the principality of Wales, and office of the general governor of the seas and ships, to the intent that the said duke might obtain the said offices to his own use, the sum of 3,000*l.* of lawful money of England; and did also, about the same time, procure from the said king a further reward, for the surrender of the said office to the said earl, of an annuity of 1,000*l.* by the year, for and during the life of the said earl; and, by the procurement of the said duke, the said king, of famous memory, did, by his letters patents, dated the 27th of Jan. in the said year of his reign, under the great seal of England, grant to the said earl the said annuity, which he the said earl accordingly had and enjoyed during his life; and, by reason of the said sum of money so as aforesaid paid by the said duke, and of his the said duke's procurement of the said annuity, the said earl of Nottingham did, in the same month, surrender unto the said late king, of famous memory, his said offices, and his letters patents of them; and thereupon, and by reason of the premises, the said offices were obtained by the said duke, for his life, from the said king of famous memory, by letters patents made to the said duke of the same offices, under the great seal of England, dated the 28th of Jan. in the said 16th year of the said king, of famous memory: and the said offices of great admiral and governor, as aforesaid, are offices that highly touch and concern the administration and execution of justice, within the provision of the said laws and statutes of this realm; which notwithstanding, the said duke hath unlawfully, ever since the first unlawful obtaining of the said grant of the said offices, retained in his hands, and exercised them, against the laws and statutes aforesaid.

**Buying the Wardenship of the Cinque Ports.**

III. "The said duke did likewise, in and about the month of December, in the 22nd year of the said late king James, of famous memory, give and pay unto the right hon. Edward late lord Zouch, lord warden of the cinque ports, and of the members thereof, and constable of the castle of Dover, for the said offices, and for the surrender of the said offices

of lord warden of the cinque ports and constable of the said castle of Dover, to be made to the said late king, of famous memory, the sum of 1,000*l.* of lawful money of England; and then also granted an annuity of 500*l.* yearly to the said lord Zouch, for the life of the said lord Zouch, to the intent that he the said duke might thereby obtain the said offices to his own use; and for and by reason of the said sum of money so paid by the said duke, and of the annuity so granted to the said Edward lord Zouch, he the said lord Zouch, on the 4th of Dec. in the year aforesaid, did surrender his said office, and his letters patents of them, to the said late king: and thereupon, and by reason of the premises, he the said duke obtained the said offices for his life, of the said late king, by his letters patents under the great seal of England, dated the 6th of Dec. in the aforesaid year. And the said office of lord warden of the cinque-ports, and of the members thereof, is an office that doth highly touch and concern administration and execution of justice; and the said office of constable of the castle of Dover, is an office that highly concerneth the keeping and defence of the town and port of the said castle of Dover, which is, and hath ever been esteemed for a most eminent place of strength and defence of this kingdom; the which notwithstanding, the said duke hath unlawfully ever since the first unlawful obtaining of the said office, retained them in his hands, and exercised them against the laws and statutes aforesaid.

**His not guarding the Seas.**

"IV. Whereas the said duke, by reason of his said offices of great admiral of the kingdoms of England and Ireland, and of the principality of Wales, and of the admiral of the cinque ports, and general governor of the seas and ships of the said kingdoms, and by reason of the trust thereto belonging, ought at all times, since the said offices obtained, to have safely guarded, kept, and preserved the said seas and the dominion of them; and ought also, whensoever they wanted either men, ships, munition, or other strength whatsoever, that might conduce to the better safeguard of them, to have used, from time to time, his utmost endeavour for the supply of such wants, to the right honourable the lords and others of the privy council, and by procuring such supply from his sovereign or otherwise: He the said duke hath, ever since the dissolution of the two Treaties mentioned in the act of subsidies of the 21st of the late king James, of famous memory, (that is to say the space of three years last past) neglected the just performance of his said office and duty, and broken the said trust therewith committed unto him; and hath not, according to his said offices, during the time aforesaid, safely kept the said seas: insomuch, that by reason of his neglect and default therein, not only the trade and strength of this kingdom of England hath been, during the said time, much decayed; but the same seas also have been, during the same time, ignominiously

staying, but that having heard the motion with much earnestness in the lords house of parliament, he could do no less than give the order they had done; and therefore he willed them to set down the reasons of their suit, which he would acquaint the house withal; yet in the mean time gave them leave to let their said ships and pinnaces fall down as low as Tilbury. And the 10th of March following, an unusual joint action was, by his procurement, entered in the chief court of Admiralty, in the name of the said late king and of the lord admiral, against them, for 15,000*l.* taken piratically by some captains of the said merchant ships, and pretended to be in the hands of the East-India Company; and thereupon the king's advocate, in the name of advocate for the late king and the said lord admiral, moved and obtained one attachment, which, by the serjeant of the said court of Admiralty, was served on the said merchants in their court, the 16th of March following: Whereupon the said merchants, though there was no cause for their molestation by the lord admiral, yet the next day they were urged in the said court of Admiralty to bring in the 15,000*l.* or go to prison. Wherefore immediately the company of the said merchants did again send the deputy aforesaid, and some others, to make new suit unto the said duke, for the release of the said ships and pinnaces; who unjustly endeavouring to extort money from the said merchants, protested, That the ships should not go, except they compounded with him; and when they urged many more reasons for the release of the said ships and pinnaces, the answer of the said duke was, That the then parliament must first be moved. The said merchants therefore being in this perplexity, and in their consultation, the 23d of that month, even ready to give over that trade, yet considering that they should lose more than was demanded by unlading their ships, besides their voyage, they resolved to give the said duke 10,000*l.* for his unjust demands. And he the said duke, by the undue means aforesaid, and under colour of his office, and upon false pretence of rights, unjustly did exact and extort from the said merchants the 10,000*l.* and received the same about the 28th of April following the discharge of those ships, which were not released by him, till they the said merchants had yielded to give him the said duke the 10,000*l.* for the said release, and for the false pretence of rights made by the said duke as aforesaid.

His putting some Ships into the hands of the French.

“ VII. Whereas the Ships of our sovereign lord the king, and of his kingdoms aforesaid, are the principal strength and defence of the said kingdoms, and ought therefore to be always preserved, and safely kept, under the command, and for the service, of our sovereign lord the king, no less than any the fortresses and castles of the said kingdoms: and whereas no subject of this realm ought to be dispossessed of any

VOL. II.

his goods or chattels without order of justice, or his own consent first duly had and obtained: the said duke, being great admiral of England, governor-general and keeper of the said ships and seas, and who therefore ought to have and take a special and continual care and diligence how to preserve the same; did nevertheless, in or about the end of July last, in the 1st year of our sovereign lord the king, under colour of the said office of great admiral of England, and by indirect and subtle means and practices, procure one of the principal ships of his majesty's navy-royal, called the Vanguard, then under the command of captain John Pennington, and six other merchant ships of great burthen and value, belonging to several persons inhabiting in London, the natural subjects of his majesty, to be conveyed over, with all their ordnance, munition, tackle and apparel, into the ports of the kingdom of France; to the end that, being there, they might the more easily be put into the hands of the French king, his ministers and subjects, and taken into their possession, command and power: and accordingly the said duke, by his ministers and agents, with menaces, and other ill means and practices, did there, without order of justice, and without the consent of the said masters and owners, unduly compel and enforce the said masters and owners of the said six merchant-ships, to deliver the said ships into the said possession, command and power of the said French king, his ministers and subjects: and by reason of his compulsion, and under the pretext of his power as aforesaid, and by his indirect practices as aforesaid, the said ships aforesaid, as well the said ship royal of his majesty as the others belonging to the said merchants, were there delivered into the hands and command of the said French king, his ministers and subjects, without either sufficient security or assurance for re-delivery, or other necessary caution in that behalf taken and provided, either by the said duke himself, or otherwise by his direction; contrary to the duty of the said offices of great admiral, governor-general, and keeper of the said ships and seas, and to the faith and trust in that behalf reposed, and contrary to the duty which he oweth to our sovereign lord the king in his place of privy-counsellor; to the apparent weakening of the naval strength of this kingdom, to the great loss and prejudice of the said merchants, and against the liberty of those subjects of our sovereign lord the king that are under the jurisdiction of the admiralty.

His practice for the employment of them against Rochelle.

“ VIII. The said duke, contrary to the purpose of our sovereign lord the king, and his majesty's known zeal for the maintenance and advancement of the true religion established in the Church of England, knowing that the said ships were intended to be employed by the said French king against those of the same religion at Rochelle, and elsewhere, in the kingdom of

France, did procure the said ship royal, and compel, as aforesaid, the said six other ships to be delivered unto the said French king, his ministers and subjects, as aforesaid; to the end the said ships might be used and employed, by the said French king, in his intended war against those of the said religion in the said town of Rochelle, and elsewhere within the kingdom of France: and the said ships were, and have been since, so used and employed by the said French king, his ministers and subjects, against them. And thus the said duke did, as aforesaid, in great and most apparent prejudice of the said religion, contrary to the purpose and intention of our sovereign lord the king, and against his duty in that behalf, being sworn counsellor to his majesty, and to the great scandal and dishonour of this nation. And notwithstanding the delivery of the said ships by his procurement and compulsion, as aforesaid, to be employed, as aforesaid, the said duke, in cunning and cautelous manner, to mask his ill intentions, did, at the parliament held at Oxford in August last, before the committee of both houses of parliament, intimate and declare, that the said ships were not, nor should they be so used and employed against those of the said religion, as aforesaid; in contempt of our sovereign lord the king, and in abuse of the said houses of parliament, and in violation of that truth which every man should profess.

His compelling Lord Roberts of Truro to buy his Title of Honour.

“IX. Whereas the Titles of Honour of this kingdom of England were wont to be conferred, as great rewards, upon such virtuous and industrious persons as had merited them by their faithful service; the said duke, by his importunate and subtle procurement, hath not only perverted that antient and honourable way, but also unduly, for his own particular gain, he hath enforced some that were rich (though unwilling) to purchase honour; as the lord Roberts, baron of Truro, who, by practice of the said duke and his agents, was drawn up to London, in or about October in the 22nd year of the reign of the late king James of famous memory, and there so threatened and dealt withal, that by reason thereof he yielded to give, and accordingly did pay the sum of 10,000*l.* to the said duke, and to his use; for which said sum, the said duke in the month of Jan. in the 22nd year of the said late king, procured the title of baron Roberts of Truro, to the said lord Roberts. In which practice, as the said lord Roberts was much wronged in this particular, so the example thereof tendeth to the prejudice of the gentry, and dishonour of the nobility of this kingdom.

His selling Places of Judicature.

“X. Whereas, no Place of Judicature in the courts of justice of our sovereign lord the king, nor other like preferments given by the kings of this realm, ought to be procured by

any subject whatsoever for any reward, bribe, or gift; he the said duke in or about the month of Dec. in the 18th year of the reign of the late king James of famous memory, did procure of the said king, the office of high treasurer of England to the lord viscount Mandeville, now earl of Manchester; which office, at his procurement, was given and granted accordingly to the lord viscount Mandeville: and, as a reward for the said procurement of the same grant, he the said duke did then receive to his own use, of and from the said lord viscount Mandeville, the sum of 20,000*l.* of lawful money of England. And also in or about the month of Jan. in the 16th year of the reign of the said late king, did procure of the said late king of famous memory, the office of master of the wards and liveries to and for sir L. Cranfield afterwards earl of Middlesex, which office was, upon the same procurement, given and granted to the said sir L. Cranfield: and, as a reward for the same procurement, he, the said duke, had, to his own use, or to the use of some other person by him appointed, of the said sir L. Cranfield, the sum of 6,000*l.* of lawful money of England, contrary to the dignity of our sovereign lord the king, and against the duty that should have been performed by the said duke unto him.\*

His procuring Honours for his poor Kindred.

“XI. That he the said duke hath, within these ten years last past, procured divers Titles of Honour to his mother, brothers, kindred and allies; as, the title of countess of Buckingham to his mother, while she was sir Tho. Compton's wife; the title of earl of Anglesey to his younger brother, Christ. Villiers; the titles of baron of Newnham Padocks, viscount Fielding, and earl of Denbigh, to his sister's husband, sir Wm. Fielding; the titles of baron of Stok and viscount Purbeck, to sir John Villiers, elder brother unto the said duke; and divers more of the like kind to his kindred and allies; whereby the noble barons of England, so well deserving in themselves, and in their ancestors, have been much prejudiced, and the crown disabled to reward extraordinary virtues in future times with honour, while the poor estates of those for whom such unnecessary advancement hath been procured, are apparently likely to be more and more burthensome to the king, notwithstanding such annuities, pensions, and grants of lands annexed to the crown, of great value, which the said duke hath procured for those his kindred, to support these their dignities.”

His exhausting, intercepting, and misemploying the King's Revenue.

“XII. He the said duke, not contented with the great advancement formerly received from the late king, of famous memory, did, by his procurement and practice, in the 14th year of

\* Vide Howell's Letters, p. 116, quoted ante, p. 1253.

the said king, for the support of the many places, honours and dignities conferred on him, obtain a grant of divers manors, parcel of the revenue of the crown, and of the duchy of Lancaster, to the yearly value of 1,697*l.* 2*s.* 0*d.* of old rent with all woods, timber, trees, and advowsons; part whereof, amounting to the annual sum of 747*l.* 13*s.* 4*d.* was rated at the sum of only 820*l.* though, in truth, of so far greater value. And likewise, in the 16th year of the same king's reign, did procure divers other manors, annexed to the crown, of the yearly value, at the old rent, of 1,338*l.* or thereabouts, according as in a schedule hereunto annexed appeareth. In the warrant for passing of which lands, he, by his great favour, procured divers unusual clauses to be inserted, viz. That no perquisites of courts should be valued, and that all bailiff-fees should be reprised in the particulars upon which those lands were rated; whereby a precedent hath been introduced, which all those who, since that time, have obtained any lands from the crown, have pursued to the damage of his late majesty and of our sovereign lord the king that now is, to an exceeding great value. And afterwards he surrendered to his said majesty divers manors and lands, parcel of those lands formerly granted unto him, to the value of 723*l.* 18*s.* 2*d.* per annum; in consideration of which surrender, he procured divers other lands of the said late king to be sold and contracted for, by his own servants and agents, and thereupon hath obtained grants of the same to pass from his late majesty to several persons of this kingdom; and hath caused tallies to be stricken for the money, being the consideration mentioned in those grants in the receipt of the exchequer, as if such monies had really come to his majesty's coffers; whereas the duke (or some other by his appointment) hath indeed received the same sums, and expended them upon his own occasions. And notwithstanding the great and inestimable gain made by him, by the sale of offices, honours, and by other suits by him obtained from his majesty, and for the countenancing of divers projects, and other courses, burthensome to his majesty's realms, both of England and Ireland; the said duke hath likewise, by his procurement and practice, received into his hands, and disbursed to his own use, exceeding great sums that were the monies of the late king, of famous memory, as appeareth also in the said schedule hereunto annexed; and, the better to colour his doings in that behalf, hath obtained several privy-seals from his late majesty and his majesty that now is, warranting the payment of great sums to persons by him named, causing it to be recited in such privy-seals, as if those sums were directed for secret services concerning the state, which were, notwithstanding, disposed of to his own use; and other privy-seals have been procured by him for the discharge of those persons without account; and by the like fraud and practice, under colour of free gifts from his majesty, he hath gotten into his hands great sums which were intended by his majesty to be disbursed for the preparing,

furnishing and victualling of his royal navy; by which secret and colourable devices the constant and ordinary course of the exchequer hath been broken, there being no means, by matter of record, to charge either the treasurer or victualler of the navy with those sums which ought to have come to their hands, and to be accounted for to his majesty: and such a confusion and mixture hath been made between the king's estates and the duke's, as cannot be cleared by the legal entries and records, which ought to be truly and faithfully made and kept, both for the safety of his majesty's treasure, and for the indemnity of his officers and subjects whom it doth concern. And also in the 16th and 20th years of the said king, he did procure to himself several releases from the said king, of divers great sums of money of the said king by him privately received, and which he procured, that he might detain the same for the support of his places, honours, and dignities. And these things, and divers others of the like kind, as appeareth in the schedule annexed, hath he done, to the exceeding diminution of the revenue of the crown, and in deceit both of our sovereign lord the king that now is, and of the late king James, of famous memory, and to the detriment of the whole kingdom.

His transcendent Presumption in giving Physic to the King.

“XIII. Whereas special care and order hath been taken by the laws of the realm, to restrain and prevent the unskilful administration of physic, whereby the health and life of man be much endangered: and whereas most especially, the royal persons of the kings of the realm, in whom we their loyal subjects humbly challenge a great interest, are, and always have been esteemed by us, so sacred, that nothing ought to be prepared for them, or administered unto them, in the way of physic or diet, in the times of their sickness, without the consent and direction of some of their sworn physicians, apothecaries, or surgeons: and the boldness of such (how near soever to them in place and favour) who have forgotten their duties so far as to presume to offer any thing unto them beyond their experience, hath been always ranked in the number of high offences and misdemeanors. And whereas the sworn physicians of our late sovereign lord king James, of blessed memory, attending on his majesty in the month of March, in the 22nd year of his most glorious reign, in the times of his sickness, being an ague, did, in due and necessary care of, and for the recovery of his health, and preservation of his person, upon and after several mature consultations in that behalf had and holden, at several times in the same month, resolve and give directions, that nothing should be applied or given unto his highness, by way of physic or diet, during his said sickness, but by and upon their general advice and consents, and after good deliberation thereof first had; more especially by their like care, and upon like consultations, did justly resolve, and pub-



Conclusion.

“ And the said commons, by protestation, saving to themselves the liberty of exhibiting, at any time hereafter, any other Accusation or Impeachment against the said duke, and also of replying to the Answers that the said duke shall make unto the said Articles or to any of them, and of offering further proof also of the premisses, or of any of them, as the case shall, according to the course of parliament, require, do pray, that the said duke may be put to answer all and every the premisses; and that such proceeding, examination, trial and judgment, may be upon every of them had and used, as is agreeable to law and justice.”

REPORT OF THE CONFERENCE TOUCHING THE DUKE OF BUCKINGHAM.

The above Articles were delivered by the commons to the lords at a Conference of both houses, which spun out two days time. It was managed by eight members, and sixteen more as assistants. The eight chief Managers were sir Dudley Diggs, Mr. Herbert, Mr. Selden, Mr. Glanville, Mr. Pym, Mr. Sherland, Mr. Wandesford, and sir John Elliot.

*Sir Dudley Diggs*, by way of prologue, made this speech;

“ My Lords; There are so many things of great importance to be said in very little time to-day, that I conceive it will not be unacceptable to your lordships, if (setting by all rhetorical affectations) I only in plain country lan-

king his successor for dissolving that parliament, to preserve one that was accused by them for poisoning his father.”

To this account of Wilson the following note is subjoined in Kennett's Compl. Hist.

“ Dr. Eglisbam, one of the king's physicians, was obliged to flee beyond seas for some expressions he had muttered about the manner of his majesty's death, and lived at Brussels many years after. It was there he published a Book, to prove king James was poisoned; giving a particular account of all the circumstances of his sickness, and laying his death upon the duke of Buckingham and his mother. I have read the book some 15 years ago in the hands of Don Pedro Ronkillor, the Spanish ambassador, who told me it had been translated into High-Dutch, about the time Gustavus Adolphus was entering into Germany for recovering of the Palatinate: and that by a secret order of the court of Brussels, to throw dirt upon the royal family of England. Among other remarkable passages I remember in the Book, there is one about the Plaister that was applied to the king's stomach. He says, It was given out to have been mithridate, and that one Dr. Remington had sent it to the duke, as a medicine with which he had cured a great many of agues in Essex. Now Eglisbam denies it was mithridate, and says, Neither he nor any other physicians could tell what it was. He adds, That sir Matthew Lister and he being

guage, humbly pray your lordships favour to include many excuses necessary to my manifold infirmities, in this one word, I am commanded by the knights, citizens, and burgesses of the Commons house, to present to your lordships their most affectionate thanks for your ready condescending to this Conference; which, out of confidence in your great wisdoms, and approved justice, for the service of his majesty, and the welfare of this realm, they desired upon this occasion.

“ The House of Commons, by a fatal and universal concurrence of Complaints, from all the sea-bordering parts of this kingdom, did find a great and grievous interruption, and stop of Trade and Traffic; the base pirates of Sally ignominiously infesting our coasts, taking our ships and goods, and leading away the subjects of this kingdom into barbarous captivity; while, to our shame and hinderance of commerce, our enemies did (as it were) besiege our ports, and block up our best rivers mouths. Our friends, on slight pretences, made embargoes of our merchants goods, and every nation (upon the least occasion) was ready to contemn and slight us. So great was the apparent diminution of the antient honour of this crown, and once strong reputation of our nation. Wherewith the Commons were more troubled, calling to remembrance, how formerly, in France, in Spain, in Holland, and every where by sea and land, the valours of this kingdom had been better valued, and even in latter times, within remembrance, when we had no

the week after the king's death at the earl of Warwick's house in Essex, they sent for Dr. Remington, who lived hard by, and asking him, What kind of Plaister it was he had sent to Buckingham for the cure of an ague, and whether he knew it was the king the duke designed it for? Remington answered, That one Baker, a servant of the duke's, came to him in his master's name, and desired him, if he had any certain specific remedy against an ague, to send it him; and accordingly he sent him mithridate spread upon leather, but knew not till then that it was designed for the king. But, continues Eglisbam, sir Matthew Lister and I shewing him a piece of the Plaister we had kept after it was taken off, he seemed greatly surprised, and offered to take his corporal oath, that it was none of what he had given Baker; nor did he know what kind of mixture it was.—But the truth is, this Book of Eglisbam's is wrote with such an air of rancour and prejudice, that the manner of his narrative takes off much from the credit of what he writes.”

Other curious circumstances concerning king James's death are reported by Wilson. Howell says in a letter written apparently about a fortnight after the king's death (the printed date, 11 Dec. 1625, is clearly wrong) “ He died of a fever which Legan with an ague, and some Scotch doctors mutter at a Plaister the countess of Buckingham applied at the outside of his stomach.”

(long may he live to our comfort, and the good of the Christian World) and also his blessed father, who is dead; on whom, to the grief of the Commons, and their great distaste, the lord duke did (they conceive) unworthily cast some ill odour of his own foul ways; whereas servants were antiently wont to bear, as in truth they ought, their master's faults, and not cast their own on them undeservedly. It is well known, the king (who is with God) had the same power, and the same wisdom, before he knew this Duke, yea, and the same affections too; through which (as a good and gracious master) he advanced and raised some stars of your lordships firmament; in whose hands, this exorbitancy of will, this transcendancy of power, such placing and displacing of officers, such irregular running into all by-courses of the planets, such sole and single managing of the great affairs of state, was never heard of.

“ And therefore, only to the lord duke, and his procurement, by mis-informations, these faults complained of by the Commons, are to be imputed.

“ And for our most gracious sovereign that lives, whose name hath been used, and may perhaps now be for the Duke's justification, the Commons know well, that among his majesty's most royal virtues, his piety unto his father hath made him a pious nourisher of his affections ever to the lord duke, on whom, out of that consideration, his majesty hath wrought a kind of wonder, making favour hereditary, but the abuse thereof must be the lord duke's own: and if there have been any commands, such as were, or may be pretended, his mis-informations have procured them; whereas the laws of England teach us, That kings cannot command ill or unlawful things, whenever they speak, though by their Letters Patents, or their Seals. If the things be evil, these Letters Patents are void, and whatsoever ill event succeeds, the executors of such commands must ever answer for them.—Thus, my lords, in performance of my duty, my weakness hath been troublesome unto your lordships; it is now high time humbly to intreat your pardon, and give way to a learned gentleman to begin a more particular Charge.

The First, Second, and Third Articles enlarged by Mr. *Herbert*.

Then were read the First, Second, and Third Articles, see p. 1308.

These three Articles were discoursed upon by Mr. *Herbert*, and touching Plurality of Offices, he observed, That in that vast power of the duke (a young experienced man) there is an unfortunate complication of danger and mischief to the state, as having too much ability, if he be false, to do harm, and ruin the kingdom; and if he be faithful, and never so industrious, yet divided amongst so many great Places (whereof every one would employ the industry of an able and provident man) there must needs be in him an insufficiency of performance, or rather an impossibility, especially

considering his necessary attendance likewise upon his court places.

To the Second and Third, namely, ‘The buying the Office of Admiralty and Cinque-Ports,’ (both which he comprised in one) he said, That to set a price upon the walls and gates of the kingdom, is a crime which requires rather a speedy remedy than an aggravation, and is against the express law of 5 Edw. 6, upon this foundation, ‘That the buying of such Places doth necessarily introduce corrupt and insufficient officers.’ And in the parliament of 12 Edw. 4, it is declared by the whole assembly, ‘That they who buy those Places’ (these are the express words) ‘bind themselves to be Extortioners and Offenders;’ as if they did lay an obligation upon themselves to sell again. And though the buying of such Places be not against any particular law, enjoining a penalty for them (the breach whereof is a particular offence) yet as far as they subvert the good, and welfare, and safety of the people, so far they are against the highest law, and assume the nature of the highest offences.

The Fourth Article enlarged by Mr. *Selden*.

Then were read the Fourth and Fifth Articles; these were enlarged by Mr. *Selden*, who said, “ That by nature of his Office the duke as Admiral ought to have guarded the Seas: by his Patent he is made ‘Magnus Admirallus Angliæ, Hiberniæ, et Walliæ, Normaniæ, Aquitanæ, Villæ Calesii et Marchiarum ejusdem, et Præfectus generalis Classium Marium dictorum regnorum.’ The seas of England and Ireland are committed to the Admiral, as a part of the demesne and possessions of the crown of England; not as if he should thereby have jurisdiction only, as in case of the admirals in France or Spain. The state of Genoa, Catalonia, and other maritime parts of Spain, the sea-town of Almain, Zealand, Holland, Friesland, Denmark, Norway, and divers other parts of the empire, shew, that the kings of England, by reason that their said realm hath used, time out of mind, to be in peaceable possession, are lords of the seas of England, and of the islands belonging to them. And although Grotius that Hollander wrote of purpose to destroy all Dominion in the East-Ocean; yet he speaks nothing against the Dominion of our English Seas, howsoever he hath been misapprehended; but expressly elsewhere saith, ‘Meta Britannicis littora sunt oris;’ the utmost limits of the demesne of the crown of England, are the shores of the neighbouring countries; the whole sea, or the Territorium Maximum that intervenes, being parcel of the possession of the crown: the keeping and safe-guard of these committed to the lord admiral by the name of the ‘Præfectus Marium et Admirallus,’ being but the same antiently: before the use of the word Admiral came in, which was under Edw. 1, the Admiral had the titles of Custodes Maris. And this Prefectura or Custodia, or office of safe-guarding the seas,

open with as much brevity and perspicuity as I may: The substance of several cases concerning the same; the evidence to make them good, together with such observations as naturally arise out of the matter; whereby your lordships may the better discern wherein the duke's faults do consist, and what punishment may be answerable to such offences.

"The Sixth Article is a distinct charge, different from the other two; wherefore I will handle it, with the incidents thereof, by itself. The Seventh and Eighth Articles being of one nature and subject, are indeed several parts of one charge, rather than several charges, and have such a connection in themselves, that, with your lordships leaves, I will handle them both together without dividing them, which I hold will be the shortest and fittest way to do right to the cause, and to your lordships.

"The Sixth Article giveth me occasion, my lords, thus to enlarge myself. In a Treaty the 18th of August 1604, between our late sovereign king James of glorious memory, and Philip 3, king of Spain, it was agreed, That there should be perfect amity and peace to endure for ever by land, sea, and fresh-waters, between these kings, their heirs and successors, their dominions, liege-men and subjects, then being, or which should be; And that either party should then after abstain from all depredations, offences and spoils, by sea, land, and fresh-waters, in what dominions or government soever of the other, and should cause restitution to be made of all depredations which then after should be committed, and the damages growing by means thereof; and that the said kings shall take care that their subjects should from thence abstain from all force and wrong doing, and that they likewise should revoke all commissions and letters-patents of reprisal or mart, or otherwise, containing licence to take prizes; all which are declared by the said Treaty itself to be void, and that whosoever should do any thing contrary should be punished not only criminally, according to the merit of his offence, but should also be compelled to make restitution and satisfaction for the losses to the parties damaged, requiring the same. Lastly, it was concluded, That between them and every of their subjects might be free commerce in all the dominions by sea, land, and fresh-waters, in which before the wars, there hath been commerce, and according to the use and observance of the ancient leagues and treaties before the wars, the customs as they were at that present rated according to the ordinance of the places being paid.

"This Treaty being settled and continuing, his late majesty king James by his highness letters patents bearing date the 14th of Sept. an. 13, of his reign, did grant unto the governors of the merchants of London trading into the East-Indies, and to their successors, in case they be justly provoked or driven thereunto, in defence of their persons, goods or ships, by any disturbance or hinderance in their quiet course of trade, or for recompence or re-

covery of the persons, ships or goods of any of his majesty's subjects that had been formerly in, or near the East-Indies, or for any other just cause of their defence, or recompence of losses sustained; That then the captains or principal commanders of the said Company, or any other under their government, should or might attempt, surprise, or take the persons, ships, and goods of any prince or state, by whose subjects they should sustain any wrong or loss in manner as aforesaid, as by the said letters-patents appeareth: Some years after the granting of these letters-patents, under pretext that the said Treaty was broken, there was some interruption and violence offered by the king of Spain's subjects in the ports of East-India to the merchants of the East-India Company trading into those parts, whereby they were much damaged; and thereupon suspecting that it might be in vain to complain for redress in an ordinary course of justice in the East-India, or in default thereof to return into Spain to make complaint to that purpose, where nothing was likely to be done till they had sent from thence again into the East-Indies, and received an answer; and after all this, upon denial of justice in Spain, to come into this kingdom for letters of request, without which in ordinary course they should not use reprisal, and many years would be spent before they could come to have an end of their suits; It is true, that thereupon, partly in their defence, and partly for amends, and partly for revenge, they did by pretext of the said letters-patents take some goods of the Portugals in the East-Indies, subjects to the king of Spain; and afterwards being commanded by the king of Persia to transport certain forces of his in Ormus, an island situate in the country of Persia, some goods of Portugals subjects to the king of Spain were there taken by captain Blith and captain Wedell, and others of their Company, being servants and in pay under the East-India Company.

"In July 1623, two ships called the *Lyon* and the *Jonas*, being part of a fleet belonging to the said Company, returned from Ormus aforesaid out of an East-Indian voyage, and arrived in the Downs richly laden with goods and merchandise lawfully belonging to the said Company, and estimated to the value of 100,000*l.* The duke of Buckingham, in or about Oct. 1623, being advertised thereof, well knowing the Company to be rich, and apprehending in himself a probable ground how he might exact and extort some great sum of money from the said Company out of the profit of these ships and their lading, by colour of his office of Lord Admiral of England, and out of his power and greatness, his office being used for a groundwork of his design therein, did thereupon pretend, that the lading of the said ships was for the most part with goods piratically taken at sea in the parts about Ormus aforesaid, and that a tenth part, or some other great share thereof, did belong to him in the right of his said office of Lord Great Admiral of England, and by

virtue of his letters-patents and grant from his late majesty in that behalf; alledging withal, howsoever the said Company might peradventure answer the matter, yet there would and might be strong opposition against them. These words were used to possess them with fear, and to make them stand in awe of his power, when he should come afterwards particularly to press them to yield to his unjust demands. Having once resolved of his ends, which was to get money, he thus proceeded to effect the same. In the months of Nov. Dec. Jan. and Feb. then next following, he had divers times treaties by himself and his agents with the then governor and others of the said Company, for the effecting of his said designs; wherein he still unlawfully pretended that a tenth part, or some other great share, out of the lading of the said ships, belonged unto him; albeit the said Company upon right information of their cause to their council, both civilians and common-lawyers, were advised that there did no tenths or other such shares belong to the said duke, as he pretended.

“ And whereas the said duke by this time finding that he could not prevail to get his ends by any fair course, continued yet resolute to make his gain upon the Company by right or wrong, as he might; and to that purpose made use of the following opportunities and advantages; in such cunning and abusive manner as I shall further open to your lordships. The said duke well knowing that the said Company had then four ships, called the Great James, the Jonas, the Star, and the Eagle, and two pinnaces called the Spy and the Scout, the said ships and pinnaces, with their victuals, store and ordnance, were of the value of 54,000*l.* and more, laden with lead, cloth, and other merchandize in them to the value of 20,000*l.* and more, and having in them also about 30,000*l.* in rials of Spanish money; in all, 100,000*l.* and more.

“ These ships and pinnaces were well near ready to set sail for a voyage into the East-Indies by the first day of March, in the 21st year of his said late majesty's reign; and he well-knowing how great a hindrance it would be to the said Company, if the said ships and pinnaces should be stayed for any long time, the rather in regard if they did not set sail about that time of the year, or within twenty days after, they had utterly lost their voyage for that year; the reason whereof dependeth upon a secret of winds, called the Marsounds, which are constantly six months easterly, and six months westerly, every year at their set times, in those parts of Africa, about the Cape of Bona Speranza; (for of those winds, all ships going hence into the East-Indies, are to make their use, in the usual and due time; which yet cannot be done, if men take not their opportunity by coming to the Cape in their proper and due season, and in so long and dangerous a voyage, wherein the Equinoctial Line is twice to be passed, it is no good discretion to stay the utmost time in going from hence, in confidence

of fair winds, but rather to take time enough before-hand, for fear of the contrary: Nor can the lord admiral of England, who is *custos marium domini regis*, and hath jurisdiction of all foreign parts, *super altum mare*, be admitted to pretend himself ignorant of this secret, or of any other particulars belonging to the seas and voyages. The duke therefore apprehending, and well weighing how great a hindrance, or rather what an absolute loss it would be to the Company, if these their ships and pinnaces of so great value, and bound forth in so instant and difficult a voyage, should be stayed for any long time, now they were ready to set sail, and the season of going upon point to expire: The said duke upon the said first day of March, 1623, to effect his designs upon the said Company, and to get that by circumvention and surprisal, which in a legal and due course of justice he had not hopes to obtain: Not thinking it sufficient, that the sense of his displeasure lying over the Company as an ominous cloud threatening a storm, if they did not appease him by some great sacrifice; and to cast them yet further into a farther strait, not sparing to abuse your lordships in parliament, by making you unwilling instruments to give colour and advantage to his secret and unlawful practise. Upon the said first day of March, he put your lordships, sitting in parliament, in mind, touching the great business likely to ensue upon dissolution of the then treaties with Spain, and that a speedy resolution thereof was necessarily required, for that the enemy would pretermitt no time; and if we should lose the benefit of that spring, he said it would be irrevocable; and thereupon he took occasion to move that house, whether he should make stay of any shipping that were then in the ports, as being high admiral he might, and namely, the said ships prepared for the East-India voyage, which were of great burthen, well furnished, and fit to guard our own coasts: Which motion was generally approved of the whole house, knowing nothing of the duke's secret designs and private intentions. And the same day a motion was made amongst the commons in parliament to the same effect, by sir Edward Seymour, kt. the vice-admiral to the duke of the county of Devon; which in respect of the time when, and person by whom it was propounded, is very suspicious, that it issued all from one spirit, and that he was set on by the duke, or some of his agents; the truth whereof, your lordships may be pleased to search out and examine as you shall see cause. By colour of this Order of the lords house of parliament, the duke caused John Pexal marshal of the Admiralty, to make stay to be made of the said ships and pinnaces; howbeit notwithstanding all the occasion pretended for the defence of the realm, there were not any other ships staid at this time.

“ The Company perceiving, by the course of things, from whence these evils moved, upon the 5th of March, 1623, became earnest suitors to the said duke for a releaseiment of their said

ships and pinnaces; whereunto the said duke replied, That he had not been the cause of their stay: but having heard the motion in the lords house, he could do no less than order as they had done: Yet to attain his ends, and put them in some hope of favour by his means; he told them withal, That he had something in his pocket might do them good, and willed them to set down what reasons they would for their suit, and he would acquaint the house therewith: Nevertheless about this time he presumed of himself at Theobalds, to give leave for the ships and pinnaces to fall down as far as Tilbury, there to attend such further directions as should be given unto them, with leave so to signify by word of mouth to the serjeant of the Admiralty, for that the duke had then no secretary with him. Thus somewhile by threatening of strong oppositions and terrors, and otherwhile by intimating hopes of favour, and good assistance, the duke sought to accomplish his purpose, yet prevailed not; and so the 10th of March, 1623, the king's advocate Dr. Reeves, advocate for the king and lord-admiral, made allegation in the Admiralty on the duke's behalf; and by his procurements, that it appeared by examinations there taken, that 15,000*l.* and more, piratically taken by the said Captain Blith and Wedel, and their complices, upon the sea near Ormus, and in other parts within the jurisdictions of the Admiralty, was come into the possession of the treasurers of the East-India Company, and remained in their hands, and prayed it might be attached; and the said treasurers be monished to appear the Wednesday then next following, and there to bring in the 15,000*l.* to remain in deposit with the register of that court.

“The same 10th of March, a Warrant issued forth accordingly directed to the marshal of the said court; and upon the same next Wednesday, the 17th of March, the said warrant was returned by the said marshal, that the day before he had attached the said monies in the hands of Mr. Stone, then present in the court, and had admonished him, and Mr. Abbot, the deputy-governor of that Company, and divers others then present, to bring the same into court. Upon the same Wednesday also, it was prayed by the king's advocate, That Mr. Stone, and all that had an interest in this money, might be pronounced as in contumacy, and therefore be arrested and detained until 15,000*l.* were brought into the register. Hereupon sentence of contumacy was pronounced, but the payment thereof was respited until Friday following. Upon which 17th of March, this sentence being pronounced, Mr. Stone, Mr. Abdy, and others, officers of the said Company, then present, informed how the Governor was lately dead, and buried but the day before; and that upon Wednesday then next following, they had appointed a Court for Election of a new Governor, and until then they could resolve of nothing, and therefore desired further respite. The Advocate nothing relenting at this reasonable excuse, and desire of the

Company, did again earnestly press their imprisonments, but the judge took time to consider of it. The Company finding by these extraordinary and extreme courses, the drift of the duke, whose greatness and power seemed irresistible, and his mind implacable, without satisfaction to his own content, and withal observing what a strait they were cast into, by reason of the stay of their ships; which, if it were much longer, they must needs lose their voyage utterly for this year, and the very unloading of them would endamage them to the value of the sum extorted: And being told, that the eye of the state was upon this business, and that it would light heavy upon them; and hearing the duke protest, their ships should not go, unless they compounded with him; and finding that he made difficulty of releasing their ships, by saying, The parliament must be moved, before they could be discharged, albeit the wind were now fair for them. And making overture of some reasonable grounds of composition, by offering to grant letters of mart to the said Company for the future, against the subjects of the king of Spain, while yet the peace and treaty between his late majesty and the king of Spain, were not broken or dissolved.

“The said Company being intangled by the duke's subtilty, and overcome at last by the terror of his power and greatness, was drawn to make offer of 6,000*l.* to the said duke, which was rejected as a base offer. And now the time pressing them on very hard, some consultations were had amongst them, Whether it were better for them to make use of a clause in their patent, allowing them three years to draw home their estates, and so to let their Company die, and be dissolved, or else to yield to the duke's desire: yet in conclusion, they were drawn in to offer him 10,000*l.* for their peace, if it could serve; which offer was made unto him accordingly, but at first he would not accept it; howbeit, about the 23rd of March, 1623, they agreed to give him the said 10,000*l.* which he accepted; and forthwith moving the lords of parliament, or acquainting them therewith, he retracted their ships, and gave them leave to depart on their voyage; which they accordingly did, setting sail the 27th day of the same month from the Downs. And afterwards upon the 5th of April, 1624, the duke signified unto the lords house of parliament, That his majesty, at the humble petition of the East India Company, had commanded him to discharge the East India ships, which he had once stayed, according to the order of this house, made the 1st day of March then last past; and moved, That the said order might be countermanded: and thereupon it was ordered, That the clerk of that house should cross the said order of the 1st of March out of his book, which was done accordingly; and afterwards the said 10,000*l.* was paid unto the said duke; which he received and accepted accordingly. And upon the 28th day of April aforesaid, suffered a colourable sentence in the Admiralty to be given against him for their discharge, in such sort, as by the

were true, That the goods, whereof he claims his share, were piratically taken. From which allegation, as he may not now recede, so it is clear by reason and authority, That of such goods, no part or share whatsoever is due to the Lord Admiral, in right of his office, or otherways.

“ For that the parties from whom the same were taken, ought to have restitution, demanding it in due and reasonable time; and it were an injury to the intercourse and law of nations, if the contrary should be any way tolerated.

“ 2. By law; so are the statutes of this kingdom, and more especially in 27 Edw. 3, 13. whereby it was provided, That if any merchant, privy or stranger, be robbed of his goods upon the sea, and the same came afterwards into this realm, the owner shall be received to prove such goods to be his, and upon proof thereof, shall have the same restored to him again.

“ Likewise 1, 2, 3 Edw. 6, 18, in the act of parliament, touching sir Thomas Seymour, great admiral of England,\* who therein amongst divers other things, is charged with this, That he had taken to his own use goods piratically taken against the law, whereby he moved almost all Christian princes to conceive a grudge and displeasure, and by open war to seek remedy by their own hands: and therefore for this amongst other things, he was attainted of High Treason, as appeareth by that act, wherein the law is so declared to be as before is expressed.

“ But if it should be admitted, that the Duke had right in this case, for which he might compound; yet the manner of his seeking to try and recover his right, is, in itself, an high offence, and clearly unlawful in many respects, whereof I will touch but a few: as, in making the most honourable house of parliament an instrument to effect his private ends for his profit: in proceedings to arrest and stay the ships of men not apt to fly, but well able to answer and satisfy any just suits which he might have against them though their ships had gone on in their voyage: in prosecuting things so unseasonably, and urging them so extremely by his advocate, for bringing in of so great a sum of money upon the sudden, and formally under colour of justice and service for the state: in reducing that Company into that strait and necessity, that it was as good for them to compound, though the duke had no title, as to defend their own just right against him upon these disadvantages, which by his power and industry he had put upon them.”

Then he read the Seventh and Eighth Articles, which he handled jointly, as being not two Charges, but two several parts of one and the same Charge; and when he had read them, he went on speaking further to their lordships, as followeth:

\* See vol. 1. p. 489.

“ Your lordships may have observed, how in handling the former Articles, I have in my discourse used the method of time, which I hold to be best for the discovery of the truth: I shall therefore by your lordships patience, whereof now I have had some good experience, use the like order in my enlargement upon the latter Articles; touching which, that which I have to say, is thus:

“ In or about the 22d year of the reign of our late dear sovereign lord, king James, of famous memory, there being then a treaty between our said late sovereign and the French king, for a Marriage to be had between our then most noble prince now our most gracious king, and the French king's sister, now our queen, and for entering in'o an active war against the king of Spain, and his allies in Italy, and the Valtoline. Our said late sovereign passed some promise to the French king's ambassador here, the marquis D'Effiat, for procuring, or lending some ships to be employed by the French in that service, upon reasonable conditions; but without thought or intent that they should be employed against the Rochellers, or any others of our religion in France: for it was pretended by the French king's ministers to our king, That the said ships should be employed particularly against Genoua, and not otherwise. But afterwards some matter of suspicion breaking forth from those of our religion in France, that the design for Italy was but the pretence to make a body of an army fall upon the Rochellers, or other of our religion in that kingdom; the king grew so cautious in his conditions, that as he would perform his promise to lend his ships, so to preserve those of our religion, he contracted or gave directions, that the greatest part of the men in the same ships should be English, whereby the power of them should be ever in his hands.

“ And the duke of Buckingham, then, and yet, lord great admiral of England, well knowing all this to be true, pretended he was and would be very careful, and proceed with art, to keep the said ships in the hands of our king, and upon our own coasts, and yet nevertheless underhand he unduly intended, practised and endeavoured the contrary: for afterwards by his direction or procurement, in or about the 29d year aforesaid, a ship of his majesty's called the Vanguard, being of his majesty's royal navy, was allotted and appointed to be made ready for the service of the French king, and seven other merchant's ships of great burthen and strength belonging to several persons, natural subjects of our said late sovereign lord, were by the duke's direction impressed as for the service of his said late majesty, and willed to make themselves ready accordingly. The names and tunnage of the said seven merchant ships were as followeth. 1. The Great Neptune, whereof sir Ferdinando Gorge was captain. 2. The Industry, of the burden of 450 tuns, whereof James Moyer was captain. 3. The Pearl; of which Anthony Teach was captain.

ambassador should direct, &c. there to expect directions of the party that should be admiral of the said fleet, so prepared, with a requiry of all officers to be assistant hereunto.

“All things being now in readiness, capt. Pennington being admiral of this whole Fleet, in May 1625, went with the king's said ship the Vantguard, and the seven merchants ships aforesaid, to Diep in France; there instantly the duke of Momorancy, admiral of France, would have put 200 French soldiers aboard the ship called the Industry, being no more men than she could stow, but a far greater proportion of men than her proper company was able to command or master; and offered also to do the like to every one of the said ships, telling the said capt. Pennington, and other the said English captains, and owners, and their companies, in direct terms, that they were to go, and should go to serve against the city and inhabitants of Rochel, and against those of our religion: whereunto they all shewing themselves unwilling, there were chains of gold and other rewards offered unto some of the captains, masters, and owners, to induce them: all which they utterly refused, protesting unanimously against the design, and would not take in above a fit number of men, such as they might be able to command.

“Also the company of the king's ship did there inform capt. Pennington of this overture made to go against Rochel, and exhibited a petition to him against the same, subscribing their names to the petition in a circle or compass, that it might not appear who was the beginner of the same, and then they laid it under his prayer-book, where he found and read it. Whereupon capt. Pennington and the rest consulted more seriously of the matter, and by a general assent returned all back to the Downs, where they arrived about the end of June, or beginning of July 1625. From thence capt. Pennington sent a letter to the duke of Buckingham by one Ingram, with the said petition, and employed him to become a suitor to get a discharge from serving against Rochel: Ingram delivered the letter to the duke, and saw him read it together with the said petition: whereby, as by other former and later means, he had full notice of the design, and intent of the French to go against the Rochellers: James Moyer also about the same time came to the court, and had conference with my lord Conway and sir John Cook, (now secretary) acquainting them what had passed at Diep, praying them to acquaint the duke, which they did, and the duke delivered the said letter and petition to sir John Cook. The duke of Chevereux and M. de Villocleer being now come into England, as extraordinary ambassadors from the French king, they and the said marquis D' Effiat, more especially D' Effiat, solicited and got a letter from the lord Conway by the duke's means, dated July 10, 1625, directed to capt. Pennington, whereby he took upon him to express and signify his majesty's pleasure to be, that his majesty had left the command of the ships to

the French king, and that now capt. Pennington should receive into them so many men as that king should please for the time contracted, and recommended his letter to be as a sufficient warrant in that behalf. All this while the king or body of the council were never made acquainted with any other design than that of Genon, nor heard any thing of the passages at Diep, nor of the design of Rochel, nor of our masters and companies petitions, informations or complaints thereupon. This letter of the lord Conway's was sent by Parker from Hampton-Court unto Pennington, being now about the Downs, and was not long after delivered into his hands. About this time M. de la Touche, and others, as from the duke de Rohan, and others of the Protestant party in France, solicited our king and council against the going of the ships, and had good words and hopes from both, but from the duke the contrary, who told them, the king his master was obliged, and so the ships must and should go.

“The ships remained still in the Downs, and afterwards, viz. about July 15, 1625, there was a treaty at Rochester between the three ambassadors extraordinary of France, and James Moyer, and Anthony Touchin for themselves and other English captains, and masters of ships, &c.

“The said Moyer and Touchin being by message commanded to attend the duke of Buck. at Rochester, for conclusion and settlement to be had of this business, the said ambassadors did there proffer and offer to the said Moyer and Touchin an Instrument in French purporting thus, viz.

“1. That the said English captains and their companies should consent and promise to serve the French king against all, none excepted but the king of Great Britain, in conformity of the contract formerly passed between d' Effiat and them. 2. That they should consent and agree, in consideration of the assurance given them by the ambassadors, to the Articles of March 25, 1625, whereby the French king should be made master of the said ships, by indifferent inventory; that then they should by him be warranted against all hazards of sea-fight, and if they miscarried, then the value thereof to be paid by the French king, who would also confirm this new proposition within fifteen days after the ships should be delivered to his use by good caution in London. 3. That if the French king would take any men out of the said ships, he might, but without any diminution of freight for or in respect thereof.

“The said James Moyer having gotten the French instrument interpreted, answered, 1. They would not go to serve against Rochel; 2. nor send their ships without good warrant for their going; and 3. not without sufficient security to their liking for payment of their freight and riddition of their ships, or the value thereof; for the ambassadors security was by them taken not to be sufficient, and they protested against it, and utterly refused this peraffected

yea or no, offering to procure them a sufficient discharge to their contentment, for their so doing.

“The same day also, sir Ferdinando Gorge, and the rest, by writing, under their hands subscribed, did declare as followeth; namely,

“That they were willing to obey our king, but held not the security peraffetted at Rochester, by the three ambassadors, to be sufficient (though honourable) and so they absolutely refused to deliver their ships upon that security, desiring better caution in that behalf. 1. By merchants of Paris. 2. To be transferred to London. 3. Irrevocable. 4. And such as might not be protected by prerogative; and to have this under the hands and seals of both kings.”

“All this while our king, or body of the council, knew nothing in certain of any other design of the French, than only of their pretence against Genoa, and believed, that all the Articles and Instruments that had passed between the French and us, or the captains, masters, and owners of the English ships, had been penned and contrived with full and good cautions accordingly, for prevention of all dangers that might grow to the contrary. Also the same 28 July, the captains and masters taking notice of Mr. Nicholas pressing them to deliver their ships before security given to their content, contrary to former propositions, which they held unreasonable, did make answer unto the marquis in writing, That until they should have security to their contentment, they would not quit the possession of their ships unto the French, (which was but reasonable) and they sent therewith a valuation of their several ships, as they would stand to. They likewise demanded a performance of all things, formerly sent to his lordship from them by Mr. Nicholas (save only for the security by money deposited) saying, That for all the rest they durst not proceed otherwise.—Lastly, They prayed for a speedy Answer, that the delay in this business may not seem to be in them.

“But D’Efiat being confident of the duke of Buck’s letters, promises, and proceedings aforesaid, would not consent to these reasonable demands of the captains and masters of the English ships, protracting the time till he might hear further from the said duke out of England.

“While these things were thus in handing both in France and in England, there were written over out of France into England letters of advertisement, how, and upon what ground, or by what act or means procured or occasioned, appeareth not; yet from one Mr. Larking, a servant to the earl of Holland, and a kind of agent, a person some way employed by our state, or under some of our ambassadors or ministers in France; that the peace was concluded with those of our religion in France; and that within fourteen days the war would break forth, or begin in Italy, with a design upon Genoa; a matter of great importance for annoying the Spaniard.

“This letter of Larking came to the English

court at Richmond, 28 July, when the duchess of Cheveraux’s child was there christened, and the contents thereof (as hath been alleged) were confirmed by the ambassadors of Savoy and Venice: by the advantage and colour whereof, the duke of Buck. drew the king, who all this while knew nothing of the design upon Rochel, or those of our religion, but thought the former articles had been safe and well penned, both for him and his subjects, (according to the most religious and politic intention, and instructions in that behalf originally given by his late father) to write a letter dated at Richmond the same 28 July, directed to the said capt. Pennington, to this effect, viz.

“His majesty did thereby charge and command the said captain Pennington, without delay, to put his highness’s former command in execution, for consigning the Vantguard into the hands of the marquis D’Efiat for the French, with all her furniture, assuring her officers, his majesty would provide for their indemnity; and to require the seven merchants ships, in his majesty’s name, to put themselves into the service of the French king, according to the promise his majesty had made unto him; and in case of backwardness or refusal, commanding him to use all forcible means to compel them, even to sinking; with a charge not to fail, and this letter to be his warrant.

“This letter was sent by captain Thomas Wilbraham to captain Pennington, who was yet in the Downs. In the beginning of August, 1625, captain Pennington went over again to Diep, carrying with him the said letters of his majesty, and certain instructions in writing from the duke of Buckingham to Mr. Nicholas, agreeable in substance to the former verbal instructions given by the duke to him at Rochester, as the said Nicholas alledged: who also affirmeth, that in all things what he did touching that business, he did nothing but what was warranted by the duke’s instructions to him: which, if it be true, then the duke of Buckingham, who commanded and employed him therein, must needs be guilty of the matters so acted by the said Mr. Nicholas. If there be any subsequent act or assent of council, or of some counsellors of state for the going of these ships to the French, or for putting them into their power, it was obtained only for a colour, and was unduly gotten, by mis-informing the contents of the sealed articles, and concealing the truth, or by some other undue means: neither can any such latter act of council in any sort justify the duke’s proceedings, which, by the whole current of the matter, appears to have been indirect in the business even from the beginning. About the time of captain Pennington’s coming over to Diep the second time, Mr. Nicholas did, in his speeches to the captains and masters of the seven merchants ships, threaten and tell them, that it was as much as their lives were worth, if they delivered not their ships to the French, as he required; which put them in such fear, as they could hardly sleep: and thereupon two of them were once resolved to have come again away



with the ships; and because the former threats had made them afraid to return into England, therefore to have brought and left their ships in the Downs, and themselves, for safety of their lives, to have gone into Holland.

“ Captain Pennington being the second time come into Diep, there forthwith delivered and put the said ship the Vanguard into the absolute power and command of the said French king, his subjects and ministers, to the said French king's use, to be employed in his service at his pleasure; and acquainted the rest of the fleet with the effect of his majesty's letter and command, and demanded and required them also to deliver and put their ships into the power and command of the French king accordingly. The captains, masters, and owners of the seven merchants ships refused so to do, as conceiving it was not the king's pleasure they should so do, without security for delivery of their ships, or satisfaction for the same to their good contentment. Whereupon Pennington went on shore at Diep, and there spake with D'Effiat the ambassador, and shortly after returned aboard, and gave the captains, masters, and owners, an answer, resting upon the validity, and urging the performance of the former contract made and perfected in England.

“ Then the said masters and captains prepared to be gone, and weighed anchor accordingly. Whereupon captain Pennington shot at them, and forced them to come again to anchor, as yielding themselves for fear to his mercy and disposal. Upon this, captain Pennington and the Frenchmen, that now commanded the Vanguard, came aboard the merchants ships, and there proposed unto them a new way for their security touching their ships, namely, to accept the security of the town of Diep: Whereupon they all went ashore, except sir Ferdinando Gorge, who, with his ship, the Great Neptune, adventured to come away, as not liking these new and unreasonable propositions. At their coming ashore they spake with Mr. Nicolas, and there by his intercession came to a new agreement to accept the security of the town of Diep, upon certain hard conditions; namely, the said marquis D'Effiat as extraordinary ambassador in England, and as having power by deputation from the duke of Chevereux and Villocleer, on or about August 15, 1625, did agree and promise to the said Moyer, Touchin, Thomas Davies, Dard, John Davies, Lewen, as captains and owners of the said ships, called the Industry, the Pen, the Marygold, the Loyalty, the Peter and John, and the Gift of God, that the French king should give and furnish to the said owners (they being present, and accepting it in this town) this sufficient security, That within 15 days after the said French king should be in possession of the said ships, he should give sufficient caution in London, for the sum of 215,000 livres, whereto the said ships were estimated, with all that appertaineth to them, as cannons and other munitions of war, viz. 50,000*l*. And in or about the same 15th August 1625, the

commonalty of the said town of Diep entered security, and bound the goods of their commonalty to the said English captains and owners, that the said French king and his ambassadors should furnish the security within the city of London within the time, and for the sum aforesaid.

“ On or about August 16, 1625, the said marquis d'Effiat, as well in his quality of bear ambassador, as by virtue of his said deputation, did by public act promise unto the said Moyer, Touchin, &c. to give and furnish to them (they being present and requiring it in the town of Diep) sufficient security in the city of London, within 15 days after the French king should be in peaceable possession of the said ships, for the sum of 215,000 livres turnovs, whereto the said ships were valued, namely, for the said ship called the Industry, and so a several sum for every ship, which security should remain for assurance to pay to every of them the price of their ships, before specified in that act, in case they should be left in the French king's hands, with other particulars in the said act mentioned: without derogating nevertheless from the clauses of the said contract, March 25, 1625. Albeit, because the said ambassadors had found it good to discharge the said English mariners out of the said ships, that therefore the freight agreed upon by the said former contract should not be wholly paid, but only for the space of the first six months; and if the French king would use them for twelve months longer, or for any less time, that then he should pay freight for the same according to a new particular rate and manner expressed in the said Articles, and bound the goods of himself and the said duke of Chevereux and M. Villocleer for the performance hereof, as by the said article itself, reference being thereunto had, amongst other things more fully appeared.

“ This Article being passed and recorded at Diep, all the said seven merchants ships, except the Great Neptune, who was gone away in detestation of the action intended by the French, were forthwith delivered into the absolute possession, power, and command of the French king, and of his said ambassador d'Effiat, and other the ministers and subjects of the French king; to be employed by him in his service at his pleasure, and not one of the English company, man or boy, (other than one only man, a gunner as it should seem) would stay in any of those ships, to serve against the Rochellors, or those of our religion.

“ As soon as these ships were thus delivered into the possession and power of the French, the said ambassador then moved them, and dealt earnestly with them for the sale of their ships. Mr. Nicholas having finished the work he went for, at his coming from Diep he received a diamond ring worth 50*l*. and an husband set with sparks of diamonds, worth 100 marks, of the ambassador, as a recompence for his pains taken in this employment, which (though ambassadors do confer greater rewards sometimes at their parting upon persons of ill

Nicholas's quality, for less service done) yet was it more than so ill an office as he was employed in, could in any sort deserve.

"The said Capt. Pennington returned speedily into England, and took his journey towards the city of Oxford, where the parliament was then sitting, by adjournment from Westminster thither, and there several propositions were taken into debate for the good of our religion, and the supply of his majesty's occasions: For the well resolving and settling whereof, the true knowledge how, and upon what occasions and terms the several ships were sent, delivered, employed, and to be employed, was very requisite. Afterwards nevertheless upon or about Aug. 6th, 1625, at a meeting and conference between both the houses of parliament in Christ-Church-Hall, after the reading there of his majesty's most gracious answer to a petition of the lords and commons formerly exhibited unto his majesty touching our religion, and much for the good thereof, the duke of Buckingham well knowing all the passages which I have now related to your lordships to be true, did not only cautelously conceal the same, but also much boldly and untruly, by colour of a message delivered from his majesty to both the houses, affirm unto them touching those ships to this effect; That it was not always fit for kings to give account of their counsels, and that about five of the six months were already past and yet the said ships were not employed against Rochel; willing and advising the said lords and commons to judge the things by the event, to which he seemed to refer the matter. By which cunning speeches the duke intended, and accordingly did make the lords and commons then to believe that the said ships were never meant, or any way in danger to be employed against the Rochellors or those of our religion in France; and herein he did great injury and disservice to his majesty, to the great scandal and prejudice of our religion and affairs, and highly abused both the lords and commons by this cautelous and subtle speech and insinuation, and thereby gave both houses occasion to forbear petitioning or suing to his majesty for redress in this business, while the time was not then passed; for his ships were not as then actually employed against the Rochellors, albeit in truth they were then delivered into the French king's power.

"And the same time before the parliament was dissolved, Capt. Pennington, who could have opened the whole truth of the business for the service of the king and the realm, came to Oxford, but was there drawn to conceal himself by means of the duke, and not to publish in due time his knowledge of the premises, as was there shortly after reported. The truth whereof, the lords in this parliament may be pleased to examine, as they shall see cause; the parliament at Oxford being shortly after, viz. Aug. 12, unhappily dissolved.

"In or about Sept. 16, 1625, the said ships were actually employed against the Rochellors, and their friends, to their exceeding great pre-

judice, and almost utter ruin. It hath been said by some of the French, that the Vanguard she mowed them down like grass; to the great dishonour of our nation, and the scandal of our religion, and to the disadvantage of the great affairs of this kingdom, and all Christendom.—Also the ships themselves were in eminent peril to be utterly lost, for lack of sufficient cautions. If they be come home since this parliament sate down, long after the matter was here expounded and taken into examination; it may be well presumed, that it is by some underhand procuring of the duke, and the secret complying of the French with him, to colour out the matter; which the lords may examine as they see cause. The one and only Englishman that presumed to stay in one of the ships, and serve against the poor Rochellors of our religion, at his return, was slain in charging a piece of ordnance, not by him well sponged.

"In Feb. last, 1625, M. de la Touche having speech with Mr. Thimos Sherwell, a member of the commons house of parliament, at Salisbury, as he was coming up to the parliament, and M. de la Touche going down into Somersetshire to Mr. John Paulet's to M. Sobysa; He told Mr. Sherwell in the hearing also of one Mr. John Clements of Plymouth, who is now in town, the words that the duke had spoken to him the last summer, touching these ships; and thereupon used these words, 'Ce duque est un meschant homme.'

"Upon this whole Narration of the fact touching the manner of delivery of the ships to the French, divers things may be observed, wherein the duke's offences do consist: us, in betraying a ship of the king's royal navy unto a foreign prince's hands, without good warrant for the same; the dispossessing the subjects of this realm of their ships and goods by many artifices and subtilties, and, in conclusion, with high hand and open violence, against the good will of the owners; In breaking the duty of lord admiral and guardian of the ships and seas of this kingdom; in varying from the original good instructions, and presuming to give others of his own head in matters of state; In violating the duty of a sworn privy-counsellor to his majesty; In abusing both houses of parliament by a cautelous misinformation, under a colour of a message from his majesty; and in disadvantaging the affairs of those of our religion in foreign parts: Offences of an high and grievous nature.

"For the Proof of some parts thereof, which are not the least, I offer to your lordships consideration the statute of the 2 & 3 of E. 6, touching the duke of Somerset; wherein is recited, That amongst other things, he did not suffer the piers, called the Newhaven and Blackerst, in the parts beyond the seas, to be furnished with victuals and money, whereby the French were encouraged to invade and win the same; and for this offence, amongst others, it was enacted, That a great part of his land should be taken from him. And if non-feas-

ance in a matter tending to lose a fixed castle belonging to the king, be an high offence; then the actual putting of a ship-royal of the king's, into the hand of a foreign prince, which is a moveable and more useful castle and fortress of the realm, must needs be held a greater offence.

"I will forbear to cite any more precedents of this kind, because some of those who have gone before me, have touched at divers precedents of this nature, which may be applied to this my part. Only, because the abuse of the parliament, which is the chiefest council of state and court of judicature in the realm, is not the least offence in this business, I shall desire your lordships to take it into consideration the statute of Westm. 1, cap. 30, whereby such as stem to beguile courts of justice, are to be sore judged in the same courts, and punished, as by that statute appeareth."—So he concluded, and left the duke to their lordships equal justice.

*Mr. Pym* enlargeth the Ninth, Tenth, and Eleventh Articles.

The Ninth and Tenth Articles were read next. These, as also the Eleventh Article, were enlarged and aggravated by *Mr. Pym*, in this manner.

"My lords: Although I know that I shall speak to my own disadvantage, yet I shall labour to speak with as little disadvantage to the matter as I can. I have no learning or ornament whereby I might shew myself, and I shall think it enough plainly to shew the matter: For all that I am at, is, that I may lose nothing of the cause. And therefore, my lords, I shall apply myself with as much convenient brevity, as one that knows that your lordships time is much more precious than my words: Your lordships being such judges, as will measure things by true and natural proportions, and not by the proportion of the action or expression. The first entrance into my service, must be reading the Articles.

"My lords, this Charge for matter of fact, is so notorious and apparent, that it needs no proof, that these honours have been procured: And therefore I will only insist upon the consequence. 1st, I will shew, that by this fact the duke hath committed a great offence: And 2. That this offence hath produced a great grievance to the commonwealth. And I will conclude, in strengthening the whole by some precedents of former times, that parliaments have proceeded in that course, in which your lordships are like to proceed.

"1. To prove it a fault or an offence, I must prove that there was a duty; for every fault presupposeth a duty: And in this case the first work is to shew, that the duke was bound to do otherwise: For which I need to alledge nothing else, than that he is a sworn servant and counsellor to the king, and so ought to have preferred his majesty's honour and service before his own pride, in seeking to ennoble all that blood that concerned him. And it is not

enough to say, that it is not questionable: if there have been great men questioned in like cases. There be some laws made in particular, according to the temper and conditions of several states: There are other that be essential and collateral with government; and if those laws be broken, things run to disorder and confusion. Such that rule observed in all states, of suppressing vice to encourage virtue, by apt punishment and rewards: And this is the best law to insist upon in a court of parliament when the proceedings are not limited either by the civil or common laws, but matters are judged according as they stand in opposition or conformity with that which is *Suprema lex, cui omnia subj.*

2. "By this late law, whoever moves to king to bestow honour, which is the greatest reward, binds himself to make good a double proportion of merit in that party who is to receive it; the first, of value and excellence; the second of continuance and durability. And as this honour sets men up above others, it they should be eminent in virtue beyond others as it is perpetual, not ending with their persons, but descending upon their posterity: it there ought to be in the first root of this honour some such active merit in the service of the commonwealth, as might transmit a vigorous example to his successors, whereby they may be raised to an imitation of the like virtues.—He said, he would forbear to urge this point further, out of a modest respect to those persons whom it did collaterally concern, professing his Charge to be wholly against the duke of Buckingham.

3. "From the consideration of Honour, together with the price of money; the which being compared together, may be reduced to two heads (may it please your lordships); the one being earthly and base, may be bought with a proportionable price of white and red earth, gold and silver: the other, which is spiritual (which is sublime) to which, money cannot be a proportionable price. Honour is transcendent, in regard it was held a sacred and divine thing; insomuch that there was a temple dedicated to her by the Romans: and so I conclude by prescription, that honour is a divine thing; for the Scripture calls kings, Gods; and then those that are about kings must needs be resembled to those powers and principalities that attend next to the throne: and if honour be such a divine thing, it must not be bought with so base a price as money.

4. "Lastly, Honour is a public thing, it is the reward of public deserts.

"And thus your lordships have seen, that the sale of Honour is an offence unnatural, against the law of nature. Now what an offence this is, your lordships may discern, considering the kinds of the offence, and the adjuncts which I now fall upon. 1. It extremely deflowers the flowers of the crown; for it makes them cheap to all beholders. 2. It takes from the crown the most fair and frugal reward of

deserving servants: for when honour comes to be at so mean a rate as to be sold, there is no great man will look after it. 3. It is the way to make a man more studious for lucre and gain, than of sufficiency of virtue; when they know that they shall be preferred to titles of honour according to the heaviness of purse, and not for the weightiness of their merit. 4. It introduceth a strange confusion, mingling the meaner with the more pure and refined metal. 5. Lastly, It is a prodigious scandal to this nation, (as the house of commons think).

“ For Examples and Precedents, I am confident there are none; and your lordships can look for none, because it is not paralleled to any precedent. But certainly it is now a fit time to make a precedent of this man, this great Duke, that hath been lately raised to this transcendent height in our sphere; who thinketh he cannot shine enough, unless he dim your lordships honours, in making the same contemptible through the sale of it, by the commonness of it.

“ Yet I am commanded further to observe another step of unworthiness in this gentleman, who hath not only set honour to sale by his agents, but compelled men likewise, unwilling, to take titles of Honour upon them. For the particular, that noble gentleman that this concerns, I am commanded to say of him from the house of commons, That they conceive of him, that he was worthy of this honour, if he had not come to it this way; they can lay no blame upon him, that was constrained to make this bargain to redeem his trouble. But we must distinguish of this, as divines do betwixt the active and the passive usurers; they condemn the active, speaking favourably of the passive.

“ And I must here observe to your lordships, by the direction of the house of commons, That it seems strange to them, that this great man, whom they have taken notice of to be the principal patron and supporter of the semipelagian and a popish faction, set on foot to the danger of the church and state, whose tenets are Liberty of Free-will, though somewhat mollified; that a man, embracing these tenets, should not admit of liberty in moral things: and that he should compel one to take honour and grace from a king whether he will or no; what is that, but to add inhumanity and oppression, to injury and incivility.

“ But here I must answer a precedent or two, which may be by misunderstanding enforced against me: 5 H. 5, there was Martin and Babington, and others, which were chosen to be sergeants, and they did decline from it out of their modesty, and doubted that their estates were not answerable to their place: yet upon the charge of the warden of England, they accepted it, and appeared to their writs. Likewise there is a writ in the register, that many, by reason of the tenure of their lands, may be compelled to be made knights. But this makes rather against, than for this faction: for it is true, that this is the wisdom and policy of the common-law, that those that be thought

fit men for employment, may be drawn forth to be employed for the good of the commonwealth, where otherwise they would not take it upon them: but that any man, for his gain, should force a man to take degrees of Honour upon him; certainly this is beyond all precedents, and a thing not to be exemplated, either in our nation, or any other.

“ And further, I am commanded to tell your lordships, That it is dangerous, that if a great lord, by his power or strength, may compel a subject to take such honours, why may he not compel them as well to take his lands at what price he will, and to sell them again as he thinks fit; yea, to marry his children as it pleaseth him? The consequence of this is great, if that it be well considered; and they conceive that it is of so great a consequence, that if it be not stopped, it may come in time to make way for a dangerous subversion, and demonstrates a great tyranny of a subject, under a most wise, most gracious, and most moderate king.

“ And thus, my lords, I have done with the first Article allotted to my Charge, and so I proceed to the next.

“ My lords; Before I enter into the enforcement of this Article, I shall, by way of protestation from the house of commons, do in this, as I did in the other Article. And first, for the king's majesty, under whom we are now happily governed and placed, I must, by their direction, say, for his honour and our comfort, and, with humble acknowledgment, confess, that since his coming to the crown, there have been men of as great parts and learning advanced into places in church and commonwealth, as any have been heretofore. And then for the first of those lords, whose names are mentioned in this Article, I must say, that they do not intend to reflect at all upon him; nay, they think his person so worthy, as to be advanced to as high a place, without any price at all; and that he ought to have kept it longer, if those that shuffled in those times, had not shuffled him out.

“ Now to the matter of this Article, which is the Sale of Places of Judicature, being an offence: and to prove this, is all one as to make the glass clear by painting of it. The grounds whereon I shall go, shall be laid open; *Magna Charta*, chap. 29. The words are these: ‘Nulli vendemus, nulli negabimus justitiam.’ It may be said, this comes not close to my purpose; yet, by your lordships favour, I shall make it good, that it doth, and I shall begin with the latter of the two first, ‘Nulli negabimus;’ for if any that hath power or favour with the king, should procure him to delay the making of judges, when there were judges to take it, it will not be denied, that they do their best endeavour to make the king break his word; for if any use their favour about the king to procure places of judicature for money, they do what in them lies to make justice saleable; for it is plain, that he that buys must sell, and cannot be blamed if he do sell.

"I shall open the evil consequences that depend upon the sale of the places of judicature, or any places of great trust. 1. By this means, unable men shall be sure of the precedence unto places; for they being conscious of their own want of merits, they must be made up by the weight of gold. 2. It must needs hence follow, that suits, contentions, brawls, and quarrels shall be increased in the common-wealth. For when men come to seats of judicature by purchase, they must, by increase of suits, increase their own profit. 3. Men will not study for sufficiency of learning to be able to discharge their places, but how they may scrape together money to purchase places. 4. It will follow, that those that have the best purses, though worst causes, will carry away the victory always. 5. It will follow, that when they be preferred for money to those places, they are tied to make the best of those places, 'vis et modis:' and then the great man that sold those places to them, must uphold them in their bribery; and he is tied to it, because they are his creatures; nay, further, he is tied to support them in their bribery, to advance their places upon the next remove. 6. And, lastly, when good men, and well-deserving, come to any place, they shall not continue there, but they shall be quarrelled at, so that there may be a vacancy in that place, and then some other shall suddenly step into the saddle, by giving a competent price.

"Upon these and the like reasons, this fact of selling and buying Places and Offices of trust, hath not only been declaimed against by Christians, but also by moral Pagans. Aristotle in his 5 lib. of Ethicks, cap. 8. gives it as a caveat, That no man amongst the Thebans was to take upon him any place of government in the common-wealth, if that he were a merchant, unless there were ten years distance between. And the reason is this, because merchants are used to buying and selling; it is their trade and art to get money, so that their fingers are accustomed to that which they cannot leave, when they come to places of trust and judicature. Nay further in honour of the merchant, he is accounted the wisest merchant that gains most; so that if such comes to offices and places of trust, he thinks it best to advance his profit.

"Next to the Pagans, the popes, a generation full of corruption, yet they, by their bulls, are full of declamation against such. And this is plain by a bull of Pius Quintus, who lays the penalty of confiscation of goods of any that do for money acquire any offices, and condemns them by his papal sentence to be great sinners. So Gregory 13th condemns the like.

"And now to come nearer home, to come to that which will principally lead your lordships, which are the judgments of your ancestors in parliament; wherein it appears by the statute of 5 Hen. 6, that the same statute condemns the seller and receiver, as well as the buyer and giver. It further appears by the preamble of that statute, that such offences were against the

law, and they foresaw the corruptions of those that came into those places by those means, and that it is a hindrance of sufficient and worthy men from those places. And also 2 & 3 Edw. 6, which was likewise cited in the case of the duke of Somerset, by which he was to forfeit his estate, that one thing was for selling of places in the common-wealth for money. And certainly, with your lordships favour, it is most just and probable, that they that profess themselves to be patriots, and shew by their actions, that they aim at their own lucre, and labour to hinder the distributing of justice; it is most just and proper, that those men should return back again to the public treasury of the king and kingdom, what they have by their unsatisfied lucre gotten.

"And so, my lords, craving pardon of you for my boldness, confusion, and distractions, in going through this business, I humbly leave myself to the judgments of your favours and charities, and this great man the duke to your wise censure and justice."

*Mr. Sherland* enlargeth upon the Twelfth Article.

Then was read the Twelfth Article.

Before *Mr. Sherland* entered to open and enlarge upon it, he discoursed in general concerning Honours, mentioned in the preceding Article, and spake as followeth:

"My lords; It hath pleased God, who hath the disposing even of all things in his hands, to cast this service now upon me, who did formerly my endeavour to decline it, considering the weightiness of the business, the greatness of this presence, and my manifold defects, best known to myself: But another that should have with better contentment, I doubt not, performed this service, being fallen now sick, there is a necessity imposed on me by the house of commons, wherein I shall be very plain and short, according to the warning I had; yet I shall deal plainly and faithfully, according to the sense of that house by whose command I now appear: And since I am now thrust as a bush into the gap, I hope your lordships will not expect such a composure and strength of speech which you have had from others of my companions. The subject that falls to my lot to speak of before your lordships, are honour and justice, two great flowers of the crown: I confess myself exceeding unfit and unable to speak of these points before so great an assembly of such persons of so great honour, and such superior judges of this kingdom; but I must take my lot: it pleaseth your lordships, as in sphere, to take knowledge of the grievances presented by the commons house, which I desire and hope your lordships will not take presumption.

"May it please your lordships, the parts of this Charge, as you discern upon the reading of it, are two; the one general, the other particular: The general is perverting the ancient and noble course of attaining to the titles of honour. 2. The other, the compulsion or in-

forcement of men unwilling to purchase honour.

“For the first by way of protestation, I am commanded by the house of commons, to say, that they repine not at their advancement upon whom those honours were conferred, but they think them worthy thereof; yet they wish, for their sakes, and the safety of this nation, their virtues had solely raised them, and that they had not been forced and constrained to contribute to this bottomless gulf to attain their titles.

“They complain again of this unworthy way brought in by this great man, they fall upon this in this manner, and found the evils under which the common-wealth suffers, and the causes of them being two principal evils, which are the decay and stopping of the trade, and the termination of honour. In examination of which second evil, the trade and commerce of honour, we have, as the commons do, receive, *confitentem ream*: For he endeavouring to colour the matter says for himself, That he was not the only introducer and first bringer in of this: but they find that he was the first that defiled this virgin of honour so publicly, making an account, that all things and persons should stoop and subject themselves to his vain desires and extravagancy. Now that this commerce of honour is an offence; then to prove what kind of offence it is, is the only thing I shall trouble your lordships with.

1. “And first that it is an offence, I shall draw my first argument from the Nature of Honour; honour is a beam of virtue; now this honour can be no more fixed upon an undeserving person for money, than fire can be struck out of a stick.

2. “From the Subject of Honour, which is merit, for the which no price ought to be paid to any great man by any undeserving person for the same, but their own merit and desert.”

Then he passed to the Grievances which are caused by the selling of Titles, and they are three. 1. “It is prejudicial to the noble barons of this kingdom. 2. To the king, by disabling him to reward extraordinary virtues. 3. To the kingdom, which comprehends both kings, lords, and people.

“For the first he said, He would not trouble their lordships with recital, how antient, how famous the degree of barons hath been in these western monarchies; He said, the haronage of England hath longer upheld that dignity; and doth yet retain a greater height than in any other nation: they are great judges, a court of the last resort, they are great counsellors of state, and not only for the present, but as law-makers, counsellors for the time to come; and this not by delegacy and commission, but by birth and inheritance; so that when any man shall be made a member of this great body, who is not qualified for the performance of such noble functions, it must needs be a prejudice to the whole body, and dishonour to the head. As if a little water be put into a great vessel of wine, as it receives spirit and strength

from the wine, so it doth impart some degrees of its own infirmity and coldness to the wine.

2. “It is prejudicial to the king: now that it can disable him from giving honour, for that it is a power inseparable, but by making honour ordinary, it becomes as an incompetent reward for extraordinary virtue; when men are noble, they are taken out of the press of the common sort, and how can it chuse but fall in estimation, if honour itself be made a press?

3. “It is prejudicial to the kingdom; the stories and records are full of the great assistance which the crown hath received from the barons, both in foreign and domestic actions, not only by their own persons, but by their retinue and tenants, and therefore they are called by Bracton, ‘*robur belli*,’ how can we now expect the like from such as have no tenants, and are hardly able to maintain themselves?

“But this is not all; for the prejudice grows not primitively by defect of that assistance which they might give the state, but positively they have been a great burthen to the kingdom by gifts and pensions already received, and yet stand in need of more for the future support of their dignities. This makes the duke's offence the greater, that in this weakness and consumption of the commonwealth, he hath not been contented alone to consume the public treasure, (which is the blood and nourishment of the state) but hath brought in others to help him in this work of destruction. And that they might do it more eagerly by enlarging their honours, he hath likewise enlarged their necessities; and their appetites. He did second his Charge with two precedents; the first, 28 Hen. 6, in the Complaint against the duke of Suffolk, in the 31st Article of that Complaint this was one of his Charges, that he William de la Pool, duke of Suffolk, had procured one who had married his niece, to be made earl of Kendal, and obtained for him 1,000*l.* per annum in the duchy of Guienne; and yet this party was the son of a noble and well-deserving father. So you see this is no new thing for the house of commons to complain, that those that are near the king should raise their kindred to an unnecessary honour; and if that were worthy of punishment for advancing of one, then what punishment is he worthy of that hath advanced so many?

“The second precedent is 17 Edw. 4. There passed an act of parliament for the degrading of John Nevil, marquis Montague, and duke of Bedford; the reason expressed in the act is, because he had not a revenue sufficient for the maintaining of that dignity; to which is added another reason of that nature, that when men of mean birth are called to a high estate, and have not livelihood to support it, it induceth great poverty, and causeth briberies and extortions, imbraceries and maintenance. And now my lords, how far these reasons shall lead your judgments in this case, I must leave it to your lordships.”

Then he read the Twelfth Article, being

the second part of his Charge; the title whereof was, the Exhausting, intercepting and misemploying the King's Revenues.

"My lords, this Article consists of several clauses, which in some respects may be called so many distinct charges: for though they all tend to one end and scope, the diminishing the king's treasure, yet it is by divers ways, so that every clause is a particular branch. Therefore he desired to break it into parts, and to select the most material, either in point of offence or grievance, intending to pass through them with this order; first, to declare the state of the proof, and then to add such reasons and reinforcements as he did conceive most conducing to that judgment which the commons were to expect from their lordships."

He made two main branches of this Article. The first concerns Lands obtained from the crown; the second concerns Money in Pensions, Gifts, Farms, and other kind of profit.

Touching the Lands he observed four things,

"1. The sum of 3,035*l.* per annum of old rent, besides the forest of Layfield of which we have no value, and we can find no schedule granted by the late king to my lord of Buckingham within ten years past, as appeareth by the several grants vouched in the schedule annexed; and it was in itself a great grievance that in a time of such necessity, when the king's revenues are not able to support such a great charge, that so much land should be conveyed to a private man: this he acknowledged was not the duke's case alone, for others had received divers grants from the king, but none in so great measure.—And because the commons aim not at judgment only, but at reformation, he wished, that when the king should bestow any land for support of honours, that the caution which was wont to be carefully observed might again return into use; that is, to annex these lands to the dignity, lest being obtained and wasted, the party repair to the king for a new support; by which provision the crown will reap this benefit; that as some lands go out of new grants, others will come in by spent entails.—He said he would not trouble their lordships with repetition of the laws heretofore made for preventing the alienation of the king's lands, and for resuming those that had been alienated, nor of the ordinances made in this high court for the same purpose, and fines set upon those that presumed to break such ordinances; he only added as a further enforcement of the grievance, that when the king's revenues be unable to defray public necessities, the commons must needs be more burthened with supplies.

"2. His second point was, the unusual Clauses which the Duke by his greatness hath procured to be inserted into the Warrants for passing of those Lands, of which two were mentioned; the first, That the casual profits should not be rated in the particulars; the second, That all bailiffs fees should be repaid: Both which are to be proved by the Warrants remain-

ing with the auditors of the rates, and other auditors; whereupon he presented these considerations:

"1. That it was a mark of ingratitude and insatiableness in the duke, thus to strain the king's bounty beyond his intention; and that he would not receive this bounty by the ordinary way, but by the way of practice. 2. It argued unfaithfulness in him, that being a sworn counsellor, he should put the king into such courses of so much prejudice, deceitfully, in concealing the value of that which he bought; so that the king gave he knew not what; for under the proportion of 2,000*l.*, he gives it may be 4,000*l.* And by this the king did not only sustain great loss for the present, but it opened a way of continual loss, which hath ever since been pursued by all those who have passed lands from the crown. 3. The king is hereby not left master of his own liberality, neither in proportion nor certainty; for it might so fall out, that the quantity passed from him, might be treble to that he intended.

"3. The third was, 'The surrender of divers parcel of these lands back to the king, after he had held them some years, and taking others from the king in exchange.' Where he noted, That the best of the Lands and most vendible being passed away, the worst lay upon the king's hand; that if he should have occasion to raise money by sale of lands, that course is not like to furnish him. Besides, that in the mean time betwixt the grants and the surrenders, opportunity was left to the duke to cut down woods, to enfranchise copyholds, to make long leases, and yet the old rent remaining still; the land may be surrendered at the same value. Whether this have been practised, he could not affirm, not having had time to examine it; yet he desired the lords to enquire after it, the rather for that the manor of G. in Lincolnshire being dismembered, and 17*l.* of the old rents sold out of it, was by a surrender turned back upon his majesty.

"4. The fourth point of this branch was, The colourable Tallies divers parcels of these lands had from the crown in lieu of this surrender, being sold and contracted for by his own agent, and the money received by himself or to his use, and yet Tallies were stricken out, as if it had really come to the exchequer for his majesty's service. This is to be proved by his own officers, by the officers of the exchequer, and by the Tallies themselves, which Tallies amount unto 90,563*l.* 16*s.* 8*d.* Whence he observed, 1. That there ran a trade of falsehood toward the king throughout all this his dealing. 2. That this was a device thought upon to prevent the wisdom of parliament; for by this means the grant seems to have the face of valuable purchases, whereas they were indeed free gifts. 3. If the title of those lands should prove questionable, it appearing by record, as if the king had received the money, he was bound in honour to make restitution, and yet the duke had the profit.

"But it may be said, This was the por-

chasers desire for their own security. Of which objection he made this use, That the subjects generally took notice of so much lands given to the duke, that there is good cause to expect resumption.

“ In the second general branch of this Article concerning Money, the first point observed was, the total sum received by him in ten years space, amounting to 162,995*l.* besides the grant he hath of the overplus above 3,000*l.* per annum to be made of the third imposed upon strangers goods, and besides the moiety of 7,000*l.* out of the customs of Ireland, which he is bound to pay to the king; but whether it hath been paid, or no, is doubtful.

“ This he delivered as a sum estimative, yet so computed as it may be more, but no less. And this total ariseth by free gifts or pensions to himself, else by profit of farms, by pensions to others; for offices, whereof he received the profits, as the Admiralty, and Mastership of the Horse. All which appear by a schedule annexed to his charge.

“ The Grievances consist in this; That the common-wealth hath been bereaved of the use and employment of so public treasure in a time of as great want, and great occasions in this state, as it hath had in many ages, when the expences of the king's court can hardly be supplied, when his house and castles were unfurnished, when the seas have been unguarded, the coast subject to the incursion and spoil of enemies by default of provision in the navy, to the dishonour of the nation, and damage of the subjects, and hazard of the whole. And the offence is this, that the wants in the navy and stores being within his own charge, he was no more sensible of them; whereby it appears, he preferred the serving of his own turn before his duty and before the safety of this state.

“ The second point observed in this branch, was, That the Duke, under pretence of secret services, had procured great sums of money to be issued by Privy-seals to sundry persons named by himself, but afterward employed to his own use. Hereof two instances are propounded: the one of 8,000*l.* paid to sir Robert Pye, 12 Aug. 1610, and by him disbursed for the duke's purchase of Hurlleigh, and sir Robert Pye discharged by another Privy Seal, 4 Junii following. The second instance is of 60,000*l.* paid to Hurlimach by a Privy Seal, in Sept. 1625. Which time they rather noted, because the parliament at Oxford was broken up a little before out of discontent that the king was not supplied for the setting out of the fleet, which would have been done with a less sum. For the proof of that the house of commons will offer to your lordships witnesses.

“ The quality of this offence he left to their lordships judgment; yet propounding some things by way of enquiry from whence it might receive measure and proportion. 1. Whether it had not affinity with the crime in the civil law, called *crimen peculatus*; which was when a man did unjustly turn to his own use that money which was either *sacra*, dedicated to

God's service religiously; or *religiosa*, used about funerals and monuments of the dead; or *publica*, of which kind the matter now in question is? And this offence by that law was death and confiscation of goods and estate. Which he notes the rather, that their lordships might perceive, that in the wisest state the public treasure was held in the same reputation with that which was dedicated to God and religion. 2. And whether it doth not resemble another crime in the same law termed *crimen falsi*, and is defined to be when a man shall ‘*imitatione veri sum compendium alieno dispendio per dolum facere*,’ by semblance of truth make gain to himself of other mens losses: which in the case of a bondman was death, and in case of another man banishment and confiscation, or otherwise very penal, as the judges should find cause of moderation, or rigor, in the nature and circumstances of the fact. 3. Whether their lordships will estimate it according to any sentences in the Star-chamber, which have been very frequent in cases of fraud: or according to the common-law, which so much detests this kind of dealing, as that they term it *Covin*, and make it vitiate ordinary and lawful actions. Or lastly, whether they will measure it by that judgment which the duke hath passed against himself in the guilt of his own conscience? (direct actions are not afraid to appear open-faced; but injustice and fraud desire to be masked with subtily and closeness.) It were offence enough, if there were no more but a cunning concealing of unthankfulness to hide his majesty's bounty; or guilt of unworthiness, as if he durst not avow the receipt of that which he hath not merited; both which proceed from *malum culpa*, or else that other kind of guilt which proceeds from *malum pance*, the fear of punishment, foreseeing this inquisition into his actions, and hoping, under this disguise of public service, to escape their lordships censure.

“ The third point in this branch is, That he hath received sundry sums of money intended for the maintenance of the Navy; whereof there are two instances: the one whereof is 20,000*l.* the other of 30,000*l.* both in Jan. 1624. By Privy Seal, by the which these sums are issued, they appear to be free gifts: but by the affirmation of some in answer for the duke, it hath been said, He was only the hand to convey them to the treasury of the navy. If the truth be according to the Privy Seal, they are to be added to the former total as parcel of his own gain: If according to that allegation, it may prove a precedent of greater damage to the king, than the money is worth; for by this way his majesty hath no means by matter of record to charge the Treasurer of the Navy with these sums, and may lose the benefit of the act of parliament 13 Eliz. whereby accountants lands are made liable to the payment of their debts to the king, and in many cases may be sold for his majesty's satisfaction. The Treasurer of the Navy is a worthy man, but if he should die, the king loseth the benefit,



"The fourth point of this branch is, That he hath caused so great a mixture and confusion between the king's estate and his own, that they cannot be distinguished by the records and entries which ought to be kept for the safety of his majesty's treasure, and indemnity of the subject. This is proved in divers instances, whereof the last alleged is one, and others follow.

"By the wisdom of the law in the constitution of the Exchequer, there be three guards set upon the king's treasure and accounts. The first is a legal impignoration, whereby the estates personal and real of the accountants are made liable to be sold for the discharge of their debt, which I mentioned before. The second an apt controlment over every office; by which the king relies not upon the industry and honesty of any one man: but if he fail in either, it may be discovered by some other sworn to take notice of it, and either to correct his errors, or amend his faults. The third is a durable evidence and certainty, not for the present time only, but for the perpetuity, because the king can neither receive, or pay, but by record.

"All these guards have been broken by the duke, both in the cases next before recited, and in these two which follow. The custom of the Exchequer is the law of the kingdom, for so much as concerneth the king's revenue. Every breach of a law by a particular offence, is punishable; but such an offence as this, being destructive of the law itself, is of a far higher nature.

"The fifth point of this second branch, is concerning two Privy Seals of Release; the one 16, the other 20 Jac. whereby this duke is discharged of divers sums secretly received to his majesty's use, but by virtue of these releases to be converted to the support of his own estate. The proof hereof is referred to the Privy Seals themselves. From which he made one observation, of the subtily he used to wind himself into the possession of the king's money, and to get that by cunning steps and degrees, which peradventure he could not have obtained at once. A good master will trust a servant with a greater sum than is out of his purse, than he would bestow upon him being in his purse; and yet after it is out of his hands, may be drawn more easily to make a release, than at first to have made a free gift. This is a proper instance to be added to the proof of the point of mingling his own estate with the king's; and of the same kind be other particulars mentioned in the schedule, though not expressed in the charge; as 20,000*l.* received in composition for the earl of M. his fine, which cannot be discovered whether part or all be converted to the duke's benefit, and yet it appears by a private seal to be clearly intended to the king's own service for the household and wardrobe, till by the duke's practice it was diverted into this close and by-way.

"Another instance in this, is, his endeavour to get the money which should be made of Prize

goods into his own hands; and for this purpose he first laboured to procure that his man Gabriel Marsh might receive it; and when it was thought fit some partner should be joined with him, trial was made of divers, but none of credit would undertake the charge with secret consort. And the commons have reason to think there was good cause of this refusal: for he is so ill an accountant, that he confessed at their house (being examined) that by authority from the duke he received divers bags of gold and silver out of the St. Peter of Newgate, which he never told.

"When this practice of employing his own man would take no effect, then he procured a commission from sir William Russell, who is indeed without exception an able and worthy officer; but that is not enough for the king's security; for however he was to receive the money, it was to be disbursed by and to the duke's warrant and profit. Which clause has been altered since this was questioned in parliament; and now it is to be issued from an immediate warrant from his majesty: but as it was before, it may be noted as an encroachment upon the office of my Lord Treasurer, whereby he might make a more easy way, to some sinister end of his own; so that upon the matter, sir William was but a safeguard of the money for the duke himself. And this I must note some guilt in the very act of it.

"The last point upon this whole Charge, was a reduction of the value of the land, together with the money into one total, and to that purpose he rated the land, being valued at a reasonable value, at 40 years purchase; for although some of it was sold for 30, yet a great part was worth more than 100 years purchase, so as 40 years is conceived to be an easy medium; at this rate, 3,035*l.* amounteth to 121,400*l.* which being added to the total of the money received, 162,995*l.* both together make the sum of 284,395*l.* besides the forest of Leyfield, and besides the profit made out of the thirds of strangers goods, and the moiety of the profit made out of the customs of Ireland.

"This is a great sum in itself, but much greater by many circumstances; if we look upon the time past, never so much came into any private man's hands out of the public purse; if we respect the time present, the king never had so much want, never so many foreign occasions, important and expensive; the subjects have never given greater supplies, and yet themselves unable to furnish these expences. But as the circumstances make the sum greater, so there be other circumstances which make it less, if it be compared with the inestimable gain he hath made by the sale of honours and offices, and by projects hurtful to the state, both of England and Ireland; or if it be compared to his profusion, it will appear but a little sum. All these gifts, and other ways of profit, notwithstanding he confessed before both houses of parliament, that he was indebted 100,000*l.* If this be true, how can we hope to satisfy his prodigality? if false, how can we hope to satisfy

his covetousness? and therefore their lordships need not wonder, if the commons desire, and that earnestly, to be delivered from such a grievance.

“That this complaint and proceedings of theirs may appear to be suitable to the proceedings of their predecessors in like cases; he alleged three precedents, which he said were precedents in kind, but not in proportion, because there hath never been the like. The first, 10 Rich. 2, in the complaint against Michael de la Pool, earl of Suffolk; out of which he took three Articles: the first, That being chancellor, and sworn to the king's profit, he had purchased divers lands from the king, more than he had deserved, and at under rate; yet this was thought to be an offence against the state.—The second, That he had bought of one Tydman an annuity of 500*l.* per annum; which grant was void by the laws, yet he being chancellor, procured the king to make it good by a new grant, upon surrender of the old. This was complained of in parliament, and there punished.—The third, Whereas the muster of St. Anthony's, being a schismatic, had forfeited his possessions into the king's hand; this earl took them in farm at 20 marks a year, converting the overplus, which was 1,000 marks, to his own profit, which would have come to the king.—The next precedent, 11 Rich. 2, in the Judgment against Robert de Vere of Oxford, and others; out of which he took two Articles, the fifth and seventh: the fifth was for taking manors and lauds annexed to the crown, whereby they themselves were enriched, and the king made poor. The seventh was for intercepting the subsidies granted for the defence of the kingdom.—The third precedent is that of 28 Hen. 6, in the Parliament Roll, out of the complaint against William de la Pool, duke of Suffolk, article 29. That he being next and primest of council to the king, he had procured him to grant great possessions to divers persons, whereby the king was much impoverished, the expence of his house unpaid, wages, wardrobe, castles, navy, debts, unsatisfied; and so by his subtle counsel, and unprofitable labour, the revenues of the crown, and the duchy of Lancaster, and other the king's inheritances, so much diminished, and the commons of the kingdom so extremely charged, that it was near to a final destruction. The fourth was, That the king's treasure was mischievously distributed to himself, his friends and well willers; so that for lack of monies, no army, nor ordnance, could be provided in time; and because these great persons were not brought to judgment upon these articles alone, but for other misdemeanors, he made this observation, That ravening upon the king's estate, is always accounted with other great faults that deserve judgment.”

Then he said, he had done with that which had been left to him; and so he left the duke to their lordships' justice, That as he had exceeded others in this offence, so he might not come behind them in punishment. And so he humbly desired their lordships to be pleased to

pardon his delivery, and to give a favourable censure of him.

The Thirteenth Article enlarged by Mr. Wandesford.

Lastly, The Thirteenth Article was read.

Mr. Wandesford, deputed to enlarge and aggravate upon the Thirteenth Article, commended the charity and providence of that law, which makes it penal for unskilful empirics, and all others, to exercise and practise physic upon common persons, without a lawful calling and approbation, branding them who thus transgress as ‘improbos, ambitiosos, temerarios, et audaces homines.’ But he that without skill and calling shall direct a medicine, which upon the same person had wrought bad effects, enough to have dissuaded a second adventure; and then when physicians were present, physicians selected for learning and art, prepared by their office and oaths, without their consent, nay, even contrary to their direction, and in a time unseasonable; he must needs (said he) be guilty, albeit towards a common person, of a precipitate and unadvised rashness, much more towards his own sovereign. And so pious are ourselves to put the subjects in mind of their duty towards their princes, persons so sacred, that in the attempt of a mad-man upon the king, his want of reason, which towards any of his fellow subjects might acquit him of felony, shall not excuse him of treason. And how wary and advised our ancestors have been not to apply things in this kind to the person of a king, may appear by a precedent, 32 H. 6, where John Arundel, and others the king's physicians and chirurgeons, thought it not safe for them to administer any thing to the king's person, without the assent of the privy council first obtained, and express licence under the great seal of England.

“This medicine found his majesty in the declination of his disease, (and we all wish it had left him so) but his better days were shortly turned into worse; and instead of health and recovery, we hear, by good testimony (that which troubles the poor and loyal commons of England) of great distempers, as droughts, raving, fainting, an intermitting pulse, strange effects to follow upon the applying of a treacle plaister. But the truth is, testimony tells us, that this plaister had a strange smell, and an infective quality, striking the malignity of the disease inward; which nature otherwise might have expelled outward. Add to this the drink, twice given to his majesty, by the duke his own hands, and a third time refused, and the following complaint of that blessed prince, the physicians telling him, to please him for the time, That his second impairment was from cold taken, or some other ordinary cause: ‘No, no,’ said his majesty, ‘it is that which I had from ‘Buckingham.’ And though there be no precedent (said he) of an act offered to the person of a king, so insolent as this; yet it is true, that divers persons as great as this, have been questioned and condemned for less offences against

the person of their sovereign. It was an Article amongst others laid against the duke of Somerset, for carrying Edward the sixth away in the night time, out of his own head, but from Hampton-Court to Windsor; and yet he was trusted with the protection of his person. Precedents failing us in this point, the common law will supply us. The law judgeth a deed done in the execution of an unlawful act, manslaughter, which otherwise would but have been chance-medley; and that this act was unlawful, the house of commons do believe, as belonging to the duty and vocation of a sworn and experimented physician, and not the unskilfulness of a young lord. And so precious are the lives of men in the eye of the law, that though Mr. Stanford saith, If a physician take one into his cure, and he die under his hands; it is not felony, because he did it not feloniously. Yet it is Mr. Bracton's opinion, That if one that is no physician or chirurgeon undertake a cure, and the party die under his hands, this is felony. And the law goeth further, making physicians and chirurgeons themselves accountable for the death of their patients, if it appear they have transgressed the rules of their own art; that is, by undertaking a thing wherein they have no experience, or having yet failed in their care and diligence.

“Lastly, he said, He was commanded by the house of commons to desire their lordships, that seeing the duke hath made himself a precedent in committing that which former ages knew not, their lordships will, out of their wisdom and justice, make him an example for the time to come.”

Sir John Elliot's Speech concluding the Duke's Impeachment.

The several Articles being thus enlarged and aggravated by the said respective members, sir John Elliot was appointed to make the Epilogue to the Impeachment, who spake thus:

“My lords; Your lordships have heard, in the labours of these two days spent in this service, a representation from the knights, citizens and burgesses of the commons house of parliament, of their apprehension of the present evils and dangers of this kingdom; of the causes of the same; and of the application of them to the duke of Buckingham, so clearly and fully, as I presume your lordships expect I should rather conclude, than add any thing to his Charge.—Your lordships have heard how his ambition was expressed in procuring and getting into his hands the greatest offices of strength and power of this kingdom; by what means he had attained them, and how money stood for merit.—There needs no argument to prove this, but the common sense of the miseries and misfortunes which we suffer; adding but one, the regality of our narrow seas, the ancient inheritance of our princes, lost or impeached.

“This I need not further to press, but from hence my observation must descend to his other virtues, and that by way of perspective; I shall give it so near and short, as rather to exercise

your lordships memory, than to oppress your patience.

“First, I propose unto your lordships, the inward character of the duke's mind, which is full of collusion and deceit; I can express it no better than by the beast, called by the antients *Stellionatus*; a beast so bluffed, so spotted, so full of foul lines, that they knew not what to make of it: so do we find in this man's practice, who first invieged the merchants, drawing them to Diep to be intralled; then dealt deceitfully with the king to colour his offences, his design being against Rochel and the religion: Next with the parliament, to disguise his actions; a practice no less dangerous and disadvantageous to us, than prejudicial to our friends and allies.

“Next, I present to your lordships, the duke's high oppression, and that of strange latitude and extent, not to men alone, but to laws, and statutes, to acts of council, to pleas and decrees of court, to the pleasure of his majesty, all must stoop to him, if they oppose or stand in his way. This hath been expressed unto you in the ship called the *St. Peter*, and those of Diep; nay, he calls on the colour of his majesty's great name to shadow his design.

“It had been his duty, nay, the rest of the place, not to have translated them into the hand of strangers; that had his majesty yielded in that point, the duke should have opposed it by his continual prayers and intercessions, making known unto his majesty the inconveniences likely to ensue, and not to rest there, but to have reported it to your lordships sitting in council, to have desired and prayed your aid and assistance, in a matter of so great importance: And if this had failed, he should have entered into a protestation against it. This hath been done by worthy predecessors in that office, and this hath been the worthy discharge of the great trust reposed in his place. I heard the ships were returned, but I know it; but if I knew so, this neither excuseth, nor qualificth the duke's offence. The French in this case are to be commended, not be excused; he left them in the hands of a foreign power, who when they once had them, for any thing he knew, might easily have kept them.

“The third head is, The duke's Extortion, in exacting from the East-India Company, without right or colour, 10,000*l.*, exquisitely expressed, and mathematically observed by the gentleman, you know by whom employed, who, by his marine experience, learned this observation, That if the fleet gained not the wind by such a time at the Cape, the voyage was lost.”—

Here one of the lords interposing privately, ‘It was the king that employed him;’ sir John Elliot, in the name of the commons, makes this Protestation:

“Far be it from them to lay an odium or aspersion on his majesty's name; they hold his honour spotless, nor the least shadow of blemish can fix upon him in this business. Next to the

fool extortion, is Bribery and Corruption in the sale of Honour and Offices of Command. That which was wont to be the crown of virtue and merit, is now become a merchandize, for the greatness of this man, and the justice itself made a prey unto him. All which particulars your lordships have heard opened, and enforced with reasons and proofs, what in themselves they are; and therefore I spare further to press them.

“ In the fifth place, I observe a wonder in policy and in nature, how this man, so notorious in evil, so dangerous to the state in his immense greatness, is able to subsist of himself, and keep a being: To this I answer, That the duke hath used the help of art to prop him up: It was apparent, that by his skill he hath raised a party in the court, a party in the country, and a main party in the chief places of government in the kingdom: So that all the most deserving offices that require abilities to discharge them, are fixed upon the duke, his allies and kindred. And thus he hath drawn to him and his, the power of justice, the power of honour, and the power of command, and, in effect, the whole power of the kingdom, both for peace and war, to strengthen his allies; and in setting up himself, hath set upon the kingdom's revenues, the fountain of supply, and the nerves of the land.

“ He intercepts, consumes, and exhausts the revenues of the crown, not only to satisfy his own lustful desires, but the luxury of others; and by emptying the veins, the blood should run in, he hath cast the body of the kingdom into an high consumption. Infinite sums of money, and mass of land, exceeding the value of money, contributions in parliament have been heaped upon him, and how have they been employed? Upon costly furniture, sumptuous feasting, and magnificent building, the visible evidences of the express exhausting of the state; and yet his ambition, which is boundless, resteth not here, but, like a violent flame, bursteth forth, and getteth further scope: Not satisfied with injuries, and injustice, and dishonouring of religion, his attempts go higher, to the prejudice of his sovereign, which is plain in his practice. The effects I fear to speak, and fear to think. I end this passage, as Cicero did in a like case, ‘ Ne gravioribus utar verbis quam rei natura fert, aut levioribus quam cause necessitas postulat.’

“ Your lordships have an idea of the man, what he is in himself, what in his affections. You have seen his power, and some, I fear, have felt it; you have known his practice, and have heard the effects. It rests then to be considered, what, being such, he is in reference to the king and state; how compatible or incompatible with either? In reference to the king, he must be stiled the canker in his treasure; In reference to the state, the moth of all goodness. What future hopes are to be expected, your lordships may draw out of his actions and affections; I will now see, by comparison with others, to what we may find him

likened; I can hardly find him a match or parallel in all precedents; none so like him as Sejanus, who is thus described by Tacitus, ‘ Audax, sui obtegens, in alios criminator, juxta adulator et superbus.’

“ To say nothing of his vencies, if you please to compare them, you shall easily discern wherein they vary; such boldness of the one hath lately been presented before you, as very seldom or never hath been seen. For his secret intentions and calumniation, I wish this parliament had not felt them, nor the other before. For his pride and flattery, it is noted of Sejanus, that he did, ‘ Clientes suos provincias adornare.’ Doth not this man the like? Ask England, Scotland, and Ireland, and they will tell you. Sejanus's pride was so excessive, as Tacitus saith, He neglected all council, mixed his business and service with the prince, seeming to confound their actions, and was often stiled ‘ Imperatoris laborum socius.’ How lately and how often hath this man commixed his actions in discourses with actions of the king's?

“ My lords, I have done, you see the man; only this which was conceived by the knights, citizens, and burgesses, should be boldly by me spoken, That by him came all these evils, in him we find the cause, and on him we expect the remedies, and to this we met your lordships in conference; to which, as your wisdom invites us, so we cannot doubt, but in your lordships wisdom, greatness and power, we shall, in due time, find judgment as he deserves.

“ I conclude, by presenting to your lordships the particular censure of the bishop of Ely, reported in the 11 Rich. 1, and to give you a short view of his faults. He was first of all noted to be luxurious; Secondly, He married his own kindred to personages of highest rank and places; Thirdly, no man's business was done without his help; Fourthly, he would not suffer the king's council to advise in matters of state; Fifthly, he grew to such a height of pride, that no man was thought worthy to speak unto him; And lastly, his castles and forts of trust, he did ‘ obscuris et ignotis hominibus tradere.’ His doom was this, ‘ Per totam insulam publice proclamatur, periat qui perdere cuncta festinat, opprimatur ne omnes opprimat.’”

The Duke of Buckingham charges sir Dudley Diggs with treasonable Words at the foregoing Conference.

After the Report of the Duke's Charge was made to the lords, his grace rose up and affirmed to the house, “ That some Words were spoken at the late Conference by sir Dudley Diggs, which so far trenched on the king's honour, that they were interpreted treasonable. And that, had he not been restrained by the order of the house, he would have reprehended him for them. He, therefore earnestly desired, because that divers constructions had been made of those Words, and variously reported, that the eight lords would be pleased to pro-

duce their Notes taken at the said conference."

This motion occasioned a long debate, the house being often put into a committee and resumed again, till, at last, 30 lay-lords and 6 bishops, though there was no order for it, made a voluntary Protestation, upon their honours, "That the said sir Dudley Diggs did not speak any thing at the said Conference, which did or might trench upon the king's honour; and, if he had, they would presently have reprehended him for it."—The lord president, the earl of Manchester, affirmed, That he had reported the words in the same sense they were delivered unto him by the party himself; and, though the dislocation of them required to be explained, yet he agreed with the rest of the lords for the party's good meaning, and made the same protestation. Some other lords affirmed, They did not hear them at all; others said, They would make no Protestation until they were commanded by order; and only one, the earl of Holland, thought the words were fit to be explained and the party questioned about them.

Sir John Elliot and sir Dudley Diggs committed to the Tower.

Sir Dudley Diggs having made the prologue, and sir John Elliot the epilogue, in the impeachment of the duke, they were both by the king's command committed to the Tower.

Private Suggestions to the King, in behalf of the Duke.

Upon the Impeachment of the duke, a Paper was privately conveyed to the king, importing,

"That this great opposition against the Duke, was stirred up and maintained by such as seek the destruction of this free monarchy. Because they find it not yet ripe to attempt against the king himself, they endeavour it through the sides of the duke. The persons agreeing in this one mischief, are of divers sorts and humours: 1st, meddling and busy persons, who love popular speeches: 2. covetous landlords, inclosers, depopulators, &c. who being of the parliament, ease themselves in Subsidies, and lay it on the true commons, and cry out, the Grievances are caused by the duke. 3dly, Recusants, who hate the duke for the breach of the Spanish match. 4thly, persons indebted, who, by privilege of parliament, avoid payment. 5thly, puritans and sectaries, though two of them scarcely agree in what they would have: haters of government, and would have the king's power extinguished in matters ecclesiastical, and limited in civil. 6thly, male-contented, who look upon the duke with an evil eye, because themselves are not preferred. 7thly, lawyers, who are very fit in parliaments to second any complaint against both church and king, and all his servants, with their customs, antiquities, records, statutes, precedents, and stories. 8thly, merchants and citizens, who deceive the king of custom. 9thly, innovators, plebeicola.

"That since the time of Henry the 6th, these parliamentary discouragements might be suffered, as being but certain symptoms of subsequent rebellions, civil wars, and the degrading our king, and no one patriot daring to oppose them, lest he incur the reputation of a fool or coward in his country's cause.—E. majesty therefore strengthened himself with some favourite, as whom he might see trust, than many of the nobility, tainted with this desire of oligarchy.

"It behoveth, without doubt, his majesty uphold the Duke against them, who if he be decurted, it will be the corner-stone, on which the demolishing of his monarchy will be based: for if they prevail with this, they will hatch a thousand other demands to his feathers of royalty. They will appear in counselors, servants, alliances, limits of pences, and accompts of his revenues; and if they can, they will now dazzle him in the beginning of his reign.

"Lastly, king James and king Charles the duke's Accusers, in all the asperities are laid upon him. King James, for the most destined for the wars in this time, spent treaties, &c. And his majesty can testify the things done in his time. And although actions of the king, are imputed to the duke: who, if he suffer for obeying his sovereign, the next attempt will be to call the king to account for any thing he undertakes, which doth not prosperously succeed, as all we would desire it.

"If it pleases his majesty to remove and aside all these disadvantages, he shall find a charge against the duke very crapsy, and of small moment: and if his majesty and the duke grace thank it no impeachment to their honour, all that the parliament hath objected against the duke, except two or three things that may receive an answer, is pardoned at the king's coronation, which benefit every poor subject enjoyeth."

The King's Speech concerning the Duke.

May 11. The King came to the parliament, and spake to the house of peers, as followeth:

"My lords; The cause, and only cause of my coming to you this day, is to express in sense I have of all your honours; for he that toucheth any of you, toucheth me in a very great measure. I have thought fit to take order for the punishing some insolent Speeches lately spoken. I have been too remiss heretofore in punishing such Speeches as concern myself; not that I was greedy of their money, but that Buckingham through his importunity would not suffer me to take notice of them, lest he might be thought to have set me on, and that he might come the forwarder to his Trial. And to approve his innocency, as touching the matters against him, I myself will be a witness to clear him in every one of them. I speak not this to take any thing out of your hands; but to shew the reason why I have not hitherto punished those insolent speeches

against myself. And now I hope you will be as tender of my honour, when time shall serve, as I have been sensible of yours."

And so his majesty was pleased to depart.

The Commons' Message to secure the Duke.

The same day this following Message was brought from the commons to the lords, by sir Nathanael Rich:

"The commons taking into serious consideration the main mischiefs and inconveniences which this renowned kingdom doth now suffer, threatening apparent danger to the king and commonwealth, have by search and disquisition into the causes thereof, found that they do principally flow from the exorbitant power, and abusive carriage of the duke of Buckingham, whereof he hath this parliament been impeached before their lordships by the commons, besides an accusation of a peer in their own house, who hath charged him (as they are informed) of High Treason: they therefore with one voice make an entire Declaration, That they hold it a thing of dangerous consequence both for the present and future times, that a man of so great eminence, power, and authority, being impeached and accused of such high crimes and offences, should yet enjoy his liberty; hold so great a part of the strength of the kingdom in his hands, sit as a peer in parliament, and be acquainted with the counsels thereof, whereby inevitable mischief may suddenly fall upon the kingdom. Wherefore they have thought it their duty, to recommend this their unanimous desire to their lordships, as agreeable to law and reason, That they would be pleased forthwith to commit the person of the said duke to safe custody."

The Duke's Speech against the Commons.

Whereupon, the Duke made this Speech in the Lords House:

"My lords; If I should hold my peace, it would argue guilt; if I should speak, it would argue boldness, being so foully accused. Your lordships see what complaints are made against me by the house of commons. How well I stood in their opinions not long since, your lordships know it. What I have done since to lose their good opinions, I protest I know not. I cannot so distrust my own innocency, and my heart which abhors guilt, as to decline any course, or court of justice: and had they not brought my cause to your lordships, it should have been my own work; and they have done me a favour to deliver me out of their hands, into your lordships.

"I will not speak any thing to cast dirt at those, who had taken pains to make me so foul; but to protest my innocency in that measure, which I shall ever hope to prove, it being before such just judges. I desire my trial may be hastened, that I may no longer suffer than I must needs. And now that my accuser hath not been content only to make my process, but to prescribe to your lordships the manner of your judgment, and to judge me before I am

heard, I shall not give way to any of their unjust demands, &c."

The Commons resent the Imprisonment of their Members.

The Commons, upon the imprisonment of their Members, and the offence taken by the king at the words spoken by those two gentlemen in impeaching the duke, resolved to proceed in no other business, till they were righted in their Liberties, and ordered, That the house be turned into a Grand Committee presently, to sit and consider of the best ways and means to effect the same, and that no member be suffered to go forth.

Sir Dudley Carlton's Speech on that occasion.

At which time, sir Dudley Carlton observing that unusual, and as he termed it, sullen silence of the house, made this Speech:

"I find (by a great silence in this house) that it is a fit time to be heard, if you please to give me the patience. I may very fitly compare the heaviness of this house unto some of my misfortunes by sea in my travels: for as we were bound unto Merseillis, by oversight of the mariners we mistook our course, and by ill fortune met with a sand; that was no sooner over past, but we fell on another; and having escaped this likewise, we met with a third, and in that we stuck fast. All of the passengers being much dismayed by this disaster, as now we are here in this house for the loss of those two members: at last, an old experienced mariner, upon consultation, affirmed, that the speediest way to come out from the sands, was to know how we came there; so, well looking and beholding the compass, he found by going in upon such a point, we were brought into that straight; wherefore we must take a new point to rectify and bring us out of danger.

"This house of parliament may be compared to the ship; the sands to our messages; and the commitment, to the sands that the ship did stick fast in; and lastly, the compass, to the table where the book of orders doth lie. Then, I beseech you, let us look into the book where the orders are, whether the gentlemen did go no farther than the order did warrant them. If they did not, it is fit that we should defend them whom we employed in our behests: but if they have exceeded their commission, and delivered that which they had not warrant for, it is just that we let them suffer for this presumption; and this our course will bring us from these rocks.

"I beseech you, gentlemen, move not his majesty with trenching upon his prerogatives, lest you bring him out of love with parliaments. You have heard his majesty's often messages to you, to put you forward in a course that will be most convenient. In those messages he told you, That if there were not correspondency between him and you, he should be forced to use new counsels. Now, I pray you, consider what these new counsels are, and may be: I fear to declare those that I conceive. In all

Christian kingdoms, you know that parliaments were in use anciently, by which their kingdoms were governed in a most flourishing manner, until the monarchs began to know their own strength, and seeing the turbulent spirit of their parliaments, at length they, by little and little, began to stand upon their prerogatives, and at last overthrew the parliaments throughout Christendom, except here only with us.

“And indeed, you would count it a great misery if you knew the subjects in foreign countries as well as myself; to see their look, not like our nation, with store of flesh on their backs, but like so many ghosts, and not men, being nothing but skin and bones, with some thin cover to their nakedness, and wearing only wooden shoes on their feet; so that they cannot eat meat, or wear good clothes, but they must pay and be taxed unto the king for it. This is a misery beyond expression, and that which yet we are free from: let us be careful then to preserve the king's good opinion of parliaments, which bringeth this happiness to this nation, and makes us envied of all others, while there is this sweetness between his majesty and his commons; lest we lose the repute of a free-born nation, by turbulency in parliament. For, in my opinion, the greatest and wisest part of a parliament are those that use the greatest silence, so as it be not opiniatory, or sullen, as now we are by the loss of these our members that are committed.

“This good correspondency being kept between the king and his people, will so join their love and favour to his majesty with liking of parliaments, that his prerogative shall be preserved entire to himself, without our trenching upon it; and also the privilege of the subject (which is our happiness) inviolated, and both be maintained to the support of each other. And I told you, if you would hear me patiently, I would tell you what exception his majesty doth take at those gentlemen that are committed. You know that eight members were chosen to deliver the charge against the duke, but there were only six employed for that purpose; insomuch that there was no exception.

“As for sir Dudley Diggs his part, that was the Prologue, and in that his majesty doth conceive that he went too far beyond his commission, in pressing the death of his ever blessed father in these words, ‘That he was commanded by the house, concerning the Plaister applied to the king, That he did forbear to speak further in regard of the king's honour,’ or words to that effect; this his majesty conceiveth to be to his dishonour, as if there had been any under-hand dealing by his majesty, in applying of the plaister, and this may make his subjects jealous of his doings: in this point his majesty is assured, that the house did not warrant him. Now, for that which is excepted against sir John Elliot, his over bitterness in the aggravation upon the whole Charge, and specially upon some of the heads of it: for, if you please to remember, when I moved for

putting of the St. Peter of Newhaven on the Charge against the duke of Buckingham and shewed my reasons for that purpose, you know how tender sir John Elliot was of it, as if he had been a child of his own, and so exact in the handling thereof by a stranger, that he would not suffer it to be touched, though never so tender a hand, for fear it may prove changeling: which did manifest, how special soever his pretences were, that he had *in cauda*: and I must confess, I was very sorry when he delivered his aggravation to the Lords, to see his tartness against the duke when as he had occasion to name him, he gave him the title of ‘This man,’ and ‘This man;’ whereas the other observed more respect and modesty in their Charges against so great a person as the duke is, considering that he was not convicted, but stood *reatus in re*. Lastly, for pressing the death of his majesty, you know that the sense of the house concluded, That it is only an act of precession; nay, some of them expressly said, ‘God forbid that I should lay the death of the king to his charge.’ If he without warrant from the house, insisted upon the compass of the plaister, as if there were ‘*Aliquid quod non patet*’; this was beyond his commission from our house, and this is that which his majesty doth except against; and thus drew his majesty, with other insolent invective to use his regal authority in committing us to the Tower.

The Commons' Protestations touching what is imputed to sir Dudley Diggs.

Sir Dudley Diggs being charged for saying the matter of applying the Plaister to his majesty, ‘That he did forbear to speak further of that in regard of the king's honour,’ words to that effect; there passed a Protestation of every man in particular for himself, and it was ordered in the house, That they were sick in the town, should have three of the house sent to them to take this Protestation likewise:

‘I protest before Almighty God and us house of parliament, That I never gave consent that sir Dudley Diggs should speak these words that he is now charged withal, or words to that effect; and I have not assented to any that he did speak such words, or words to that effect.’

Sir D. Diggs released out of prison, protested never spake the Words charged on him.

Within few days after, sir Dudley being released out of prison, came into the house, and made Protestation concerning the passage whereat his majesty had taken offence: the speaking of the plaister applied to the body of the late king, he said, ‘He would forbear to speak any further of it, in regard of the king's honour,’ he protested, that this was not from his words, and that it never came into his thoughts. And he gave the house great thanks for their respect unto him, and said, that if

had received from his majesty a gracious testimony of his satisfaction.

And the king himself signifieth to the house by the Vice-Chamberlain, That he understood, out of some Notes which were taken at the Conference, that sir Dudley Diggs had spoken the words wherewith he was charged, but now was satisfied that he did not speak them, nor any words to such effect: nevertheless, the Duke affirmed to the house of peers, that some words were spoken at this late Conference by sir Dudley Diggs, which so far did trench upon the king's honour, that they are interpreted treasonable; and that (had he not been restrained by order of the house) he would then have reprehended him for the same: he therefore earnestly desired, for that divers constructions have been made of those words, and for that they have been diversly reported, that every one of the said reporters would be pleased to produce their notes taken at the conference.

This matter was much debated, and the house of peers often put into a committee, and reassumed again, but they came to no resolution therein. In fine, 36 lords made this voluntary Protestation upon their honours; "That the said sir Dudley Diggs did not speak any thing at the said conference, which did or might trench on the king's honour; and if he had, they would presently have reprehended him for it."

The Lord President affirmed, That he had reported the Words in the same sense they were delivered unto him by the party himself, and though the connexion of them require to be explained, yet he agreed with the rest of the lords, for the party's good meaning, and made the same Protestation.

Sir John Elliot released out of the Tower.

Not long after, sir John Elliot also was released out of the Tower, and sent for to come into the house. Then the Vice-Chamberlain stood up, and by way of explanation of his former speech, said,

"That he intended not to charge him, but to give him an occasion to discharge himself. 1st. That all the others had used respective words in the conference; but for the manner of his speech, he conceived it was too tart and harsh to the person of the duke, and that in representing a character of his mind, by comparing him with a strange beast, he had out-gone his commission. 2dly. That contrary to the sense of the house, as if they were ignorant of the return of the ships out of France, he said, 'They say they are come, but I know it not;' when the house knew it full well. That speaking of the duke, he said, 'That man,' which phrase in all languages, is accounted a great indignity to persons of honour: That he made scandalous comparisons between the duke and Sejanus, and the bishop of Ely, which was likewise besides his charge: That he brake off ambiguously and abruptly with a sentence of Cicero, as if something else might be which was not yet discovered."

VOL. II.

Sir John Elliot thanked the Vice-Chamberlain for dealing so plainly with him, and giving him occasion to clear himself: and to the particulars charged against him, he answered, 1. "Considering the duke's plurality of great and different offices, together with his deceit and fraud, in persuading the merchants to go to Diep, there to entrap them; in colouring the designs to the king, which he had plotted to serve against those of his religion; in abusing the parliament at Oxford; and disguising his purpose, as if the ships were to go to Rochel. These particulars being so various, and of such a nature, he called by the name of *Stellionatus*, from a beast discoloured, uncertain and doubtful, that they knew not by what name to call it, or by what colour to describe it; and these he called a character of the mind, because they lie in the heart, and were deceits to abuse the king and parliament. 2. As to his saying, 'He knew not the ships were come,' he answered, he did not know it then, and as yet he knew it not, though it was true that he heard it. 3. He denied not, that speaking of the Duke, he sometimes used this word, 'that man,' though at other times he was not wanting to give him his due titles; and said, That the Latines, speaking of Cæsar, called him 'Ille Cæsar,' and that the same is usual in all languages; nor did he think the duke to be a God. 4. He confessed, That he paralleled him with the bishop of Ely and Sejanus; and though there were many particular censures of that bishop, yet he produced none but such as were within the compass of his charge; nor did he apply the venericies and venefices of Sejanus to the duke, but excluded them. Lastly, touching the Physic of the king, he said, he brake off so abruptly in aggravation of the duke's Offence, who, not content with the injury of justice, the wrong of honour, the prejudice of the state, nor that of the revenue, his attempts go higher, even to the person of the king, making on that his practice in such a manner, to such an effect, that he said, he feared to speak, nay, he doubted to think; in which regard he left it, as Cicero did another thing, 'Ne gravioribus, &c.'"

It was then resolved on the question, That sir John Elliot hath not exceeded the commission given him in any thing that passed from him, in the late conference with the lord; the like for sir Dudley Diggs, both passed without a negative: the like vote did pass for Mr. Selden, Mr. Herbert, Mr. Glauville, Mr. Sherland, Mr. Pym, and Mr. Wandesford, who were also managers at that Conference.

On May 26, the Lord Keeper having delivered this Message from the king, viz. "That his majesty hath willed him to signify unto their lordships, that he doth marvel his meaning in his last Answer, about lord Arundel's imprisonment, should be mistaken: and for the better clearing of his intention, hath commanded him to signify unto their lordships his further Answer, which is, That their lordships last Petition was so acceptable to his majesty that



his intent was then and is still, to satisfy their lordships fully in what they then desired."—Hereupon it was ordered, That all business be adjourned till that day se'nnight. At the same time the duke of Buckingham signified unto their lordships his desire to have the king's counsel allowed him to plead his Cause: but the lords would not hear him, because they would entertain no business: and so the house was adjourned to the 2d of June.

May 15. The lords took into consideration the king's Message, sent to them on the 8th, about allowing the earl of Bristol counsel in his Trial. And, upon some former orders of the house being read, it was agreed, upon the question, That the Lord Keeper should deliver an humble Answer from their lordships to the king concerning the said Message, which was to this effect:—"Whereas his majesty had lately sent to them a Message concerning the allowance of counsel to the earl of Bristol, their lordships had with all duty advised of that business, and thereupon did humbly signify to him, that the allowance of counsel to the earl of Bristol was ordered before his majesty's Message to them. And that order, as they conceive, did not prejudice any fundamental law of the realm; for, in the parliament of the 22nd of his majesty's blessed father, a general Order was made touching the allowance of counsel to delinquents questioned in parliament; at the voting whereof his majesty, then prince, was present; and that order extended further than this late one for the earl of Bristol."

May 17. The Lord Keeper brought a Reply from the king to the said Answer, viz. "That his majesty had advised of it, and as he considered that himself had recommended this cause to their honour and justice, although he knew that by the fundamental laws of the land, or custom and use of parliaments, counsel was not to be allowed to a person accused of high treason; yet, since his majesty might at his own pleasure descend from his own right and prerogative; and that it may appear to all the world that his majesty in his gracious goodness, is pleased to allow the earl of Bristol all ways of defence, in a more ample measure than is due unto him by law; he is content, and doth hereby give full licence, that, in this particular case, the earl of Bristol may have counsel, both to advise him, and to speak and plead for him. But whereas their lordships Message put his majesty in mind of a general order, made in the 22nd of his blessed father's reign; he remembered that upon the occasion of the earl of Middlesex's Cause, which was only criminal and not capital, an Order was made in the house, which his majesty never, until now, conceived to extend unto causes capital; and he is well assured, that neither the judges were advised with in making that order, nor his late majesty's learned counsel heard for him; therefore his majesty was not satisfied about that general Order, nor that counsel should be allowed in cases capital, without his licence; and would advise further thereof, and

then would send again to their lordships touching the general."—Upon the hearing of this Answer from the king, the lords ordered that Mr. Serj. Hedley, Serj. Bramston, Serj. Crawley, and Mr. Anthony Low, should be allowed as Counsel, to speak and plead for the earl of Bristol.

The same day, the duke of Buckingham moved the house, to know whether he should answer the whole Charge, exhibited by the Commons against him, or such parts thereof only as their lordships should appoint: also, whether he should answer the Aggravations of the commons, reported to this house? which he was desirous to do, that he might clear all matters therein.—Upon consideration of this, the lords ordered, "That those Aggravations should be delivered to the clerk, to be kept by him close from all except the members of this house; and no copies to be given to any but them. Likewise, That the duke of Buckingham should answer the engrossed Articles of the Charge sent up by the commons, but not the Aggravations; unless, upon perusal thereof, he should find any thing fit to be answered, or that the house think proper for that purpose. And, for expedition's sake, the duke to have the use of the original Aggravations."

The Earl of Bristol's Speech, by way of Introduction, before he gave in his Answer.

May 19. The Earl of Bristol was brought again to the bar of the lords; when the duke of Buckingham desired that he might have leave to retire, lest his presence should give some distaste to the earl; and he withdrew himself accordingly. Then the Lord Keeper told the earl, That their lordships did expect his answer unto Mr. Attorney's Charge. Upon which he said,

"I am not insensible upon what disadvantages I come to trial in this cause; For first, I am fallen into his majesty's heavy displeasure, and am to encounter with a potent adversary, highly in favour, and am accused for treason; for which, all counsel and friends abandon me, as a man infected with the plague; I am become bound and under restraint; whereas a man who is to encounter for his life and honour, and with a strong adversary, had need to come upon equal terms.

"But as to the matter, I mind myself charged with divers Articles of High Treason; but looking into them with the eyes of my best understanding, with the opinion also of my counsel lately assigned me, and taking them apart one Article from another, I find not any thing in them like treason, or that hath so much as the shew or countenance of a fault, either in act or words: only by laying all things together, and by wresting the wrists with a strained construction, directly contrary to the true sense and meaning of them, and the occasion whereupon they were spoken, it is informed, and that by way of inference only, That the intent was evil, and the matter to prove the intent to be evil, depends upon two props, viz. Ill affection

to religion, and too much affection to Spain; which, if I shall clear, the inference grounded upon these props, will fall of itself.—Therefore I crave leave of your lordships, before I give my Answer to the Charge, that I may give you an account of these two particulars; and I humbly beseech you, that what I shall speak in my just defence, may not be conceived to proceed of vain ostentation.

“And first for Religion, I was in my childhood bred in the Protestant religion, and rather after the stricter manner than otherwise. When I grew in years fit, I travelled into France, Italy, and Rome itself: In all which travels, I can produce some that I consorted withal, who will witness with me, that I ever constantly used the religion I professed, without the least prevarication; no man being able to charge me, that so much as out of curiosity I ever was present at any of the exercises belonging to the Roman religion, or did the least act of conformity to any their rites or ceremonies.

“Secondly, after my return home, I was received into the service of his late majesty of blessed memory, whom I served some years as a gentleman of his privy chamber, and carver; in which time, none of his majesty’s servants received the Holy Sacrament, frequented sermons, and other exercises of our religion more than I.

“Thirdly, in that time of my youth, not to avoid idleness, but out of affection to religion, I translated that excellent Book of our faith, and great points of our religion, written by Mr. Moulins; which his late majesty having sometimes after seen, approved so well, that he would needs have it printed; which accordingly was printed in the name of Mr. Sampford my chaplain, to whom I gave the honours: But it was my own act, as Mr. Sampford will not deny, though, to this hour, I had never before spoken it.

“Fourthly, about seven or eight and twenty years of my age, I was employed ambassador into Spain, in that great business of the Treaty of the Marriage; and whereas others before me carried with them but one chaplain, I had two, viz. Mr. Sampford and Mr. Boswel; and at my arrival at the court of Spain, I caused it to be published, that such a day (God willing) I purposed to have a communion, to the end that such English as were in the town, might resort thither. Whereat the duke de Lerma, and other the great ministers of Spain, took offence, and told me, they might well perceive, I brought no good affection to the business I came about, that would so publicly and avowedly in that court, where never the like was done, proclaim there a communion; and with high expressions persuaded me to decline it. Whereunto I answered, I came to do my master’s service, which I would heartily and effectually endeavour, but would not omit my service to God, no, though my master commanded. And at the communion there were present 100 persons, some of them brothers, kinsmen, and near dependants upon some of their lord-

ships, whom I see there in my eye. This I did in Spain; the like I did in Germany, in the emperor’s courts, in my ambassage thither.

“Fifthly, I had in my several employments into Spain and Germany, above 500 persons of all qualities attending upon me, and never one perverted in religion: my children carefully instructed and bred in the same religion. I had constantly every sabbath a sermon in my house; and sacraments, and other exercises of our religion frequented.

“Sixthly, a foul-mouthed Shimei railed against our late king and religion in Spain; how I caused that to be revenged by a near kinsman of my own, is well known.

“Seventhly, one of the English dying in the town of Madrid, of whose religion there was some question made; and the king’s chaplains telling me, that they at the day of his death had been with him, and taken an account of his faith, and that he died a Protestant: I caused him to be brought home to my house, and there buried according to our rites; whereat much ado was made, and it was threatened, that the inquisitors and other officers, would come and fetch him out, and bury him after their manner: I stood upon it, and that it was the king of England’s house, and openly protested, that whosoever should come thither with such intent, I would shoot at him with a piece; and exhorted all my people, that if such an attempt should be, they should, rather than suffer such a dishonour to our religion, die with me in that quarrel, and hoped such English as were in the town would do the like.

“Eighthly, There having been a monastery for English Jesuits, founded and settled at Madrid before my coming thither, and the English arms set up, I laboured to suppress it, and having written thereof to the late king, his majesty advised me not to run my head against the rock, for it was an impossible thing for me to do: yet I undertook it, and it pleased God so to bless my endeavours, that I absolutely dissolved and overthrew it. For which, the bishop of Winchester, Montague, (now with God) wrote unto me by his majesty’s direction, a letter of his majesty’s gracious acceptance of so great a service: telling me, besides the service I had done to the church and commonwealth, it should remain a trophy of honour to me and my posterity for ever: and the king himself, with his own hand, wrote unto me, beginning his Letter, ‘Good fortune Digby, your good luck in your service well deserves that stile.’

“Ninthly, In all negotiations in Spain, in point of religion, I ever straitened my Instructions.

“Tenthly, The Match with Spain was not moved by me, I ever advised a Protestant Match, and shewed many reasons both of conscience and state; but if with a Catholic, then rather with Spain than France, so as good conditions might be made for religion, as appears by a letter I wrote, and delivered to the prince,

at his first going upon the employment; for which I had like then to have been ruined for being a Puritan, as I am now for being a Papist, and all by one and the same hand.

“ Eleventhly, And I appeal to the testimony of Dr. Mason and Dr. Wren, the king’s chaplains with me in Spain; and to Mr. Sampford, Mr. Boswel, and Mr. Frewen, my own chaplains there. And that such Papists as have been my ancient acquaintance and friends, being men of worth, well known to many of their lordships, may be examined upon oath, whether I have not in all places, as well in Spain as in England, and at all times upon fit occasions, avowed myself a Protestant, without the least prevarication? Or whether I did ever any the least act that was not suitable to the same profess on? And that Mr. Frewen, Mr. Wake, my own chaplains, may give their testimonies, whether in the time of several dangerous sicknesses, which I had of late years fallen into, I have not in the time of such my sicknesses (when no man can be supposed to dissemble with the world, being ready to leave it) made before them a confession of my faith, and made my peace with God, resolving to die as belittled a Protestant and a good Christian. This I tell your lordships, was my religion I was bred in, have ever professed and lived in, and was resolved by God’s grace, to die in; and yet was so unhappy, by reason of employment, to be distasteful to many good men, that I have been suspected even by them, not well knowing me: and this hath been the rise the duke hath now taken against me. Then for my love to Spain, I wonder from whence that opinion should grow, since I was there hated and shamed, as the man whom, of all others, they desired to have the least to do withal, having stood ever stricter in point of religion, than by my instructions I might have done; as after the capitulation concluded on, they understood by some intelligence, which caused their hatred towards me.

“ Sure I am, I shewed it not by the service I did them; for divers years together there was not a letter sent by that king to any other state, that the king my master had not a copy of before, or by that time it came to the place whither it was directed. There was not any great action on foot, whereof I had not the private instructions, and sent them thither; not any expedition by sea or land, wherein I had not some ministers or intelligencers, that gave me from time to time advertisements of their actions, and most private intentions, whereof I advertised his majesty from time to time. I used such industry, as to get all the papers of that king’s private cabinet into my hands; took copies and notes of such of them as I thought useful; and upon every of them set my private mark before they were conveyed back again, to the end, that if I should have had an occasion to have charged him with any thing mentioned in the same papers, I might have let him see I knew it, by telling him in what paper it was, and marked with such a mark.

“ There was not a port in Spain, that I had not caused the depth of it to be sounded, nor a fort whereof I knew not the strength, both for the garrison, munition, and other matters of advantage and disadvantage; insomuch as if it should please the king to appoint a committee of the lords to take an account of me, I should, by the stores I gathered there, and brought with me, make it appear, I was as useful a servant to his majesty in a war, as in peace. Whereas at his majesty’s coming out of Spain, the powers of the Desponsories were to be deposited in some man’s hand; and the duke upon pretence of doing me honour, but intending to break my neck by it, moved they might be left with me, and the king of Spain was contented; and so they were put into my hands, not as an attorney only for the prince; but the king of Spain having taken the substitution of them by his secretary of state, entered in legal form; whereby that king was then become interested in them by their occupation, as well as the prince by granting of them. And becoming the *instrumentum stipulatum*, wherein they were both interested, they were deposited into my hands, as an indifferent person, trusted between the king of Spain and the prince, with a declaration of the trust. And now the duke was returned out of Spain, he plotted my ruin, and put it in execution in this manner. He concealed, that the powers were to expire at Christmas, and procured his majesty to write a letter, (not a direct commandment) but expressing a desire, that the Desponsories should not be till one of the days in Christmas, intending thereby to draw me into a dilemma, that if I proceeded in the match, this letter should, as now it is, have been enforced against me, as a breach of instructions: if I had not proceeded, then I had broken my trust between the prince and king of Spain, overthrown the Marriage, so long sought and laboured, it being the main scope of my ambassage, contrary to express warrant, and that upon a letter I must needs know to be a mistake. And when I had written into England, to have a direct warrant in the point, the duke then seeing that plot would not take, he dealt with divers great lords, as was well known to some of their lordships there present, to have me, upon my arrival in England, committed to the Tower, before I should ever come to speak with the king; which the Spanish ambassador, here in England, having gotten private notice of, gave advertisement thereof to that king: who thereupon foreseeing my danger, and consulting with his council and divines, what were fit for him in honour and conscience to do in that case, they resolved, that seeing my sufferings grew by being an honest man, and endeavouring to perform the trust reposed in me by that king, as well as the prince; that king was bound both in honour and conscience, not only to preserve me from ruin, but to make me a reparation for any loss I should sustain by occasion of the trust: Whereupon, at his departure, going to court to take his leave, the conde

Olivares told me, what was plotted against me in England; and in respect of the danger, by reason of the greatness of my adversary, persuaded me to stay there, and in his master's name made an offer, not in secret, but in the presence of sir Walter Aston."

Here he repeated those offers of reward, honour, and preferment, he then proceeded, and said: "Upon what grounds and hope came I to encounter with those dangers? Not upon hope of my greatness in court, and strength of friends there, to bolster out an ill cause; no sure, my strength was too weak, and my adversaries too powerful. But I knew my conscience was clear, and my cause good, and trusted in God Almighty. And to him now, and to their lordships' judgments, recommend myself, and my cause."

THE ANSWER OF THE EARL OF BRISTOL TO THE ARTICLES OF IMPEACHMENT.

And then he delivered his ANSWER, desiring their lordships it might be after recorded in parchment, that it might remain to posterity; which being read by one of his council, the Lord Keeper asked him, Whether he desired to say any more than he had done? he answered, That he had something more to say, but knew not the order, or whether Mr. Attorney would speak first; but he being desired to speak, he desired their lordships he might put them in mind of what he conceived they had already premised; which was, That the duke, whom he accused in that house of far higher offences, than any with which he was charged, might be proceeded with as he was, and that they might be upon equal conditions. And that such heads as he had delivered against the duke, being of such matters as he met withal in his negotiation as an ambassador, and which he had, according to his duty, acquainted the state withal, might, by their lordships care and order, be put into legal form, and prosecuted; for so was the use, when he had the honour to sit at the council table. He said, he conceived he had already done his part to inform, and would be ready to make it good, it concerning their lordships to see it prosecuted, it not being to be expected that he should solicit it; or if he would, he could not, being under restraint. And he desired likewise, that the judges might deliver their opinions, Whether the matter charged against him were treason; that if it should not be so in their opinions, he might not lie under so heavy a burden.—He put their lordships in mind, that it was a strange manner of proceeding, that upon a displeasure, a peer of the kingdom complaining of those that had practised against him, and had been the causers of his sufferings, should then, and never but then, be charged with treason. He told them, it was not his case alone, but it equally concerned them, and their posterity, and, it might be, some others hereafter, more than him now. For, he said, he thanked God, he had some experience in the world, and thereby, and by those things he had kept, was able to make his innocency

appear, which, perhaps, would not be every man's hereafter; and so many an honest heart in a good cause distracted with fears, and abandoned of friends, might perish through the malice of a potent adversary.

The lords again asked him whether he had any thing more to say? he answered, No, but desired leave only to explain himself in two things; one in his speech now spoken, and the other when he was first brought to the house. That in his speech this day, was, where he affirmed, he had like to have been ruined in his negotiation: first, for being a Puritan, and now for being a Papist, and both by one hand; he explained it to be by the hand of the duke of Buckingham. And the other when he first came to the house, saying there, for redress of former sufferings, and meeting on the sudden with treason charged upon him, he spake in passion, expressing the wrongs and injuries done him by the duke; and told their lordships, he had used means to convey part of his sufferings to the late king his master, who, in the duke's hearing, swore he would (after he had heard the duke against him) hear him also against the duke; for which his majesty suffered much, or to some such purpose. Now he understandeth this speech to reflect upon what was in agitation in the lower house; but he said, although he could not well excuse the duke's indiscretion in that point, yet he spake it not any ways to corroborate that opinion; for howsoever the duke were his enemy, yet he could not think so dishonourably of him.

The house was pleased to allow that his own Counsel might read his Answer, as follows; the Earl sitting by on a stool all the while, and explaining or enforcing any part thereof.

"The ANSWER of JOHN Earl of BRISTOL to the ARTICLES of several HIGH TREASONS, and other great and enormous Crimes, Offences, and Contempts, supposed to be committed by him against our late sovereign lord king James of blessed memory, deceased; and our sovereign lord the king's majesty that now is; wherewith the said Earl is charged by his majesty's Attorney General, on his majesty's behalf, in the most high and honourable Court of Parliament, before the king and the lords there.

"The said earl not acknowledging any of the supposed treasons, crimes, offences, or contempts wherewith he is charged in and by the said Articles to be true; and saving to himself all advantage and benefit of exception, to the uncertainty and insufficiency of the said Articles, and several Charges in them contained: and humbly praying that his cause may not suffer for want of legal form, whereunto he hath not been inured; but may be adjudged according to such real and effectual grounds and proofs, as may be expected from an ambassador, the ground of the charge growing thence: and that he may have leave to explain himself and his own meaning, in any thing that

may seem to admit of a doubtful construction, for Answer saith as followeth :

“ I. To the First Article he saith, That he did not advance or further the design of the king of Spain against our late sovereign lord the king, his children, friends, and allies ; or traitorously, falsely, wilfully, or as a traitor to our late sovereign lord the king, by any letters, or other messages, sent in the years 1621, 2, 3, or at any other time, inform, advise, or assure the said late king, that the emperor and king of Spain, or either of them, would really, fully, or effectually make restitution, or plenary restoration, to the count Palatine and his children, of the dominions, territories, and possessions of the said count, or of the electoral dignity ; or that the king of Spain did really, fully, or effectually intend the Marriage between the lady his sister, and the prince our said sovereign lord, according to the articles formerly propounded between the said two kings, as by the said Article is alledged ; neither does or did he, the said earl, know that the emperor and king of Spain, or either of them, never really intended such restitution or restoration as aforesaid, or that the king of Spain never really intended the said Marriage, as by the said Article is alledged ; nor doth he the said earl know that the emperor or king of Spain, or either of them, intended by the said Treaties, in the Article mentioned, to give time for compassing their own ends or purposes, to the detriment of this kingdom, as by the said Article is also alledged ; neither was the said late king James made secure upon any such false assurances given unto him by the said earl, or thereby lost the opportunity of time ; nor were the dominions, territories, and possessions of the count Palatine, or the electoral dignity, thereby lost, or any part thereof taken out of the possession of the said king James : nor the said count Palatine, the lady Elizabeth his wife, or their children, dispossessed, disinherited, or bereaved thereof, or of any part thereof, by any act or default of him the said earl ; nor did, nor was he, the said earl, the cause of any thing to the dishonour of our said late sovereign lord king James, or to the disherison of the said late king's children, or their posterity ; to the disanimating or discouraging of any of the rest of the princes of Germany, nor any other kings or princes in amity and league with his said late majesty ; nor did any thing in or concerning the same contrary to his duty and allegiance, or contrary to the trust and duty of an ambassador, or falsely, wilfully, or traitorously, or as a traitor to our said sovereign lord the king, in any such sort, or by any such means, ways, or inducements, as by the said Article is supposed, or by any other ways or means whatsoever : but the said earl dealt therein, and in all his said trusts as an ambassador, carefully, faithfully, and honestly, and as became a faithful and loyal subject, servant, counsellor, and ambassador. And for a clear demonstration of the truth and manner of his proceedings, touching the matter contained in

the said Article, the same consisting of several parts, viz. the loss of the said Palatinate, and the Match with the said lady of Spain, and of his several employments ; as of one extraordinary Ambassage to the emperor, of another to the king of Spain, in the years 1621, 2, and 3, aforesaid, he humbly craveth leave of this most high and honourable court to separate the business, and to distinguish the times.

“ And, beginning with the Palatinate first, to give an Account of his Ambassage to the Emperor ; and so to make as brief a deduction as he can of his whole carriage in that business, from the beginning of his employment to the time he left it. In this ambassage to the emperor he propounded all things faithfully according to his instructions ; and the answers which he returned to his late majesty were the very same, and none other, than such as were given him by the emperor, under his hand and the imperial seal ; the which, according to his duty, he faithfully sent unto his said majesty ; and withal, did honestly, faithfully, and truly advertise his said majesty what he understood and thought then upon the place : but was so far from giving unto his said majesty any ill-grounded hopes in that behalf, that he wrote unto the lords of the council, here in England, from Vienna, the 26th of July, 1621, in sort as followeth, viz. “ I am further to move your lordships, that there may be a dispatch made presently into Spain, to his majesty's ambassador and Mr. Cottington, that they there deal effectually for the preparing and ripening of the business against my coming ; and that they use some plain and direct language, letting the ministers there know, that the late letter sent by the king of Spain to the emperor, was colder and more reserved than his majesty had reason to expect. I shall conclude with telling your lordships, that though I despair not of good success in this knotty business, yet I hope his majesty and your lordships lay not aside the care of all fitting preparations for a war, in case a peace cannot honourably be had ; and amongst other things, I most earnestly recommend unto your lordships, and, by your lordships, unto his majesty, the continuing abroad, yet for some small time, of sir Robert Mansel's fleet upon the coasts of Spain ; which, in case his majesty should be ill-used, will prove the best argument he can use for the restitution of the Palatinate.”—And the said earl further saith, That this his advice was really seconded by his actions, by being the cause, as he returned homeward out of Germany, of the bringing down of the count Mansfelt, whereby the town of Frankendale was relieved, and, by supplying of his majesty's army, then in great distress, with money and plate, to the value of 10,000*l.* merely out of his zeal and affection to the good of the king and his children, having no order or warrant for the doing of it ; but might easily have excused it, either through want of order, or want of means ; but that his heart was ever really bent in effects, more than

shews, to serve the king's son-in-law and his cause, as by the discourse of this business will appear. And how acceptable these services then were, will appear by the Letters of the Queen of Bohemia, dated in Oct. 1621, in these words following:—"My lord; Having understood from Heidelberg, how you have shewn your affection to the king and me in all things, and in the help of money you have lent our soldiers, I cannot let such an obligation pass without giving you many thanks for it by these lines, since I have no other means to shew my gratefulness unto you; howsoever, assure yourself, that I shall never be forgetful of the testimonies you give me of your love, which I entreat you to continue, in doing the king and me all the good offices you can to his majesty; you have been an eye-witness of the miserable estate our countries are in: I intreat you therefore to solicit his majesty for our help. You have given me assurance of your affection, I intreat you now to shew it by helping us, in your good endeavours to his majesty, and you shall ever bind me to continue, as I am already, your very affectionate friend,  
ELIZABETH."

"The Earl likewise received several other letters, about the same time, both from the king of Bohemia and council of Heidelberg, to the same effect. And how much satisfaction his late majesty received in that behalf, and touching that business, will several ways appear, and particularly by his speech to the parliament. And the said earl likewise appealeth to both houses of parliament, to whom, by his late majesty's order, he gave a just and true Account of that employment; with what true zeal he proceeded, and how he pressed that single treaties and promises might no longer be relied on, but that a fitting preparation for a war might go, hand in hand, with any treaty of accommodation; and, for a conclusive testimony of his late majesty's approbation of his carriage in this employment, he humbly desireth that a letter of the duke of Buckingham's, under his own hand, bearing date the 11th of Oct. 1621, may be read: viz.—"My lord, I am exceeding glad your lordship hath carried yourself so well in this employment, that his majesty is not only infinitely pleased for the service you have done, for which he commanded me to give your lordship thanks in his name, until he see you himself; but that you have given all men cause to commend his majesty's choice of such a man, that, unless your heart had gone with the business, could never have brought it to so good a pass. Amongst other things his majesty liketh very well the care of clearing his honour, whereof he will advise further with your lordship at your coming over. I hope you will not find your negotiation with the infantina of such difficulty as you seem to fear in your letter, seeing my brother Edward hath brought with him a letter from his majesty's son-in-law, whereby he putteth himself wholly to his majesty's advice and pleasure for his submission. And as for the money your

lordship hath so very seasonably laid out, his majesty will see you shall sustain no loss; holding it very unreasonable you should suffer any thing by the care of his service, which you have shewed so much to his contentment, and the great joy of your lordship's faithful servant,  
G. BUCKINGHAM."

"Having given this Account of his Employment with the Emperor, he humbly craveth leave to make it known in what sort, before this his employment, he endeavoured to serve the prince Palatine and his cause; which will best appear by his majesty's own testimony, upon the going of sir Francis Nethersale to the prince Palatine; at which time his majesty being, out of his royal and just heart, desirous to do a faithful servant right, commanded sir Francis Nethersale to let the prince Palatine understand how good a servant the said earl had been unto him, and how active in his affairs; as will best appear by a dispatch of sir Francis Nethersale, written all in his own hand, to sir George Calvert, in answer to what was commanded him, dated at Prague 11th August 1622, and sent by his late majesty to the said earl for his comfort, being as followeth:—"Right honourable; That you may the better be assured, that I have neither forgotten nor neglected the commandment received from his majesty by your honour, you will be pleased to have the patience to hear me report what I said to the king upon delivery of my lord Digby's letters to his majesty, which was, that the king my master, whose justice is so much renowned over the world, did use to shew it in nothing more than in vindicating his servants from wrongful opinions, whereof he knew noble hearts were more sensible than of injuries done to their persons or fortunes; that, out of his royal disposition, his majesty having found my lord Digby mistaken by some of his people at home, by occasion of his being by him employed in the affairs with Spain; and having thereupon conceived a jealousy that the said noble lord might also be misrepresented hither to the prince Palatine, had, in that respect, given me a particular commandment to assure the prince, that his highness had not a more truly affectionate servant in England; and, for proof thereof, to let the prince understand, that whereas the baron Donagh, now his highness's ambassador in England, had, since his coming thither, obtained but three great points for his master's service, to wit, the Loan of Money from the king of Denmark, the Contributions in England of the city and country, and the sending of ambassadors to the contrary party: that the lord Digby had been the first propounder of all those to the king my master, before his highness's ambassador, or any other of his servants in England; although his lordship had been contented, that others who were but set on should carry away the thanks and prize; because his lordship being known to be the first mover therein, might possibly weaken the credit he hath in Spain, and so render him the more unable to serve both his own master

and the prince; in which respect I humbly prayed his highness also to keep this to himself.—By which testimony it may appear, as the said earl conceiveth, how he the said earl behaved himself before his said ambassage and in his said ambassage, with his said late majesty's approbation thereof.—Now he most humbly craveth leave to give your lordships an Account how he proceeded after his Return from the emperor's court: as soon as he came into England, he discovered to his majesty and the lords of his council, in what great want he had left the forces in the Palatinate, and solicited the present sending away of money; and thereupon 30,000*l.* was borrowed of sir Peter Vanlore, sir Baptist Kirks, and sir Wm. Cockaine, and presently sent into the Palatinate, besides the 10,000*l.* which he had lent, for which he paid the interest out of his own purse 6 months; having also given, not long before, 500*l.* by way of Benevolence, to the service of the said Palatinate. Now, in the interim betwixt his return from the emperor, which was in November 1621, and his going into Spain, in May, 1622, he first gave an Account, as is aforesaid, of his embassage, to both the houses of parliament; and moved them to be as effectual as was possible for the supplying of his majesty, and that the money might be wholly employed for the succour of the Palatinate. The parliament being dissolved, he solicited, with great care and industry, the settling of some course for the supplying of the Palatinate; and his majesty was persuaded to maintain 8,000 foot and 1,600 horse under his own standard, and in his pay, in the Palatinate, and to establish a certain course for the due payment of the said army: and the lord Chichester was upon his, the said earl's motion, sent for out of Ireland; and he the said earl, by his majesty's commandment, took care of his dispatch. In this estate the said earl left this affair at his departure towards Spain, in 1622, nothing doubting but all things would have effectually and constantly been pursued, according to the order which was settled and resolved on at his departure. On his arrival at the court of Spain, he presently proceeded according to his instructions, pressing the business of the Palatinate as effectually as could be, and faithfully laboured, and effected from time to time, (as far as the point of Negotiation) all the particulars that were given him in charge; as will appear by his late majesty's letters upon every particular occasion. And, if by accident, such as the marquis of Baden, count Mansfelt, and the duke of Brunswick's receiving each of them an overthrow that summer; or by neglect, or ill-ordering the affairs there, (whereof his late majesty so far complained to his son-in-law, as to give order for the withdrawing of his forces, as will appear by his majesty's letters of the 3d of June, 1622, as also by his letter to sir Horace Vere and the lord Chichester, if there were not a speedy redress,) those businesses have miscarried, the earl hopeth he shall not be liable to the blame, it having no relation to

him or his employment; having so far, and so honestly, with his best affections, employed his care and utmost service in the business: and his majesty was pleased, by many several letters, upon several occasions, to signify his gracious acceptance of his service, as in his letter of the 24th of November 1622, from Newmarket, writing as followeth, viz. "Your dispatches are in all points so full, and in them we receive so good satisfaction, as in this we shall not need to enlarge any further, but only to tell you we are well pleased with the diligent and discreet employing of your endeavours in all that concerneth our service; so are we likewise with the whole proceedings of our ambassador, sir Walter Aston. Thus we bid you heartily farewell."—And afterwards his majesty was likewise pleased, in his letter of the 7th of January 1623, a little before our gracious sovereign lord the king, then prince, his coming into Spain, to write as followeth, viz. "Concerning that other unfortunate knotty affair of the Palatinate, to say the truth, as things stand, I know not what you could have done more than you have done already."—And whereas it is objected, that the Palatinate should be lost by the hopes he, the said earl, gave by his letters out of Spain, it is an objection of impossibility; for there was nothing left but Manheim and Frankendale, when his first letters, out of Spain, could possibly come to his late majesty's hands; for he did not begin there to negotiate in that business until August, 1622; and about that time Heidelberg, and all but Manheim and Frankendale, was lost; and Manheim he had saved by his industry, had it not been so suddenly delivered, as is by his majesty acknowledged, by his letter of the 24th Nov. 1622, writing thus, viz. "And howsoever the order given to the Infanta, for the relief of Manheim, came too late, and after the town was yielded into the hands of Tilly; yet must we acknowledge it to be a good effect of your negotiation, and an argument of that king's sincere and sound intention."—And Frankendale being by the said earl's means once saved, was again the second time saved merely by his the said earl's industry in procuring a letter from the king of Spain, dated the 2nd of Feb. 1623, whereupon followed the Treaty of Sequestration, which hath since continued: and he the said earl was so far from hindering succours, by any letter or counsel of his, that he was the solicitor, and, in great part, the procurer of most of the succours that had been sent thither, as is formerly set down: and when his royal majesty that now is, arrived at the court of Spain with the duke of Buckingham, they found the said business of the Palatinate in so fair a way, that the Spanish ministers told them the king should give his late majesty a blank in that business to frame his own conditions, as appeareth by his late majesty's letter of the 8th Oct. 1623, as followeth, viz.

'Our son did write to us out of Spain, that that king would give us a blank in which we

' might frame our own conditions, and the same he confirmeth to us now.'—And the like touching the blank was also acknowledged by the duke of Buckingham, in his speech in parliament, after the return of his majesty out of Spain. It will appear by the testimony of sir Walter Aston, and by his and the earl's dispatches, that the said earl wanted not industry and zeal in this business; insomuch that the last answer the earl procured therein from the king of Spain, was fuller than he, the said earl, was ordered by his late majesty's latest letters to insist upon; so as by that which hath been alledged, the said earl hopeth your lordships will be satisfied, not only that he wanted neither will nor industry; but that he hath, with all true zeal and affection, and with his own means, faithfully served their majesties and the prince Palatine in this cause. And forasmuch as, in that affair, he had all the assurances that could be betwixt Christian princes; if therein there hath been any deceit (as by the said Article is intimated), which he never knew, nor believed, he referreth it to God to punish their wickedness; for, betwixt princes, there can be no greater tye than their words, oaths, hands, and seals; all which he procured in that behalf: and both he, the said earl, and sir Walter Aston, were so confident that the business would be ended to his late majesty's satisfaction, that, in a joint dispatch to his said late majesty of the 23rd of Nov. 1623, after his now majesty's return into England, they wrote as follows:—" We hope that your majesty may, according to your desire, signified to me the earl of Bristol, by the letter of the 8th Oct. give to your majesty's royal daughter, this Christmas, the comfortable news of the near expiring of her great troubles and sufferings; as also unto the prince, your son, the congratulation of being married to a most excellent princess."

" Having thus given your lordships an account of his proceedings touching the Palatinate, he will, by your lordships good favour, proceed to the other part of the Charge concerning the Marriage. And, first, touching the hopes and assurances, that he is charged to have given to his late majesty and ministers of state here in England, of the Spaniards real proceedings in the said Match, when it is said he knew they never meant it; he saith, He never gave any hopes of their real proceeding, but such and the very same that were first given unto him, without adding or diminishing; neither could he have done otherwise with honesty or safety. And he further saith, That the hopes he gave were not upon slight and vain intelligence, but, as well in that of the Match as the other of the Palatinate, his advertisements were grounded upon all the assurances, both upon word and writing, that could pass betwixt Christians; as will be made evidently appear by his dispatch of the 9th Sept. 1623; which he humbly desired may be read, if the length of it may not displease: the substance of it being to shew by all the engage-

ments and promises of the king of Spain, that he really intended the Match; and the cause why the conde D'Olivares pretended to the duke of Buckingham, that the Match was not formerly meant, was only thereby to free himself from the treating any longer with the said earl, so the end he might treat for larger conditions, in point of religion, with the said duke; the said conde D'Olivares taking advantage of having the person of his majesty, then prince, in their hands: and with this dispatch the said earl acquainted his majesty that now is, then in Spain, before he sent it. And his majesty upon the reading of it, was pleased to say, That the earl had proceeded with so much caution and care, that, in case the Spaniards should be false, he might be sure to shame them for their falshood. By this dispatch the said earl doubteth not but it will appear to this most honourable court, That whilst the treating of that business was in his hands he proceeded in it, not only with care and industry, but with some measure of vigilancy.—For the clearing of an objection that hath been alledged, viz. That the Match was never meant before the duke's going into Spain, nor after; the earl craveth leave to set down some few reasons, of many, which caused him to believe that the said Match had been really meant; and that it was so conceived, by both their majesties and the king of Spain, and their chief ministers on both sides, for the following reasons: 1. The duke of Buckingham certified to his late majesty, That the business of the Marriage was brought to a happy conclusion; whereupon his late majesty was pleased to give order to the said duke and earl to proceed in other business, which his said late majesty would not have treated until the Marriage was concluded; as will appear by a letter of his late majesty jointly to the duke of Buckingham, and the said earl, of the 23d July, 1623. 2. It will appear by letters of the lord Conway to the duke of Buckingham, bearing date 3rd and 4th Sept. 1623, that the said duke had good assurance of the conclusion of the said Match; and, upon this confidence, all things were put in due execution in England, as had been capitulated; and the lord Conway, and others, fully settled and agreed all the points of immunity and liberty for the Roman Catholics for the use of their religion, as was set down in the Declaration of the 9th Aug. 1623, hereafter mentioned in the Answer to the 5th Article of this Charge. 3. The very day that his now majesty and the duke of Buckingham departed from the Escorial, in Spain, towards England, the said duke solemnly swore to the Treaty of the said Marriage, and the furthering of it all that should be in his power, upon the Holy Evangelists, in the presence of the said earl and sir Walter Aston. 4. The Treaty of Marriage had formerly been signed, sealed, and solemnly sworn to by the king of Spain; and when his majesty and that king took their leaves, the king of Spain did solemnly protest, on the word of a king, faithfully and punctually to perform all that had been



capitulated in the Treaty of the Marriage; and hereupon embraced his majesty at his departure; and the very next day sent a letter unto his majesty all written with his own hand, and protesting to make good all that he had capitulated or promised to his majesty at his departure the day before; so that if there were no true meaning on the part of Spain to make the Marriage, as by Mr. Attorney is pretended, yet certainly the said earl hath not been slightly deceived: neither can it be, as he conceiveth, any fault in him; since not only his late majesty but his majesty that now is, and the duke of Buckingham, being then both upon the place, did confidently believe, (and that upon other grounds than the informations, suggestions, or persuasions of the said earl) that the Marriage was really intended; and to that effect, both his late majesty and his majesty that now is, after his return into England, wrote unto him, the said earl, several letters, assuring him that their intents and pleasures were to have the said Match proceeded in: and thereupon the powers of his majesty then prince, were again renewed, and sent unto the said earl; so that the said earl having so many and so great causes to be assured that the Match was really intended on both sides, he conceiveth it will be hard for Mr. Attorney to make good that part of his Charge, wherein he affirmeth, That the earl should know the contrary, or give assurances upon false grounds, as in the said Article is alleged."

"II. To the Second Article the said earl saith; That he did not falsely, wilfully, or traitorously, or contrary to his allegiance, or the trust or duty of an ambassador, continue the Treaties upon Generalities, without effectual pressing the king of Spain unto particular conclusions, according to his late majesty's instructions or directions; nor intended to have continued the said Treaties upon generalities, without reducing them to certainties or direct conclusions; nor did therein any thing to the dishonour of his said late majesty or to the danger or detriment of his majesty's person, his crown or dominions, or of his confederates or allies, as by the said Article is alledged; but directly denieth all the supposed offences wherewith he standeth charged by the said Article: and, for a clear declaration and manifestation of the truth and manner of his proceedings, that it may appear to this high and most honourable court, how far he hath been from offending in that kind, nor continuing the said Treaties one day longer than necessity enforced, but rather pressing beyond than coming any way short of his instructions and directions: he farther saith, first, as to the continuing of the Treaties upon generalities, that the temporal articles were, by agreement on both sides, not to be treated or settled, until such time as the articles of religion were fully agreed; for that it was held most proper and honourable for both sides, first to see if the difficulties of religion might be reconciled before they passed into further engagements; and the said articles of religion, by

reason of the pope's new demands sent into England by Mr. Gage, were not signed nor condescended unto by his late majesty nor his majesty that now is, then prince, until the 5th Jan. 1622, and then were sent away post out of England to the said earl by Mr. Simon Digby, who arrived with them at Madrid in Spain, about the 25th of the same month: but the earl's care was such to have no time lost in the settling the temporal articles, that before he would condescend (so much as *de leue esse*) unto the articles of religion that they should be sent back again unto Rome, he procured the king of Spain to promise that within the time limited for the procuring of the dispensation (which was by March or April following at the farthest) all the temporal articles should be settled and agreed; to the end the Infanta might be delivered at the spring, as, by the king of Spain's answer in writing, was declared to be that king's intention; and accordingly sir W. Aston and the said earl did, not in general, but most industriously, labour to settle all particular articles, (as they did most of them,) viz. That the portion should be two millions, it appearing that it was so agreed by the late king of Spain, the present king's father; that, the dispensation coming, the desponsories should be within 40 days after, and the Infanta's departure from Madrid should be within 20 days after that; and that don Duarte de Portugal should be the man that should attend the Infanta in the journey: and all other particulars necessary for the conclusion of the said Treaty, were by sir W. Aston, the said earl, and the Spanish commissioners, drawn up into heads in writing; and after many debates they were consulted with that king, and the 2nd of March, 1622, O. S. the conde de Gondomar and the secretary don Andreas de Prada, were appointed to come home to the house of the said earl, to signify unto sir W. Aston and himself, (as they did) that the king of Spain had declared his resolution in all the particulars, and given them order to come to a speedy conclusion with them of all things: and that king's answer to that conclusion the earl saw and read, all written with the said king of Spain's own hand.— On the 7th of the same month of March, the king's majesty then prince, and the duke of Buckingham, arrived at Madrid, and then the Spaniards took new hopes, and the negotiation was put into a new form; so that where it is objected against the earl, that he entertained and continued the Treaty so long upon Generalities, he conceiveth it is not meant of the spiritual articles, for they were such as were sent from Rome to England, and from thence they came to the earl; and for the temporal articles, they not being to be settled or treated till the articles of religion were concluded, he conceiveth it cannot be alledged with any colour, that in them his majesty was entertained with generalities; since from the time that the said articles of religion were brought unto the said earl by Mr. Simon Digby, being about the 25th of Jan. there were but six weeks until the 7th

of March following, when his majesty then prince, arrived in Spain; and in the interim all the above specified particulars were settled: and the time that hath been spent in this Treaty hath not been through his the said earl's default, in continuing upon generalities, without pressing to particulars, but hath been caused as well by difficulties which the business brought with it, as also by exterior accidents, viz. the wars of Bohemia, the death of two popes, and of the late king of Spain, without the least fault of the said earl's, as is acknowledged by his late majesty in the said earl's instructions of the 14th March, 1621; neither could any delay therein be attributed unto him the said earl, for he was employed in those times into Flanders and Germany; and sir Walter Aston and sir Francis Cottington, for the space of three or four years, were resident in Spain; from whence the hopes they gave were upon all the discreet grounds that ministers can expect from a state: but the earl resumed this business only six months before his majesty's coming into Spain; and he was so desirous to see his majesty, then prince, bestowed, that he pressed nothing so much, both to the king and the prince, as that the prince might lose no more time, and rather break the Match with Spain, than suffer any further delays, as will appear by the dispatches from his first arrival at the court of Spain, until his majesty, then prince, his coming; for in his letters of the 20th June, 1622, being the first he wrote after his first audience, he was so desirous that no time might be lost, that in them he craveth leave of his then majesty that in case he should find any delays in Spain, he might (without expecting any new order) take his leave and come home. And upon the return of sir Francis Cottington in Sept. following, he wrote both to the king and his majesty then prince, viz. to the king as followeth: 'I shall presume to add to that which Mr. Cottington shall deliver unto your majesty by word of mouth, of the present state of the Match, what I conceive to be the right way to bring it to a speedy issue; that your majesty will be pleased positively to declare what will do in point of religion, and that you will appoint me a certain limited time, by which this king shall procure the dispensation, or conclude the Match without it; that in case there should be any further delay therein, then, I may declare your majesty disengaged, and free to bestow the prince in such sort as you shall judge most convenient.' And to the prince at the same time he wrote in the subsequent words, viz. 'That which will be necessary for his majesty presently to do on his majesty's part, is to declare himself how far he will be pleased to extend in point of religion, in such form as Mr. Cottington will propound unto your highness; and that he set me a prefixed limited time to break or conclude the Match, either with the dispensation or without it; and for the rest it may be left to my negotiation; but your highness may be pleased to hasten this his majesty's resolution with all possible

'speed.' And the said earl saith: that having received from his said late majesty the resolution in point of religion, and a limited time, according to his desire; he was so precise and punctual therein, that although the making or breaking of the Marriage depended upon it, he would not give one month's longer time, for the procuring of the dispensation, until he had first acquainted his said late majesty therewith, and received his directions under his own hand; as will appear by his said majesty's letters of the 25th Oct. 1622, as followeth:—"Right trusty and well beloved cousin and counsellor, we greet you heartily well. Whereas by your last letters written to our secretary, dated 29th Sept. you are desirous to have our pleasure signified unto you under our own hand, whether we will be contented or not to have a month's longer time for the coming of the dispensation from Rome, than we have already limited unto you, in case they shall there conclude all things else to our contentment, with a resolution to send the Infanta hither next spring; we do hereby declare unto you, that in such case you shall not break with them for a month's longer delay; we also wish you not to trouble yourself with the rash censure of other men, in case your business should not succeed, resting in that full assurance of our justice and wisdom, that we will never judge a good and faithful servant by the effect of things so contingent and variable; and with this assurance we bid you heartily farewell."—And he further said, That when he had agreed unto the Articles of Religion, and that a settled time was appointed for the coming of the dispensation and a conclusion of the Match, although he would bind himself to nothing without his majesty's approbation, yet, for that no time might be lost, he agreed to the propositions, *de bene esse*, sent by Mr. Porter on the 10th Dec. 1622; to the end the Articles might be sent immediately to Rome, without losing so much time as to hear first from England, and humbly moved, that in case his majesty should approve of the said Articles, he would send his approbation directly to Rome, for the gaining of time, which his majesty was pleased to do: and at that time he wrote both to his said late majesty and his now majesty then prince, viz. to his majesty as followeth: 'This is the true state of the business as it now standeth; if your majesty approve of what is done, I hope it will have a happy and short conclusion; if your majesty think it not fit to allow of these articles, I have done the utmost of my endeavours, and shall humbly persuade your majesty not to lose a day longer in the Treaty; so much it importeth your majesty and your kingdoms that the prince were bestowed.'—And to the prince, in letters of the like date, in this sort: I presume now to write unto his majesty that which I think my duty to say likewise unto your highness; That in case you should not approve of what is now conditionally agreed, you permit not a day more to be lost in this

‘ Treaty; for it is of so great consequence that your highness were bestowed, that it importeth almost as much that you were speedily, as willingly, married; but I hope that his majesty and your highness, will in such sort approve of this last agreement, as you will speedily bring this long Treaty to a happy conclusion. I am out of hope of bringing things to any better terms, and therefore I deal clearly with your highness; and do not only most humbly persuade, but, on my knees, beg it of you, that you either resolve to conclude this Match as you may, or speedily to break it off, and bestow yourself elsewhere; for no less than the happiness of your kingdoms, and the security of the king your father and yourself, depend upon it.—All which things being considered, the earl most humbly submitteth himself to the judgment of this most high and honourable court, whether those delays, which several accidents have brought forth in this business, can be attributed to his fault; since, on the one side, he hopeth it will evidently appear unto your lordships, That he ever moved his majesty and the prince to admit of no delays, but rather to think of some other course; and on the other side, it will appear by all his dispatches, that he pressed things with the ministers of Spain to as speedy a conclusion, as the utmost terms of fair negotiation and good manners would bear. And whereas it is pretended that the Spaniards should take occasion, by entertaining the said Treaties, to abuse his late majesty (which he knoweth not) yet he saith, That he used all the industry and vigilancy that a careful minister could do, and got from the Spaniards all the assurances, by oaths, words, and writings, which could be expected from Christians, the which he faithfully, without adding or diminishing, represented unto his said majesty; and his said majesty in those times, was pleased to conceive upon those assurances, that they dealt really with him: and he conceiveth that his majesty that now is, then prince, and the duke of Buckingham, were pleased to write as much to the late king’s majesty, at their first coming into Spain; and that all which the said earl had written touching that employment, was there avowed by the conde D’Olivares, and conde de Gondomar, to the said prince and duke, at their arrival at Madrid; and he hopeth that, when his dispatches are perused, it will appear and be adjudged, That he served his majesty with some measure of vigilancy, as well as fulness of fidelity.”

“ III. To the Third Article the said earl saith; That he did not, either by word or letters to his late majesty or his ministers, extol or magnify the greatness or power of the king of Spain; nor represented to his late majesty the supposed dangers, that would ensue unto him if a war should happen between him and the said king of Spain; nor affirmed, nor insinuated, as in the said Article is mentioned, to any such intent as by the said Article is alleged. But if he did at any time speak or write of the power or greatness of the king of

Spain, or represented any dangers to his late majesty that might ensue, by entering into hostility with the said king, it was as a faithful counsellor and servant to his muster, by way of advice and opinion, which he ever delivered sincerely, faithfully and truly, according to the present occasion; and in no wise to any such intents as in the said Article is mentioned, nor to any other evil intent or purpose whatsoever. But he hath been so far from dissuading his late majesty to take arms, that he hath upon all just occasions advised, that all fitting preparations for war might be made, as (beginning with the year 1621, from which time he is only charged,) will appear by his speech in parliament presently upon his return out of Germany, ‘ That he hoped his majesty would rely no longer upon single treaties, but make all fitting preparations for a war, and that the parliament would enable his majesty thereunto:’ and by the care he took before his going again upon his ambassage into Spain, that the establishment of an army, under his majesty’s own standard, of horse and foot, and in his own pay, might be fully settled and provided for, as likewise his advice to the lords of the council, that his majesty might have a curb upon the king of Spain upon all occasions, by continuing of sir Rob. Mansel’s fleet upon the coasts of Spain, as will appear by his letter written from Vienna, 26th July, 1621, mentioned in the Answer to the first Article: by all which it will appear that he laboured and endeavoured, as much as in him lay, that his majesty might be well prepared for any occasion of war which should happen; and he no way remembereth to have discouraged, or to have spoken or written any thing that might have been understood to have tended to the discouraging, his said late majesty from the taking of arms or entering in hostility against Spain: or for resisting of him or his forces from attempting the invasion of his said late majesty’s dominions, or the dominions of his late majesty’s confederates, friends, or allies, as by the said Article is charged against him; nor remembereth that he hath had any cause so to do: but if he hath in any kind spoken or written of Spain, or the power of it, it may have been to his late majesty or to his majesty that now is, by way of discourse, speaking of the solidness of the Spanish proceedings, of their serious and deliberate debating of business before they resolved upon them, and of their constant pursuing of them when they were once resolved; wishing that England and other nations would herein imitate them; for that he supposed the right way to impede the Spanish greatness, was to grow as wise as they, and so beat them at their own weapons: but, otherwise, he is confident he hath never been heard to speak, or write, any thing that might give any terror or discouragement to his late majesty; or his chief ministers; knowing that England need but little fear the power of Spain, having almost in all attempts and enterprizes won honour upon them. And as for his representing the dangers

that might ensue upon a war, though he knoweth not what is aimed at in that particular, yet he is most confident, out of the integrity of his own conscience, that he hath neither said or advised any thing but what befitted a faithful counsellor and an ambassador; which was truly to deliver his opinion as he understood it upon the present occasion: and as for the affirming that his majesty's quiet should be disturbed, and he not permitted to hawk or hunt, he remembereth not what discourse he may have had or written to any person how fit it might be, upon the being embroiled in so great a war, seriously to attend it, and make it our whole work: but as he is confident it will appear, that what discourse soever it may have been, it wanted not the true zeal and affection which he hath ever borne to the king's service: so he hopeth it will be found not to want that due respect and reverence, on his part, which he ought to shew to so gracious a master; neither can it be conceived, that the considerations of hunting, hawking, or ease, should be considerations worthy so great and prudent a king, to withhold him from a war for the good of Christendom and his kingdoms, if he should be unjustly provoked thereunto.

“ IV. To the Fourth Article the said earl saith;—That he did not any thing contrary to his duty and allegiance, or contrary to the faith and trust of an ambassador, as by the Article is alledged; but did endeavour the service and honour of his late majesty, and no corrupt or sinister ends of his own, or his own advancement, as by the Article is alledged. And as for the conference which is pretended he should hold concerning the Treaty, that being told there was little probability that the said Treaties would or could have good success, and that he should acknowledge as much; and yet say that he cared not what the success thereof would be, but that he would take care to have his instructions perfect, and to pursue them punctually; and would make his fortune thereby, or words to that effect; he doth not remember to have held any such discourse, though it is true, that the time hath been, many years since, when he thought the Match very unlikely to be effected, in regard of the unequal Answers which were given in prince Henry's time, and the unlikelihood of accommodating the differences of religion and faith. Further, as to the reviving of the said Match for his majesty that now is, that in the first he wished and advised a Protestant Match; but, in the duty of a servant, understanding that both their majesties really desired the Match with Spain, he did seriously and faithfully intend the service and honour of their majesties, and effectually endeavoured to procure their ends; and it is very likely he might say he would get his instructions perfect, and to pursue them punctually, as he conceiveth was lawful and fit for him to do; but for the latter part of this conference, that he should say he would make a fortune by it, or any words to that effect, he was in the year 1641, and ever since, of that rank and quality, both

in regard of his employment, fortunes, and his master's favour, that he assureth himself he did not; and dare answer so far for his own discretion, that it was impossible for him to hold so mean and unworthy a discourse.

“ V. To the Fifth Article the said earl saith;—That he did not intend or resolve, that if the Marriage in the former Articles mentioned should have been effected, that thereby the Romish religion or the professors thereof should be advanced; or the true religion and the professors thereof discouraged or discountenanced, as by the said Article is alledged; nor did he, to any such end or purpose or otherwise, at any time, counsel or persuade the late king's majesty to set at liberty the Jesuits and priests of the Romish religion; or to grant or allow unto the Papists and professors of the Romish religion a free toleration or silencing of the laws made and standing in force against them, as in the said Article is also alledged; but contrarily, upon all occasions, to the utmost of his power, did labour to prevent all the inconveniences in point of religion, that might come by matching with any princess of a differing religion; as well appeareth by a Paper of his own opinion, That his majesty should marry with a lady of his own religion, as hereafter mentioned in his Answer to the 7th Article: and for further proof thereof he saith, that in the whole Treaty with Spain he ever stood stricter in point of religion than by his instructions he needed to have done, as will appear by the testimony of sir W. Aston, and his dispatches 12th December 1622, and other dispatches, which he desireth may be read: and as for counselling or persuading to set at liberty Jesuits or priests, he utterly denieth to have done any such thing, as before he hath answered; although it be true that the embassy of Spain being far different from employments in other places, where there is a body of our reformed religion, and where his majesty hath kindred and allies, whereby his majesty's ministers may be informed of the necessary occurrences of state, without the help of a priest or Jesuit; but in Spain there being none but Roman Catholics, nor any other manner of correspondency or intelligence but by them, the ambassadors must make use of all sorts of people, especially of Jesuits and priests; and to that purpose ambassadors thither have always a particular warrant under the king's hand, to treat and make use of priests, Jesuits, and all other sorts of men, unless it be such as he proclaimed rebels; and divers times the ministers employed in Spain, to gratify some whom they there employed for the king's service as he believeth, at their particular suit, moved his majesty to extend grace and favour to some particular friend or kinsman of theirs, being a Roman-Catholic and imprisoned in England; and this he remembereth to have happened to others, but doth not remember to have written himself to his late majesty in that kind: and, as concerning his advice and counsel to set at liberty Jesuits and priests, the granting to the Papists a toleration, or a silencing of the

laws against them, he saith, That his late majesty was engaged by the Treaty of Madrid in 1617. in divers matters concerning religion, as likewise by promises to the comde de Gondomar, and his letters to the king of Spain, of the 17th April, 1620, wherein he is pleased to promise some particulars in favour of Roman-Catholics, as by the said letter will appear. And, notwithstanding the said earl had sufficient warrant, under the king's own hand, to assure the king of Spain, that whatsoever was agreed in the said Articles, or in the said letter, his majesty would sincerely perform; yet the said earl was so cautious in that point, that when, for the conclusion of the Match, the other articles of religion being all agreed, it was pressed by the Spanish ministers, that a clause, if convenient, might be inserted, with protection, that the form and way thereof should be wholly left to his majesty's wisdom and clemency; and that his majesty's Roman Catholic subjects should acknowledge this grace only to come from the king's mercy and goodness; yet the said earl would not descend or assent therunto, but only *de bene esse*, as by his letters to Mr. Sec. Calvert, bearing date 8th Oct. 1622, will appear; thereby to give his majesty time to take it into consideration, before he would engage or bind him in this point.—And the said earl saith, That he did not by letters, or otherwise, ever counsel or persuade his late majesty to grant unto the Papists and professors of the Romish religion, a free toleration or silencing of the laws made and standing in force against them, but ever protested against any such toleration; and when any such proposition hath been offered to be made in Spain, he hath ever refused so much as to give ear unto it, or to suffer it to be propounded; although it be true he hath since seen a writing touching Pardons, Suspensions, and Dispensations, for the Roman Catholics, bearing date 9th Aug. 1623, signed by the lord Conway and others in England, where-with he was never acquainted; which paper is that which followeth:

**The Declaration touching the Pardons, Suspensions, and Dispensations of the Roman Catholics.**

For the satisfaction of their excellencies, the marquis Ynojosa and Don Carlos de Colonia, the lords ambassadors for the king of Spain; and to the end it may appear that his majesty of Great Britain will presently and really put in execution the grace promised and intended to the Roman Catholics his majesty's subjects, and of his own grant more than he is tied to by the Articles of Treaty of Marriage.—We do declare in his majesty's name, That his majesty's will and pleasure is, that a legal and authentical pardon shall be passed under the great seal, wherein shall be freely pardoned all those penalties, forfeitures and seizures, indictments, convictions, and incumbrances whatsoever, whereunto the Roman Catholics are liable or have been proceeded against, or might be, as well priests, as others, for matters of con-

science only, and to which the rest of his majesty's subjects are not liable. And to the end his majesty may make himself clearly understood, where it shall happen that any of those forfeitures and pecuniary mulcts have been given away under his majesty's great seal; his majesty will not hide that it is not his power so to make void those letters patent, except they be voidable by law; and thereby his majesty is well pleased that all Roman Catholics may in these cases plead in law, if they find it good, and shall have equal and legal trial. And his majesty is likewise pleased that his general pardon shall remain in being five years, to the end, all that will, may in due time take it out; and his majesty will give order for the comfort of the poorer sort, that the pardon shall not be costly, but such a course shall be taken as was in a like occasion at his majesty's coming into England; so that it shall be lawful to put as many as are possible into one pardon.—And we do hereby declare, That his majesty's will and pleasure is, to the end the Roman Catholics his majesty's subjects may have a present and immediate fruition of as much as is intended them by the Articles of Treaty of Marriage, to cause a present suspension under his majesty's seal of all those penal laws, charges and forfeitures, whereunto the Roman Catholic subjects of his majesty have heretofore been subject, and which the rest of his majesty's subjects have not been liable; and in the same grant and under the same seal, to give a dispensation and toleration to all the Roman Catholics his majesty's subjects, as well priests, as temporal persons and others, of and from all the penalties, forfeitures, troubles, and incumbrances, which they have been or may be subject to by reason of any statute or law whatsoever, to the observation whereof the rest of his majesty's subjects are not bound. We do likewise declare, that his majesty hath promised on his royal word, that the execution shall be no ways burthensome or penal to the Roman Catholics, but that for the manner of privileging, and freeing them from that, he must confer with bishops and advocates, into which he will presently enter and expedite by all means.—And we do further declare, That his majesty's intention is presently to pursue his former directions (which had been before executed if their excellencies had so thought good) to put under his seal severally the said pardon and suspension, and dispensation; and that his majesty's attorney and learned counsel shall have referred to them the charge to open them with all those effectual words, clauses, expressions, and reservations, which may presently give fruition to the Roman Catholics his majesty's subjects, and make them available in the fruition of all that is intended and promised by his majesty in the Articles of Marriage, and his majesty's further grace.—And we do declare, That his majesty's further will and pleasure is, for the better satisfaction and discharge of the care and endeavour of their

‘ must be of necessity for the exercise of her religion for herself and family, within your highness’s courts, and thereby by degrees these two different religions shall grow to an equality of power; it will be great hazard and disquiet to the state, and not to be redressed without great danger, and courses of more violence, than is usual for this state to put in practice. But in case his majesty out of his wisdom and consideration best known to himself, hold it fittest that your highness match with France or Spain or any other catholic, either for that the present time affordeth no protestant princess, who is for years or blood suitable for your highness, or that can in any considerable measure by the portion, supply his majesty’s present wants, I then conceive that the match by which this state shall suffer least inconveniency and cumbers, and whereby his majesty’s necessities shall by the greatness of the portion be the most relieved, is with Spain, if such a match may be made with such conditions of religion, as other catholic princes will contract themselves withal.—Thus much I thought fit humbly to present unto your highness, for that I see my employment liable to the censure of many worthy persons, with whom, though I concur in my opinion, yet I seem much to differ from them many ways; for that it is more proper to me to be true to my master’s ends and services, than by the declaring this, to procure their satisfaction: Only to your highness I thought fit to make this declaration, and shall be a suitor to you for your favour, as you shall see me really labour to put this in effect. And if his majesty shall, either upon motion of parliament, or any other proposition that can be made unto him, think fit to proceed with a protestant match, as I shall wish as well unto it as any man living, so, I hope, in such sort to manage the present business that I have in hand, that it shall rather much further, than any way cross or hinder it. But in case his majesty shall not be drawn to any proposition for a protestant match, I then conceive, that your highness both doth, and will approve, that I really and effectually labour to procure a match for your highness in Spain, upon such conditions, in point of religion and portion, as to his majesty shall seem fit.’

“ Besides which declaration of the said earl’s opinion, he hath all his life, in all places, lived and avowed himself a Protestant, never having done the least act that was not suitable to the same profession; and that in all his foreign employments, for the space of fourteen years, of more than 500 persons of all qualities that have attended him, there was never any one perverted in his religion, save two Irish footmen, who in Ireland had been bred Papists: and he humbly desireth the testimony of Dr. Mawe and Dr. Wrenn, and of Mr. Sampford, one of the prebends of Canterbury, Mr. Boswell, parson of St. Lawrence in London, and Mr. Frewen, divinity-reader in Magdalen-Col-

VOL. II.

lege in Oxon, (all of whom were his majesty’s chaplains in Spain) as well for the frequent use of the sacrament, and constant profession and exercises of religion; and the testimony also of such catholics as are known to have been his ancient acquaintance and friends, and to examine them upon oath, whether either publicly or privately, in Spain or in England, they have known him in any kind to make shew, or so much as forbear upon all occasions avowedly to declare the religion that he professeth; and that the said Mr. Frewen and Mr. Wake, his now chaplains, may be also examined, whether in extremity of several sicknesses, whereunto he hath of late years fallen, he hath not ever settled his conscience with them towards God, and made a confession of his faith, resolving as befitted a Protestant and a good Christian.

“ VIII. To the Eighth Article the said earl saith:—That he did not at any time, or in any place, endeavour to persuade the prince to change his religion, and to become a Roman Catholic, or to be obedient to the usurped authority of the pope of Rome; neither did the said earl, to that end or purpose, or otherwise, use unto his majesty, then prince, the words in the Article mentioned, viz. “ That the state of England did never any great thing, but when they were under the obedience of the pope of Rome, and that it was impossible they should do any thing of note otherwise,” as in the said Article is charged: but the said earl acknowledgeth, that upon occasion of a letter, which came to his majesty then prince, putting his majesty in mind of the great actions of his royal progenitors in the Holy Wars; and that the great kings of those times did not only employ their forces, but, in their persons, went into the Holy Land; the earl believeth, that, by way of discourse only, and not otherwise, he may have said, that in regard of the difference of religion, it were of more difficulty to undertake such great actions now than in former ages; and it might well be instanced in the present Treaty of Marriage, wherein the pope’s consent was to be obtained; and to this effect, and upon the like grounds, he was confident there were very many that have, may few of nearness about his late majesty that have not often heard his majesty say, that he was the true martyr, that suffered more for his religion than all the princes of Christendom besides; instancing in divers particulars, but especially in that he could not match his children with kings of their own rank, without the pope’s leave. But the said earl saith, That he never alledged any such thing to other purpose, than to shew that only conscience and love to truth, (in which regard protestants suffered much) and not any temporal respects, made us constant and zealous to the profession of our religion; by which discourses he ever attributed much to the sincerity and honour of the protestant religion; but never used it as an argument to persuade, as in the accusation is insinuated. Besides, he conceiveth, that, by way

of Answer thereunto, the same question may be asked which his majesty was pleased to ask of the said earl in the 7th Article, viz. 'What the said earl saw in his majesty that he should think him so unworthy as to change his religion for a wife, or any earthly respect whatsoever?' So why should it be thought, that the becoming more fit to undertake great actions in the world, (being a mere moral temporal respect) should be an argument to persuade, in conscience, so religious and wise a prince, and so well instructed as his majesty is; as though the soul of a Christian prince was to be wrought upon, in point of truth and belief, by temporal and worldly respects of conveniences and greatness. It were necessary, for proof of this assertion, 'The earl's persuading his majesty touching his religion,' to produce some arguments that he used out of the scriptures to satisfy him, in point of conscience, in some tenet of the Romish church; or that he procured any conference with learned men for his satisfaction in point of religion; otherwise, the argument used in this Article against the said earl doth, as he conceiveth, carry little strength to prove the charge of persuading of his majesty either in regard of itself, or indeed in regard of his majesty's piety."

"IX. To the Ninth Article the said earl saith, That there was a discourse in Spain, of the way of accommodating the prince Palatine's affairs; and, by way of discourse, it was moved, That the marriage of his eldest son with a daughter of the emperor, and his son to be bred in the emperor's court, would be the fairest way for pacifying and accomodating those businesses; and the earl, by way of such discourse, and not otherwise, did say, That he thought his late majesty would not be averse, either to the said Match or the breeding of the prince Palatine's son with the emperor: so as thereby the whole patrimonial estate of the prince Palatine, with the dignity electoral, might be fully restored; that his son might be brought up in his own religion and have such preceptors and such a family as his said late majesty and his father, (meaning the prince Palatine) should appoint, and they to have free exercise of their religion; for so his late majesty had often declared himself to the said earl, and wished him to lay hold of any occasion for entertaining of any such proposition; and otherwise than so; and upon the terms aforesaid, and by that way of conference and discourse only, he delivered not any opinion to his majesty at his majesty's being in Spain; for the said earl is very confident that his majesty was returned out of Spain, before any proposition was made for the said Marriage, other than by way of discourse as aforesaid; the same as the said earl believeth, being first moved and debated on, by way of proposition, here in England betwixt Mr. Secretary Calvert and the ambassador of the king of Spain, about the 2d of Oct. 1623; and his late majesty upon relation made unto him by a letter of Mr. Secretary Calvert, approved of the proposition, and declared the same to be the only way, as he

sepossed with honour, to accommodate those great businesses; and wrote to that purpose to his son-in-law, the prince Palatine, by his letter, dated 19th Oct. 1623, a copy of which letter together with a copy of Mr. secretary Calvert's relation, the lord Conway by his late majesty's commandment, sent unto the said earl, the tenor of which, translated out of French, is as followeth:

'We have thought good, that we may provide best and most soundly for your affairs, not only to procure, but also to assure your peace, were to cut up by the very roots that evil which hath been settled in the heart of the emperor, by the great displeasure and enmity he hath conceived against you. For the removing and quite extinguishing of which, it seemeth to us no better or more powerful means can be used, than a good alliance, which may be proposed by us between your eldest son, and the daughter of the said emperor, upon the assurance we have, we shall not be refused in this nature, if you on your part will give your consent. And for the more surety of the good success thereof, we are determined, before any such proposition be made to the emperor, to interest the king of Spain with us in the business, who, we trust, will lend us his helping hand, as well for the effecting of it, and bringing it to a good conclusion, as in procuring likewise, that the condition be duly observed. Amongst which conditions, if it happen that the emperor should demand, that your son, during his minority, should be brought up in his court, we shall tell you, that we, for our own part, see no reason why you should stick at it, upon such conditions as he might be tied unto, to wit, That the young prince should have with him such governor, as you shall please to appoint him, although he be no Roman Catholic; and that neither he, nor any of his, should be any way forced in matter of their conscience. And our meaning is, so to order our proceeding in this Treaty, that before your said son be put into the hands of the emperor, he will have a clear and certain assurance of an honourable, entire, and punctual restitution of all whatsoever belonging to you: As also we will take care to provide accordingly, as fully and exactly for the assurances requisite for the liberty of conscience, for him and his domesticks, as they have done here with us touching those that have been granted them for the Infanta. And therefore seeing there is no inconvenience at all, that may cause your averseness or backwardness in this business, which we, for our parts, think to be the best, shortest, and most honourable way that you can take, for the compassing of the entire restitution, and making your peace sure with the emperor, we hope your opinion will concur with us therein, and shall intreat you, by the first, to send us your answer.'

By which letter, written after his majesty's coming out of Spain, it appeareth unto your lordships that there was no proposition of the

Marriage betwixt the son of the prince Palatine and the emperor's daughter when that letter was written: for therein his majesty saith, he was determined to interest the king of Spain in the business before any such proposition should be made to the emperor: and it will also thereby appear, what his late majesty's opinion was of the conveniency thereof, which he, the said earl, hopeth will acquit him, if, by way of discourse only, he declared what he knew was his majesty's inclination; which with honesty, he could not have concealed. And the said earl saith, That he doth not remember what answer sir Walter Aston made upon that discourse which he then delivered, nor what replies the said earl made; but sure he is, that whatsoever the said earl said, or what answers or replies soever were made, as it was by way of discourse, and not otherwise, so it was according to that which he then truly conceived to be the best and easiest way to accommodate the business, and to be his majesty's pleasure, which the said sir W. Aston might be ignorant of, as he is confident he was; and not out of any disaffection to our religion, or any sinister respect or regard to the house of Austria, as by the said articles is intimated; for he did not conceive the breeding of the Palatine's son with the emperor, having a governor appointed by his late majesty and his father, and he and his domestics to have the free use of their own religion, to be a matter of impossibility, or of such dangerous consequence in point of religion, as to imply his conversion, as by the articles is intimated; well knowing that, in the emperor's court, all princes there, though his prisoners, and others his counsellors and servants about his person, and of great command in his armies, being avowed protestants, have the free use of their religion: and it is not to be supposed that the son of the prince Palatine, grand-child to the king of Great Britain, should be matched, and no care taken to capitulate for the use of his religion, it being ever granted to the meanest princess that is bestowed; and his majesty's special care in this point is fully seen in the said letter."

"X. To the Tenth Article the said earl saith, That by comparing the above Article, of his too much forwardness, with the second, whereby he is charged with 'continuing the Treaties upon generalities, without reducing them to certainties and direct conclusions, your lordships will perceive how impossible it was for him to avoid exception: but for direct answer to the present Charge, he saith, That he did not presumptuously, nor to his yet knowledge, break his instructions, nor set any day at all for the desponsories; but was therein merely passive, in admitting the day nominated by the king of Spain, according to the capitulation long before made; nor did he presumptuously, wittingly, or willingly, disobey any commandment or direction of his late majesty or his majesty that now is, then prince, which he could understand not to be countermauded, or, by precedent or future instructions, otherwise

explained. And for the better manifestation of the truth of his proceedings in and concerning the same, he saith, That on the day of the departure of his majesty, then prince, from the Escorial in Spain, his highness delivered unto him, in the presence of the commissioners on both sides, the powers, with public declaration taken in writing by Serica, secretary to the king of Spain, of the prince's pleasure, and how he, the said earl, should use them, viz. That he should deliver them unto the king of Spain, upon the coming of the dispensation cleared from Rome, according to that which had been agreed, which was to have been within ten days after the coming of the said dispensation. And he further saith, That it is true, that the prince afterwards, by his letters, sent by one Mr. Clark, commanded him, the said earl, not to deliver the said powers till he should have received security that the Infanta, after being betrothed, should not enter into any religious order; and that before he proceeded, he should send unto his majesty then prince, such security as should be offered, that he might judge whether it were sufficient or not; whereupon the said earl, as became a faithful servant, presented unto his late majesty and to his majesty that now is, then prince, such assurances as were offered unto him for securing of that point, together with such reasons as, he conceived, were fit to be offered to their considerations; which gave unto his late majesty and his majesty that now is, then prince, such satisfaction, as they were pleased to dispatch a post presently unto him, absolutely discharging him of that commandment; as by their several letters, dated the 8th of Oct. 1623, will appear: as followeth,

"We have received your letters by Grisley, and the copy of them to our dear son; and we cannot forbear to let you know, how well we esteem that dutiful, discreet, and judicial relation, and humble advice to our son: whereupon, having fully deliberated with ourself, and communicated with our dear son, we have resolved, with the good liking of our son, to rest upon that security, in point of doubt, for the Infanta's taking a religious order, which you, in your judgment, shall think meet."

"And by that other Letter of his majesty that now is, then prince, as followeth; viz.

"Your letter to the king and me, concerning that doubt I made after I came from St. Laurence, hath so satisfied us both, that we think it fit no longer to stick upon it, but leave it to your discretion to take what security you shall think fitting."

"Hereby the said Earl was absolutely freed from that commandment; and being so freed thereof, he then remained under the order which his majesty then prince, had left with him at his departure; which was to proceed according to the capitulations, and his highness's declaration when he delivered the said powers unto him; and so he intended to have done, till, by his highness's declaration, of the



as appeareth by his late majesty's letters of the 7th Jan. 1622.—Concerning the Temporal Articles, the said earl saith, When the desponsories were formerly appointed to have been, as he remembereth, on the 9th Aug. before the departure of his majesty then prince, (which was only hindered by the not coming of the dispensation) the prince appointed him and sir W. Aston to meet with the Spanish commissioners; and they drew up the heads of the Temporal Articles, wherewith the prince and duke of Buckingham were acquainted; and in case the dispensation had come, and the desponsories been performed on that day, there had then no other provision been made for them before the Marriage; but presently upon the prince's departure, he, the said earl, caused them to be drawn into form, and sent them to his late majesty the 24th Sept. 1623, desiring to understand his majesty's pleasure with all speed, especially if he disapproved any thing in them; but never received notice of any dislike thereof until the aforesaid letters of the 13th Nov. 1623, which put off the desponsories. So it appeareth the said earl was so far from breaking his instructions, or from having any intention to have proceeded to the execution of the desponsories, before his majesty and the prince were satisfied in the point of the Infanta's entering into religion; or before convenient assurance as well of the restitution of the Palatinate as for performance of the Temporal Articles, that he deserved, as he conceiveth, (under favour) no blame, so much as in intention: but if he had erred in intention only, as he did not, and the same never reduced into act, the fault, as he conceiveth, was removed by his obedience before the intention was put in execution; for so it is in cases towards God himself.—And as to the matter of aggravation against him, 'That he appointed so short a day for the desponsories, as that without extraordinary diligence, the prince had been bound.' he thereto saith as before, That he set no day thereto at all, nor could defer it after the dispensation came from Rome, without a direct breach of the Match so long laboured in, and so much desired; yet he and sir W. Aston used all possible industry to discover how the motion of deferring the Match would be taken; and finding an absolute resolution in the king of Spain to proceed punctually in requiring the powers, according to the capitulations, within ten days after the coming of the dispensation: and at that time also getting advertisement from Rome, that the dispensation was granted, and would presently be there: he, the said earl, to the end that, in so great a case, he might have a clear and undoubted understanding of his late majesty's pleasure, sent a dispatch, of the 1st Nov. with all diligence to the king; letting his majesty know that it would not be possible for him to protract the Marriage above 24 days, unless he should hazard the breaking of it, for which he had no warrant; but that this was no new resolution, nor the

king so straitened in time as by the said Article is pretended, will appear by the said earl's dispatch of the 24th Sept. 1623; in which, upon the scruple that was then made of the Infanta's entering into religion, he wrote to the same effect, viz. "That if the dispensation should come, he knew no means how to detain the powers above 24 days." So that although that difficulty happened not until about the middle of Nov. 1623, yet it was foreseen that it must of necessity happen whensoever the dispensation should come; and there was warning of two months time given thereof; viz. from the 24th Sept. to the 29th Nov. which was the time appointed for the desponsories: so he humbly submitteth himself to your lordships which of the two ways was the safer and most dutiful for him to take; whether upon inferences and conjectures, to have overthrown so great a business; or, on the other side, first to have presented to his majesty with truth and sincerity, as he did, the true state of his affairs, with his humble opinion therein; with an intention, if his majesty should resolve to break the Match, that, for the said earl's honest discharge of the public trust reposed in him, when the powers were deposited in his hands, and for his sufficient warrant in so great a cause, his majesty would be graciously pleased to give him clear and express orders, which he then had not; and, in the interim, whilst his majesty might take into consideration the great inconveniences that might ensue, the said inconveniences might be suspended; and the business kept upon fair terms, that his majesty might have his way and choice clear and unsoiled before him; and as for the evil consequences which are pretended would have followed, if the said earl had proceeded to the consummation of the Match before he had express warrant to the contrary, he must, and doth confess, he then understood the clean contrary; for he supposed that his majesty should speedily have seen the Marriage (which he had so long sought) effected, and the prince should have a worthy lady whom he loved; that the portion was much greater than was ever given in money in Christendom; and that the king of Spain had engaged himself for the Restitution of the Palatinate; for which the said earl conceived a daughter of Spain and two millions had been no ill pawn, besides divers other additions of advantage to the crown of England: whereas, on the contrary side, he foresaw the prince would be kept at least one year longer unmarried, a thing which highly concerneth these kingdoms; he doubted that the Recovery of the Palatinate from the emperor and duke of Bavaris, by force, would prove of great difficulty; and that Christendom was like to fall in a general combustion; so desiring that his majesty should have obtained his ends, and have the honour and happiness not only to have given peace, plenty, and increase to his own subjects and crowns; but to have compounded the greatest differences that had been these many years in Chris-

tendom; and, by his piety and wisdom, to have prevented the shedding of so much Christian blood, as he feared would ensue, if these businesses were disordered. These reasons he confesseth, and his zeal unto his majesty's service, made him so earnestly desire the effecting of this business: and he cannot but think himself an unfortunate man, that his majesty's affairs being so near the settling to his majesty's content, as he conceived they were, and hoping to have been to his master not only a faithful but a successful servant, to see the whole state of affairs turned upside down, without any the least fault of his; and yet he the only minister on the English or Spanish side, that remaineth under disgrace.

"XI. To the Eleventh Article the said Earl saith, That the said Article is grounded upon a Petition, preferred by him to this most honourable house, supposed to be scandalous; which your lordships, as he conceiveth, according to the custom and privileges of the house of peers, would have been pleased first to have adjudged so to have been, either for matter appearing in itself, or upon hearing of the said earl; for if the matter appearing in the Petition itself be not excepted unto, it cannot, as he conceiveth, by collateral averment, be taken for a scandal, till it be examined and found false: but, for a plain and direct Answer thereunto, he saith, That the said Petition doth not warrant any such inference, as by the said Article is enforced; and that he hopeth to justify the contents of his said Petition in such sort as shall not displease his majesty nor deserve that expression which is used in the Charge; but contrarily, what he hath said, or shall say therein, in his defence, shall, in all things, tend to the honour and service of his most royal majesty, by reducing unto his memory divers circumstances, and laying before him the passages of divers particulars, which, by undue practices, have been either concealed from his majesty or misrepresented unto him.

"Having thus offered unto this high and honourable court such proofs and reasons as, he hopeth, shall, in your lordships wisdom and justice, clearly acquit him of any capital crime, or wilful offence: if it shall appear that, out of error or judgment, too much fervency of zeal to his majesty's service, or ignorance in the laws, wherewith he hath not been able to be so well acquainted as he ought, by reason of his foreign employments for the space of 14 years, or by any other ways or means, he hath fallen into the danger of the laws, for any thing pardoned in the general Pardon made in the 21st year of our late sovereign lord king James of England, of blessed memory, he humbly prayeth allowance of the said Pardon, and the benefit thereof; with this clause, That he doth and will approve that he is none of the persons excepted out of the same; and though he is very confident that he shall not need the help of any Pardon, having received several significations, as well from his majesty's own mouth, that he had never offended his majesty, as lately

by several letters from the lord Conway, that he might rest in the security he was, and sit still, and should not be further questioned; yet he hopeth your lordships will find him so free from blame, that he shall need no Pardon: but he hath served his late majesty of blessed memory, and his most gracious sovereign that now is, with fidelity, care, and industry; and that your lordships will take such course, as you, in your wisdom, shall think fit, not only for the upholding of the honour and reputation of a peer of this realm, after so many employments, but will likewise become humble and earnest suitors to his majesty on his behalf, (which he humbly prayeth) that he may be restored to his majesty's gracious favour, which, above all worldly things, he most desireth."

The Earl of Bristol's Answer being ended, the lord keeper demanded of him if he had any thing more to say. Whereupon the Earl complaining of the inequality between himself and the duke of Buckingham, and that, by reason of his restraint, he was disabled from proceeding against the duke, and that his counsel was disheartened to give him their free advice; he earnestly urged their lordships promise to make them both equal: and said, That his counsel informed him there was no treason in all the Charge against him, save only what came near a statute touching religion, which he humbly submitted to the house; and besought their lordships to take some course, by the resolution of the judges, or otherwise as they should please, that it may be declared whether his case be treason or not, before he be further proceeded with: likewise, that he might have liberty to examine his witnesses, and that Mr. Attorney might not take hold of any matter of form or legality to his prejudice.

To this Mr. Attorney replied, "That he would not, but only insist upon the matter of the Charge;" and desired, as the earl had done, that the house would direct the course how the witnesses might be examined, and the manner of his further proceeding against the said earl. The earl being withdrawn, the house agreed to give his counsel encouragement for their free and faithful advice to him; and it was further ordered that the said earl should have liberty to go abroad in the custody of Mr. Maxwell, the usher, to take the air for his health's sake; which was granted at his humble request. The Earl being called in again was made acquainted with this order, as the king's own consent, for which he returned his majesty and their lordships his most humble thanks.

ANSWER\* to the Articles of Impeachment.

June 8. The duke of Buckingham gave in

\* While under impeachment the Duke was elected Chancellor of the University of Cambridge, which much offended the Commons, but pleased the King. See 2 Cobb. Parl. Hist. 164, 1 Rushw. 371 et seq.

his Answer to the house of lords concerning the Articles of his Impeachment, see p. 1307. But before he delivered it, he made the following Speech:

“ My Lords, In a case of pressure considered by itself, I have a fair beginning; as it is a debt due to your lordships for this noble favour in leaving it to my choice, whether I would answer to every particular in the aggravation, or not. I may without lessening any obligation, say, the favour is of greater extent than at first may be imagined; for what is my cause now may be yours or your posterities hereafter. I have in a manner tied myself only to my Charge, hoping, if I give your lordships satisfaction in that, the aggravations will fall of themselves. I could not well have followed the aggravations, being composed of words, which, I hope, my actions have not deserved, and I am sure my ears have not been acquainted with, without some distraction of spirit: yet I have left nothing of them unanswered that is material. I have used as much speed to come to my Answer as conveniently I could, without prejudice to my cause, having already had my reputation too long upon the stage; and had your lordships called for it sooner, I had been as ready as now I am desirous to detain your lordships as little as may be, with the expectation of my particular, from weightier business. I was also grieved that my business should be the cause of the loss of this year for foreign attempts, and the hindrance of those resolutions that would have comforted our friends abroad, and secured ourselves at home: but, in this, my lords, I am sure, you will easily acquit me in your thoughts. When I look upon my Charge in general, as the commons did, without searching into the integrity of my own heart and actions, which are yet unknown to most of them, I wonder not so much at their proceedings, the particulars not being voted against me unanimously; but, had they taken the means to have been better and more truly informed of the particulars, or had given me cause to have informed them, I assure myself they had not troubled your lordships with this Charge. I confess there hath been that contestation in the house of commons concerning my justification, that I cannot but acknowledge much favour there from many, and if the actions of some others of that house do not make them conclude me of a worse disposition than I shall hereafter be found, there is none but may say with me, ‘ I am at peace with all.’ I shall now, for the present, only apply myself to the clearing my reputation, and for the future to those actions and endeavours which may repossess me of that I have accounted one of my greatest losses, their good opinions. I would not speak nor profess this before your lordships, if reason and my own disposition did not warrant the performance of it. For, first, who accused me? Common Fame. Who gave me up to your lordships? The house of commons. The one is too subtle a body, if a body; the other too great a one, for me to contest with: I am confident, when my Cause

shall be tried, neither the one or the other, or part of either, will be found to have any ground to be my enemy. But as Fame is subtle, so it is often, and especially in accusations, false: therefore though the house of commons have not willingly wronged me: yet I am confident it will at length be found, that Common Fame hath abused both them and me. I presume the house of commons have proceeded against me, out of an hearty and zealous affection, to do their king and country service; and, I hope, out of Christian charity, to punish or amend my faults, (if Fame could have proved them) and not to ruin my reputation, or destroy my fortune. I shall never call such proceedings wrong, which, seeking to cure my errors, give me opportunity to clear and publish my innocency. For the state itself, I have a little to say: it is but a little: I will not abuse your lordships patience. I was born and bred in it, I owe it my life. I have been raised to honours and fortunes in it, I freely confess, beyond my merits. What I wanted in sufficiency and experience for the service of it, I have endeavoured to supply by care and industry. Could there be the least alienation hereafter of my heart from the service of the state, for anything that hath past, I should be the ungratefullest man living. Should but such a thought stain my heart, I should be content it were let blood. If my posterity should not inherit the same fidelity, I should desire an inversion in the course of nature, and be glad to see them earthed before me. My Answer to the several points of my Charge I shall crave leave to deliver briefly in writing and in form of law: but as naked as truth loves to be: and so I leave myself and my Cause to your lordships justice.”

THE DUKE OF BUCKINGHAM'S ANSWER TO THE ARTICLES OF IMPEACHMENT.

Then his grace presented his ANSWER, and gave the same to the lord keeper, and his lordship to the clerk, which followeth in *hæc verba*:

“ The humble ANSWER and Plea of George Duke of Buckingham, to the Declaration and Impeachment made against him, before your Lordships, by the Commons House of Parliament.\* (See p. 1307.)

“ The said duke of Buckingham being accused, and sought to be impeached before your lordships, of the many misdemeanors, misprisions, offences, and crimes, wherewith he is charged by the commons house of parliament, and which are comprised in the Articles preferred against him, and were aggravated by those whose service was used by that house in the delivery of them; doth find in himself an inexorable pressure of deep and hearty sorrow,

\* Rushworth says, that sir Nicholas Hide was employed in drawing up this Answer, and that to this service he owed his being appointed Chief Justice of the King's-bench, when sir Randolph Crew was removed for refusing to forward the Loan.

that so great and so worthy a body should hold him suspected of those things which are objected against him, whereas, had that honourable house first known the very truth of those particulars, whereof they had not there the means to be rightly informed; he is well assured, in their own true judgments, they would have forbore to have charged him therewith. But the integrity of his own heart and conscience, being the most able and most impartial witness, not accusing him of the least thought of disloyalty to his sovereign or to his country, doth raise his spirits again to make his just defence before your lordships; of whose wisdom, justice, and honour he is so well assured, that he doth with confidence, and yet with all humbleness, submit himself and his cause to your examinations and judgments; before whom he shall, with all sincerity and clearness, unfold and lay open the secrets of his own actions, and of his heart; and, in his Answer, shall not affirm the least substantial, and as near as he can, the least circumstantial point, which he doth not believe he shall clearly prove before your lordships. The Charge consisteth of 13 several Articles, whereunto the duke, saying to himself the usual benefit of not being prejudiced by any words, or want of form, in his Answer; but that he may be admitted to make further explanation and proof, as there shall be occasion; and saving to himself all privileges and rights belonging to him as one of the peers of this realm, doth make these several and distinct Answers following, in the same order they are laid down unto him.

"I. To the First Article, which concerneth the Plurality of Offices which he holdeth, he answereth thus:—That it is true that he holdeth those several places and offices, which are enumerated in the preamble of his Charge, whereof only three are worthy the name of offices, viz. the Admiralty, the Wardenship of the Cinque-Ports, and Mastership of the Horse; the others are rather titular and additions of honour: for these offices he humbly and freely acknowledgeth the bounty and goodness of his most gracious master, who is with God; who, when he had cast an eye of favour upon him, and had taken him into a more near place of service about his royal person, was more willing to multiply his graces and favours upon him than the duke was forward to ask them; and, for the most part, as many honourable persons, and his now most excellent majesty above all others, can best testify, did prevent the very desires of the duke in asking: and all these particular places, he can and doth truly affirm, his late majesty did bestow of his own royal motion, except the Wardenship of the Cinque-Ports only; and thereto also he gave his approbation and encouragement. And the duke denieth, that he obtained these places either to satisfy his exorbitant ambition, or his own profit or advantage, as is objected against him, and he hopeth he shall give good satisfaction to the contrary in his particular Answers ensuing, touching the manner of his obtaining the places

of the Admiralty, and the Wardenship of the Cinque-Ports; whereunto he humbly desireth to refer himself.—And for the Mastership of the Horse to his majesty, he saith, It is a mere domestic office of attendance upon the king's person, whereby he receiveth some profit; yet but as a conveniency to render him more fit for his continual attendance; and in that place, the times compared, he hath retrenched the king's annual charge, to a considerable value, as shall be made apparent.—And for the Number of Places he holdeth, he saith, That if the commonwealth doth not suffer thereby, he hopeth he may, without blame, receive and retain that which the liberal and bountiful hand of his majesty hath freely conferred upon him. And it is not without many precedents, both in ancient and modern times, that one man, eminent in the esteem of his sovereign, hath, at one time, held as great and as many offices: but when it shall be discerned, that he shall falsely or corruptly execute those places, or any of them; or that the public shall suffer thereby, he is so thankful for what he hath freely received, that, whensoever his gracious master shall require it, he, without disputing with his sovereign, will readily lay down as his royal feet, not only his places and offices, but his whole fortune and his life, to do him service.

"II. To the Second Article, his buying the Admiral's Place, the said duke maketh this clear and true Answer.—That it is true, that in Jan. in the 16th year of his late majesty's reign, his late majesty did, by his letters patent, grant unto the duke the office of Lord Admiral for his life; which grant, as he well knoweth it, was made freely, and without any contract or bargain with the late lord admiral, or any other, and upon the voluntary surrender of that noble and well-deserving lord, so he is advised it will appear to be free from any defect in law, by reason of the statute 5 Edw. 6, mentioned in the Article of his Charge, or for any other cause whatsoever; for he saith the true manner of his obtaining this office, and of all the passages thereof, which he is ready to make good by proof, was thus: that honourable lord, the late earl of Nottingham, the lord admiral, being grown much in years, and finding that he was not then so able to perform that which appertained to his place, as in former times he had done to his great honour; and fearing lest his majesty's service and the commonwealth might suffer by his defect, became a humble and earnest petitioner to his late majesty to admit him to surrender his office. His late majesty was at the first unwilling unto it, out of his royal affection to his person, and true judgment of his worth, but the earl renewed his petitions, and in some of them nominated the duke to be his successor, without the duke's privity or forethought of it. And, about that time, a gentleman of good place about the navy, and of long experience, of himself came to the duke, and earnestly moved him to undertake the place. The duke apprehending the weight of the place, and considering his young years and want of expe-

rience to manage so great a charge, gave no ear unto it; but excused it, not for form, but really and ingenuously out of the apprehension of his then unfitness for it. The gentleman not thus satisfied, unknown to the duke, applied himself to the late king, and moved his majesty therein, and offered these reasons for it: that the duke was the fittest man at that time, and as the state of the navy then stood, for that place, for he said it was then a time of peace: that the best service that could be done for the present, was to repair the navy and ships royal, which then were much in decay, and to retrench the king's charge and to employ it effectually; that before there was like to be personal use of service otherwise, the duke, being young and active, might gain experience, and make himself as fit as any other: and that, in the mean time, none was so fit as himself, having the opportunity of his majesty's favour and means to his person, to procure a constant assignment and payment of money for the navy; the want whereof was the greatest cause of the former defects. These reasons persuaded his late majesty, and, upon his majesty's own motion, prevailed on the duke to take the charge upon him: and thereupon the earl voluntarily, freely, willingly, and upon his own earnest and often suit, surrendered the place; without any precedent contract or promise whatsoever, which might render the duke in the least degree subject to the danger of the law, which was not then so much as once thought upon: and upon that surrender, the grant was made to the duke: but it is true, that his majesty out of his royal bounty, for recompence of the long and faithful service of the said earl, and for an honourable memory of his deserts to him and the crown of England, did grant him a pension of 1,000*l.* per ann. for his life; which, in all ages, hath been the royal way of princes, wherewith to reward antient and well-deserving servants in their elder years; when, without their own faults, they are become less serviceable to the state: and the duke also voluntarily and freely, and as an argument of his noble respect towards so honourable a predecessor, who to his death, he called father; and whose estate, as he then understood, was fallen very low; did, with his late majesty's privity and approbation, send him 3,000*l.* in money; which he hopeth no person of worth and honour will esteem to be an act worthy of blame in him. And when the duke had thus obtained this place of great trust, he was so careful of his duty, that he would not rely upon his own judgment or ability; but of himself humbly besought his then majesty to settle a commission of fit and able persons for the affairs of his navy, by whose counsel and assistance he might manage that weighty business with the best advantage for his majesty's service; which commission was granted, and yet continueth; and without the advice of those commissioners he hath never done any thing of moment; and, by their advice and industry, he hath thus husbanded the king's money, and furthered the service, that

where before the ordinary Charge of the Navy was 54,000*l.* per ann. and yet the ships were very much decayed, and their provisions neglected, the charge was reduced to 30,000*l.* per ann.; and with that charge the ships all repaired and made serviceable, and 2 new ships built yearly; and for the two last years, when there were no new ships built, the ordinary charge was reduced to 21,600*l.* per ann. And now he dare boldly affirm, that his majesty's navy is in better state by much than ever it was in any precedent time whatsoever."

"III. To the Third Article, his buying the Wardenship of the Cinque-Ports, he maketh this plain, ingenuous, and true Answer:—That in Dec. in the 22nd year of his late majesty's reign, he obtained the office of Lord Warden of the Cinque-Ports, and Constable of the Castle of Dover (being one entire office) upon the surrender of the lord Zouch, then lord warden. The manner of obtaining whereof, was thus: the lord Zouch being grown in years, and with his almost continual lameness being grown less fit for that place, he discovered a willingness to leave it, and made several offers thereof to the duke of Richmond, and Rd. earl of Dorset, deceased; but he was not willing to part with it, without recompence. Notice whereof coming to the duke, by an offer made from the lord Zouch, he finding by experience how much, and how many ways both the king's service might, and many times did suffer; and how many inconveniences did arise to the king's subjects in their goods, ships, and lives, by the intermixture of the jurisdictions of the admiralty and wardenship of the Cinque-Ports, and by the emulation, disaffection, and contention of their officers, as clearly appear by these particulars, amongst many others which may be instanced. 1. Whereas the admiral-jurisdiction extends generally to all the narrow seas; the warden of the Cinque-Ports hath and exerciseth admiral-jurisdiction on all the sea-coasts, from Show-Beacon in Essex, to the Red Norc in Sussex; and within those limits there have been continual differences between the lord admiral and the lord warden, whether the lord warden's jurisdiction extends into the main sea, or only as far as the low-water-mark, and so much further into the sea, as a man on horseback can reach with a lance; which occasioneth questions between those chief officers themselves. 2. There are many and continual differences in executing of Warrants against offenders: the officers of the one refusing to obey or assist the authority of the other; whereby the offenders protected or countenanced by either, easily escape. 3. Merchants and owners of goods questioned in the admiralty, are often enforced to sue in both courts, and often enforced, for their peace, to compound with both officers. 4. The king's service is much hindered; for the most usual and ordinary rendezvous of the king's ships being at the Downs, and that being within the jurisdiction of the lord warden; the lord admiral or captains of the king's ships have no power

abroad, but it hath been so far from endangering the dominion of the narrow seas thereby, as it is suggested, that his majesty's ships or men of war, were never yet mastered, nor encountered by them, nor will they endure the sight of any of our ships; and when the duke himself was in person, the Dunkirkers run into their harbours. But there is a necessity that, according to the fortune of wars, interchangeable losses will happen; yet, hitherto, notwithstanding their more than wonted insolency, the loss on the enemy's part hath been as much, if not more, than what hath happened to us; and that loss that hath fallen, hath chiefly come by this means, that the Dunkirkers ships being of late years exercised in continual hostility with the Hollanders, are built of a mold as fit for flight as for fight; and so they pilfer upon our coasts, and creep to the shore, and escape from the king's ships: but to prevent that inconvenience for the time to come, there is already order taken for the building some ships, which shall be of the like mold, light and quick of sail, to meet with the adverse party in their own way. And for the pirates of Sallie, and those parts, he saith, it is but very lately that they found the way unto our coasts, where, by surprize, they might easily do hurt; but there hath been that provision taken by his majesty, not without the care of the duke, both by force and treaty, to repress them for the time to come, as will give good satisfaction. All which he is assured will clearly appear upon proof."

"V. To the Fifth Article the duke maketh this Answer; That about September last, this ship called the *St. Peter*, amongst divers others, was seized on as a lawful prize by his majesty's ships, and brought into Plymouth, as ships laden by the subjects of the king of Spain: in the end of October or beginning of November, they were all brought to the Tower of London, all of them were there unladen but the *Peter*, and the bulk of her goods was not stirred, because, they were challenged by the subjects of the French king; and there did not then appear so much proof against her, and the goods in her, as against the rest. About the middle of November allegations were generally put in against them all in the Admiralty-court, to justify the seizure; and all the pretendants were called in: upon these proceedings, divers of the ships and goods were condemned, and divers were released in a legal course; and others of them were in suspense till full proof made. The 28th of Dec. complaint was made on the behalf of some Frenchmen at the council board, concerning this ship and others, when the king by advice of his council, his maj. being present in person, did order, That the ship of Newhaven, called the *Peter*, and the goods in her, and all such other goods of the other prizes, as should be found to appertain to his majesty's own subjects, or to the subjects of his good brother the French king, or the States of the United Provinces, or any other princes or states in friendship or alliance with his majesty, should be delivered: but this was not absolute,

as is supposed by the Charge, but was thus qualified, so as they were not fraudulently coloured; and it was referred to a judicial proceeding. According to this just and honourable direction, the king's advocate proceeded upon the general allegations formerly put in the 26th of Jan. after there was a sentence in the admiralty, that the *Peter* should be discharged; and the king's advocate, not having then any knowledge of further proof, consented to it: but this was not a definitive sentence, but a sentence interlocutory, as it is termed in that court. Within few days after, this ship prepared herself to be gone, and was falling down the river: then came new intelligence to the lord admiral by the lieutenant of the Tower, that all those ships were laden by the subjects of the king of Spain; that the *Amirantasco* waded them beyond the North-Cape; that they were but coloured by Frenchmen; that there were witnesses ready to make good this new allegation; neither was it improbable to be so, for part of the goods in that ship have been confessed to be lawful prize. This ship being now fallen down the river, and being a ship of the most value of all the rest, the duke acquainted the king therewith; and by his commandment, made stay of the ship, lest otherwise it should be too late; which the duke, in the duty of his place of admiral, as he believeth, ought to have done, without such command: and if he had not done so, he might worthily have been blamed for his negligence; and then instantly he sent for the judge of the admiralty, to be informed from him, how far the sentence already passed, did bind, and whether it might stand with justice to make stay of her again, she being once discharged in such manner as before. The judge answered, as he was advised, That it might justly be done, upon better proofs appearing; yet discreetly, in a matter of that moment, he took time to give a resolute answer, that in the interim he might review the acts which had passed. The next day, or very shortly after, the judge came again to the duke, and, upon advice, answered resolutely, That the ship and goods might justly be stayed, if the proofs fell out to be answerable to the informations given; whereof, he said, he could not judge, till he had seen the depositions. And according to this resolution of the judge, did five other learned advocates, besides the king's advocate, concur in opinion, being intreated by the duke to advise thereof; so cautious was the duke not to do any unjust act. Then he acquainted the king again therewith, and his majesty commanded him to re-seize this ship, and to proceed judicially to the proofs; and the duke often required the king's advocate to hasten the examination of the witnesses; and many witnesses were produced and examined in pursuance of this new information. But the French merchants, impatient of any delay, complained again to the council-board, where it was ordered, not barely, That the ships and goods should be presently delivered, but should be delivered upon security;

pared and furnished, was not out of any respect, to draw them the rather to the composition; but really out of an apprehension, that there might be need of their strength for the defence of the realm at home; and, if so, then all private respects must give way to the public interest. These ships, upon the importunity of the merchants, and reasons given by them, were suffered, nevertheless, to fall down to Tilbury, by his late majesty's directions; to speed their voyage the better, whilst they might be accommodated for this voyage, without prejudice to the public safety; and they were discharged when there was an accommodation propounded and allowed, which was, that they should forthwith prepare other ships for the home service, whilst those went over with their voyage: which they accordingly did. That the motion made in the Commons' house, was without the duke's knowledge or privity. That when there was a rumour that the duke had drawn on the composition by staying of the ships which were then gone, the duke was so much offended thereat, that he would have had the former composition to have broken off, and have proceeded in a legal course; and he sent to the company for that purpose; but the company gave him satisfaction, that they had raised no such rumour, nor would, nor could avow any such thing, and intreated him to rest satisfied with such public acts to the contrary. That after this, their ships being gone, and, being careful of their future security, they solicited the dispatch of the composition; consulted with counsel about the instruments which passed about it, and were at the charge thereof; and the money was paid long after the sentence; and the sentence given after the ships were gone; and no security given at all for the money, but the sentence; and when this money was paid to the duke, the whole sum (but 200*l.* thereof only) was borrowed by the king, and employed by his own officers, for the service of the navy. If these things do, upon proof, appear to your lordships, as he is assured they will, he humbly submitteth it to your judgments, how far verbal affirmations or informations extrajudicial, shall move your judgments, when judicial acts, and those things which were acted and executed, prove the contrary."

"VII. To the Seventh Article, which is so mixed with actions of great princes, as that he dares not in his duty publish every passage thereof, he cannot for the present make so particular an Answer as he may, hath, and will do to the rest of his Charge. But he giveth this general Answer, the truth whereof he humbly prayeth may rather appear to your lordships by the proofs, than by any discourse of his; which, in reason of state, will haply be conceived fit to be more privately handled.\*—

\* Since the duke's Answer delivered into the house, he hath himself openly declared to their lordships, that for the better clearing of his honour and fidelity to the state, in that part

That these ships were lent to the French king at first, without the duke's privity: that when he knew it, he did that which belonged to an admiral of England, and a true Englishman: and he doth deny that, by menace or compulsion, or any other indirect or undue practice or means, he, by himself, or by any others, did deliver those ships, or any of them, into the hands of the French, as is objected against him. That the error which did happen, by what direction soever it were, was not in the intention any ways injurious or dishonourable, or dangerous to this state, or prejudicial to any private man, interested in any of those ships; nor could have given any such offence at all, if those promises had been observed by others, which were professed and really performed by his majesty and his subjects on their parts."

"VIII. To the Eighth Article, wherein he is taxed to have practised for the employment of the ships against Rochel, he answereth;— That he was so far from practising or consenting that the said ships should so be employed, that he shall make it clearly appear, that when it was discovered that they would be employed against those of the religion, the protestation of the French king being otherwise, and their pretence being that there was a peace concluded with those of the religion, and that the French king would use those ships against Genoa, which had been an action of no ill consequence to the affairs of Christendom, the duke did, by all fit and honourable means, endeavour to divert that course of their employment against Rochel, and he doth truly and boldly affirm, that his endeavours, under the royal care of his most excellent majesty, have been a great part of the means to preserve the town of Rochel; as the proofs, when they shall be produced, will make appear. And when his majesty did find, that, beyond his intention, and contrary to the faithful promises of the French, they were so misemployed, he found himself bound in honour to intercede with the most christian king, his good brother, for the peace of that town, and of the religion, lest his majesty's honour might otherwise suffer; which intercession his majesty did so sedulously, and so successfully pursue, that the town and the religion there do, and will, acknowledge the fruits thereof. And whereas it is further objected against him, That when in so unfaithful a manner he had delivered those ships into the power of a foreign state, to the danger of the

of his Charge which is objected against him by this Seventh Article, he hath been an earnest and humble suitor to his majesty, to give him leave in his proofs, to unfold the whole truth and secret of that great action; and hath obtained his majesty's gracious leave therein; and accordingly doth intend to make such open and clear proof thereof, that he nothing doubteth, but the same, when it shall appear, will not only clear him from blame, but be a testimony of his care and faithfulness in serving the state.

ed, though he confesseth that they exceed his merit, yet they exceed not precedents of former times. But whatsoever it is he hath, or hath had, he utterly denieth that he obtained the same, or any part thereof, by any undue solicitation or practise, or did unduly obtain any release of any sums of moneie he received; but he having, at several times, and upon several occasions, disposed of divers sums of the moneys of his late majesty and of his majesty that now is, by their private direction, he hath releases thereof for his discharge; which was honourable and gracious in their majesties, who granted the same for their servant's indemnity; and he hopeth, was not unfit for him to accept of, lest, in future times, he or his might be charged therewith, when he could not be able to give so clear an account thereof, as he hopeth he shall now well be able to do.

“ XIII. To the Thirteenth Article of the Charge, which is set forth in such an expression of words, as might argue an extraordinary guiltiness in the duke; who by such infinite bonds of duty and thankfulness, was obliged to be tender of the life and health of his most dread and dear sovereign and master, he maketh this clear and true answer,—That he did neither apply nor procure the plaister or posset-drink, in the Charge termed to be a potion, unto his late majesty, nor was present when the same was first taken or applied: but the truth is this; that his majesty being sick of an ague, took notice of the duke's recovery of an ague not long before, and asked him how he had recovered, and what he found did him most good? The duke gave him a particular answer thereto, and that one, who was the earl of Warwick's physician, had ministered a plaister and posset-drink to him; and the chief thing that did him good was a vomit; which he wished the king had taken in the beginning of his sickness. The king was very desirous to have that plaister and posset-drink sent for; but the duke delayed it: whereupon the king impatiently asked, Whether it was sent for or not? And finding by the duke's speeches he had not sent for it, his late majesty sent J. Baker the duke's servant, and, with his own mouth, commanded him to go for it: whereupon the duke besought his majesty not to make use of it but by the advice of his own physicians, nor until it should be tried by James Palmer, of his bed-chamber, who was then sick of an ague, and upon two children in the town; which the king said he would do. In this resolution the duke left his majesty and went to London; and in the meantime, in his absence, the plaister and posset-drink was brought and applied by his late majesty's own command. At the duke's return his majesty was in taking the posset-drink, and the king then commanded the duke to give it him; which he did in presence of some of the king's physicians, they then no ways seeming to dislike it, the same drink being first tasted of by some of them, and divers others in the king's bed-chamber: and he thinks this was the second time the king took it. After-

wards, when the king grew somewhat worse than before, the duke heard a rumour as if his physic had done the king hurt, and that the duke had ministered that physic to him without advice. The duke acquainted the king therewith; to whom the king, with much discontent, answered thus, 'They are worse than devils that say it.' So far from the truth it was; which now notwithstanding as it seemeth, is taken up again by some, and with much confidence affirmed. And here the duke humbly prayeth all your lordships, not only to consider the truth of this Answer, but also to commiserate the sad thought which this Article had revived in him.

“ This being the plain, clear, and evident truth of all those things which are contained and particularly expressed in his Charge, the rest being general and requiring no Answer: and he being well assured that he hath herein affirmed nothing which he shall not make good by proof, in such way as your lordships shall direct, doth humbly refer it to the judgment of your lordships, how full of danger and prejudice it is to give too ready an ear, and too easy a belief unto reports or testimony without oath, which are not of weight enough to condemn any. He humbly acknowledgeth how easy it was for him in his younger years, and unexperienced, to fall into thousands of errors in those ten years wherein he had the honour to serve so great and open-hearted a sovereign and master; but the fear of Almighty God, his sincerity in the true religion established in the church of England, (though accompanied with many weaknesses and imperfections, which he is not ashamed humbly and heartily to confess) his awfulness, not willing to offend so good and gracious a master, and his love and duty to his country, have restrained and preserved him, he hopeth, from running into heinous and high misdemeanors and crimes: but whatsoever, upon examination and mature deliberation, they shall appear to be; lest in any thing, unwittingly, within the compass of so many years, he shall have offended, he humbly prayeth your lordships, not only in those, but as to all the said misdemeanors, misprisions, offences, and crimes wherewith he standeth charged before your lordships, to allow him the benefit of the free and general Pardon granted by his late majesty in parliament in the 21st year of his reign, out of which he is not excepted; and of the gracious Pardon of his now majesty granted to the said duke, and vouchsafed in like manner to all his subjects at the time of his most happy inauguration and coronation: which said Pardon, under the Great Seal of England, granted to the said duke, beareth date the 10th day of February now last past, and is here shewn forth unto your lordships, on which he doth most humbly rely; and yet he hopeth your lordships, in your justice and honour, upon which with confidence he puts himself, will acquit him of and from those misdemeanors, offences, misprisions, and crimes wherewith he hath been charged; and he hopeth, and will



appears upon the proofs. The 2nd, for that if they should declare his cause to be Treason, then his testimony against the duke of Buckingham would be weakened; and the lord keeper having read the 2nd, 3rd and 4th orders also, the earl of Bristol gave their lordships humble thanks, and so was withdrawn.

The Lord Conway's ANSWER to the Earl of Bristol's Charge against him.

June 13. The lord Conway put their lordships in mind of several Articles delivered to them by the earl of Bristol against himself, the 1st of May last; and besought the lords that he might then give in his Answer to the same; which being granted, it was read *in hæc verba*:

“ The ANSWER of the Lord CONWAY to the ELEVEN ARTICLES, delivered against him into the Upper House of Parliament by the Earl of BRISTOL, the 1st day of May. (See p. 1290.)”

“ I. To the First Article he saith;—He doth acknowledge to owe a great deal of respect, love, and service, to the duke of Buckingham; and doth well remember that a worthy gentleman did invite him to endeavour the reconciliation of the earl of Bristol with the duke; to which also he made answer, That he had both affection and readiness to do all the good offices in his power, and that for the general duty which every man oweth to the works of reconciliation, and for other special motives, as being born in one and the same county, of long acquaintance, nothing having ever passed between the persons of the earl of Bristol and the lord Conway, but demonstrations of goodwill, and an interest of blood being between the lord Conway's children and the earl, acknowledging withal many lovely parts and powers in him; and it is not unlikely but the lord Conway might say, (according to the ingenuous freedom which he useth and cherisheth in himself) that if things should not be reconciled, but break out into opposition between the duke and the earl, he must then declare his greater love to be to the duke than to him; but this the lord Conway limited to their particular persons, and hopes it cannot, by any justice, be interpreted to stain him as he is a public minister, a magistrate, or a peer of the realm. All offices and obligations, in those respects, he owes to God and the king, but to no subject; and doth profess and is confident he hath paid them hitherto; and hopes in God to continue so with unblameable integrity.

“ II. To the Second Article he saith,—That the artifice the earl of Bristol useth, in mingling truth with untruth, makes it hard to clear it without much prolixity; which the lord Conway thinks this Article not worthy of, comparing it with the honour and reverence he owes to this great and noble council; yet, by your lordships good favours he gives it this Answer, That he verily believes he never wrote in those terms of being a secretary by the duke's creation; although he never was, nor is, unapt to

VOL. II.

acknowledge infinite obligations to the duke, for his favours freely conferred upon him; which he was ever, as he is yet, ready to testify by all due attributes and expressions: but for the lord Conway to have acknowledged this in those terms, had been to have forgotten what he owed to his gracious master of glorious memory: who when he gave him the seals, in the presence of divers lords of the council (the duke being also present) told him, and took the duke to witness, that it was his own proper choice to make lord Conway his secretary: yet it may well be when our now gracious king and the duke were in Spain, his late majesty having commanded the lord Conway to write, that they both might know it, that he had appointed him only to be secretary to receive the dispatches from thence and return the answers, that he might then write to the duke that he was his secretary: and as to the beginning of the lord Conway's letters, with Gracious Patron, which the earl of Bristol is pleased to note, it is true that, ever since the king gave him the creation of duke (which carries the style of grace) the lord Conway hath given him that title, with the addition of patron: with as true and plain a heart as it is given ordinarily in other countries, without particular intention or meaning: and the first time that ever the lord Conway gave the style, was, when his late majesty told him, he must in his letters give the duke the style of grace; and that this letter he showed to his majesty and 20 others of the same style, and his majesty neither reprov'd it nor forbid it.

“ III. To the Third Article he saith;—That it is a scandalous Article without foundation; and that the lord Conway never did any thing to keep the earl of Bristol from his late majesty's presence, but by express commandment from his majesty which, as he was secretary, he conceives to be sufficient warrant.

“ IV. To the Fourth Article he saith;—This is in all a scandal; and in one part unthankfully and untruly wrested; for Mr. Grisle, coming to the lord Conway under the pretext of faith and confidence, for advice, to know of him whether it might be safe for his lord, upon consideration of several restraints and leaves, to come to London to follow his business; hereupon the lord Conway answered him in the presence of God (as a man that would not betray another to save his own head) that he thought he might not safely come without leave from his majesty; but this advice he gave as a friend, not as a secretary, nor any way from his majesty or in his name.”

“ V. To the Fifth Article he saith;—He denies the Charge in general; and, for that part, touching his speaking with the duke, he remembereth that the earl of Bristol did in the postscript of a letter, desire him to move his majesty in that point; but the lord Conway conceiving the state of affairs to stand so between the earl and the duke, that good respect required that an office of grace to the earl should not pass without the knowledge of the duke, it

is possible he might stay the opportunity to acquaint the duke; it being no part of his duty to his master of glorious memory, but a thing free in the choice of him, the lord Conway, to do or not, and further, the lord Conway doth verily believe, that he was informed that it was the desire of the earl that the duke should be made acquainted with it.—To the rest of the Article he answereth, “That it gives him, the lord Conway, the first notice of any displeasure taken by his late majesty against him, for not moving him; or that he should call the denying the earl leave a barbarous act: and the lord Conway denies that he retarded the leave from his majesty; but so soon as he received the warrant, he obeyed it, without any clause or limitations more than the king commanded; and that he delayed not the dispatch of it.

“VI. To the Sixth Article he saith;—It appears by the earl of Bristol’s acknowledging that he was directed to the lord Conway for his business, that the king had not found any fault in the lord Conway’s handling of the earl of Bristol’s occasions, as is alledged in the 5th Article: and for the lord Conway’s refusing to do any thing without the duke, it is true that the duke being so far engaged by the relation he made to both houses of parliament, in the presence, and with the assistance, avowal, and testimony, (in many things) of the then prince, now our gracious king: his late majesty commanded the lord Conway that nothing should be moved or done in the earl of Bristol’s business, without the knowledge of the duke.

“VII. To the Seventh Article he saith;—It is true that Commissioners were appointed for forming the Charge against the earl of Bristol, in sundry articles; which were the longer in handling by reason that some of the committee were at London, for occasion of the king’s service, and the lord Conway tyed to attend the court; yet the lord Conway did come expressly to London, to attend the committee, to give that business the greater expedition: and doubteth not but the commissioners will witness that the lord Conway did shew all manner of forwardness to give speed to that work: and as touching the king’s promises, the lord Conway knows not any thing of them, but he well knows that the king bestowed the reading of all the Charge, and Answers, both at large and in brief, as they were made by the earl of Bristol and directed to his majesty; and doth verily believe that if the earl of Bristol’s Answers had been so full as to have admitted no reply, his majesty would have presently put an end to the earl’s business; especially if he had promised it, as is alledged. Touching the commissioners Declaration, the lord Conway never heard any one of them declare himself satisfied; and the earl of Bristol’s Answers being given to the king, it was in his majesty’s heart and pleasure to give directions; which, if the lord Conway had ever received, he would have obeyed them; but the commissioners had done their work in forming the Charge; and for ought the lord Conway knows, had neither

warrant nor matter to proceed further upon. The lord Conway knows of no artifice of the duke of Buckingham, to the ends mentioned in this Article; nor was ever made acquainted with, or believes there was any: and, for himself, when the supposed articles are made appear, as is undertaken, the lord Conway will be ready to make his just Answer.

“VIII. To the Eighth Article he saith;—He never knew or heard of any such solemn protestation of the king, touching the admitting of the earl of Bristol to his presence; but his late majesty told the lord Conway, That there was a further Charge to be laid against the said earl, which, perhaps, the lord Conway might accordingly write unto him: the king never gave the lord Conway directions for any further charge, but moving his majesty upon some solicitation of the earl of Bristol, his majesty was pleased to answer, that the earl was upon other ways and solicitations; by which the lord Conway took himself to be discharged of that business, and, perhaps, answered the earl of Bristol so.

“IX. To the Ninth Article he saith;—He knows not what passed from the earl of Bristol to his majesty or from his majesty to him, by the duke’s hand; but for his majesty’s letter, which the lord Conway acknowledgeth passed through his hands, there was nothing inserted but by the king’s directions; and the letter read, approved, and signed by his majesty: for the latter part of this Article, the lord Conway refers himself to his Answer to the 4th Article, where the same charge is laid against him.

“X. To the Tenth Article he saith;—That the Treaty for marrying the king of Bohemia’s eldest son with the emperor’s daughter, and bringing him up in that court, was handled by the lord Baltimore; and the lord Conway had never any part in that treaty, nor knew that his majesty gave consent to it, or advised it; but on the contrary, he ever understood that his majesty was against the breeding of the young prince in the emperor’s court; and ever said, That he would take upon him the care of his breeding: but the lord Baltimore giving an account of that treaty, by his letter to his majesty then at Newmarket, and there being then a dispatch going for Spain, his majesty commanded the lord Conway to send that dispatch from the lord Baltimore, in the packet to the earl of Bristol, which is all the lord Conway had to do in it; and the lord Baltimore being a party in the treaty, and a commissioner in forming the Charge against the earl of Bristol, the earl may as well take exceptions against him and the rest of the commissioners, as against the lord Conway for that part of the Charge: but the earl of Bristol is not charged for conforming himself to his majesty and his proceedings here, in that point; but further, for moving it, and carrying it in such a fashion in Spain, as sir W. Aston told him, ‘He durst not consent to it for his head.’ For the late letter from his majesty, the lord Conway answereth, That he did nothing

therein but by direction from his majesty and by his majesty's own words or pen.

"XI. To the Eleventh Article he saith;— That he never sent any dispatches to the earl of Bristol into Spain, without his majesty's directions, and first shewing them unto his majesty and receiving his approbation and warrant of them; whose judgment would not have let dubious or entrapping directions pass him without reformation; and if the earl be charged with any thing more than the directions import, the dispatches will clear that: but the lord Conway conceives that the cause of the earl of Bristol's troubles proceeds, truly, from his own large promises on the behalf of Spain and the emperor, and the little grounds the effects shew he had for drawing of his majesty into so deep and disadvantageous engagements.—The lord Conway having thus made a true and clear Answer to the several Articles exhibited against him, he humbly leaveth the same to your lordships grave consideration; reserving to himself, as well all just advantages against any part of those Articles in the varieties and contradiction of the Charge; as also, the supply of any thing in these his humble Answers that may be defective in point of form; or which, by further instance, or doubtful interpretation, may require a clearer explanation."

This Answer being read, it was ordered, "That the earl of Bristol may reply thereunto if he pleases."

June 9. The Commons dispatched the Chancellor of the Duchy to the lords, to desire a copy of the duke of Buckingham's Answer; that, upon consideration thereof, a Reply might be made by them, with as much speed as possible. The lords said, That they would take this Message into consideration with all speed. Hereupon the Duke stood up, and declared, "That for the better clearing of his honour and fidelity to the state, in that part of his Charge which is objected against him by the 7th Article, he hath been an earnest and humble suitor to his majesty to give him leave in his Proofs, to unfold the whole truth and secret of that great action; and hath obtained his majesty's gracious leave therein; and accordingly doth intend to make such open and clear proof thereof, that he nothing doubteth, but the same, when it shall appear, will not only clear him from blame, but be a testimony of his care and faithfulness, in serving the state."

June 10. The copy of the duke's Answer was brought down to the commons, by Mr. baron Trevor and sir C. Cæsar; and they further signified, "That the Duke had made a request to their lordships, which they, also, recommended to this house, that the commons would proceed, with all expedition, in their Reply to this Answer; that so they might go on with business of much higher concern."—By the further proceedings on the Journals, the Commons seem to have fallen upon the consideration of the duke's Answer immediately; though nothing is particularly entered

about it.—This second parliament the King thought proper abruptly to dissolve on the 15th of June, notwithstanding the House of Lords had with great humility and earnestness laid before his majesty their Advice "To continue this parliament, by which" say they, "those great and apparent dangers at home and abroad, signified unto us by your majesty's command, may be prevented, and your majesty made happy in the duty and love of your people, which we hold the greatest safety and treasury of a king; for the effecting whereof, our humble and faithful endeavour shall never be wanting."

Saunderson, in his Life of Charles 1, says, that the king's words to the lords, who came to intercede for a longer sitting, were, 'No, not a minute!' And that on the very day the parliament was dissolved, the earl of Arundel was confined to his house, and the earl of Bristol committed to the Tower by the king's order.

Rushworth has given a copy of a Remonstrance, which, he says, the commons intended to have presented to the king; as also another of a Declaration from his majesty containing his Reasons for the Dissolutions of this and the foregoing parliaments. They are inserted also in 2 Cobb. Parl. Hist. pp. 194 et seq.

These Impeachments were put a stop to\* by the dissolution of the parliament on the 15th

\* In the year 1791 it was resolved, in the case of Warren Hastings (*infra*), that a Parliamentary Impeachment was not determined by a dissolution of parliament. Besides the long discussions, which this question then received in parliament, it was at the same time much agitated in print. See "An Examination of Precedents and Principles, from which it appears that an Impeachment is determined by a Dissolution of Parliament, &c. by Edward Christian, esq." published in 1791. "A Dissertation, shewing, &c. and containing some farther Observations on the effect of a Dissolution of Parliament, upon an unfinished Impeachment," published by the same gentleman in the following year. "State of the Question, how far Impeachments are affected by a Dissolution of Parliament," 1791. "Series of Letters to the Right Hon. Edmund Burke, in which are contained Inquiries into the Constitutional Existence of an Impeachment against Mr. Hastings, by the Hon. George Hardinge, esq." 1791; and, "A Review of the Arguments in favour of the Continuance of Impeachments, notwithstanding a Dissolution, by a Barrister," 1791. The last of these publications was said to be written by the hon. Spencer Perceval, who was afterwards successively Solicitor General and Attorney General, and is now (May, 1809) Chancellor of the Exchequer and Chancellor of the Duchy of Lancaster. It is written with very great clearness and strength of argument, and relates the History of Parliamentary Impeachments, affecting the point in question, in a most interesting and impartial manner. The great distinction between legislative and judicial

sides, it will afford your grace more leisure to look into your own affairs, which lie confused and unsettled. Lastly, (which is not the least thing) this act will be so plausible, that it may much advantage his majesty in point of subsidy.

“Secondly, It were expedient (under correction) that your grace would be pleased to allot some set hours for audience and access of suitors; and it would be less cumber to yourself and your servants, and give more content to the world, which often mutters for difficulty of access.

“Lastly, It were not amiss that your grace would settle a standing mansion-house and family, that suitors may know whither to repair constantly, and that your servants, every one in his place, might know what belongs to his place, and attend accordingly: for though confusion in a great family carry a kind of state with it, yet order and regularity gains a greater

opinion of virtue and wisdom: I know your grace doth not (nor needs not) affect popularity. It is true that the people's love is the strongest citadel of a sovereign prince, but to a great subject it hath often proved fatal; for he who pulleth off his hat to the people, giveth his head to the prince; and it is remarkable what was said of a late unfortunate earl, who, a little before queen Elizabeth's death, had drawn the axe upon his own neck, ‘That he was grown so popular, that he was too dangerous for the times, and the times for him.’

“My lord, now that your grace is threatened to be heaved at, it should be above every one that oweth you duty and good-will, to reach out his hand some way or other to serve you: among these, I am one that presumes to do it, in this poor impertinent paper; for which I implore pardon, because I am, my lord, your grace's most humble and faithful servant, J. H. London, 13th Feb. 1626.”

126. The Case of GEORGE ABBOT, Archbishop of Canterbury, for refusing to licence a Sermon preached by Dr. Sibthorp, in order to promote the Loan, and to justify the King's imposing Public Taxes without consent of Parliament: 3 CHARLES I. A. D. 1627. [1 Rushw. Coll. 422—431.]

**KING** Charles finding himself much straitened by not obtaining the four Subsidies and three Fifteenths voted to him in his second parliament, which he rashly dissolved before the bills for raising that supply were perfected, endeavoured, as is well known, to relieve his necessities by means of forced loans from his subjects (many curious details concerning which are to be found in Rushworth). For the advancement of this project, one Dr. Sibthorp, (who appears to have been an eager seeker of preferment by an injudicious bustling course in recommending the measures of the court), published in print \* a Sermon preached by him at Northampton, February 22d, 1627, at Lent assizes, intituled, ‘Apostolical Obedience.’ This book was licensed by the bishop of Lon-

don, who did approve thereof, as a Sermon learnedly and discreetly preached. It was dedicated to the king, and expressed to be the doctor's meditations, which he first conceived upon his majesty's instructions unto all the bishops of this kingdom, fit to be put in execution, agreeable to the necessity of the times; and afterwards brought forth upon his majesty's commission, for the raising of monies by way of loan. His text was, Rom. xiii. 7, ‘Render therefore to all their dues.’ Among other passages he had this, ‘And seriously consider how as Jeroboam took the opportunity and breach betwixt Rehoboam and his subjects, to bring idolatry into Israel; so the papists lie at wait, if they could find a rent between our sovereign and his subjects (which the Lord

\* This matter is thus mentioned in Kennett: “Another great unhappiness was this; the bishops at the king's request were most of them zealous to promote this Supply of the public necessities; and earnestly pressed their clergy to contribute their best assistance in it. Hence, some were more officious than became their function in such a secular affair: And others were so indiscreet as to make it a doctrine of their pulpits to urge the duty of answering whatever the king demanded. In particular, Dr. Sibthorp, vicar of Brackley, preached upon this subject at Northampton on Feb. 22, 1627, at the Lent assizes; and having his Sermon licensed by the bishop of London, he published it under the title of ‘Apostolical Obedience,’ with a Dedication to the king. The whole

scope of it was to advance the Loan, and to justify the king's imposing public taxes without consent of parliament; and to prove that the people, in point of conscience, were bound to submit to the regal will and pleasure. For which he was afterward called in question, and censured by the parliament: But yet he gained his ends at court, being made Chaplain in Ordinary to his majesty, prebendary of Peterborough, and rector of Burton Latimers in Northamptonshire; from which he was ejected in the Civil Wars, and enjoyed them again at the Restoration, dying in April 1662. One who speaks most favourably of the royal party, says, He was a person of little learning, and of few parts, only made it his endeavours, by his forwardness and flatteries, to gain preferment.”

‘forbid) to introduce superstition in England. I speak no more than what I have heard from themselves, whilst I have observed their forwardness to offer double, according to an act of parliament so providing; yea, to profess, that they would depart with the half of their goods. And how, or why can this forwardness be in them, but in hope to cast the imputation of forwardness upon us? And so to them, that which the Jesuit will not suffer them to be, loving and loyal subjects.’

Also the said Sermon holds forth, ‘That the prince, who is the head, and makes his court and council, it is his duty to direct and make laws. Eccles. viii. 3 and 4, He doth whatsoever pleases him. Where the word of the king is, there is power, and who may say unto him, What doest thou?’ And in another place he saith, ‘If princes command any thing which subjects may not perform, because it is against the laws of God, or of nature, or impossible: Yet subjects are bound to undergo the punishment, without either resisting, or railing, or reviling, and so to yield a passive obedience where they cannot exhibit an active one. I know no other case,’ saith he, ‘but one of those three, wherein a subject may excuse himself with passive obedience; but in all other he is bound to active obedience.’

The Commission to sequester Archbishop Abbot from all his Ecclesiastical Offices.

Archbishop Abbot having been long slighted at court, now fell under the king’s high displeasure, for refusing to licence Dr. Sibthorp’s Sermon, as he was commanded, intitled, “Apostolical Obedience;” and not long after he was sequestered from his office, and a commission was granted to the bishops of London, Durham, Rochester, Oxford, and doctor Laud, bishop of Bath and Wells, to execute archiepiscopal jurisdiction. The Commission was as followeth:

CHARLES, by the grace of God, king of England, Scotland, France and Ireland, defender of the faith, &c. To the right rev. father in God, George, bishop of London; and to the right rev. father in God, our trusty and well-beloved counsellor, Richard, lord bishop of Durham; and to the right rev. father in God, John, lord bishop of Rochester; and John, lord bishop of Oxford; to the right rev. father in God, our right trusty and well-beloved counsellor, William, lord bishop of Bath and Wells, greeting;

“Whereas George, now archbishop of Canterbury, in the right of the archbishopric, hath several and distinct archiepiscopal, episcopal, and other spiritual and ecclesiastical powers and jurisdictions, to be exercised in the government and discipline of the church within the province of Canterbury, and in the administration of justice in causes ecclesiastical within that province, which are partly executed by himself in his own person, and partly, and

more generally, by several persons nominated and authorised by him, being learned in the ecclesiastical laws of this realm, in those several places whereunto they are deputed and appointed by the said archbishop; which several places, as we are informed, they severally hold by several grants for their several lives; as namely, sir Henry Martin, knight, hath and holdeth by the grants of the said archbishop, the offices and places of the Dean of the Arches, and Judge, or Master of the Prerogative Court, for the natural life of the said sir Henry Martin.—Sir Charles Caesar, knight, hath and holdeth by the grant of the said archbishop, the places or offices of the Judge of the Audience, and Master of the Faculties, for the term of the natural life of the said sir Charles Caesar.—Sir Thomas Ridley, knight, hath and holdeth by the grant of the said archbishop, the place or office of Vicar General to the said archbishop.—And Nathaniel Brent, doctor of the laws, hath and holdeth by grant of the said archbishop, the office or place of Commissary to the said archbishop, as of his proper and peculiar diocese of Canterbury.—And likewise the several Registers of the Arches, Prerogative, Audience, Faculties, and of the Vicar General, and the Commissary of Canterbury hold their places by grants from the said archbishop respectively.

“Whereas the said Archbishop, in some or all of these several places and jurisdictions, doth or may sometimes assume unto his personal and proper judicature, order, or direction, some particular causes, actions, or cases at his pleasure. And forasmuch as the said archbishop cannot at this present, in his own person, attend the services which are otherwise proper for his cognisance and jurisdiction, and which, as archbishop of Canterbury, he might and ought in his own person to have performed and executed in causes and matters ecclesiastical, in the proper function of archbishop of that province: we therefore, of our regal power, and of our princely care and providence, that nothing shall be defective in the order, discipline, government, or right of the church, have thought fit by the service of some other learned and reverend bishops, to be named by us, to supply those things which the said archbishop ought or might in the cases aforesaid to have done, but for this present cannot perform the same.

“Know you therefore, That we reposing special trust and confidence in your approved wisdoms, learning, and integrity, have nominated, authorized, and appointed, and do, by these presents, nominate, authorise, and appoint you the said George, lord bishop of London; Richard, lord bishop of Durham; John, lord bishop of Rochester; John, lord bishop of Oxford; and William, lord bishop of Bath and Wells, or any four, three, or two of you, to do, execute, and perform all and every those acts, matters, and things, any way touching or concerning the power, jurisdiction, or authority of the archbishop of Canterbury, in causes or matters ecclesiastical, as amply, fully, and

effectually, to all intents and purposes, as the said archbishop himself might have done.

“And we do hereby command you, and every of you, to attend, perform, and execute this our royal pleasure, in, and touching the premisses, until we shall declare our will and pleasure to the contrary.—And we do further hereby will and command the said archbishop of Canterbury, quietly, and without interruption, to permit and suffer you the said George, bishop of London; Richard, bishop of Durham; John, bishop of Rochester; John, bishop of Oxford; and William, bishop of Bath and Wells, any four, three, or two of you, to execute and perform this our commission, according to our royal pleasure thereby signified. And we do further will and command all and every other person and persons, whom it may any way concern, in their several places or offices, to be attendant, observant, and obedient to you, and every of you, in the execution and performance of this our royal will and command, as they and every of them will answer the contrary at his utmost perils.

“Nevertheless we do hereby declare our royal pleasure to be, That they the said sir Henry Martin, sir Charles Cæsar, sir Thomas Ridley, and Nathaniel Brent, in their several offices and places aforesaid, and all other registers, officers, and ministers, in the several courts, offices and jurisdictions, appertaining to the said archbishop, shall quietly, and without interruption, hold, use, occupy and enjoy their said offices and places, which they now hold, by the grant of the said archbishop, or any other former archbishop of Canterbury, in such manner and form, and with those benefits, privileges, powers, and authorities, which they now have, hold, and enjoy therein, or thereout severally and respectively, they, and every of them, in their several places, being attendant and obedient unto you the said George, bishop of London; Richard, bishop of Durham; John, bishop of Rochester; John, bishop of Oxford; and William, bishop of Bath and Wells, or to any four, three, or two of you, in all things according to the tenor of this our commission, as they should or ought to have been, to the said archbishop himself, if this commission had not been had or made.

“In witness whereof, We have caused these our letters to be made patent. Witness ourself at Westminster, the ninth day of October, in the third year of our reign. *Per ipsum Regem.* EDMONDS.”

For a Memorial of these Proceedings, the Archbishop left to posterity the following Narrative, penned with his own hand.

#### ARCHBISHOP ABBOT'S NARRATIVE.

##### *Pars Prima.*

It is an example, so without example, that in the sunshine of the gospel, in the midst of profession of the true religion, under a gracious king, whom all the world must acknowledge to be blemished with no vice; a man of my

place and years, who have done some service in the Church and Commonwealth, so deeply laden with some furious infirmities of body, should be removed from his ordinary habitation, and by a kind of deportation should be thrust into one end of the island (although, I must confess, into his own diocese) that I hold it fit, that the reason of it should be truly understood, lest it may someways turn to the scandal of my person and calling.—Which Declaration notwithstanding, I intend not to communicate to any, but to let it lie by me privately, that it being set down impartially, whilst all things are fresh in memory, I may have recourse to it hereafter, if questions shall be made of any thing contained in this relation.

And this I hold necessary to be done, by reason of the strangeness of that, which by way of censure was inflicted upon me, being then of the age of 65 years, incumbered with the gout, and afflicted with the stone, having lived so many years in a place of great service, and, for ought I know, untainted in any of my actions, although my master king James, who resteth with God, had both a searching wit of his own, to discover his servants whom he put in trust, whether they took any sinister courses, or no; and wanted not some suggesters about him to make the worst of all mens actions whom they could misreport: yet this innocency and good fame to be over-turned in a month, and a Christian bishop suddenly to be made *fabula vulgi*, to be tossed upon the tongues of friends and foes, of Protestants and Papists, of court and country, of English and foreigners, must needs in common opinion, presuppose some crime, open or secret: which being discovered by the king, albeit not fully appearing to the world, must draw on indignation in so high a measure.

I cannot deny, that the indisposition of my body kept me from Court, and thereby gave occasion to maligners to traduce me as withdrawing myself from public services, and therefore mishaking some courses that were taken; which abstaining perhaps neither pleased the king, nor the great man that set them on foot.—It is true, that in the turbulency of some things, I had no great invitements to draw me abroad, but to possess my soul in patience, till God sent fairer weather: but the true ground of my abstaining from solemn and public places, was the weakness of my feet, proceeding from the gout; which disease being hereditary unto me, and having possessed me now nine years, had deliberated me more and more: so that I could not stand at all, neither could I go up or down a pair of stairs, but besides my staff, I must have the service of one, at least, of my men, which was not fit to be admitted in every place where I was to come.

And although I was oft remembered, by the wisest of my friends, that I might be carried as the old lord treasurer Burleigh was, yet I did not think my service so necessary for the commonwealth, as his lordship's, by long experience, was found to be. I did not value

gassed unto him by some malicious body, that thereby the Archbishop might be put to some remarkable strait. For if the king should send the Sermon unto him, and command him to allow it to the press, one of these two things would follow, that either he should authorise it, and so all men that were indifferent, should discover him for a base and unworthy beast; or he should refuse it, and so should fall into the king's indignation, who might pursue it at his pleasure, as against a man that was contrary to his service.

Out of this fountain flowed all the water that afterwards so wet: in rehearsing whereof, I must set down divers particulars, which some men may wonder how they should be discovered unto me. But let it suffice once for all, that in the word of an honest man, and of a bishop, I recount nothing, but whereof I have good warrant, God himself working means.

The matters were revealed unto me, although it be not convenient, that in this Paper I name the manner how they came unto me, lest such as did by well doing further me, should receive blame for their labour. Well! resolved it is, that I must be put to it, and that with speed; and therefore Mr. William Murrey, nephew (as I think) unto Mr. Thomas Murrey, sometimes tutor unto prince Charles, and the young man now of the king's bed-chamber, is sent unto me with the written Sermon; of whom I must say, That albeit he did the king his master's business, yet he did use himself civilly and temperately unto me. For, avoiding of *inquit* and *inquam* (as Tully saith) I said this, and he said that, I will make it by way of Dialogue, not setting down every day's conference exactly by itself, but mentioning all things of importance in the whole, yet distinguishing of times, where, for the truth of the relation, it cannot be avoided.

*Murrey.* My lord, I am sent unto you by the king, to let you know, that his pleasure is, That whereas there is brought unto him a Sermon to be printed, you shall allow this Sermon to the press.

*Archb.* I was never he that authorised Books to be printed; for it is the work of my chaplains to read over other men's writings, and what is fit, to let it go; and what is unfit to expunge it.

*Murrey.* But the king will have you yourself to do this, because he is minded, that no books shall be allowed, but by you and the bishop of London: And my lord of London authorised one the other day (Cousens his Book) and he will have you do this.

*Archb.* This is an occupation that my old master king James did never put me to, and yet I was then young, and had more abilities of body than now I have; so that I see I must now learn a new lesson: but leave it with me, and when I have read it, I shall know what to say unto it; a day or two hence you shall understand my mind. When I had once or twice perused it, I found some words which seemed unto me to cross that which the king intended,

and in a sort to destroy it; and therefore upon his return, a day or two after, I expressed myself thus:

Mr. Murrey, I conceive, that the king intendeth, that this Sermon shall promote the service now in hand about the Loan of Money, but in my opinion it much crosseth it; for he layeth it down for a rule, and because it shall not be forgotten, he repeateth it again, 'That Christians are bound in duty one to another, especially all subjects to their princes, according to the laws and customs of the kingdom, wherein they live.' Out of this will men except this Loan, because that there is neither law nor custom for it in the kingdom of England.—Secondly, In my judgment, there followeth a dangerous Speech, 'Habemus necessitatem vindicandæ libertatis.' For this was all that was then quoted out of Calvin, no mention being made of any the other words which are now in the printed copy: For when by the former rule he hath set men at liberty, whether they will pay or no, he imposeth upon them a necessity to vindicate this liberty, and *vindicare* may be extended to challenge with violence *cum vi*. But for my part, I would be most unwilling to give occasion to sedition and mutiny in the kingdom.—Again, here is mention made of Poll-money, which, as I have heard, hath already caused much distaste where the Sermon was preached.—Moreover, what a speech is this, 'That he observes the forwardness of the Papists to offer double,' according to an act of parliament so providing, yea, to profess, that they would part with the half of their goods, where he quoteth in the margin, anno 1 Caroli; the Act for the Subsidy of the laity, whereby Popish Recusants were to pay double; when indeed there is no such act.—And in the fifth place it is said in this Sermon, 'That the princes of Bohemia have power to depose their kings,' as not being hereditary, which is a great question. Such a one as hath cost much blood, and must not in a word be absolutely defined here, as if it were without controversy. I pray you make his majesty acquainted with these things, and take the Book with you, (where it is to be noted, that all this time we had but one single copy, which was sometime at the court, and sometime left with me.)

*Murrey.* I will faithfully deliver these things to the king, and then you shall hear further from me.

Some two or three days after he returned again unto me, and telleth me, That he had particularly acquainted the king with my Objections; and his majesty made this answer: First, for the laws and customs of the kingdom, he did not stand upon that, he had a precedent for that which he did, and thereon he would insist.

*Archb.* I think that to be a mistaking, for I fear there will be found no such precedent. King Henry the 8th, as the Chronicle sheweth, desired but the sixth part of men's estates, ten groats in the pound; our king desireth the

whole six parts full out, so much as men are set at in the Subsidy Book: and in the time of king Henry, although he were a powerful king, yet, for that taxation, there began against him little less than a rebellion; so that he held it wisdom to desist, and laying the blame upon cardinal Wolsey, professed, that he knew nothing of the matter.

*Murrey.* Secondly, The king saith, for the words, 'Habemus necessitatem vindicandæ libertatis,' he taketh them to be for him; and he will stand on his liberty. Thirdly, For poll-money, he thinketh it lawful. Fourthly, It is true, there was no such act passed, and therefore it must be amended (and yet in the printed book it is suffered still to stand. Such slight, and, I may say, slovenly care was had by them that published this Sermon.) And Fifthly, For that of Bohemia, he hath crossed it out of the Book.

Some other matters there were, against which I took exception, but Mr. Murrey being a young gentleman, although witty, and full of good behaviour, I doubted, that being not deeply seen in divinity, he could not so well conceive me, nor make report of my words to his majesty: and therefore I being lame, and so disabled to wait on the king, did move him, That he would, in my name, humbly beseech his majesty to send the bishop of Bath and Wells unto me, and I would, by his means, make known my Scruples; and so I dismissed Mr. Murrey, observing with myself, that the Answers to my five Objections, especially to two or three, were somewhat strange: as if the king were resolved, were it to his good or to his harm, to have the Book go forth.

After one or two days more, the young gentleman cometh to me again, and telleth me, That the king did not think it fit to send the bishop of Bath unto me; but he expected I should pass the Book. In the mean time, had gone over one High Commission day, and this bishop, who used (otherwise) very few days to fail, was not there; which being joined to his majesty's Message, made me in some measure to suspect that this whole business might have that bishop's hand in it, especially I knowing in general the disposition of the man.

The minds of those that were actors for the publishing of the Book, were not quiet at the court, that the thing was not dispatched; and therefore one day the duke said to the king, Do you see how this business is deferred? If more expedition be not used, it will not be printed before the end of the term; at which time it is fit that it be sent down into the countries. So eager he was, that either by my credit his undertakings might be strengthened, or, at least, I might be contemned and derided as an unworthy fellow. This so quickened the king, that the next Message which was sent by Mr. Murrey was, in some degree, minatory. That if I did not dispatch it, the king would take some other course with me.

When I found how far the Duke had prevailed, I thought it my best way to set down in

writing many objections, wherefore the Book was not fit to be published: which I did modestly, and sent them to the king. The words were these, which I culled out of the written Sermon:

1. Page 2. Those words deserve to be well weighed, 'And whereas the Prince pleads not 'the power of Prerogative.'

2. Page 8. 'The king's duty is first to direct and make laws.' There is no law made till the king assent unto it; but if it be put simply to make laws, it will make much starting at it.

3. Page 10. 'If nothing may excuse from 'active obedience, but what is against the law 'of God, or of nature, or impossible.' How doth this agree with the first fundamental position? page 5. 'That all subjects are bound to 'all their princes according to the laws and 'customs of the kingdom wherein they live.'

4. Page 11. 'The Poll-money,' mentioned by him in St. Matthew, was imposed by the emperor as a conqueror over the Jews, and the execution of it in England, although it was by a law, produced a terrible effect in king Richard the 2nd's time, when only it was used, for ought that appeareth.

5. Page 12. It is in the bottom, view the reign of Henry the 3rd, and whether it be fit to give such allowance to the book, being surreptitiously put out?

6. In the same page, let the largeness of those words be well considered, 'Yea all antiquity to be absolutely for absolute Obedience 'to princes in all civil and temporal things.' For such cases as Naboth's vineyard may fall within this.

7. Page 14. Sextus Quintus was dead before the year 1580.

8. In the same page, weigh it well, How this Loan may be called a Tribute; and when it is said, 'We are promised, it shall not be immoderately imposed;' how that agreeth with his majesty's commission and proclamation, which are quoted in the margin?

It should seem, that this Paper did prick to the quick, and no satisfaction being thereby accepted, bishop Laud is called, and he must go to answer to it in writing: this man is the only inward counsellor with Buckingham, sitting with him sometimes privately whole hours, and feeding his humour with malice and spite. His life in Oxford was to pick quarrels in the Lectures of the publick readers, and to advertise them to the then bishop of Durham, that he might fill the ears of king James with discontent, against the honest men that took pains in their places, and settled the truth (which he called Puritanism) in their auditors. He made it his work to see what Books were in the press, and to look over Epistles Dedicatory, and Prefaces to the Reader, to see what faults might be found.

It was an observation what a sweet man this was like to be, that the first observable act that he did, was the marrying of the earl of D. to the lady R. when it was notorious to the world,



that she had another husband, and the same a nobleman, who had divers children then living by her. King James did for many years take this so ill, that he would never hear of any great preferment of him; insomuch that the bishop of Lincoln, Dr. Williams, who taketh upon him to be the first promoter of him, hath many times said, That when he made mention of Laud to the king, his majesty was so averse from it, that he was constrained oftentimes to say, That he would never desire to serve that master, which could not remit one fault unto his servant. Well, in the end he did conquer it, to get him to the bishoprick of St. David's; which he had not long enjoyed, but he began to undermine his benefactor, as at this day it appeareth. The countess of Buckingham told Lincoln, that St. David's was the man that undermined him with her son: and verily, such is his aspiring nature, that he will underwork any man in the world, so that he may gain by it.

This man, who believeth so well of himself, framed an Answer to my Exceptions. But to give some countenance to it, he must call in three other bishops, that is to say, Durham, Rochester, and Oxford, tried men for such a purpose; and the whole style of the speech runneth, 'We and We.' This seemed so strong a confutation, that for reward of their service, as well as for hope, that they would do more, Dr. Neal, bishop of Durham, and the bishop of Bath, were sworn of the privy council.

The very day, being Sunday, Mr. Murrey was sent unto me with a Writing; but finding me all in a sweat by a fit of the stone, which was then upon me, he forbore for that time to trouble me, and said, That on the morrow he would repair to me again. I got me to bed, and lying all that night in pain, I held it not convenient to rise the next day: and on the Monday, Mr. Murrey came unto me, which was the eighth time that he had been with me, so incessantly was I plied with this noble work: I had shewed it before to a friend or two, whereof the one was a learned doctor of divinity, and the other had served many times in parliament with great commendation. We all agreed, That it was an idle work of a man that understood not logic, that evidently crossed himself, that sometimes spake plausibly, and in the end of his Sermon fell so poor and flat, that it was not worth the reading.

Mr. Murrey coming to my bed-side, said, That he was sent again by the king, and had a Paper to be shewed unto me.

Archb. You see in what case I am, having slept little all this last night, but nevertheless since you come from the king, I will take my spectacles and read it.

Murrey. No, my lord, you may not read it, neither handle it; for I have charge not to suffer it to go out of my hands.

Archb. How then shall I know what it is?

Murrey. Yes, I have order to read it unto you, but I may not part with it.

Archb. I must conceive, that if I do not assent to it, his majesty will give me leave to

reply upon it; which I cannot do, but in my study, for there are my Books.

Murrey. I must go with you into your study, and sit by you till you have done.

Archb. It is not so hasty a work, it will require time, and I have not been used to study, one sitting by me: but first read it, I pray you.

The young gentleman read it from one end to the other, being two or three sheets of paper.

Archb. This Answer is very bitter, but giveth me no satisfaction. I pray you leave the Writing with me, and I shall batter it to pieces.

Murrey. No, my lord, I am forbidden to leave it with you, or to suffer you to touch it.

Archb. How cometh this about? Are the authors of it afraid of it, or ashamed of it? I pray you tell his majesty, that I am dealt with neither manly nor scholar-like. Not manly, because I must fight with adversaries that I know not; nor scholar-like, because I must not see what it is that must confute me. It is now eight and forty years ago that I came to the university, and since that time I have ever loved a learned man: I have disputed and written divers books, and know very well what appertaineth to the schools. This is a new kind of learning unto me. I have formerly found fault, that the Author of this Sermon quoteth not the places whereupon he grounds his doctrine; and when I have oft called for them, it is replied unto me, That I must take them upon the credit of the writer, which I dare not do: for I have searched but one place, which he quoted in general, but sets down neither the words, nor the treatise, nor the chapter, and I find nothing to the purpose for which it is quoted; and therefore I have reason to suspect all the rest. I pray you therefore, in the humblest manner, to commend my service to the king my master, and let him know, that unless I may have all the quotations set down, that I may examine them, and may have that Writing, wherein I am so ill used, I cannot allow the Book.

Before I go further, it shall not be amiss to touch some particulars of that which I sent in writing to the King.

The first was page 2. Those words deserve to be well weighed, 'And whereas the prince pleads not the power of prerogative.' To this Mr. Murrey said, The king doth not plead it: But my reply was, By what then doth he coerce those Refractories? For I have not heard of any law whereby they are imprisoned, and therefore I must take it to be by the king's prerogative.

To the second, page 8. 'The king's duty is first to direct and make laws.' There is no law made till the king assent unto it; but if it be but simply to make laws, it will cause much startling at it. To this I remember not any material thing answered, neither to the third.

Page 10. 'If nothing may excuse from active obedience, but what is against the law of God, or of nature, or impossible.' How doth

It seemed therefore strange unto me; that in the upshot of the business, I was called in to make that good by divinity, which others had done; and must have no other inducements to it, but Dr. Sibthorp's contemptible Treatise. I imagined this, for the manner of the carriage of it, to be somewhat like unto the earl of Somerset's Case, who abused the wife of the earl of Essex, must have her divorced from her husband, and must himself marry her: and this must not be done, but that the archbishop of Canterbury must ratify all judicially. I know the Cases are different, but I only compare the manner of the carriage.

When the approbation of the Sermon was by me refused, it was carried to the bishop of London, who gave a great and stately allowance of it; the good man being not willing that any thing should stick which was sent unto him from the court, as appeareth by the Book, which is commonly called, 'The Seven Sacraments,' which was allowed by his lordship, with all the errors; which since that time have been expunged, and taken out of it.

But before this passed the bishop's file, there is one accident which fitly cometh in to be recounted in this place. My lord of London hath a chaplain, Dr. Worrall by name, who is scholar good enough, but a kind of free fellow-like man, and of no very tender conscience: Dr. Sibthorp's Sermon was brought unto him, and, 'hand over head' (as the proverb is) he approved it, and subscribed his name unto it. But afterwards, being better advised, he sent it to a learned gentleman of the Inner Temple, and writing some few lines unto him, craveth his opinion of that which he had done; the gentleman read it: but although he had promised to return his judgment by letter, yet he refused so to do, but desired, that Dr. Worrall would come himself; which being done, he spake to this purpose: What have you done? You have allowed a strange Book yonder; which, if it be true, there is no *meum* or *tuum*, no man in England hath any thing of his own: If ever the tide turn, and matters be called to a reckoning, you will be haaged for publishing such a Book. To which the doctor answered, Yea, but my hand is to it; what shall I do? For that, the other replied, you must scrape out your name, and do not so much as suffer the sign of any letter to remain in the paper. Which accordingly he did, and withdrew his finger from the pye.

But what the chaplain well advised would not do, his lord, without sticking, accomplished; and so being insensibly hatched, it came flying into the world: but in my opinion, the Book hath persuaded very few understanding men, and hath not gained the king sixpence.

#### *Pars Secunda.*

Hitherto I have declared at length all passages concerning the Sermon, and, to my remembrance, I have not quitted any thing that was worthy the knowing. I am now in the second place to show what was the issue of this

not allowing the worthy and learned Treatise: In the height of this question, I privately understood, from a friend in the court, that for a punishment upon me, it was resolved, that I should be sent away to Canterbury, and confined there. I kept this silently, and expected God's pleasure; yet laying it up still in my mind, esteeming the Duke to be of the number of them, touching whom Tacitus observeth; 'That such as are false in their love; are true in their hate.' But whatsoever the event must be, I made that use of the report, that 'Jacula prævisâ minus feriunt.' The Duke, at the first, was earnest with the king, that I must be presently sent away before his going to sea; for, saith he, if I were gone, he would be every day at Whitehall, and at the Council Table, and there will cross all things that I have intended: To meet with his objection, I got me away to Croydon a month sooner than in ordinary years I have used to do: but the term was ended early, and my main fit of the stone did call upon me to get me to the country, that there on horse-back I might ride upon the downs; which I afterwards performed, and, I thank God, found great use of it, in recovering of my stomach, which was almost utterly gone.

The Duke hastened his preparations for the Fleet; but still that cometh in for one memorandum, That if he were once absent, there should no day pass over, but that the archbishop would be with the king, and infuse things that would be contrary to his proceedings. What a miserable and restless thing ambition is, when one talented, but as a common person, yet by the favour of his prince, hath gotten that interest, that, in a sort, all the keys of England hang at his girdle, (which the wise queen Elizabeth would never endure in any subject) yet standeth in his own heart in such tickle terms, as that he feared every shadow, and thinketh, that the lending of the king's ear unto any grave and well-seasoned report, may blow him out of all; which, in his estimation, he thinketh is settled upon no good foundation, but the affection of the prince, which may be mutable, as it is in all men more or less: If a man would wish harm unto his enemy, could he wish him a greater torment, than to be wrested and wringed with ambitious thoughts? Well, at first it went current, that with all haste I must be doffed, but upon latter consideration, it must be staid till the duke be at sea, and then put in execution by the king himself, that, as it seemeth, Buckingham might be free from blame, if any should be laid upon any person. Hence it was, that after his going, there was new prosecution of the Yorkshire men, and the refusing Londoners were pursued more fervently than before; and it is very likely, that the arrow came out of the same quiver; that the bishop coming to the election at Westminster, was driven back so suddenly to Bugden. Take heed of these things, noble duke, you put your king to the worst parts, whereof you may hear one day: So when your sovereign in the parliament time had spoken sharply to both houses,

commanding them to go together again, and to give more money, and commanding them to meddle no more with the duke of Buckingham; you came the next day, and thought to smooth all, taking the glory of qualifying disturbances to yourself; whereas if you had read books of true state government, wherewithal you are not acquainted, sweet things are personally to be acted by kings and princes, as giving of honours, and bestowing of noted benefits; and those things that are sour and distasteful, are to be performed by their ministers; you go the contrary way.

But as before the whole house falleth on fire, some sparks do fly out; so, before the Message of the king was brought me by the Secretary, there were some inklings that such a thing would follow. And upon the naming of me (by occasion) it was said by a creature of the Duke's, That it would not be long, before the Archbishop should be sequestered (that was the word). So well acquainted are the duke's followers with great actions that are ready to fall out in state.

Accordingly, on Tuesday the 5th of July, 1627, the lord Conway came unto me to Croydon, before dinner time, having travelled, as he said, a long journey that morning, even from Oatlands thither; he would say nothing till he had dined: then, because he was to return to Oatlands that night, I took him into the gallery, and when we were both sat down, we fell to it in this manner.

*Archb.* My lord, I know you, coming from court, have somewhat to say to me.

*Secretary.* It is true, my lord, and I am the most unwilling man in the world to bring unpleasing news to any person of quality, to whom I wish well, and especially to such a one, as of whose meat I have eaten, and been merry at his house: But I come from the king, and must deliver his pleasure: I know who you are, (and much more, with very civil language.)

*Archb.* I doubt not, my lord, but you have somewhat to say; and therefore I pray you in plain terms let me have it.

*Secret.* It is then his majesty's pleasure, that you should withdraw yourself unto Canterbury; for which he will afford you some convenient time.

*Archb.* Is that it? Then I must use the words of the psalmist, 'He shall not be afraid of any evil tidings, for his heart standeth fast, and believeth in the Lord.' But, I pray you, what is my fault that bringeth this upon me?

*Secret.* The king saith, you know.

*Archb.* Truly I know none, unless it be that I am lame, which I cannot help; it is against my will, I am not proud of it.

*Secret.* The king bad me tell you, that if any expostulation were used —

*Archb.* No, I will not use any expostulation; if it be his pleasure I will obey, I know myself to be an honest man, and therefore fear nothing. But, my lord, do you think it is for the king's service in this sort to send me away?

*Secret.* No, by God! I do not think it, and

so yesterday I told the king with an oath; but he will have it so.

*Archb.* I must say as before, 'He shall not be afraid of any evil tidings, for his heart standeth fast, and he believeth in the Lord.' But I pray you, my lord, is the king precisely set upon my going to Canterbury? There are questions in law between me and that town about the liberty of my archbishopric, which I, by my oath, am bound to maintain; and if I should be among them, I have many adversaries of the citizens; I have there some tenants, and the dean and chapter are interested in the question; I would be unwilling that my servants and their people should fall together by the ears, while I am in the town: his majesty knows this difference to be between us, by the token that a suit which I lately brought against them, by a *quo warranto* in the King's Bench, was stopped, justice being denied me, which is not usual to be denied to any subject; and the king will knoweth by whose means it was stayed. I have thereore another house, called Foord, five miles beyond Canterbury, and more out of the way; his majesty may be pleased to let me go thither.

*Secret.* I can say nothing to that, but I will acquaint the king with it; and I conceive nothing to the contrary, but that his majesty will yield so much unto you. I have a second charge to deliver unto you, and that is, That his majesty will not have you from henceforth to meddle with the High Commission; he will take care that it shall be done otherwise.

*Archb.* I do not doubt but it shall be better managed, than it hath been by me: And yet, my lord, I tell you, that for these many years that I have had the direction of that court, the time is to come that ever honest man did find fault, that he had not there justice done.

*Secret.* It is now vacation time, and so consequently little to do; and by Michaelmas his majesty may set all in order.

*Archb.* I am sorry that the king proceedeth thus with me, and letteth me not know the cause.

*Secret.* Although I have no commission to tell you so, it is for a Book which you would not allow, which concerned the king's service.

*Archb.* If that be it, when I am questioned for it, I doubt not but to give an honest answer.

*Secret.* You will never be questioned for it.

*Archb.* Then am I the more hardly dealt withal, to be censured, and not called to my answer.

*Secret.* Well, my lord, I will remember that of Foord; and will your grace command me any more service?

*Archb.* No, my lord, but God be with you; only I end where I began, with the words of the Prophet, 'He shall not be afraid for any evil tidings, for his heart standeth fast, and believeth in the Lord.'

It comforted me not a little, that the word was now out: my conceiving must be for not allowing of a Book! I had much ado to forbear smiling when I heard it, because now it

was clear it was not for Felony or Treason that was laid to my charge, nor for intelligence with the Spaniards or French, nor for correspondence with Jesuits or Seminary Priests, or any other grievous crime, I thank God for that. I had almost forgotten, that among many other memorable Speeches that passed between us, I used this one, That peradventure the king might be offended at me, because I was no more present at the matter of the Loan; but, said I, my lameness hindered me therein, and I hoped thereby to do my master better service, because if ever course be taken to reconcile the king and his people, (which if it be not, this kingdom will rue it in the end) I would hope among many other, to be a good instrument therein, since my hand hath not been in those bitterness which have of late fallen out. You say well, saith the Secretary: Would you that I should tell the king so much? Yea, said I, if you please; I hold it not unfit that his majesty should know it.

What he reported therein, I do not know; but matters proceeded in the former course, as if there were no regard had of any such thing.

The lord Conway being gone from me for two or three days, I expected to hear the resolution, to what place in Kent I should betake myself; and receiving no news, I tossed many things in my mind, as perhaps, that the king desired to hear somewhat from the duke, how he sped in his journey; or that peradventure he might alter his purpose, upon report of my ready obeying; or that it might so fall out, that some of the lords of the court understanding, upon the Secretary's return from Croydon, that which was formerly concealed from them, might infuse some other counsils into the king. These thoughts I resolved, at last, not forgetting the courses of the court, and imprinting that into my heart, That there was no good intended towards me, but that any advantage would be taken against me, I sent a man to Whitehall, whither the king was now come for a night or two, and by him I wrote to the lord Conway, in these words:

My very good Lord; I do not forget the Message which you brought unto me on Thursday last, and because I have heard nothing from you since that time, I send this messenger on purpose to know what is resolved touching the house, or houses where I must remain: there belong to the archbishopric three houses in Kent, one at Canterbury, another five miles beyond, called Foord, and a third on the side of Canterbury, but two miles off, the name whereof is Becksburn.—I pray your lordship to let me know his majesty's pleasure, whether he will leave the choice of any of those houses to me to reside in: I have reason to know the resolution hereof, because I must make my provision of wood, and coals, and hay, for some definite place; and when I shall have brewed, it is fit I should know where to put it, or else it will not serve the turn: it is an unseasonable time to brew now, and as untimely to cut wood,

being green in the highest degree, and to make coals, without all which, my house cannot be kept. But when I shall know what must be my habitation, I will send down my servants presently to make the best provisions that they can. And so expecting your lordship's Answer, I leave you to the Almighty, and remain, Your lordship's very loving friend, G. CANT. Croydon, July 10, 1627."

He made my servant stay, and when he had gone up to know the king's further pleasure, he returned me the Answer following:

May it please your grace; I am ashamed, and do confess my fault, that I wrote not to your grace before I received your reproof, though a gracious one, but, in truth, I did not neglect nor forget. But the continual oppression of business would not permit me to advertise to your grace the king's Answer. His majesty heard seriously your professions and Answers, and commanded me to signify unto you, That he knew not the present difference between you and the town; and if he had, he would not have cast you into that inconvenience. He was well pleased you should go to your house at Foord, and said, he did not expect when the question was ended between your grace and the town, that you should go to Canterbury.—And he further said, He would not tie you to so short a time, as might be any way inconvenient, but doth expect, that your grace will govern it so, as his majesty shall not need to warn you a second time.—I will not fail to move his majesty, to give you liberty to chuse either of your houses you name, and give you knowledge of his pleasure, and in all things be ready to obey your commandments, or take occasion to serve you in the condition of, Your grace's most humble servant, CONWAY. Whitehall, July 10, 1627.'

I could not but observe therein that passage, That the king doth expect, that your grace will govern it so, as his majesty will not need to warn you a second time: I needed no interpreter to expound those words, and therefore did take order, that one of my officers was presently dispatched unto Foord, to see the house ready.

While necessaries were caring for, and I lay for some days at Croydon, and afterwards at Lambeth, the city of London was filled with the report of my confining (for so they did term it) and divers men spake diversly of it. I will not trouble myself to mention some idle things, but some other of them require a little consideration. A main matter that the Duke was said to take in ill part, was, the resort which was made to my house at the times of dinner and supper, and that oftentimes of such as did not love him.

My answer unto that is, That by nature I have been given to keep a house according to my proportion, since I have had any means, and God hath blessed me in it. That it is a property by Saint Paul required in a bishop,

of spite, I conceived it to be agreeable to the proceedings with the lords and gentlemen which refused to contribute to the Loan, they all being laid aside in the commissions for lieutenancy, and the peace, in their several countries. For my part, I had no cause to grieve at this, since it was his majesty's pleasure; but it was by the actors therein understood otherwise, they supposing, that this power gave me the more authority and splendor in the church and commonwealth.

To deliver therefore truly the state of this question, it cannot be denied, but that it was a great point of policy, for the establishing of order in the Ecclesiastical, and consequently Civil Estate also, to erect such a Court, whereby churchmen that exorbitated in any grievous manner, might be castigated, and rectified; and such sort of crimes in the laity might be censured, as were of ecclesiastical cognizance. And verily this is of great use in the kingdom, as well for the cherishing the study of the civil law, as otherwise: so that it be kept incorruptible, and with that integrity, as so grave a meeting and assembly requireth. That was principally my care, who took much pains, and spent much money, that in fair and commendable sort, justice was indifferently administered to all the king's people that had to do with us: But every one might see, that this was to my singular trouble; for besides that to keep things in a straight course, sometimes in fits of the gout, I was forced by my servants to be carried into the court, where I could not speak much, but with difficulty; I was at no time free from petitions, from examinations, from signing of warrants, to call some, to release others, from giving way to speeding and forwarding acts of courts; suitors, as their fashion is, being so importunate, as that in summer and winter, in the day, and in the night, in sickness and health, they would not be denied.

These things were daily dispatched by me out of duty, and more out of charity, no allowance of pay being from the king, or of fee from the subject, to us that were the judges: Nay, I may say more, the holding of that court in such sort as I did, was very expenceful to me out of my private purse, in giving weekly entertainment to the Commissioners; the reason whereof was this: King James being desirous, when he made me Archbishop, that all matters should gravely and honourably be carried, defected me, that I should always call some of the bishops that were about London, and some divines and civilians, that by a good presence, causes might be handled for the reputation of the action; and willed me withal to imitate therein the lord archbishop Whitgift, who invited weekly some of the Judges to dinner, the rather to allure them thither. This advice proceeded from the bishop of Durham that now is, which was not ill, if it came from a good intention.

I obeyed it singly, and did that which was enjoined: But whereas in those times the commissioners were but few, since that time there

hath been such an inundation of all sorts of men into that company, that without proportion, both Lords spiritual and temporal, commissioners and not commissioners, resorted thither, and divers of them brought so many of their men, that it was truly a burthen to me. I think it may by my officers be justified upon oath, That since I was archbishop, the thing alone hath cost me out of my private estate 1,000*l.* and a half, and if I did say 2,000*l.* it were not much amiss, besides all the trouble of my servants; who neither directly, nor indirectly, gained 6*d.* thereby in a whole year, but only travel and pains for their master's honour, and of that they had enough: My house being like a great hostry every Thursday in the term; and for my expences, no man giving me so much as thanks.

Now this being the true case, if the Church and Commonwealth be well provided for in the administration of justice, and regard be had of the public, can any discreet man think, that the removing of me from this molestation, is any true punishment upon me? I being one that have framed myself to reality, and not to opinion, and growing more and more in years, and consequently into weakness, having before surfeited so long of worldly shews, whereof nothing is truly gained temporally, but vexation of spirit; I have had enough of these things, and do not dote upon them: The world, I hope, hath found me more stayed and reserved in my courses.

Nevertheless, whatsoever was expedient for this, was dispatched by me while I lived at Lambeth and Croydon, albeit I went not out of door. 'Yes, but you were otherwise inutile, not coming to the Star-Chamber, nor to the Council-Table.' My pain, or weakness by the gout, must excuse me herein. When I was younger, and had my health, I so diligently attended at the Star-Chamber, that for full seven years I was not one day wanting. And for the Council-Table, the same reason of my indisposition may satisfy: but there are many other things that do speak for me. The greatest matters there handled, were for Money, or more attempts of War: For the one of these, we of the clergy had done our parts already; the clergy having put themselves into payments of Subsidy, by an act of parliament, not only for these two last years, when the temporality lay in a sort dry, but yet there are three years behind, in which our payments run on with weight enough unto us; and no man can justly doubt, but my hand was in those grants in a principal fashion.

And concerning the Provisions for War, I must confess mine ignorance in the feats thereof; I knew not the grounds whereupon the controversies were entered in general; I thought, that before wars were begun, there should be store of treasure; that it was not good to fall out with many great princes at once; that the turning of our forces another way, must needs be some diminution from the king of Denmark, who was engaged by us into

the quarrel for the Palatinate and Germans, and hazarded both his person and dominions in the prosecution of the question. These matters I thought upon, as one that had sometimes been acquainted with councils; but I kept my thoughts unto myself.

Again, I was never sent for to the Council-Table, but I went, saving one time, when I was so ill, that I might not stir abroad. Moreover, I was sure that there wanted no counsellors at the board, the number being so much increased as it was. Besides, I had no great encouragement to thrust my crazy body abroad, since I saw what little esteem was made of me in those things which belonged to mine own occupation; with bishoprics and deanries, or other church-places, I was no more acquainted than if I had dwelt at Venice, and understood of them but by some Gazette.

The duke of Buckingham had the managing of these things, as it was generally conceived: For, what was he not fit to determine, in church, or commonwealth; in court, or council; in peace, or war; at land, or at sea; at home, or in foreign parts? Mountague had put out his Arminian Book; I three times complained of it, but he was held up against me, and by the Duke, magnified as a well-deserving man. Cosens put out his Treatise, which they commonly call "The Seven Sacraments:" which, in the first edition, had many strange things in it, as it seemeth: I knew nothing of it, but as it pleased my lord of Durham, and the bishop of Bath: So the world did read.

We were wont in the High Commission, to repress obstinate and busy papists: In the end of king James's time, a letter was brought me under the hand and signet of the king, That we must not meddle with any such matter, nor exact the 12*d.* for the Sunday of those which came not to the church, (with which forfeit we never meddled.) And this was told us to be in contemplation of a Marriage intended with the lady Mary, the daughter of France.

After the death of king James, such another Letter was brought from king Charles, and all executions against Papists were suspended.

But when the term was at Reading, by open divulgation in all courts, under the great seal of England, we and all magistrates are set at liberty to do as it was prescribed by law: And now our pursuivants must have their warrants again, and take all the priests they can; whereof Mr. Cross took 14 or 15 in a very short space. Not long after, all these are set free; and letters come from the king, under his royal signet, That all warrants must be taken from our messengers, because they spoiled the catholics, and carried themselves unorderly unto them, especially the bishop's pursuivants: Whereas we had in all but two; Cross, my messenger, for whom I did offer to be answerable; and Thomlinson, for whom my lord of London, I think, would do as much. But the caterpillars indeed, were the pursuivants used by the secretaries, men of no value, and shifters

in the world, who had been punished and turned away by us for great misdemeanors.— But truth of religion and God's service, was wont to over-rule human policies, and not to be over-ruled; and I am certain, that things best prosper, where those courses are held. But be it what it may be, I could not tell what to make of this variation of the compass, since it was only commanded unto me to put such and such things in execution. But I never understood any thing of the counsel, whereby I might give my judgment how fit or unfit they were, or might speak to alter the tenure, whereunto in former times I had been otherwise used. Variety of reasons breedeth variety of actions.

For the matter of the Loan, I knew not a long time what to make of it: I was not present when the advice was taken; I understood not what was the foundation whereupon the building was raised, neither did ever any of the council acquaint me therewith. I saw on the one side the king's necessity for money, and especially it being resolved, that the war should be pursued; and on the other side I could not forget, that in the parliament great sums were offered, if the petitions of the commons might be hearkened unto. It ran still in my mind, That the old and usual way was best; that in kingdoms, the harmony was sweetest, where the prince and the people tuned well together; that whatsoever pretence of greatness, he was but an unhappy man, that set the king and the body of the realm at division; that the people, (though not fit to be too much cockered, yet) are they, that must pray, that must pay, that must fight for their princes; that it could not be, that a man so universally hated in the kingdom as the duke was, must, for the preservation of himself, de-perately adventure on any thing, if he might be hearkened unto.

These meditations I had with myself; and, God knoweth, I frequently in my prayers did beg, that he, whom these things did most concern, would seriously think upon them. It ran in my mind, that this new device for Money could not long hold out; that then we must return into the highway, whither it were best to retire ourselves betimes, the shortest errors being the best. But these thoughts I suppressed within my soul; neither did I ever discourage any man from lending, nor encourage any man to hold back: which I confidently avouch.

At the opening of the Commission for the Loan, I was sent for from Croydon. It seemed to me a strange thing; but I was told there, That howsoever it shewed, the king would have it so, there was no speaking against it. I have not heard, that men throughout the kingdom should lend money against their will; I knew not what to make of it: but when I saw the Instructions, the refusers should be sent away for soldiers to the king of Denmark, I began to remember Urias, that was set in the fore-front of the battle; and, to speak truth, I durst not be tender in it. And when afterwards I saw, that men were to be put to their oath, with whom they had had conference, and whether

any did dissuade them? And yet further beheld, that divers were to be imprisoned: I thought this was somewhat a new world. Yet all this while I swallowed my own spittle, and spake nothing of it to any man. Nay, when after some trial in Middlesex, the first sitting was for Surrey in my house at Lambeth, and the lords were there assembled with the justices of the whole county, I gave them entertainment in no mean fashion: and I sate with them, albeit I said nothing; for the confusion was such, that I knew not what to make of it: things went on every day, and speech was, of much money to be raised out of some counties; yet afterwards it was not so readily paid, as preferred; and at length some refused even in London itself, and Southwark, besides many gentlemen of special rank, and some lords, as it was said. And though it was reported, that they were but a contemptible company, yet the prisons in London demonstrated, that they were not a very few, but persons both of note and number. The Judges besides concurring another way, That they could not allow the legality of the demand, and the enforcement that is used thereupon, did somewhat puzzle me for being too busy in promoting of that, for which I might one day suffer. Yet hitherto I remained silent, hoping that time would break that off, which was almost come to an absolute period. But instead of this, by the permission of God, I was called up to the king to look clearly into the question. When the allowance of Sibthorp's Pamphlet was put upon me, I then had some reason, out of the grounds of that Sermon, to fear, (and I pray God that my fear was in vain) that the duke had a purpose to turn upside down the laws, and the whole fundamental courses, and liberties of the subject, and to leave us not under the statutes and customs which our progenitors enjoyed, but to the pleasure of princes; of whom, as some are gentle and benign, so some others, to ingrate themselves, might strain more than the string will bear.

Besides, now it came in my heart, that I was present at the king's coronation, where many things on the prince's part were solemnly promised; which being observed, would keep all in order, and the king should have a loving and faithful people, and the commons should have a kind and gracious king. The contemplation of these things made me stay my judgment; not any unwillingness to do my prince any dutiful service, whom I must and do honour above all the creatures in the world, and will adventure as far for his true good, as any one whatsoever. But I am loath to plunge myself over head and ears in these difficulties, that I can neither live with quietness of conscience, nor depart out of the world with good fame and estimation. And perhaps my sovereign, if hereafter he looked well into this paradox, would, of all the world, hate me, because one of my profession, age, and calling, would deceive him, and with base flattery swerve from the truth. 'The hearts of kings are in the hand of God, and he can turn them as the rivers of water.'

I draw to a conclusion; only repute it not amiss (because so much filleth in here) to observe a few words of the duke of Buckingham, not as now he is, but as he was in his rising. I say nothing of his being in France, because I was not present, and divers others there be that remember it well; but I take him at his first repair to court. King James, for many insolencies, grew weary of Somerset; and the kingdom groaning under the triumvirate of Northampton, Suffolk, and Somerset, (though Northampton soon after died) was glad to be rid of him. We could have no way so good to effectuate that which was the common desire, as to bring in another in his room; one nail (as the proverb is) being to be driven out by another. It was now observed, that the king began to cast his eye upon George Villiers, who was then cup-bearer, and seemed a modest and courteous youth. But king James had a fashion, that he would never admit any to nearness about himself, but such an one as the queen should commend unto him, and make some suit on his behalf; that if the queen afterwards, being ill intreated, should complain of this 'Dear one,' he might make his answer, 'It is long of yourself, for you were the party that commended him unto me.' Our old master took delight strangely in things of this nature.

That noble queen (who now resteth in heaven) knew her husband well; and having been bitten with favourites both in England and Scotland, was very sly to adventure upon this request. King James, in the mean time, more and more loathed Somerset, and did not much conceal it, that his affection increased towards the other; but the queen would not come to it, albeit divers lords (whereof some are dead, and some yet living) did earnestly solicit her majesty thereunto. When it would not do, I was very much moved to put to my helping hand, they knowing, that queen Anne was graciously pleased to give me more credit than ordinary, which all her attendants knew she continued till the time of her death. I laboured much, but could not prevail; the queen oft saying to me, 'My lord, you and the rest of your friends know not what you do: I know your master better than you all; for if this young man be once brought in, the first persons that he will plague, must be you that labour for him; yea, I shall have my part also: the king will teach him to despise and hardly intreat us all, that he may seem to be beholden to none but himself.' Noble queen! how like a prophetess or oracle did you speak!

Notwithstanding this, we were still instant, telling her majesty, that the change would be for the better: for George was of a good nature, which the other was not; and if he should degenerate, yet it would be a long time before he were able to attain to that height of evil, which the other had. In the end, upon importunity, queen Anne condescended, and so pressed it with the king, that he assented thereunto: which was so stricken while the iron was hot, that in the queen's bed-chamber, the king

