

Then is it possible to contend for a moment, that this charter was accepted by the *citizens* of Chester, to whom it was granted, when only twenty-one out of nine hundred and thirteen came in and took up their freedom under it?

Then let us see if it is accepted by the *inhabitants*, (for there is a new description added in this charter to the old one) as the King most probably foresaw that those persons who had refused to surrender their rights, would not accept it, therefore, with a view of filling the corporation, he incorporates *all the inhabitants*, as well as the citizens. He was disappointed in that; for the inhabitants partook of the virtue and spirit of their fellow-citizens;—and there was *not one* of the inhabitants who accepted it; for they have not produced, and I again defy them to produce, a *single instance* of any *inhabitant* coming to claim his freedom under that charter. I asked Mr. Hall, the town-clerk, the servant of the corporation, the witness brought here to support the rights of the select body, as far as in truth and justice he can.—(I will do him the justice to say I believe he will go no farther)—He tells you he never knew, heard or read of a single inhabitant claiming his freedom under this charter.—Then does not this make the case as clear as the sun at noon-day? Have you not reason to reproach me for taking up any more of your time? Have you not reason to desire me to sit down, and to declare you are perfectly satisfied, that neither in law nor in common sense was the charter of Charles the 1st accepted by those to whom it was granted—namely—the *citizens* and *inhabitants* of Chester.—As to the acceptance of the *select body* (the *little junto*) named in the charter, I hold that extremely cheap.

This observation, which appears to me not to be captious or sophistical, but founded upon the reason and nature of the case itself, completely does away the little subsequent period of *three years*, which my learned friend rested upon with so much triumph, and took up so much time in laying before you in proof of the acceptance of this charter, for except the evidence of those *three years*, there is not a tittle of evidence in the cause.

My learned friend, in the outset, blamed his clients for setting him to prove the usage which he had stated as far back as Henry VIII. My friend's good sense revolted against it; for how could that prove an acceptance of a charter granted by Charles II.? And he had too much decency to take up your time with proving that which had nothing to do with the issue.

If the usage prior to the charter will not avail, as little will the usage subsequent to 1688 avail; and that leads me to another part of the history subsequent to the granting this charter;

for the next period to these three years, in which there was a fullen silence on the part of the great body of this corporation, and a vigorous exertion of the *junto* who had obtained this charter, is a memorable period indeed; for however ill advised that unfortunate Prince who succeeded Charles II. was in other particulars, and who, by being a little “*imprudent and ill-advised*” had the misfortune afterwards of losing his crown, when threatened with danger, as my friend told you—when he heard that an invasion was certainly preparing in Holland, and intended against him, he was then prevailed on to do that which was right; he was induced by his fears to listen to better counsels, and one of the first good effects produced in King James II. from his apprehensions of that invasion, towards the salvation of the liberties of the country, was, restoring the rights and franchises of all the corporations in the kingdom. In this manner did King James’s good genius advise, which might have saved his crown, and preserved his family upon the throne, if he had listened to it;—happy for this country he did not listen to it, because we have a better family in the place of his. He was advised to make use of the very weapons which despotism had put into his hands, to overturn that despotism; for this charter, which I stated before to be hatched in violence and despotism, contained in itself the seeds of its own destruction: It contained a clause (which I believe is to be found in all the charters granted in that period, and in no other) empowering the crown—without fault or delinquency—without reason assigned—to remove every member of that new corporation!—In this charter of Charles II. was contained such a clause, the object of which evidently was to keep the corporation in good behaviour, under the peril of that dissolution, the power of which the King reserved in his hands.—Fortunately, however, that power was made use of for a better purpose; for King James, by the advice of his council, availed himself of it to put an end to that system of violence which he had begun, removing the mayor by name, and by name every alderman and common-council-man established by the charter of Charles II.

After my learned friend has been so emphatical in stating the effect of the judgment in quo warranto, I think I can venture, with confidence, to follow him upon the effect of this order of James. The effect was intirely to annihilate that corporation, which had been violently and corruptly created; for, by taking away the chief magistrate—by taking away the whole body of aldermen—by taking away the whole body of common-councilmen—by taking away every individual of the body known by

that charter, *who had a power to elect new members*,—the corporation was effectually dissolved, and there was once more an end of the corporation of Chester. It had risen but a short time indeed from its former ashes, and it died by a means quite as effectual as those which my friend stated had so intirely put an end to its existence before. That corporation was effectually dissolved, and there was an end of it.

Then appeared the good effects of the wise use which had been made of this instrument. Immediately after laying aside all the members of the new corporation created by Charles II. comes a charter of James, not new modeling the corporation at his pleasure—not reserving the means of destroying it at his will—but *pardoning in direct terms, the judgment in quo warranto, and in express and direct terms, restoring all the rights granted to the corporation by the charter of Henry VII. and the charter of confirmation by Queen Elizabeth*. I contend that the latter was more in point of law than he needed to have done; and that we have done more than we need to have done to put in issue the question of the acceptance of that charter; for the legal effect of the King's pardoning the judgment in quo warranto, I contend to be the restoration of all the antient rights of the city of Chester, so that if the King had stopped there—if after turning out those people who had, under the pretence of the charter of Charles the II^d, usurped the rights of the corporation, he had contented himself with granting a pardon, under the great seal, of the judgment in quo warranto, I contend with confidence that the effect of that would be to do away completely all the operation of the judgment, and to leave the corporation of Chester, precisely in the state in which it was the day before the judgment was signed.

Gentlemen, do you call for proof that the very people who had been contending for their rights for years before—the very people who had refused to submit to the usurpation of Charles the II^d.—the very people upon whose application the order of council was made, to turn out the usurpers and intruders—will you call for evidence to shew, that *they* accepted of the very thing which they had been soliciting?—that *they* accepted of the very thing which was to restore them to all their antient rights?—It will, I suppose, be allowed that the effect of the pardon was to restore them exactly to the state in which they were before the judgment. But we shall not stop there, for I shall give a very different evidence indeed from that which has been attempted to establish the acceptance of Charles's charter during those three years, for in order to prove the actual restoration of the charter of Henry VII. we shall shew you that the

persons restored entered immediately into the possession of their franchises—We shall shew you that for several years posterior to the restoring charter, no man presumed to act in any corporate capacity at Chester, but those named in that charter, or those that were corporators before the judgment, for all these resumed their functions. We shall shew you an acting under it not by the select body only, but by the whole corporation: For when they came to be restored to their constitution under the charter of Henry VII. the select body still continuing the mode of election, which had crept in in consequence of the bye-laws which I have stated, we shall shew you that the body at large, joining in one petition to the number of above 400 (a very large number indeed to be brought to concur in one act when the whole body were not got together) with two of the aldermen, in a formal act, made an application to the Mayor for the restitution *de facto* of the rights which they held under the charter of Henry VII and claiming in direct terms the restitution of that mode of election prescribed by the charter of Henry VII. which had been just restored to them. They considered themselves, rightly, not as acting under any charter of James II. for you will observe the charter of James II. is not a new one; it contains, as I said before, no new grant—no new modification; the simple operation of it is to give more express effect to pardoning the judgment in quo warranto, and to restore the antient constitution—The moment it passed, the citizens considered themselves as repossessed of their prior and better right and title to their antient franchises.

In this manner then they applied to the select body. They assented to the claim, and by a solemn act of the mayor, aldermen, and common council the mode of election prescribed by the charter of Henry VII is in express terms restored. That is protested against it is true by some of the *old junto*, who were still unwilling to be driven from their attempts; but that protest, in my opinion, greatly strengthens the evidence upon our part of the case, and seems to me perfectly decisive against that set up on the part of the defendant.

For, gentlemen, still recollect—and I must entreat you to forgive me if three or four times I should call your attention to that which is the true question.—Mr. Amery says he is elected under the charter of Charles II.—not under any bye-law or usage.

This application of the freemen, the assent of the whole corporate body, and the protest against it, are but nine years posterior

posterior to the date of this notable charter of Charles II: is it then possible to conceive that the men protesting against this which they call an *innovation*—those too every one of them named in the charter of Charles II. and within nine years after, should have considered it as a subsisting charter, or accepted by any branch of the corporation of Chester? If otherwise, what would they have said?—What are you doing? You are restoring a mode of election in the teeth of *our charter!* we protest against it, and stand upon *our charter*.—Gentlemen, will you not be astonished to find, when you come to read the protest of those very men specifically named in the charter of Charles II. within nine years after—that though they remonstrate against the mode of election, the charter of Charles II. is *not once named*. That alone, if there was nothing else in the cause, amounts to demonstration that even the very people to whom the charter was directed, nine years after, did not consider it as a subsisting charter, but a piece of waste paper; and such it *has* been considered, till revived for the first time in this cause. The protesters themselves never thought fit to set up that charter—but contend that their mode of election is *pursuant to the charter of Henry VII.* Whether it is so or not, your own good sense will shew you. I admit that the charter of Henry VII. is their subsisting charter; if that is the mode of their election, let them persist in it, and nobody will ever disturb their possession of it. But they were driven to this poor attempt to insist that the charter of Henry VII. authorises this construction—they were driven to give it a construction, which no man could give, because they considered it as a *subsisting charter*, rather than have recourse to another, the words of which were perfectly clear, but which they looked upon only as a piece of waste paper.

It did not rest there, for to be sure there never was a period of ten years, which afforded so much material evidence in any cause, as from 1688 to 1698. It was a period very slightly glossed over by my friend, and I do not wonder at it; but it is an important period in this cause.

The year 1688 was an æra which began by the new proclamation of James 2d. In the year 1693 the commonalty claimed their rights under their old charters, which was assented to by the select body, except by a few who protest; which, as I have observed, is strong evidence of the non-acceptance of the charter. In 1693, 4, 1695, and soon till the year 1698, there are repeated acts of the corporation at large, all conformable to the charter of Henry VII. and to the restitution of it in the charter of
James,

James 2d which they had just received, and to the act of the corporation itself, which I have just mentioned to you.

You will find that in these years a number of elections were made of aldermen and common-council by the body at large, in the manner precisely prescribed by the charter of Henry VII.

You will find another most solemn and deliberate act of the whole corporation, recognizing, confirming, and regulating that mode of election, and this done also by the select body, which is very remarkable indeed, and precisely according to the directions of the charter of Henry 7th, which vests the power of making bye laws, in the mayor, aldermen and common council

You will likewise find the select body making new regulations, not to alter, but to modify the election of aldermen and common council, by the body at large.

You are not to be surprized if you never find a word about the charter of James IId in any of these proceedings; because, as I stated before, it contained nothing but the restoration of their former title. This, however, did not pass without some opposition from the other party. You will find that in July, 1693, they apply to Queen Mary in council (King William being then absent she was regent of the kingdom) complaining of this new mode of election, as they called it; but if they were so absurd, so foolish, and had so much forgotten their own case, and that which they had built their own rights upon, in the hurry and confusion of the protest in June, 1693, that they then omitted to mention the charter of Charles IId (tho' it was granted but nine years before) one would think, they would have had time to recollect it, at least before they presented a solemn petition to the Queen in council; and if they conceived themselves to be possessed of so indefeasible a title, as a subsisting charter, the words of which were perfectly clear and unambiguous, they would have had recourse to that title, and called upon the Queen in council, to support the act of their predecessors; but, there is not one allegation in the petition, of the words of the charter of Charles IId, yet they talk of the charter of Henry 7th—the bye laws, and every thing in short, except the charter of Charles IId. It is a very singular thing that this charter should seem to be totally forgotten nine or ten years after the time it was granted, and yet that people now (at the distance of a century) should know more of what was done under it, than the people who lived when it passed, and should now venture to set it up as a subsisting charter. Whether they were ashamed of it in those days, whether they had grace enough to be ashamed, or, whether they were conscious that it was never intended to be

*for the
same
reason*

carried into effect—it was resisted by every-body. Whatever their reason was, they seem to have locked it up in their strong box, and to have been very careful not to put any person in mind that such an instrument existed.

To this petition (wherein they mention having been displaced by King James) an answer was put in by order of the corporation—upon which the petition was dismissed by the privy council, and the matter was left to be tried at law. For these people being still restless, had previously complained to the court of King's-bench, that they had been turned out of their offices to which they had been duly elected, and procured a mandamus to restore them. The corporation made a return to this mandamus under their common seal, in which not a word is said respecting the charter of Charles II. but they expressly say that the complainants had been elected into the common-council under the charter of Henry VII for one year, which being ended, others were elected in their room, by virtue of the same charter. The court was of opinion that this return was not sufficient to give judgment upon, but they refused to restore the parties who had applied for the mandamus—so that there was an end of their claim,—after protesting in the corporation—after petitioning the Queen in council—and after getting their mandamus in the court of King's-bench;—in all of which proceedings, they never once insisted upon that handsome piece of parchment * which has been brought into court to day. And now will it be possible to contend, after these very people have stated that they had been turned out, that the order of James to turn them out was never signified to them?—We shall prove out of their own mouths that it was; and that a copy of that order has been kept among the records by the town clerk of Chester, who shall produce it to you—we shall produce a copy from the council-book, containing that order of amotion, for the council-book is not come down, (my friend and I have agreed about the admission of a copy) we shall bring a clerk of the council who will tell you that if an order of council has been issued, which is not carried into effect, nor transmitted to the people to whom it is addressed, the constant practice is to enter a *vacat* in the council book as to such order; we shall prove that there is no such entry, but that it stands in the council book a *subsisting order*.

Gentlemen, I am now pretty nearly come to the conclusion of the history of this cause, and of these curious transactions, and very curious they are as ever came into a court of justice.

The next important period comes shortly after, which was in the year 1698; Mr. Whitley, who had been mayor, and who

* Faint, gilt, and decorated with emblematic devices in a most curious and remarkable manner.

who was a very active member of the corporation, and, to his honour, a very zealous friend and supporter of the just rights of his fellow citizens, died about the middle of the year preceding; the old junto then plucked up new courage, they set to work afresh, and, by what means, I know not, again cajoled the poor commonalty to make as it were a new surrender of their rights—for in the year 1698, there is the most extraordinary transaction (when you come to examine it and take it altogether) that I ever met with in any corporation—they call a general meeting—they had been feelingly convinced of the absurdity of setting up a right in the select body—they had made too many ineffectual attempts within ten years preceding, to venture to rest upon any acts they could do themselves—they did not call a meeting of the select body to proceed to elections, and to say, “this commonalty have usurped upon us, we will renew our ancient rights, and turn them out:”—No—but they call a meeting of the commonalty themselves, to prevail upon them to *relinquish* their right; and though they prevailed upon the majority at that meeting to do so, yet they did not venture to rest upon that, and the moment they got the commonalty to consent to this, to turn them out of the hall, (as has been the practice ever since) then to proceed to the elections and to fill up the vacancies—but, (would you believe that any men could be guilty of such a contradiction) the very men who at *that same hall* prevailed upon the commonalty to restore what was called the *ancient right* of election, make that commonalty proceed *immediately* to fill up the vacancies in the select body, for they are at that very meeting filled up by the *citizens at large*. So that the very act by which they cajoled and seduced the commonalty to make a surrender of their privileges, contains the strongest recognition of them—they get *them* to fill up the vacancies, conceiving they could not *otherwise* be a legal and subsisting body. But, having got the vacancies legally filled up by the commonalty, and their consent to what they call the old mode of election, they, falsely in point of law, thought that would be a valid act in future, and they could afterwards proceed without the commonalty. From that time they proceeded to elect under this sort of bye-law, for such it was, made in the year 1698, which for the reasons I have stated, I conceive to be a mere nullity in point of law, and that the commonalty have a right to resume those rights whenever they please, which they now are desirous of doing.

They proceeded as before, but not without interruption, for there was a memorable dispute in 1733, in which the commonalty

monalty brought an information in quo warranto, against the whole of the select body—against the then aldermen, and the common-council describing them, *eo nomine*, as mayor, aldermen, and common-council-men, of Chester, and under that description they call upon them to shew under what right they claim and exercise the franchise of electing aldermen and common-council, exclusive of the freemen at large.—What answer does the corporate body make to this information in quo warranto, and what title do they set up? why they had not *then* found out the charter of Charles II. it had lain so effectually buried, that even in the year 1733 they had not dug it up again—but they state (what I mentioned to you in the outset) the bye law made in the reign of Henry VIII. and they say, that *under that bye-law*, the election was made by the select body—and they say that that bye law was a valid, subsisting bye law at that time.

Upon that information several issues were directed to be tried; they *were* tried, and verdicts were found, and my learned friend, I suppose, will say by and by, as he did in the opening, that when we have disputed this matter, we have always been beat. I trust to day will form an exception to that general rule, if there were no other—he will certainly tell you, by and by, that we were beaten *then*:—but how?—not by the charter of Charles II. but beaten by these very bye laws which my friend, and his learned coadjutors, to day have deserted as *illegal*.

How the commonalty came to be so ill advised as to acquiesce, I know not; when if they had brought it into court and argued the point of law, there would be no doubt but these bye laws would have been found to be *null and void*:—that Johnson and the rest of his corporators would be found to have no title at all; but they acquiesced, and in consequence of that Johnson and his associates continued in possession of the rights of this corporation. Now that plea, by the whole corporate body, is in my opinion not only evidence, but conclusive evidence, against Mr Amery, that he has no claim to be elected under the charter of Charles II. for it is a direct resort to certain bye laws, under which they expressly state their elections to have been held, and their rights to have been exercised—then if it was held under these bye laws, it was not under the charter of Charles II. It is a plea by the very same body, under which Mr. Amery now makes title, and therefore is direct evidence, out of his own mouth, that the body who elected him did not claim this right under the charter of Charles II. for they expressly tell you under what they did claim it, without mentioning a single word of that charter.

I

But

But they had their reasons for omitting in their plea to mention the charter of Charles II.—for though it had been totally forgotten nine or ten years after it was granted, somebody or other had stumbled upon it in the old chest of the corporation in 1733,—and without attending to all the circumstances of it, they did, in the first stage of that dispute, venture to bring it for the first time into light, for I find that upon the motion in the court of King's-bench, upon which the information in quo warranto was grounded,—when they came to shew cause, why the quo warranto should not issue, they did give a little hint at this charter of Charles II. and would have been glad, if they could have sheltered themselves under it, which would have been better than having recourse to these old bye laws;—but I will read to you what was said by the great judges who then presided in the court of King's-bench, with my Lord Hardwicke at their head, and then you will not be surprized, that the charter of Charles II. was again locked up in the corporation chest—though you will be surprized, that it has seen the light to day.

My Lord Hardwick says, (speaking of the charters granted in the latter end of Charles II. reign)—“ these charters have
 “ never been countenanced in Westminster-hall, and I will
 “ not give an opinion in support of them, unless the strongest
 “ evidence in the world be laid before the court, of their being
 “ accepted and uniformly acted under ever since.” Now, has that evidence been laid before you?—What! acted *uniformly under ever since*, when the people to whom it was granted had forgot it *nine years after*!—Now, “ as to the election of the
 “ two mayors, immediately after the 37th Charles II. they
 “ were by the very body in whom the right of election was
 “ vested, exclusive of the citizens:”—And therefore, that great judge, as well as myself, who would presume at an humble distance to follow him in that argument, considered this as a proof, that the charter was not accepted by the body at large.—“ In the charter of restitution, 4th James II. no notice is taken of this charter of the 37th Charles,” (it is the charter of James II. which you see the learned judge considers as a void charter) “ but it takes things up just the same as:—
 “ the time of the judgment, putting them upon the same footing as they were before that judgment. The protest of the
 “ citizens against the proceedings of the select body so soon after the charter of 37th Charles II. and the struggle they
 “ made to preserve their liberties, are strong evidence that
 “ there was no acceptance; as is also the attempt of the select
 “ body in 1687, which would not have been, had they been
 “ vested.”

“ vested with the same power under the charter of Charles II.”
 This is the language of Lord Hardwicke in 1733, in the very
 cause in which my friend stated in the outset with exultation,
 that we were beaten, and the corporation were victorious.

Mr. Justice Page adds,—“ The implied acceptance of a
 “ charter may be collected from the nature of it ; and one can
 “ scarce imagine, that the freemen at large should accept a
 “ charter which cut them out of their rights in the election
 “ of all their superior officers. The frequent claims of right
 “ insisted upon by the freemen, from the year 1693, to 1697,”
 (which I have stated to you before,) “ plainly shew that the
 “ freemen never did accept of this charter, or acquiesce under it.”

Mr. Justice Probyn (another of the learned judges) says,—
 “ The charter of 37th Charles II. is to the mayor, aldermen,
 “ and common-council only, which is to the very body who
 “ claim an exclusive right under it. No surrender or accep-
 “ tance of a charter can be made by a select body, in opposi-
 “ tion to the whole body of the freemen.”—So that all these
 acts of the select body, let them prove what they will, are a
 mere nullity ; for one part could not accept the charter, in
 opposition to the whole body.

Mr. Justice Lee adds,—“ Where the acceptee doth not
 “ accept a grant, such grant cannot operate or have any effect.
 “ No notice being taken in any of the corporation entries of
 “ this charter of Charles II. but only of former usages, weighs
 “ very much with me to think that there was no acceptance.”

So that the learned judges then thought, as I am persuaded
 you will now think, that the total silence of the corporation
 books themselves upon the subject of this charter, contains the
 strongest and most decisive evidence, that it never was accepted,
 for upon every occasion down to the time which I am now
 speaking of, upon the motion in 1733, whenever there has
 been a dispute about their rights, the select body has had re-
 course not to this charter, as they would have had, if it had
 been a subsisting charter, but to that of Henry VII.

You will not, I think, after I have read these opinions of
 the judges of the court of King's-bench, be surprised that
 those, who defended themselves against that information, had
 the decency to give up the ground of the charter of Charles II.
 —it would have been a forlorn hope to attempt it—the learned
 judges were too well acquainted with it, and with the nature
 of the case, for them to have the smallest hope that a right, set
 up under *that charter*, would have been *supported*—they were
 driven to set up a different right under the bye-law, and that
 right was acquiesced in, in point of fact, by the freemen

*By the
 Court*

I have thus much at length—(I beg your pardon for taking up so much of your time, the importance of the question will be my only apology)—stated the history of the corporation, and the rights of the different parties.

It remains for me now to state the particular issues, which you are to try, and the nature of the evidence, in addition to that, which has already been given.

There are, as you have heard from my learned friend, and I dare say you were alarmed at the intelligence, twelve issues or questions, upon which you are to find your verdict; however, that alarm may be somewhat lessened, because I am persuaded the subject of your enquiry may be greatly contracted.

With respect to the *first issue*, I shall leave it in your hands, under the direction of his Lordship, to dispose of it as you please, without much solicitude as to the event of it. My learned friend was of opinion, that it ought to be found for us, there being no corporation subsisting in consequence of the judgment by quo warranto. I might add too, that the corporation has since been put an end to by the ousting order of council of James the III.

The *second issue* is, “*whether Charles II. granted or not—*” (that is) in other words, whether this charter, without considering the substance, the effect, the policy or law, on which it was founded, was duly issued by the crown—that depends upon two points of law—first, whether this charter, the subject matter thereof, lying in the county palatine of Chester, ought not to have the *palatinate seal*—and *secondly*, whether it ought not to be *enrolled*. The fact is, there is no seal of the county palatine affixed to the charter—nor is there any enrolment of it.

This issue will be matter of law, arising from these facts, but I really feel so much confidence upon those, which form the real question meant to be tried between the parties, *the true constitution of the corporation of Chester*, that I am not much inclined to press you very strongly, or to take up much of your time upon such an immaterial issue, as I conceive this to be, for I am confident, that if this charter had all the seals in the world upon it, and had been enrolled in all the courts of this country, in the most solemn and formal manner; yet that it has never had an operative existence, as to the body to whom it was directed, and if that is your opinion, which I protest I cannot prevail upon myself to doubt, in this case, it would be idle and mispending your time, to dwell much upon questions so trifling in their consequence. If it shall become a material issue, we shall have the benefit of it, for the facts will not be doubted,

doubted,—that it has not the seal of the county palatine nor been enrolled,—and it is expressly stated to be granted under the great seal, and the seal of the county palatine; and there is still a label to the charter, to which that seal was intended to be affixed, which was prevented, no doubt, by the death of the King happening two days afterwards.

With respect to the *enrolment*, I take the law to be clear, that the King cannot grant but by matter of record—my learned friend admitted, that there were *dicta* in the books to that purport, but he said there was no judicial determination which went the length of the question, and he admitted that the *dicta* in the books went so far as to say, that *letters patent not enrolled, were void*. Now I conceive the general proposition of law to be clear—that the King cannot grant but by matter of record, and therefore I hold, that letters patent ought to be made of record, to operate as a grant—that question will be decided hereafter, if it shall be material—but there is one use I would make of that circumstance, of the want of enrolment, that it seems negative evidence of the acceptance of the charter. They are mighty hot upon the charter just when it is issued, they are rewarding every person, who contributed towards procuring it—but they were no sooner taught to feel that this could not be an operative instrument, than they neglect to take the necessary steps to give it its validity, by having it enrolled,—for though it is true, as my Lord stated, that it is the duty of the officers of the crown, to have these things enrolled, we all perfectly well know, that the officers of the crown, or the inferior officers of every court of justice, are much more disposed to do their duty, when put in mind of it by the parties interested, and therefore if the officers of the crown had been put in mind to do their duty, by the parties interested in this charter, no doubt it would have been enrolled: the inference from its not being enrolled is, that it was presently deserted, as an iniquitous piece of business, which the authors themselves blushed at, and which they never dared to call into light, for half a century afterwards;—that is the inference from the want of enrolment. With respect, therefore, to the *second issue*, I shall give you no more trouble, except to call a single witness, who will say he has searched, and there is no enrolment.

We come next to a more material issue, which is the third—that is, “that the charter of Charles II. has not been accepted as to the election of aldermen.” I conceive the third issue, the fifth, and the ninth, are so connected in common sense, and the

the reason of the thing, that they are not likely to be separated in your verdict, nor can they be separated in the evidence.

The fifth issue is, "*that the aldermen have not been elected pursuant to that charter.*"

The ninth issue is, "*that the charter has not been accepted in all things,*" &c.

Now these are the issues to which the history I have been giving you of the corporation, accompanied with observations, substantially applies: And I am persuaded, that if I was to sit down now, and content myself with the observations, which I have made upon these undoubted facts, you would not hesitate a moment to say, that this charter has never been accepted.

Gentlemen, it is my duty to make a few observations upon the evidence for the defendant, upon these issues. The witnesses are, Mr. Hall the town-clerk, and a gentleman, who only reads the entries.

The substance of those entries is comprized within three years from the date of that charter; and they admit of that general answer which I have stated to you, that they prove only *acceptance by the select body*, to whom the charter was addressed, and by no means an acceptance by the body at large, which, I trust his Lordship will tell you, was necessary in point of law.

There is, however, another part of Mr. Hall's evidence, which is extremely material; for, in my opinion, though he has failed in proving the acceptance, because all the acts are merely the acts of the select body, and not one of them an act of the body at large,—yet he has certainly proved the *negation* of the acceptance.

Now, gentlemen, though the charter of Charles the Second has not been read—not even so much of it as was necessary—(it is upon the table, and liable to inspection)—and though it contains directions for the election of aldermen and common-council-men, with which they say the elections have corresponded, which, added to several corporate acts done by these officers, who are named in that charter, forms the only evidence of the acceptance of it by the select body, (no doubt those officers acted under it as long as they were permitted):—Yet you will recollect, that it also directs the mode of electing the mayor, the sheriffs, the coroners, the surveyors of the walls, the treasurers, the lease-lookers, and the election of a mayor in case of a vacancy; it makes a provision for the appointment of a deputy-mayor, and it gives him certain authorities; it makes the deputy-mayor, as well as the mayor and aldermen, justices; and it directs the manner of holding the several courts in the city, which I shall state by and by.

Now,

Now, gentlemen, you will be surpris'd to find, that upon the issue which asserts, that in every particular mentioned upon these pleadings, the charter of Charles II. was accepted, that the very witness, who is called to prove it, yet in fact proves, that out of ten or a dozen important articles, which I have mentioned to you, with respect to the mode of election, almost all of them have been held *diametrically opposite to the charter of Charles II.*

In the first place, you will recollect I asked Mr. Hall, how the mayor has been elected within his knowledge, and as far as he knows any thing of the corporation? My learned friend asked the same thing of the old witness, who has known the corporation seventy years. What is the answer from both these witnesses?—The mayor has been elected *by the freemen at large*; they have named two aldermen, of whom the aldermen have chosen one. That is directly contrary to the provision of the charter of Charles II. and directly conformable to the charter of Henry VII; for the charter of Charles II. directs the mayor, as well as the aldermen and common-council, to be elected by the select body, therefore there is not a doubt but the mayor has been elected in the teeth of that charter, down to the present moment. These are the directions of the charter of Henry VII:—“All the citizens within the said city, suburbs, and villages, dwelling within the said city, suburbs, and villages of the said city, who will be present at the election of mayor, every year, upon Friday next after Saint Dennis's day, may come freely and without hindrance, to the common-hall of the said city, who, being so met, or the greater part of them, shall name two citizens dwelling in the said city, out of the twenty-four aldermen, that are most sufficient, discreet, and best able, in the said city, suburbs, and villages, to be chosen in form following; either of them shall heretofore have been mayor or sheriffs of that city, or if not, they shall not have dealt with the sheriffship for the space of three years next, going before the Friday after Saint Dennis's day, out of the two so named, the greater part of the aforesaid aldermen and sheriffs then and there present, by voices shall name, choose, and appoint one mayor, and if it so fall out, that in the election of this one person for mayor, their voices be in number equal, then the voice of the old mayor, shall stand, and be accounted for two.”

So you see, the election of the head officer of the corporation, the most important of all others, down to the present moment, has been made directly in the teeth of the charter of Charles

Charles II. and *exactly conformable to the charter of Henry VII.*

I asked the town-clerk how the sheriffs were elected?—why says he they are differently elected; one is named by the mayor, at the common-hall, and the other elected by the commonalty.

Does the charter of Charles II. prescribe the mode of election, which the town-clerk has described? nothing like it. The charter of Charles II. says, the sheriffs also shall be elected by this favorite select body—that they are to elect every officer from the head to the foot of the corporation. The town-clerk proves the sheriffs have never been so elected, but that uniformly the mayor has named one, and the freemen chose another.

Now I will read you that part of the charter of Henry VII. respecting this point —“ But in the choosing of the sheriffs of the city this order shall be observed (viz.) that the mayor, sheriffs, aldermen, and other citizens, dwelling there, if they will be at the election of the sheriffs, may, without lett, upon Friday next after Saint Dennis’s yearly assemble, where *the mayor, sheriffs, and aldermen*, for the time present, or the greater part of them, there assembled, shall the same day freely choose one able and sufficient person, *for the one sheriff* of their city, and the *rest, of the citizens*, in like sort, present, or the greater part of them, one other able and sufficient man, *for the other sheriff.*”

Gentlemen, you recollect that the town-clerk told you, that though the mayor was named in the common-hall by the old mayor, he could not say but the aldermen concurred with him in the appointment; therefore his account is directly conformable to the mode prescribed in the charter of Henry VII. and opposite to the charter of Charles II. The charter of Charles II. has directed the same mode for the election of all the officers.

How is the election of coroners? The town-clerk says by the mayor; that is directly conformable to the charter of Henry VII.

Gentlemen, it would be tiring you to go through the election of the other subordinate officers.

The overseers of the walls I just mention, because it is something particular—they are elected by the mayor and aldermen, as the town-clerk has told you, on the Friday next after the feast of Saint Nicholas. That is precisely, as to time and manner, what is pointed out by the charter of Henry VII.—I beg your pardon, I find that election is not made conformable to either of the charters.—Then the treasurers are proved to be nominated by the mayor, though they are directed by the charter of Charles II. to be elected by the mayor, aldermen, and common-council.

The power granted to the mayor to appoint a deputy, who is a justice of the peace, and may administer oaths, and do every thing the mayor may do, has never been exercised, except in one instance, where Sir Thomas Grosvenor appointed Peter Pindar his deputy. You would have had deputies appointed every year, especially when you consider what great men have been mayors of this corporation; therefore the non-appointment of a deputy, is exceeding strong evidence of the non-acceptance of the Charter.

The next thing, which is material for your attention, with respect to the acceptance of that charter, is the manner of holding their courts. That appears to me the most decisive proof against the charter of Charles II.—For, in the first place, it directs the *county court* to be holden on *Monday from month to month*, that is—that it shall be holden every month, and that the day of holding it shall be on Monday.—Now my Lord will tell you, that if the charter of Charles II. is a subsisting charter, every court, which has been holden from that day to this, other than in the manner prescribed by the charter, is null and void. Then will you not be surprized to hear that not one county court has been held according to the directions of that charter, even to this day, for the town-clerk tells you, that they conceived themselves at liberty to hold the court three times a week, instead of once a month, on Tuesday, Thursday, or Friday; so that in no instance has a court been held on the day prescribed by the charter.—Then is it possible for any argument to induce you to believe, that if the charter of Charles II. had been, at any time, considered as the subsisting charter of this corporation, that they should, in the solemn act of holding the county court, have industriously avoided holding it on the day named in the charter, for they have held it on three different days of the week, and never on the day required by the charter; and have also held it from week to week, and not from month to month, so that if the charter of Charles II. was accepted, every county court has been illegally held, and is null and void.

Mr. *Barnes*. You mistake what the witness said.

Mr. Serjeant *Adair*. Then I wish to hear him now.

(Mr. Hall again examined.)

Ques. Which court did you mean to say was held on Tuesday, Thursday, and Friday?

A. The pentice court

Mr. Serj. *Adair*. On what days was the county court held?

A. Before the 19th Geo II. chap. 28, it was held for the purpose of electing members of parliament, but since that act there was never a county court held in the city. This pentice court,

court, the sheriffs have power of holding under the charter, on Tuesdays, Wednesdays, Fridays.

Court. It is the sheriffs court, held by the sheriffs.

Mr. Serjeant Adair. Then what I said upon that, goes for nothing.

The observation with respect to the courts of crown and portmote is, that no deputy has been appointed for them, and none is authorized by the charter of Henry VII.—The charter of Cha. II. seems industriously desirous that all remembrance (if it could be) all usage, at least of the old courts, should be done away, for it does not rest satisfied with the operation of law, which my friend has contended for, on the famous judgment in quo warranto, but it says the crown-mote court, *instead of the old one*, shall be held before the mayor or deputy mayor, &c.

You see, that the charter of Charles II. professes to annihilate (completely) the ancient crownmote court, both as to the time and manner of holding it, and also the authority under which it was holden; and it is impossible to conceive, that a court holden under a charter, which directly substitutes that court, instead of the old one, should be said to be held under any thing, but the direct authority of that charter. Now how has the crownmote court, in fact, been holden? Why, in one or two entries, in the *three first years*, it appears to have been holden before the mayor and recorder—so far, and so far only, it has pursued the directions of the charter of Charles II.; but this only in a few instances, even in the *three first years*. It has been holden, *in no one instance*, strictly conformably to the charter of Charles II.; for though a few of the crownmote courts, within the three first years, appear to have been holden before the mayor and recorder (anciently holden before the mayor only) yet in every one of these instances they are stated to be holden “*according to the usage and custom of the city of Chester, from the time whereof the memory of man is not to the contrary.*”

So that in the three first years, in the stile of their courts, which are their solemn legal acts, they seem industriously to avoid holding it under the charter of Charles II. The new charter has expressly done away the old court, which was held according to the immemorial usage of the city, and therefore the entries immediately subsequent to the charter of Charles II. shew, that they would not venture their legal acts upon the foundation of that charter, when they found that the freemen would not accept of it; but they themselves directly state, in the entry of their own courts and acts, that it was held, ac-
cording

ording to the ancient usage and custom of the city of Chester. Besides these two or three instances, you will find by the entries, which we shall read to you, that the major part of them were holden before the mayor only, though the charter directs it to be before the mayor and recorder; and Mr. Hall tells you, that the court has always been holden before the mayor, except in these few instances, "according to the usage and custom of Chester."

The same observations apply to the new portmote court, which is directed by the charter to be holden instead of the old one; and yet every court held since that charter, is stated to be held "according to the ancient usage and custom of the city of Chester."

These, gentlemen, therefore, are the observations, which I am to trouble you with, upon the evidence adduced by the defendant, to shew that the charter was accepted, the greater part of which proves the direct contrary; for their own witness has proved, that in all their most solemn acts, where they have exercised judicature and jurisdiction, they have studiously disclaimed it, and have expressly asserted (whether falsely or truly) that these judicial acts were exercised under the authority of the ancient usage and custom of the city.

There remains only one point more with respect to the acceptance of the charter, so far as relates to the freemen.—I have already stated the fact, and shall prove it, that out of the immense number of freemen, at that time, only twenty-one accepted the new charter; so *that* is a decisive proof of the non-acceptance of the charter by the freemen. There is another part of the case which is very strong—it is an undoubted part of the constitution of Chester, that none but freemen should serve upon juries.—They produced some of the early pannels of jurors after the granting of the charter of Charles II.—Observe what they are.—The very first pannel after granting the charter of Cha. II. in the mayoralty of Sir T. Grosvenor, contains the names of not one man who had accepted of the freedom under the new charter. They have found eleven of the names on that pannel, and they are every one of them proved to have had their freedom *prior* to the judgment in quo warranto.—Then what is the inference from this;—that all that pannel, summon'd by the very people to whom the new charter was granted, were permitted to act under their old authority, as freemen, *without being re-admitted under the charter of Charles II.* Then what becomes of the idea of the old corporation being at an end, when the very people, acting under this new charter, cannot hold a court—cannot do a judicial act—but are obliged

to have recourse to the old freemen, to sit upon a jury. In the next jury, which were impannelled, you have two of them, who had their freedom before the judgment in quo warranto, and who were *re-freem* under the new charter, two of those men, who were mean enough to accept of the new privilege.—Then there comes another pannel, in which there are three or four, who were made free under the new charter. Thus it was, that immediately after granting the new charter, they were obliged to have recourse to those, who were no incorporators, as my friend says, in order to serve upon juries.

I will not farther trespass upon your time and patience, in order to make that appear clearer, which appears to me as clear as the sun at noon-day.

I ought, perhaps, to say a word upon the hospital lands, lest I should be thought to blink the weight of that part of the case, which looks most like evidence of the acceptance of the charter; and it is also proved, that there is a fair granted by that charter, which has been held ever since.

It is not material for his Lordship, or you, or me, to decide in this cause, whether that fair has been duly held or not: if this is not a subsisting charter, that fair has been held without authority;—and what then?—where is the harm?—it is, so far as it goes, evidence of their having acted under that charter, I admit; but is it not a spark of evidence, the most trifling, when put in competition with that immense body of evidence, which I have stated, of the non-acceptance of the charter?

With respect to the hospital lands, they may have been held, for what I know, without authority; or, which is the same thing, I don't think they have been held under the charter of Charles II. There were some circumstances, in an entry which was read to prove that they were held under the charter of Charles II. which strongly led me to suspect the truth to be otherwise; and that was the entry of the 19th Aug. 1703. By that entry, which was an order of the mayor, aldermen, and common-council, the recorder is directed to receive the seal of the hospital lands from Lady Mainwaring, and that he should be intrusted with the charter by which the same is granted.

There were two circumstances in this order, which led me strongly to suspect, that the hospital was not understood to be holden, even at that time, by the select body, under the charter of Charles II. The first entry is, that there was a *separate seal* for the hospital; there is not a syllable of that in the charter of Charles II. there is nothing but the general seal of the corporation there. And the order further directs, that the recorder

be intrusted with the charter, by which the same is granted— that is, the charter and the seal of the hospital.—Then there is a charter, exclusive of the charter of Charles II. by which the same is granted—Where is that charter? Let them produce it, or not; it is not my business to contend, that they have a right to the hospital, or have not; when it is in dispute, let them produce the charter under which they hold it:—Here is evidence in their own books, that it is not under the charter of Charles II. because they hold it under a charter, which gives a separate seal for the hospital, which charter is intrusted to the care of the recorder. And it is not contended, that the charter, now produced, came here under the custody of the learned recorder of Chester. I have too good an opinion of him to believe, that he would have kept such a charter in his custody. It stands proved by them, that if they hold the hospital, they hold it under some other title than the charter of Charles II.; and therefore the weight of that argument falls to the ground.

Having disposed of these three issues, which are the material ones, there are four others resting upon them also, which are the 4th, 6th, 7th, and 8th. And I shall, without consulting my clients upon the subject at all, exercise my own judgment upon them. I will not take up your time with cavilling at facts, which appear to me to be proved. I will not call upon you in a cause, where I am standing up for the just rights and privileges of men, (I am sure you would not hear my call if I did) to find a verdict contrary to evidence: In my opinion, these four issues are proved by the defendant.

The issues are, that the persons named in the charter of Charles II. took upon themselves the several offices directed by that charter. I think they have proved they did.

The next issue is, that Mr. Amery was not duly elected a common-council-man and an alderman. I think they have proved that he was; for I think it mere cavil to say, that you should hold his election to the office of a common-council-man, to be void, notwithstanding it was held in the inner-pentice instead of the common-hall, provided the same people were present; as to which point, the same witness proves, that the commonalty were excluded as much from the common-hall as from the pentice.

There is another issue, which, as stated upon our replication, is the 5th issue: besides that, there are three additional issues upon which I must say a word or two, as they rest upon facts, preparatory to the evidence which I shall offer you upon them.

The

The first is, that the order of council made by King James II. was duly signified to the persons to whom it related.

The next is, that the charter of restoration of James II. was accepted.

And the third and last, which is the 12th in order, and which seems the summing up of the whole cause, and of the matter in dispute, is, that the charter of Hen VII. and the confirmation of it by Elizabeth, are the subsisting charters.

Now as to the two last of these, the acceptance of the charter of James II. and the charter of Henry VII. and Queen Elizabeth, being the subsisting charters; I have already troubled you with observations upon them, and therefore I shall only add, that every act done from the year 1688, in conformity to the charters of Henry VII. and Queen Elizabeth, is a proof of the acceptance of the charter of James II. though the charter is not mentioned; for the only way you can accept a charter restoring you to rights, is the exercise of those rights.

It only remains for me to prove, that the order of council was signified; which I shall do by the medium I before mentioned to you (that is) by a copy or entry of it being found in the hands of the select body, and by the petition of the very people removed, wherein they complained of being so removed; and then it will be impossible to doubt, that the order of the privy council was signified to them.

I must apologize for taking up so much of your time in observing upon a case, which, I protest to God, when it comes to be clearly explained and understood, is the clearest that ever came into a court of justice. The case only requires to be understood. I am satisfied that the acuteness of your understandings, and the attention which you have paid to the cause, joined to the assistance of the learned judge, would have enabled you to understand it, without half the labour and time I have taken up. It was my duty, however, on the part of my client, to trouble you with the observations which I have made. I would rather do too much than too little. I must, therefore, ask your pardon; and I should ill deserve it, if I took up any more of your time with any farther observations.

Evidence for the prosecution.

HENRY DEALTRY, Esq. of the Crown-office, (sworn.)
Examined by Mr. Mills.

Q. Did you search in the Rolls Chapel for an enrolment of a charter of the 37th Charles II. to the city of Chester?

A. I did.

Q. D.

Q. Did you find any of that date?

A. I did not.

ALEXANDER EATON, Esq. of Chester, (sworn.)

Examined by Mr. Lane.

Q. I believe you are the prothonotary of the county palatine of Chester?

A. I am deputy prothonotary.

Q. Have you searched in the Exchequer at Chester, for the purpose of finding whether any charter passed the seal of the county palatine in 37th Charles II.?

A. I have.

Q. Does it appear that any such had the seal of the county palatine affixed to it?

A. I don't find an entry of any money paid for the seal of a charter at the time you mention, which is the only means of finding it. I find the entry of money paid for the seal of writs and other patents nearly about the same time.

Q. Where?

A. In the seal-keeper's books in the Exchequer office at Chester.

Court. Don't you enrol those patents there, which are under seal?

A. I believe not in the prothonotary's office.

Court. Are they not enrolled in any other office in the Exchequer of the county palatine?

A. I never saw any there.

Court. When there are grants under the seal of the county palatine, don't you enrol them?

A. The exemplifications are made in the prothonotary's office, and the records there are enrolled and sealed by the seal-keeper.

Court. That is another thing—exemplifications are for another purpose. I speak of the general patents and charters, which pass under the seal of the county palatine.

A. I don't know that any such are enrolled.

Court. Do you know where they ought to be enrolled?

A. I do not.

Mr. Eaton, cross-examined by Mr. Bearcroft.

Q. Have you those books here which you looked into in order to see whether any fees were paid for enrolling this patent?

A. The books are here.

Q. They are private books?

A. They are books in a public office.

Q. Did you look at the time of the date of this patent, the 37th Charles II. in the year 1684—Have you any entries of that time in that book you looked into?

A. Yes.

Q. Do

Q. Do you find any fees for other charters under the county palatine seal at that time?

A. No.

Q. Have you examined so carefully about the latter end of the year 1684, that you can take upon yourself to say, that there is no entry which can possibly apply to the payment of fees for sealing that patent. I apprehend, from what you dropt just now about the exemplifications, that the only use made of the Earl of Chester's seal, at this moment, is to seal processees, and put to exemplifications of records in the court:—Is it not so?

A. I don't know of any other use of it within my own knowledge.

Q. Do you know of any instance of the Earl of Chester's seal being put to any grant within these fifty years?

A. I don't remember so long back.

Q. Did you ever see any seal to any enrolment in the court of Exchequer?

A. No.

Mr. Lane. Have you seen any entries of any letters patent being sealed under the seal of the county palatine about that period?

A. I never saw any enrolment at all.

Court. What are those entries?

A. Public records of the county palatine of Chester.

Mr. STEPHEN LEEKE, (sworn.)

Q. What office are you in?

A. In the office of seal-keeper.

Q. What is this book?

A. It begins 29th Sept. 1684. It is the seal-keeper's book, from which he accounts with the chamberlain.

Mr. Bower. Is that book a public account between the seal-keeper and the chamberlain?

A. No.

Q. What is it?—an account of seals for his own private information.

A. I take it for granted that no writs are legally issued until they are sealed; and that this is an account of the sealing of those writs which have issued.

Court. For what purpose is that account made?

A. It is an account of the profits of the seal, which the seal-keeper accounts for to the chamberlain; and from this book his account is made up.

Court. How is the account made up?

A. These seals are apportioned between the chamberlain, the Baron, the seal-keeper, the bailiff itinerant, and other officers.

within the county; this is the gross receipt; and from this the subdivisions are made out.

Court. Is there another account drawn out at length from that book, and the subdivisions made upon that account?

A. At this day a separate account is kept; but I don't believe it was at that time.

The relator's notice, dated 31st July, 1786, to the town-clerk, to produce the charters, and all books, entries, and papers, mentioned in a schedule annexed, pursuant to the rule of court made in the cause, was read.

(Proved by Mr. Wm. Wilde.)

The charters of Henry VII. and the confirmation thereof by Queen Elizabeth, and also the charter of the 26th Oct. 4th James II. were put into court, and read.

Office copy of an entry in the corporation books, containing the names of the twenty-four aldermen from the Friday next after the feast of St. Dennis, 7th Henry VIII. (A. D. 1516) for one whole year then next following—for the purpose of shewing that the election of aldermen was then annual—was read.

(Proved by said Mr. Eaton.)

Office copy of a record in quo warranto in 1733—The King against George Johnson (then mayor) ten aldermen, and eighteen common-council-men, of Chester, to shew by what authority they claimed to use and exercise the right of electing the aldermen of the said city, *exclusive of the citizens*—Defendants, by their plea, state said charter of Henry VII. and the power contained therein of making bye-laws, and then state a bye-law of the mayor, aldermen, common-council, and commonalty, dated 20th April, 10th Henry VIII. A. D. 1519, (then not in writing) *confining the election of aldermen to the mayor, aldermen, and common-council, or the major part of them.* Issue was taken on this bye-law, which by the verdict was found to be as stated in the plea.

(Proved by said Mr. Dealtry.)

A bye-law of the select body, was read, dated 6th October, 10th Henry VIII. (A. D. 1514) from the corporation books at assembly, produced by Mr. Hall, whereby it was ordained, that from thenceforth "All such persons as shall want of the number of the forty common-counsellors, shall be always chosen by the mayor, aldermen, and the residue of the common-council, within their council-house at the pentice; and not by the mayor only (as had been many times done for favor or affection) without consent of his brethren."

Mr. Serjeant Adair. That bye-law directs the election to be made in the pentice, and not in the common-hall.

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Another

And receipt of the... of the...

1733 - by the... of the...

Bye law of 20 April 20th Hen VIII 1519

Bye law 6 Oct 20th Hen VIII 1514

*James 3. June 1569
to put the government of the City
into the hands of proper persons for
the mayor
in 1569 at this time*

Another bye-law of the select body was read, dated 30th May, 1569 (9th Eliz.) from the corporation books of assembly, whereby it is recited, “ That the expences sustained by
“ such as of late years had been called to the office of mayor,
“ was three or four times more than for forty years past; and
“ that partly by the unableness of such as be chosen to the
“ rooms of aldermen, there was such want of able persons to
“ supply that place, as the commons had at their yearly elec-
“ tion purposed by their voices to have placed in such as per-
“ sonally had officiated in the office of mayoralty: And reciting,
“ that it had been doubtful whether one chosen to be alderman
“ might freely give another his room, or for just and lawful
“ cause, *by the common-council be displaced*; in that the words of
“ the charter be—*that he the same may bear the name of alderman
“ for ever* :—And reciting, that many, being well able, had
“ threatened that at the time of the election, if he should be
“ so chosen, he would refuse the office, which being done at
“ that time, might as well procure trouble, as also doubtfulness
“ of a new election :—Therefore, and in the providing of
“ condign remedy for all the premises, it was at that assembly
“ ordered in manner following; first, for the better preserva-
“ tion of the estate of such as have carried the office of mayor,
“ and to reduce the order and manner of calling to that office
“ to the like order as is used in London, and other good cities
“ of this realm (that is) not to call any that have borne the
“ office, to his double charges, so long as there shall remain
“ any of the aldermen that have not been mayors; it is or-
“ dered, that every year upon the election day, the mayor or
“ recorder, (a) before they proceed to any new election, shall
“ declare to the whole commons the names of all the aldermen
“ that are of ability to be mayors, and will them to proceed
“ out of those to the naming of two; inasmuch as the words
“ of the charter cannot otherwise well be understood, pro-
“ posing, *that they shall name two of the most sufficient, discrete
“ and honorable persons, of the number of the twenty-four aldermen*
“ but that such are to be reputed of those that before had
“ borne that office: And it is further ordered, that all such as
“ chosen, or shall be chosen, aldermen, *shall be reputed as
“ taken for aldermen for and during their lives, except they or
“ any of them shall of worthy cause, by the mayor and com-
“ mon-council of this city, in open assembly, be discharged
“ or that they shall, for their inability, or be determined during
“ their lives to dwell out of this city, make request to the
“ mayor and common-council, to give over their rooms and
“ name of aldermen, and request that one other may be chosen* ”

*James 3. June 1569
to put the government of the City
into the hands of proper persons for
the mayor
in 1569 at this time*

(a) A practice which is followed to this day.

“ and if upon such request, the mayor and common-council,
“ in open assembly, shall consent to such displacement, that
“ then it is ordered, that the *mayor, sheriffs, and common-council,*
“ shall not only take order for his and their displacement,
“ but also proceed to election of another in his place.”

Mr. Hall was again examined, and said, that during his acting in the office of town-clerk, the select body have always held three meetings previous to coming into the common-hall, on the day of electing the mayor; that the first is a meeting of the mayor and justices, the second, of the mayor, sheriffs, justices, and aldermen, and the third, of the mayor, justices, sheriffs, and sheriffs peers; at each of which they voted by scrutiny for aldermen to be put in nomination for the office of mayor for the year ensuing: That upon coming into the hall, the recorder relates to the commonalty what has passed at such previous meetings; and that then the commonalty at large may proceed to choose two of the aldermen by a poll (if demanded) of whom the mayor, aldermen, and sheriffs, then present, choose one for mayor, who is immediately sworn in before the mayor and commonalty;—but said, that the commonalty never, within his remembrance, polled for a mayor before the last election in October,

See the Stat. 4 Ed. 4 -

An exemplification of a decree in the Star Chamber, dated 4th June, 38th Henry VIII. (A. D. 1547) was read, wherein the charter of Henry VII. and the power of annually electing a mayor on the Friday next after the feast of St. Dennis, is recited; and that by the death of William Holcrofte (then late mayor) the same office was become void, and likely so to continue—Therefore it was ordered by his Majesty's council, that the citizens and commonalty should, on the 11th June then next, assemble in the common-hall, and then and there choose a mayor out of the twenty-four aldermen, in the manner prescribed by said charter of Henry VII. to continue in that office until a new mayor should be chosen at the time mentioned in said charter.

Decree in the Star Chamber dated 4th June 1547
Mayor chosen 30th June 1547

An entry in the corporation books of assembly was read, shewing that Mr. John Walley was elected mayor on 11th June, 38th Henry VIII. (A. D. 1547) in the place of said Mr. Holcrofte, deceased.

Electing accordingly

An order in the corporation books of assembly, was read, entitled,—

“ Tempor. Rici. Dutton, ar. major civit. Cestr. ad congregat. in cci. aula plitor ejusdm. cit. tent. secundo die Julii, anno R. Rnæ. Elizab: &c. xvi.—”

Assembly & order for choosing for the year
1547

At which assembly it was debated what manner of persons were

2nd July 1547

were most meet to be auditors, as well of all such bills of costs, charge, and expences, disbursed in the defence of the jurisdiction of the said city, and maintenance of the charter thereof in Lent last past, which are already corrected and seen by certain persons for that purpose appointed; as also *all such bills of expences which the said mayor hath disbursed at his last being at London, in the obtaining of a new (b) charter, for confirmation of the jurisdictions and authorities of the said city, with certain other grants and pre-eminences therein contained*: And also who are most meet to rate, limit, nominate, appoint, and assess, what sum and sums of money *every free citizen inhabiting within the same city, and out of the same city* (Richard Harpur and Robert Snagg, Esqrs. and themselves excepted) *should contribute, give, and pay, for his and their part and proportions of the said cost, charge, and expence, so being allowed, brought in, and presented, by the auditors so to be appointed, and by them which have to part thereof already subscribed their names*:—Whereupon twelve persons, therein named, were elected at this assembly; and were ordered to certify the said mayor and his brethren of their doing therein at the next assembly.”

An assembly file, dated 9th July, 1630, was read, containing the state of the poll on a *contested election by the commonalty*, of a *second* sheriff, in the place of Wm. Higginson, then late sheriff, deceased; when Mr. Robert Ince (having 146 votes) was elected.

An assembly file, dated *Friday*, 9th May, 1701, was read, containing the state of the poll on a *contested election by the commonalty*, of a mayor, in the place of Richard Oulton, Esq. then late mayor, deceased; when Mr. Hugh Starkey (having 237 votes) was chosen, and sworn in.

An assembly file, dated *Friday*, 6th Nov. 1702, was read, containing the state of the poll on a *contested election by the commonalty*, of a mayor, in the place of the Right Hon. Wm. Earl of Derby, then late mayor, deceased; when Mr. Mich. Johnson (having 354 votes) was chosen, and sworn in.

An assembly file, dated *Friday*, 23d Sept. 1720, was read, containing the poll of the *select body*, in the election of the *first* sheriff, in the place of Mr. Wm. Johnson, deceased; when Mr. Thomas Chorleton was chosen, and sworn in.

An assembly file, dated *Friday*, 22d April, 1743, was read, containing the poll of the *select body*, in the election of the *first* sheriff,

(b) N. B. The charter of Elizabeth, confirming the charter of Henry VII. and also containing some additional powers, was passed 14th June, 10th Elizabeth; being eighteen days previous to this order.

9 July 1630 - first in the...

Friday 9th May 1701

23 Sept 1720 - select body in...

22 April 1743 - first...

sheriff, in the place of Mr. Robert Cawley, deceased; when Wm. Cowper, Esq. was chosen, and sworn in.

Mr. Serjeant Adair. Mr. Hall—you will now produce the entries of such freemen as were re-sworn upon being admitted under the charter of 37th Charles II.

A. We have the rolls here.

Q. What is the usual style of the meeting of the select body?

A. The mayor, aldermen, and common-council, in common-council assembled.

Mr. Serjeant Adair. We will now shew what proportion of the old freemen accepted of the charter of 37th Charles II.

Mr. Thomas Flutt examined by Mr. Serjeant Adair.

Q. Have you carefully examined the freemen's rolls, of the corporation; and for how long preceding the year 1684?

A. I examined them from 1663 down to the year 1683 inclusive.

Q. How many freemen were admitted in that period?

A. They are enumerated in this office copy of the rolls, which I examined.

Mr. Wm. Wilde again examined.

Q. How many freemen were admitted from 1663 down to 1683 inclusive?

A. I counted them; there appear to have been admitted within that period 913.

Q. Have you examined the freemen's rolls for the year 1685?

A. I did examine them.

Q. What number of old freemen appear to have been re-sworn in the year 1685?

A. None in that year—there was one in the year 1684.

Q. What number in the year 1686?

A. Two.

Q. In the year 1687?

A. Eleven.

Q. In 1688?

A. Seven.

Mr. Serjeant Adair. Of those persons so re-sworn, eight of them were afterwards common-council-men.

Court. I suppose, Mr. Snow, you have examined to see how many freemen were admitted within the four years, from 1684 to 1688?

Mr. Snow. Yes:—There were 150.

Mr. Dealtry again called, and proved a (c) copy of the order of the privy council, of 12th Aug. 1688, for amoving the select body of aldermen and common-council.

Q. Was

(.) This copy was admitted as evidence by consent.

Accepted. 12th Aug. 1688. Freeman

From 1663 to 1683. inclusive. 913. freemen

Old freemen admitted -

1. 12. 1684 -

2. - 26.

11. - 87.

7. - 28

21. - with 8. of them. 150.

150. in all within 4 yrs. -

Order of Privy Council -

12 Aug. 1688 -

Q. Was there any *vacat* opposite to this entry in the council book?

A. There was not.

Mr. LITCHFIELD, (sworn.) Examined by Mr. Mills.

Q. You are a clerk to the privy council?

A. I am in that office.

Q. Do you know the nature of entries relative to the privy council?

A. I do; I have seen many of them—Where the word *vacat* is put to an order, it shews that the order did not issue.

Q. Do you remember whether there was any *vacat* to this order?

A. There was not.

Mr. Bearcroft. Is that memorandum *vacat* made by the clerks themselves?

A. It is part of the record, if the order is at the suit of a private party.

Mr. Bearcroft. If it is not applied for, then it is marked *vacat* (that is) not issued?

A. Yes.

Q. Is there a seal of the privy council?

A. There is.

Robert Townsend, Esq. (recorder of Chester) was examined as to an index book to the records of the body corporate, produced by the prosecutor. He said, the book was made by a Mr. Lowe, of Christleton, near Chester, an intimate acquaintance of his; and that soon after he was elected recorder, Mr. Lowe put the book into his hands; that the corporation, at his recommendation, took a copy of it; that it was a *private collection*; and that the corporation, when they ordered a copy to be made of it, did not exercise any judgment upon its authenticity.

Thereupon the court rejected the evidence.

A list of members present at an assembly of the select body, holden 9th Jan. 1688, was read, whereby it appeared, that Wm. Street, Esq. mayor, and also the several aldermen, as Robt. Murrey (the surviving sheriff) named in, and restored by the charter of 26th Oct. 1688, were then present, and acting in their several characters, at this meeting of the select body.

Another list of the members present at an assembly of the select body, holden 9th Feb. 1688, in the common-hall of the city, before said Wm. Street, Esq. mayor; at which the said aldermen, mentioned in said charter of 26th Oct. 1688, as also several of the common-council-men previous to the judgment in quo warranto, were present, and acting in those characters.

1688. 1688. 1688.

1688. 1688. 1688. 1688. 1688.

1688. 1688.

*Petition of Puleston Partington & others
1693. 10 Petition & Answer of Chester*

Mr. Litchfield produced from the council office, a petition to the Queen, of Puleston Partington, Richard Brett, and ten others, citizens and common-council-men of the city and corporation of Chester, in 1693—stating, “ That said city and citizens, by many ancient charters, were and had been incorporated by the name of *the mayor and citizens of the city of Chester* and had been represented and governed by a mayor and two sheriffs annually elected—twenty-four aldermen and forty common-council-men, who had enjoyed, or ought to enjoy, the said offices of aldermen and common-council-men, *for their lives, or until they should be duly removed.*

“ That not only by said charters, but by ancient and uninterrupted usage, upon occasion only of death or removal of any aldermen or common-council-men, an assembly of the mayor, aldermen, and common-council-men, or the major part of them, had yearly nominated and chosen others into such places as from time to time became vacant.

“ That the petitioners had been duly elected of the common-council, and had continued in said office during great part of the reign of his late majesty King Charles II. and were never interrupted therein, *otherwise than as displaced by the late King James, and restored upon this happy revolution.*

“ That upon 15th June then last, the present mayor (d) caused a hall to be called, and summoned the commonalty (who were never on such occasions summoned before) and proceeded to displace the petitioners from their office; and under colour of a new and unwarrantable election by the commonalty, had put other common-council-men into their places; and in said pretended election, *had refused to receive the votes of the greatest part of the aldermen and common-council-men, and of the petitioners in particular, contrary to the ancient usage of said city.*

“ That such tumultuary proceedings were not only injurious to petitioners, but tended to the subversion of the ancient government of said city, in violation of the charters.

“ Therefore they pray relief,” &c.

Annexed to this petition is a certificate signed by Sir Thomas Grosvenor and ten other aldermen, and seven common-council men, certifying, that the premises in the petition thereunto annexed, were true, and to their great grievance.

An order of the privy council dated 27 July, 1693, at which the said petition of Puleston Partington and others, with the certificate annexed, were then read: Whereupon it was ordered by her majesty in council, that a copy of the said petition, and certificate, should be sent to the mayor of Chester, who was to send his answer in writing to that board, to the complaint contained in that petition.

Proceed-

(d) Colonel Roger White &c.

*John J. W. P. 27. 7. 1693. return
upon the restoration of the latter by
inserted upon*

*Received by Sir Thomas Grosvenor
& others*

*27. July 1693. read at the C. C.
& sent to the Mayor of Chester for an Answer*

Proceedings at the portmote court of the city of Chester, held in the common-hall of pleas, before Roger Whitley, Esq. mayor of said city, on 5th June, 1693:

Sir John Mainwaring, Bart. and George Booth, Esq. presented an address signed by themselves and *above four hundred other citizens*, praying to be admitted to the benefit of their charters in choosing their common-council, according to the privilege thereby granted them; which was received, and publicly read in open court, as follows:

To the right worshipful the mayor, recorder, and aldermen, the justices of the peace, for the city of Chester—

“ The humble address of the freemen of the said city, whose names are thereunto subscribed, in behalf of themselves and other citizens.”

We freemen of this city, taking notice that by our several charters, from King Henry VII. (*who first constituted our government, as now established*) Queen Elizabeth, and our late King Charles II. *we have power granted to us to choose our common-council yearly*, and that there is nothing in those, or any other charter, to deprive us of that great privilege, *having been kept ignorant of this our right, the usage hath for some time been otherwise*; yet considering our present circumstances, and the ill consequences that a longer neglect may draw upon us, there being some wards that have no members, and several others but very few to represent them; and as trustees to take care of their concerns in our assemblies, which may occasion many inconveniencies and differences amongst us; also that a continued standing council may intail the succession on themselves, relations, and adherents, may alienate our revenues; oppress us by bye-laws, and we left destitute of all relief:— to prevent which, for the future, (as much as in us lies) we think it our duty, for the good and honour of this city, whose rights and franchises we are obliged by oath to maintain, according to law, and for asserting our own just privileges, granted by the said royal charters, humbly to desire, that we may be admitted to *resume and enjoy our ancient rights in choosing our common council yearly*, and in such manner as you shall judge most consistent with the due administration of the government, honour, peace, and welfare of this city.

At the same time alderman Wilcocke delivered a writing (in the name of a protestation against the address) subscribed by himself and 77 other citizens, which was also received and publicly read in open court, and is as followeth:

Before the right worshipful the mayor, recorder, aldermen, and common-council, of the city of Chester.

“ Forasmuch

5 June 1693. Portmote court -

petition from 400. Citizens
to restore to their right of
choosing their C. C. yearly.

“ Forasmuch as we, *aldermen, (e) common-council, or community, and others, freemen of this city of Chester, whose names are subscribed, from our own knowledge, and the testimony of authentic records, have great reason to believe and conclude,*

“ That our predecessors, the mayors and citizens of this city, have in their successive times, prudently and faithfully administered the government thereof, and particularly in the election of the common-council of this city, *according to the true intent and meaning of the several royal charters granted to this city, and according to law.*

“ That any innovation or alteration of the election of citizens for the common-council, would not only be contrary to the practice of our said predecessors *for several ages past,* and the true intent of the said royal charters, but also hazard and dissolve that happy order and tranquility, which have been so long preserved amongst the citizens, by regularity in election of the common-council, and that the address or petition now presented by, and on behalf of, several citizens of this city, *is contrary to the true intent and meaning of the said royal charters, to law, and the said ancient practice of our said predecessors, (and if admitted) may be of dangerous effect to the public peace and constitution of this city.*

“ Therefore, we do hereby protest against, and dissent from, the said address or petition, and admission thereof, and desire the same may be by order of this court condemned and rejected, and that this our protestation may be admitted and recorded.”

At a meeting of the mayor, recorder, and justices of the peace, in the inner pentice of the city of Chester, upon Wednesday the 7th June, anno. dom. 1693. Present, Mr. Mayor, Sir William Williams, Knight and Bart. recorder, Sir Thomas Grosvenor, alderman Street, and nine other aldermen here named.

Upon reading the application intituled the address of the freemen of the city of Chester, subscribed by 406 of the citizens of the said city, and of a writing on parchment signed by the abovementioned Sir Thomas Grosvenor, William Wilton, alderman, and Hugh Starkey, alderman, and others, to the number of 78, expressing their protest against the said address.

Mr. mayor, by the advice of his brethren, declared that he thought it reasonable and necessary in the present circumstances of this city, to conform to an election of the common-

M council

... of the said city, the body-corporate themselves consist of not

*at the inner Pentice
7 June 1693.
Opinion of the Court in favour
of the Protest*

council for the said city, agreeable to the respective charters of the said city, according to the said application of the citizens, and conceives it fit to consider of proper and expedient ways and means for the election of such common-council, for the good and welfare of this city.

At a meeting holden in the inner pentice of the city of Chester, the 12th June, 1693, by Mr. mayor and seven aldermen.

Whereas the resolution of a late meeting by Mr. mayor, &c. about the electing of common council according to the application of the citizens, was read, and ordered that the same election be on Thursday, the 15th of this instant June, and that papers be put upon the gates, &c. for publishing the same; and that the constables of the several wards, have notice by the officers, to go from house to house through their respective wards, to acquaint the citizens therewith, *only alderman Ince, and alderman Skellerne, do dissent to the recited resolution, and the present order.*

NOTICE OF THE GENERAL ASSEMBLY.

The right worshipful the mayor of this city, *by the advice of his brethren*, upon the application of the citizens of Chester, doth appoint a general assembly of the citizens of Chester, to meet at the common-hall of pleas, of this city, upon Thursday the 15th day of this instant June, at ten of the clock in the forenoon of the same day, to elect a common-council, and to supply the vacant places of the aldermen of this city, according to the charters and constitutions of this city; dated the 12th day of June, 1693.

DIRECTIONS TO THE CONSTABLES.

You are to give notice to the several inhabitants within your respective wards; that the general assembly of the citizens for the electing of the common-council, *according to the charters*, and for supplying the vacant places of aldermen of the city, is appointed to be on Thursday the 15th day of this instant June, by ten of the clock of the forenoon of the same day.

Proceedings at a general assembly holden in the city of Chester, in the common-hall of pleas, 15th June, 1693, before Roger Whitley, Esq. mayor, the citizens and commonalty of the same city, were read, at which *sixty common-council were elected, and also two aldermen in lieu of two others deceased.*

Against the proceedings of this assembly a protest was delivered into court, subscribed by twenty-six of the old aldermen and common-council, as follows:

*at 5 o'clock -
12 June 1693.
From the Court House
15th June 1693*

Proceedings at a general assembly holden in the city of Chester, in the common-hall of pleas, 15th June, 1693, before Roger Whitley, Esq. mayor, the citizens and commonalty of the same city, were read, at which sixty common-council were elected, and also two aldermen in lieu of two others deceased.

We whose names are underwritten, do protest against the address, and irregular proceedings in the election, June 15, 1693. Proceedings at an assembly holden in the city of Chester, in the common-hall of pleas, upon 18th of June, 1693, by R. Whitley, Esq. mayor, Griffith Williams, dep. recorder, the aldermen and common-council.

Protest 25-

At which assembly, the journals of the late proceedings about the election of aldermen and common council-men (according to our charters) being read, they were approved of, and ordered to be entered in our assembly books as follow, viz.

Said proceedings before stated of 5th, 7th, 12th, and 15th, June, 1693.

Proceedings at a meeting holden in the inner pentice, in the city of Chester, 23d June, 1693, by R. Whitley, Esq. mayor, and five aldermen, here named, were read.

At which meeting, one of the aldermen and all the common-council elected at said meeting of 15th June instant, took their oaths of office.

Office copy of the record of a writ of mandamus, tested 5th July, 5th William and Mary, directed to the mayor and citizens of Chester, at the instance of said Richard Brett, and eight other common-council-men (who had before petitioned the Queen in council) in which it is stated, that said Brett and others, had been theretofore elected into said offices of common-council, according to the usage and custom of the said city, theretofore obtained.

*Mand. 5 July 5th W & M 1693
pushed for post*

Office copy of the return of the mayor and citizens under their common seal to said mandamus, wherein they certify, that his late majesty King Henry VII. by certain letters patent, in the 21st year of his reign, did (amongst divers other liberties) grant to the then mayor and citizens, that the same citizens and commonalty, and their successors, should and might, in every year for ever thereafter, elect, make, and create, forty citizens for common-council of said city. And then they say that said Brett and others, before one year then last past, duly and according to the liberties, privileges, and franchises aforesaid, and by virtue of said letters patent last mentioned, were, and each of them was elected and preferred into the office of the common-council of said city, and that they and each of them, remained in such office, for the space of one whole year, then next following each of their said elections, and that each of them, after he had so continued and served in the said office, and his year being ended, was duly removed from his said office, by the election of other citizens of the said city in his stead, to such office and place, according to the liberties, privileges, and franchises aforesaid, and according to the form

Return - return upon 21 July

and effect of the said letters patent, in form aforesaid. And for that cause, said Brett and others, were removed from the said office of common-council of the said city; and that none of them after such his amotion, was again elected into such office, wherefore the said mayor and citizens, had not restored, nor could or ought to restore, the said Brett and others, into the office aforesaid.

*Let, Partin
8. Dec. 16. 3.
Return appointed*

Proceedings at an assembly holden in the city of Chester, in the Inner Pentice, on 2d. January, 1693, before Roger Whitley, Esq. mayor, Griffith Williams, Esq. deputy-recorder, the aldermen and common-council.

Mr. Mayor produced an engrossed return of the mayor and citizens, to the mandamus for restoring Richard Brett and others, to the office of common-councilmen, which was read and approved by this house, and ordered nemine contradicente, that the common seal of this city be immediately affixed thereunto; and that the same be annexed to the said mandamus, and transmitted into the court of King's-bench. And whereas Alderman Wilcocke (upon notice of this order now given to him by the direction of this house) and Alderman Ince (who is personally present) have refused to deliver their keys for opening the chest where the common seal is kept: It is further ordered, that the said chest be immediately broke open; and that Aldermen Street, Lloyd, and the two treasurers, do see the same performed.

Richard Brett

Mr. Lichfield then produced the answer of Roger Whitley to the petition of said Richard Brett, and others, to the Queen in council, as follows:

In obedience to your majesty's order in council of the 27th of July, Roger Whitley, mayor of your majesty's city of Chester, humbly returns this answer to the petition and certificate thereunto annexed.

" It is no small trouble to him to find so much disingenuity, and rashness, in any members of that city, as to presume to offer to your majesty so many gross mistakes (not to give them a worse character) as are contained in the said petition and certificate.

" If they had consulted their charters, they would have found, that they are not incorporated by the name of citizens only (as they alledge) but by the name of mayor and citizens, so great was the care of your royal predecessors, to support the authority of that magistrate, though these gentlemen would leave him out of the constitution.

" The government of the city is owned to be chiefly in the mayor, two sheriffs, twenty-four aldermen, and forty common councillors, the aldermen to enjoy their titles and offices during

during life, or till duly removed; but not only the mayor, and sheriffs are yearly chosen, but the common council men may be so also (if insisted on, as the election of one of the sheriffs hath been of late) the citizens having power given them by plain and exprefs words in their several charters, and particularly by that of the 16th of King Charles the 2d. (by which our present government is regulated) differing in some points from the preceding charters, to choose the common council men yearly, and not a syllable in that charter or any bye-law since made, to deprive them of that privilege or to direct them to any other way of election so that the common council men can have no title to a term of life, in their said offices as is insinuated by the petitioners.

“ Though the citizens sometimes (either out of ignorance of the powers given them by their charters, or being satisfied with the abilities, integrity, and good administration of their common council men) have neglected their annual elections in quiet, sedate times) and permitted the assembly to fill up vacancies (not yearly as is pretended by the petitioners but successively as they became void) yet hath not this usage been without frequent interruptions, several common council men and aldermen having been chosen by the mayor and citizens, and not by the assembly, particularly in the reigns of King Henry the Eighth and Queen Elizabeth, and complaints being made to that Queen and council by several aldermen and citizens, against this encroachment on their liberties and a new charter being then granted by her majesty, she was graciously pleased again to insert the same great privilege of choosing their common council men yearly, or hath their usage in other reigns been free from interruptions as will plainly appear upon examination, though they rashly inform our majesty to the contrary.

“ We know (by sad experience and many fatal instances) that the petitioners acted as common council men, in the reign of King Charles the Second, and contrary to their duties and the established rules of our assemblies, in a tumultuous manner, after the mayor had dissolved an assembly, and retired with the sword and mace, they, with twenty-two more of their accomplices, acted to surrender their charter, though the quo warranto required only an appearance, and above six hundred of the most considerable citizens had subscribed a declaration to answer it accordingly.

“ By which irregular proceedings, the city, liberties and franchises were given up, and at the solicitation of them and their accomplices (who now complain of violation of charters and subversion of government) they caused all our antient rights and liberties to be seized at once, our charter destroyed, and a new

with Par. 2. stated in the former Ch. Page

600. Citizens had subscribed a Decl. to answer the Quo Warranto

new one procured for them and their confederates, to pretend in magistracy and power for purchase whereof (by order of assembly in common council) they mortgaged the city's inheritance, alienated, sold and disposed of their plate and revenue, permitted encroachments on their waste and walls (to their great damage) and, the better to secure themselves in their illegal, arbitrary proceedings, they could not be content to have some of the principal officers, magistrates, aldermen and citizens displaced, but had them also disfranchised, though they had deserved eminently well from the city, in the worthy discharge of their duties in their mayoralties, and other public offices, and several of them being bountiful benefactors to it.

“ Thus they insulted over their fellow citizens, till it pleased God to put it into the heart of King James *to restore their old charter, and vacat their new one*: so that I cannot apprehend what they mean by saying, they were displaced by King James (unless out of the exorbitant power given them by King Charles's new charter) *it being evident our old charter was restored, and in use with it*, before this happy revolution.

“ The cry of the city against the irregularities and unsafety of their proceedings (and particularly in the election of common council men) rejecting worthy citizens every way qualified, and preferring very unfit persons to that employment; also the inequality in the distribution of them, there being three wards that have no common council men, and other three but five; so that six wards of the twelve, where they could draw unthinking men to their faction, swallowed up 35 of the 40 common council men, moved many substantial citizens to apply themselves to the present mayor for redress; and, as the only expedient, they earnestly pressed him to summon a general assembly for electing a common council, *according to our ancient rights and charters (yearly) by the mayor and commonalty of the city*.

Upon their daily importunities, and address, the mayor not only consulted many of the aldermen and other ancient citizens, but frequently solicited several of the adverse party to come to a healing temper, to lay aside all animosities, and unite in promoting the general good of the city; or else there would be an indispensable necessity upon him (according to his duty) to gratify the unsatisfied citizens in their just demands, *as their charters and present state of the city did necessarily require*.

“ But finding all his endeavours unsuccessful, it is true (and almost the only truth in the petition) that on the 15th day of June, the mayor, with the advice of the recorder, and the greatest part of the aldermen, justices of peace, called a general assembly in the common hall (the usual place of meeting)

such occasions) to which all citizens were timely summoned, not only by bills posted up four days before hand, on the several public places of the city, but also by particular notice, personally given them in their respective wards, by the proper officers; being thus assembled in great numbers, the mayor acquainted them, that having received an address in the late court-mote court, directed to himself, the recorder and aldermen, justices of the peace, subscribed by above 400 of them, the prayer wherof being to be admitted to choose their common-council yearly as all their charters give them power to do; that they had seriously considered it, as also of the protest against it, (subscribed only by 78 citizens) and were of opinion to call this general assembly, to have their judgment on the whole. And the said address and protest being publicly read, they unanimously voted to adhere to their charters, and proceed to an election of a new common council, there were only 26 that protested against it, that gave in a second protest in these words: We whose names are underwritten, do protest against the address and the irregular proceedings in the election, June 15, 1693. And then withdrew themselves from the assembly; so that I am astonished that they dare inform your majesty, that any of their votes were refused, or that the proceedings were tumultuous; whereas it is notoriously known and may be proved by the oath of many hundred citizens, then present, that there was not any vote refused to any question, nor the least tumult or disturbance in the whole transaction, but the protesters leaving the assembly, the rest proceeded peaceably and unanimously in the election, where 20 of the old members were chose again (to shew the impartiality of their proceedings, and inclinations to an amicable conjunction) and 20 new ones, and these petitioners might have been of the number, if their fellow citizens had thought them worthy of it.

“ But my greater admiration is, that these petitioners call this way of election unwarrantable, and to the violation of their charters, when as all their charters give them plain, free, and full power to do it, and not one word contained in them to the contrary, so that this being the true basis of our constitution, there is not doubt but the government of the city will be well established upon it, not only for our honour and peace (which have been much violated of late) but the better performance of their duties in all obedience and loyalty to your majesty.

“ Nor is the certificate annexed to the petition (to give it credit) to be wondered at, there being several of the certifiers (and of the best quality amongst them) that were not present at the election, but at London or other remote places; yet presume to assert the truth of it to your majesty, of which they could

*Report, in manuscript, that the petition
had no signature, or validity. /*

could have no cognizance, but by the misinformation of the petitioners, or some of their mistaking adherents.

“ And may it please your majesty to take notice, that the petitioners had moved the court of King’s Bench for mandamuses which were accordingly granted them, before they applied themselves to your majesty in this affair. All which is most humbly submitted to your majesty’s royal wisdom, &c.

R. Whitley, Mayor.”

An order of the privy council, dated 5th Oct. 1693, whereby upon reading at the board the said answer of R. Whitley, Esq. in answer to the said petition of Puleston Partington, and others; it was ordered, that the said petition should be dismissed, and the whole matter left to the determination of law; it appearing by said answer, that there had theretofore been some proceedings there.

Proceedings at a general assembly holden in the city of Chester, in the common-hall of pleas there, on 15th June, 1694, before R. Whitley, Esq. mayor, *the citizens and commonalty* :

At which a popular election for the forty common-council, was had, and also the places of the aldermen deceased were filled up; who all appear to have taken their oaths of office on the day following, at the inner pentice, before the said mayor and four aldermen.

Proceedings at a general assembly holden in the city of Chester, in the common hall of pleas there, on 25th Sept. 1694, before R. Whitley, Esq. mayor, *the citizens and commonalty* :

At which a popular election was had for an alderman, in the place of the right honourable Thomas Earl Rivers, deceased; when Mr. Benjamin Crichley was chosen, on a poll, as under:

Mr. Benj. Crichley,	—	—	140
Mr. Robt. Murray,	—	—	2
Mr. John Johnson, of the Bear,			75.

Proceedings at a general assembly holden in the city of Chester, in the common hall of pleas there, on 15th June, 1695, before R. Whitley, Esq. mayor, *the citizens and commonalty* :

At which a popular election was had for the forty common-council, and also of an alderman in the room of Nathaniel Williamson, late alderman, deceased; who all appear to have taken their oaths of office at a meeting in the inner pentice, on the 17th of June inst. before the said mayor.

At the said assembly of the 15th June, Mr. John Burroughs was named and chosen by the mayor, to be one of the coroners, in the room of Randle Bath, late coroner, deceased.

Proceedings

Handwritten notes:
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Proceedings at a general assembly holden in the city of Chester, in the common hall of pleas there, on 9th Sept. 1695, before R. Whitley, Esq. mayor, the citizens and commonalty:

At which a popular election was had for an alderman, in the room of George Mainwaring, late alderman, deceased.

Proceedings at a general assembly holden in the city of Chester, in the inner pentice, on 12th June, 1696, before R. Whitley, Esq. mayor, the aldermen and common-council:

At which assembly it was ordered, that the 15th day of June, yearly, should be the election day for the common-council, unless it happened to be on Sunday, and then the election to be on the day following.

Also at the same assembly, it is ordered, that in case the mayor for the time being shall find occasion at any other time than upon the 15th day of June, to supply the vacancies of the aldermen and common-council, that then and so often he may call a common hall at his pleasure for that purpose.

Proceedings at a general assembly holden in the city of Chester, in the common hall of pleas there, on 9th Oct. 1696, by R. Whitley, Esq. mayor, the citizens and commonalty:

At which a popular election was had of two aldermen in the place of two others, then deceased; who appear to have taken their oaths of office at a meeting in the inner pentice, on 10th of Oct. following, before the mayor, the deputy recorder, and three aldermen.

Proceedings at an assembly holden in the city of Chester, in the inner pentice, on 15th Oct. 1696, by R. Whitley, Esq. mayor, John Williams, Esq. deputy recorder, the aldermen and common-council of the same city:

At which assembly, the proposals under-written, for the better governing and regulating the election of the aldermen and common-council of this city, were presented by Mr. Mayor, and read, and were unanimously approved, established, and confirmed; and are as follow:

" 1st. That the constant day for the annual election of the common-council, be the 15th of June; but if it fall out to be on a Sunday, then the election to be on the 16th.

" 2d. That notice be given, yearly, at least two days before the day of election, and a general assembly summoned by the officers in their several districts giving notice to the wardens and stewards of the several companies, and by posting up intimations thereof in the usual places, for the better reminding the freemen of it.

N

" 3d.

Handwritten notes in the right margin, including dates like '12 June 1696' and '15 Oct 1696', and phrases like 'at the inner pentice' and 'at the common hall'. Some notes are crossed out or partially obscured.

“ 3d. That the assembly being met (about ten of the clock) it being the antient privilege of the mayor, to propose the question in public meetings, to avoid confusion in their proceedings, he shall read, or cause the town clerk to read, the names of the common-council (gradually) as they stand in the books for the year which is then expired.

“ 4th. That upon the reading of each name then in being, he shall put the question, whether they will choose the same person to be of the common-council *for the year ensuing, or lay him aside*; and in case the freemen do not agree in the point, then to be determined by the majority of votes.

“ 5th. That then the vacancies (by death, rejection, or otherwise) being examined, the mayor shall propose others, one by one, to supply the defects; but if any of those so proposed, be not approved of by the freemen, they may have liberty to name another in competition with him, and to determine which of them shall be elected, by a poll.

“ 6th. That if it should happen there be a vacancy of one or more, by death or otherwise, in the common-council, after the election, and *before the expiration of the year*; then it may be lawful for the mayor to summon and hold a general assembly, in the usual manner, to supply those vacancies *till the 15th June next ensuing, when there must be a new election for the whole number.*

“ 7th. That no common-council-man shall be put to any charge for his election or admission, except officers fees, and to provide every one a bucket (to quench fire) at his first coming in.

“ 8th. That no common-council-man, *thus duly chose by his fellow citizens*, for the good government of the city according to *our charters*, shall refuse to serve, or absent himself (but on necessary occasions) from their assemblies, upon pain of such fines as may be inflicted by antient orders of assembly in the behalf.

“ 9th. That if there be a vacancy of one or more aldermen, the mayor may, at any time, summon a general assembly, giving the usual notice as aforesaid; and *if the person proposed by him to supply the defect, be not approved of by the freemen, they may propose another in competition with him, and the choice to be done by a poll.*

“ 10 That every alderman upon his admission in that quality and degree, to give a piece of plate to this city.

(All which were read, and approved, and confirmed.)

Mr. Lichfield produced, from the privy council office, a petition to the Lords Justices of England, from Roger Whitte.

Esq. and ten other aldermen of Chester (which was read at the board, 15 July, 1697) as follows:

“ That this city hath had its unfortunate share in the animosities and sad divisions of the late times, being influenced by some bad men, in too great power, who not only countenanced the errors in the past administrations of our government, but encouraged new ones, which, if not timely prevented, might have been greatly destructive to the rights and privileges of this city, &c.

“ The serious consideration of these circumstances, prevailed with several hundreds of our citizens to present an address (a) in the portmote court of the city of Chester, for present relief, and to prevent the like mischief for the future.

“ Upon which address, *after a full and serious consideration of our several charters, which obliged us to an annual election of our common-council*, Colonel Whitley (the then mayor) with the advice of the aldermen, did, on the 15th of June following, proceed to the election of a new one; which 15th of June, pursuant to the power in our charters to make bye-laws for the better government of our city, has since, by the mayor, aldermen, and common-council, been established and fixed *the annual day for the election of our common-council (b)*

“ Whereupon several of the adverse party (for so they glory to stile themselves) petitioned (c) her late majesty, and this most honourable board, against these proceedings; but upon the reasons alledged in the answer (d), the petition was dismissed.

“ They also applied themselves to the court of King’s-bench, and procured several mandamuses; but upon hearing of the cause, our returns were approved, and the mandamuses quashed.

Mandamusis reversed.

“ Since then, we have proceeded in this method, and have had no interruption, till Mr. Peter Bennett, grocer, was chosen mayor in October, 1696, who now hath taken upon him the making several alterations in our government, particularly the usurping the sole power to himself, in building our new common-hall, to which his majesty hath been our royal benefactor, disposing our treasure, altering our models and contracts with workmen, &c.

“ But the most fatal violation and stroke to our charter and laws, is his waving the fixed time (being the 15th of June) and methods
N 2 “ solemnly

(a) See this address before stated in page 80.
(b) See the bye-law before stated in page 89.
(c) See this petition before stated in page 79.
(d) See this answer before stated in page 84.

“ solemnly established by our assembly, for the orderly election of our
 “ common-council according to our charter, appointing another day,
 “ viz. the 23d of July, and resolving (as he hath declared) that
 “ he will bring it to a tedious poll; which may be tumultuary
 “ and dangerous, considering our great animosities and the large
 “ morning draughts, on such occasions, which we are the more
 “ apprehensive of, when we call to mind that eight men lost their
 “ lives here in one morning, upon a parliamentary election.

“ Wherefore we hold ourselves obliged to make this dutiful
 “ representation, to this most honourable board, humbly pray-
 “ ing your lordships, that the mayor may give his answer to
 “ your most honourable board, why he has manifestly refused
 “ the committee to meet, or proceed in the building our com-
 “ mon-hall; as also, why he neglected to call a general assem-
 “ bly on the 15 June, according to the order of our common-
 “ council, (who by our charter are empowered to make bye
 “ laws) before he proceeded to a new election of a common
 “ council, lest his said neglect may occasion animosities, or
 “ disorders amongst the citizens, and be a fatal precedent for
 “ the future, or otherwise to relieve us, as you in your great
 “ wisdom shall think meet.”

Mr. Litchfield also produced from the privy council office,
 the following answer of Mr. Peter Bennett, the mayor,
 to the last mentioned petition, which was presented and
 read 29th July, 1697.

The respondent confesseth it is too true, that this city hath
 felt an unhappy share in the general animosities and divisions
 in this kingdom, but the respondent not being charged to have
 acted as an incendiary therein, doth not think himself con-
 cerned to answer for the errors or miscarriages of any other
 persons then in power, he having constantly endeavoured in
 his station, to promote the interest of this city to the utmost of
 his capacity, and to serve his present majesty ever since the late
 happy revolution, with diligence and fidelity, and particularly
 to discharge the duty of his present office of mayor, by pre-
 venting or punishing all such tumults or disorders, whereby
 his majesty's government, or the peace of the said city, might
 in any wise be disturbed.

That King Henry VII. by his royal charter, in the 21st
 year of his reign, did grant to the citizens and commonalty of
 the said city of Chester, that they and their successors for ever,
 might yearly choose four and twenty citizens of the said city,
 to be aldermen, and forty other citizens of the said city, for
 the common council of the same city, which privilege hath
 been likewise confirmed (in words to the same effect) in the
 several

*inserted
 in the
 20th July 1697*

Several subsequent charters of confirmation, granted to the said city by Queen Elizabeth and the late King Charles II. which words (contained in the said charters) have received such construction, by the constant uninterrupted usage of the said city, as well in troublesome as sedate times (whether grounded on some antient bye-law, or how otherwise, we know not) that when, and as often as the office or place of any of the aldermen or common-council of the said city became vacant by death or otherwise, in such case the mayor, aldermen, and common-council for the time being, have used in their assemblies to elect another fit person into such office or place of one of the aldermen or common-council of the same city, and every such person so elected, having taken such oaths, and performed such other things, as by law and by the custom of the said city are in such cases required, hath been esteemed and allowed, and hath acted and taken place as one of the aldermen or common-council of the said city respectively, during his life, unless removed for some misdemeanor, (as by the public books of orders, bye-laws, and other proceedings in the said city, whereunto for better certainty, the respondent refers himself may appear) until the mayoralty of Colonel Whitley, in the year 1693, when by the procurement and instigation of the petitioners several hundreds, but the lesser number of the citizens did, as this respondent believes, make such application or address to the said then mayor, as in the petition is set forth, whereupon he proceeded to an election of a new common-council by a small number of the citizens and commonalty, the greatest part of them being dissatisfied with such proceedings, and therefore, either protesting against or absenting themselves from such election, nevertheless, such annual election of a new common-council, was continued for three years thence next following, wherein the said Colonel Whitley continued mayor of the said city successively.

The respondent believes, that in the same year 1693, some of the then ejected common-council, did petition her late majesty in council for relief in the premises, and that their petition was dismissed, and the whole matter left to the determination of law, chiefly because they had before that time obtained a writ or writs of mandamus out of their majesties court of King's bench, for their restitution, but for better certainty therein, this respondent refers himself to the same petition, and her majesty's order in council thereupon, but hath heard and believes, that upon the return of the said writ or writs of mandamus, a debate arising in the said court of King's-bench, touching the sufficiency of the same return, and a proposal being made by some of the council, that for the better settling

of the said city, the merits of the cause should be tried by action upon the case, the said debate was adjourned, and no further proceedings have been since had thereupon, but for better certainty therein, the respondent refers himself to the records and rules of the said court of King's-bench.

That on the 16th day of October last, this respondent having been an alderman of the said city for seven years before (though the petitioners do not think fit to give him the honour of that title) was chosen mayor of the said city, and most heartily intending his majesty's service, and the quiet of the said city, but doubting how he might best effect the same in this conjuncture, he was determined, *by the advice of the recorder and the greatest part of the justices of the peace of the said city, to comply with the manner of election of the common-council, lately introduced by his predecessor.*

He believes there may be such order made on or about the 15th day of October last, by the said late mayor, aldermen, and common-council, appointing the annual election, to be on the 15th day of June, *but finding that our charters do not fix any certain day in the year for such election as they do for other elections, and conceiving it unfit for a common-council, to oblige the citizens for ever to a fixed day, without regard to accidents or emergencies that might make it impracticable or very inconvenient, as in this year particularly, the respondent had just reason to fear some great tumults or disorders in the city, might be occasioned by such election on the said 15th day of June, therefore for prevention thereof, and to satisfy the citizens that such elections should be made in convenient time, the respondent on the 12th day of June last, by like advice, did appoint and give public notice of a general assembly of the citizens of the said city, to meet at the common-hall of pleas there, on Friday the 23d day of this instant July, by eight of the clock in the forenoon of the same day, to elect a common-council for the said city, with which notice the citizens did acquiesce, and did accordingly meet on the said 23d day of July, and proceeded to an election of their common-council for the year ensuing; and the respondent dares appeal to the petitioners themselves, who were all then and there present (except the said colonel Whitley who is lately deceased) whether the same election was not carried on in an orderly, free, fair, and peaceable manner, nor had the petitioners any just reason to suspect the contrary.*

The respondent denies that he ever made or attempted any alteration in the government of the city, or usurped the power to himself, or altered the model or contracts touching the building of our new common-hall.

Proceeding

Proceedings at a general assembly in the city of Chester, in the common-hall of pleas there, upon Friday the 23 July, 1697, before Peter Bennett, Esq. mayor of the said city of Chester, the citizens and commonalty of the same city.

(G. L.)
23 July 1697 -
Ap. Elect. of 40. 20. 1697 -

At which a popular election of the 40 common council was had, by a poll of the citizens, there assembled; and on the same day those who were chosen in, appear to have taken their oaths of office.

G. L.
23 July 1698 -

Proceedings at a general assembly holden in the city of Chester, in the common-hall of pleas there, upon Saturday the 23d July, 1698, before William Allen, Esq. mayor of the said city of Chester, the citizens and commonalty of the same city.

Whereas by the antient usage and practice in this city, when, and as often, as the office or place of any of the aldermen or common-council of this city became vacant by death or otherwise, in such case, the mayor, aldermen, sheriffs, and common-council of this city for the time being, did use in their assemblies, to elect another fit person into such office or place; and every person so elected (having qualified himself according to law) was esteemed and allowed, and did act and take place as one of the aldermen or common-council of this city respectively, during his life, (unless removed by some misdemeanor) until the year of our Lord 1693, in and since which time, some attempts have been made, not only to remove and displace divers of the common-council so chosen as aforesaid, (without any misdemeanor charged upon them) but also to elect an annual common-council, and supply the vacant places of aldermen in other manner than hath been antiently used and practised, whereby many doubts, questions, and disputes have arisen, to the great trouble and disquiet of the citizens of this city; now for remedy thereof, and for restoring peace and quiet to and amongst, the said citizens, together with the antient form and method of elections:—It is hereby agreed, ordered, and resolved by the citizens and commonalty of this city, that Matthew Anderton, Edward Starkey, Jonathan Whithy, Edward Partington, John Warrington, Thomas Maddock, Joseph Maddock, William Francis, Thomas Stringer, Richard Taylor, Thomas Johnson, Thomas Warrington, Edward Croughton, Valentine Short, Samuel Heath, Thomas Ward, and John Parker, who were heretofore duly elected, to be of the common-council, according to the said antient usage, be, and hereby are declared, acknowledged, restored and confirmed, to be the common-council of this city; and for the supplying the full number of the common-council,

17. 21. 1698 restored to be of the common council
W. M.

it

Handwritten note: The... ismed -

it is further ordered, that James Mainwaring, Owen Ellis, Peter Edwards, Thomas Parnel, Thomas Wright, William Coker, Robert Morris, John Minshull, Humphrey Page, Thomas Williams, Edward Puleston, John Stringer, Thomas Bowker, John Bradshaw, Hugh Conway, Bradford Throppe, Richard Brereton, Joseph Dyason, Thomas Ridley, John Thomason, Hugh Colley, Richard Taylor, jun. Samuel Taylor, gent. be, and hereby are, elected and chosen to be of the common-council of this city, and that the present aldermen of this city (that is to say) William Allen, esq. (the present mayor) William Earl of Derby, Sir William Williams, knight and baronet, recorder, Sir Thomas Grosvenor, bart. Sir John Mainwaring, bart. Sir Richard Leving, kn. John Williams, esq. Henry Lloyd, William Ince, Hugh Starkey, Francis Skellerne, Peter Bennett, William Bennett, Thomas Hand, Benjamin Critchley, Robert Murrey, Michael Johnson, Robert Hewitt, John Kynafton, William Starkey, Richard Oulton, and Puleston Partington, together with the common council-men above named, and every of them, shall and may have continuance, power, and authority in their respective offices, and in their assemblies or common-council, in all things according to the said antient usage and practice in this city, before the said year 1693, any late act, order, or proceeding to the contrary in any wise notwithstanding.

On the 25th July, 1698, all the several persons named in the above order of assembly, appear, by an indorsement thereof, to have been sworn into their respective offices of aldermen and common-council-men.

And by another indorsement, it also appears, that at an assembly holden 25th August, 1698, the question was put, whether this order should be entered in the assembly book?—

Yeas, — — 36. — — — — — Noes, — — — 3.

To be entered accordingly.

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Proceedings at an assembly holden in the city of Chester, in the inner pentice, the 30th June, 1696, before Roger Whitley, Esq. mayor, John Williams, Esq. deputy recorder, the aldermen and common-council :

“ It is ordered, that the table over the inner pentice door, wherein is an account of the procuring and bringing down of the new charter, be taken down and removed by the yeoman of the pentice, and delivered to the treasurers, to be disposed of for the benefit of this city ; it containing matter both scandalous and false, and particularly, that the new charter was to the general satisfaction of all good men.”

Proceedings

Proceedings at an assembly holden in the city of Chester, in the common hall of pleas there, on 6th June, 1690, before Francis Skellerne, Esq. mayor, the aldermen and common-council :

*Account of Wm. Williams
order to pay 10. to Wm. Williams*

“ It is ordered, that the sum of ten pounds be paid by the treasurers to Sir William Williams, (a) recorder of this city ; which sum was by him disbursed for engrossing the instrument granted by the late King James to this city.”

Return of Members. 2271.

Mr. Dealtry produced and proved an office copy of an indenture from the petty-bag office, dated at the city of Chester, in the full county court of the city of Chester, holden at the said city, in the common hall of pleas there, the 17th of March, 17th William and Mary,—between Edw. Partington and Randle Batho, sheriffs of the said city, of the one part ; and Francis Skellerne, Esq. mayor, Hugh Grosvenor, Esq. John Grosvenour, Thomas Wilcock, and eight other aldermen, and thirty-six citizens, of the other part ;—whereby Sir Thomas Grosvenour, Bart. and Richard Leving, Esq. (two citizens) were returned members in parliament for the said city.

N. B. It was proved, that twenty-seven of the persons who signed this indenture, were old citizens previous to the charter of 27th Charles II. and that they were not re-sworn pursuant to the provisions of that charter.

Find! Oct. 4th 1688

Mr. Hall was again called, and proved, that the charter of 6th Oct. 4th James II. was found by him amongst the city records and papers, from whence the same was now produced in court.

*10. Nov. 1688 -
Entry of the charter restored*

Office copy of a record or entry amongst the corporation papers, dated 19th Nov. 1688, shewing, that Wm. Street (the late mayor) Thomas Grosvenor, and eleven other aldermen, named in said charter of 26th Oct. 4th James II. had that day taken the necessary oaths, and subscribed the declaration, according to the act of parliament “ for the well governing and regulating of corporations.”

The like entry, dated 28th Nov. 1688, of two other aldermen, named in said charter, having taken said oaths, &c.

*Members of select body acted there
acting 6. Feb. 1688 under charter of James II.*

A list of the house or assembly file, dated 9th Feb. 1688, before mentioned, was again read, in order to shew that the members of the select body, restored by the charter of 26th Oct. 4th James II. were then acting ; and that at this assembly they filled up the places vacant (by death) of two aldermen and five common-council-men, prior to the judgment in quo warranto, by electing others in their room.

Mr. Dealtry produced and proved an office copy, from the St. Nicholas Chapel, of the record, or enrolment of a commission under the



(a) This gentleman was restored to the office of recorder by the charter of 6th Oct. 4th James II.

the great seal of England, dated 26th March, 36th Charles II. appointing William Wilme, Esq. steward or judge of the portmote court within the city of Chester, and county of the same city, with all profits and advantages thereto belonging, during his majesty's pleasure.

Proceedings at an assembly holden in the city of Chester upon 14th Oct. 1698, by William Allen, Esq. mayor, John Williams, Esq. deputy recorder, the aldermen and common-council :

Whereas the antient common hall of pleas of this city, is now in great decay, and unfit for the service of this city, and a new hall is lately built in the Northgate-street of this city, over against the bishop's palace, which is conceived by this house to be much more useful and commodious for the public business of this incorporation ; it is therefore ordered, that the said new hall shall from henceforth be the common hall of pleas of this city, and as such shall be accepted, used, and employed, to all intents and purposes ; and that the election of a new mayor, and other officers for this year next ensuing, and all future elections of mayor and other officers, and the courts of crownmote, portmote, general quarter sessions of the peace, pentice courts, and county courts, and all other courts, meetings, and business whatsoever, which usually have been, or by the law or custom of this city should or ought to be, holden, kept, transacted, or done, in the common hall of the said city, shall, for the time to come, be holden, kept, transacted, and done, in the said new common hall : And it is further ordered, that this order shall be immediately read and proclaimed in the said old hall, to the end that all the citizens then attending for the electing of their mayor, may forthwith repair to the said new common hall for that purpose.

N. B. This record was brought not only as an evidence of the citizens' right to elect their mayor, contrary to the express provisions of the charter of 37th Cha. II. but also to invalidate the election of Mr. Amery as a common-council-man, at the meeting of the select body in the inner pentice, 17th Jan. 1763.

Mr. BENJ. HANDLEY, of Chester, tailor, aged 71.

Examined by Mr. Mills.

Q. Do you remember to have been present at the election of mayor and sheriffs of Chester ?

A. I have been present at the election of mayor.

Q. How long ago ?

A. I remember Wilson's election in the year 1721.

Q. Do you know by whom he was elected ?

A. By the citizens.