

Follows the Declaration of Umphray Spurway, Englishman.

I Umphray Spurway of *New-Milns*, Clothier, being summoned to appear before the Lords of his Majesties Privy-Council in *Edinburgh*, the 6th of *December* 1687, to declare my Knowledge of what I had seen, and heard, relating to the Death of *Sir James Standsfield* of *New-Milns*, did then and there declare before the saids Lords, as hereafter followeth: And after declaring what I had to say, was commanded to commit to writing my said Declaration, under my own Hand, which I the aforesaid *Umphray Spurway* do hereby humbly offer to the above-said Lords of his Majesties Council, subscribing the same with my own Hand.

About six Weeks before the Death of *Sir James Standsfield*, after Night I went to pay my Respects to *Sir James*, as I usually did when he was at *New-Milns*, at which time I found him not so free for Discourse, nor so pleasant as at other times: Infomuch that I used that Freedom with him, to *Quere* the Reason why his Honour was so melancholy? Who, with a great Sigh, wringing his Hands together, with Tears trickling down his Cheeks, said, *Mr. Spurway*, I have great Cause for it; I have born my own Burden, without complaining to others, but I have a very wicked Family, and it's very sad, that a Man should be destroyed by his own Bowels; but let me be never so sparing in my Expence, both at home and abroad, yet they at home of my Family consume me; condescending on some Particulars, of some extravagant Sums of Money, monethly brought in to him, that his Family had expended besides what he allowed for them, which was very sufficient: But that which grieved him most was, that his youngest Son, whom he had some comfortable Hopes of, and upon whom he had settled his Estate upon, his just Debts being first payed, and that to the Knowledge of his Son; but now he was frustrated of his Hopes of that Son too; for his eldest Son had debauched his youngest Son, who had several Times of late come in drunk, as the other: This he declared to me with very great Grief of Heart. But the *Saturday's*-Night after *Sir James*, and a Minister, one *Mr. Bell*, came to *New-Milns* from *Edinburgh*, I came in at the House of one *James Marr*, where I saw *Sir James* and *Mr. Bell* sitting by the Fire, before he had been at his own House, which I wondred at, having never known the like done by him before; but since, I have had my Thoughts, that he had a Fear upon him (good Gentleman) of going to his own House; but having sat some time with him, he desired *Mr. Marr* to send one of his People at his House, to know, if they had kindled a Fire for him; and upon the Return, the Messenger gave this Answer, *May it please your Honour, your Fire is kindled for you*; upon which *Sir James*, and the Minister arose, and took their leave of *Mr. Marr*; and I also accompanied *Sir James* and the Minister half the Way toward his Home, and so took my leave of him, wishing his Honour a good Night. But the next Morning, being *Sabbath-Day*, after the Light well appeared, one *Agnes Bruce* came at my Chamber-door, and knocked. I went and opened the Door. Says she, *Sir, Sir James is gone out of his Lodging-Room this Morning, and we have sought all the Rooms of the House for him, but cannot find him*. She goes off, I im-

mediately followed her, and when I came out of my Door, I met with *Mr. Philip Standsfield*, and *James Dick*. *Mr. Standsfield* declares to me, *Lord, Mr. Spurway, what should be the Cause of this Man's Discontent, that he should thus leave his Lodgings, and walk out?* To which I replied, *Sir, do you wonder the Cause of his Discontent, who never gave him Content, but had been the Cause of grieving him, from one to the other of them, ever since I knew the Family?* But he turned his Back upon me, and made no Reply at all; however I went at *Sir James's* House, but could not procure the Keys of neither of the Gardens, and I sent abroad of *Sir James's* Servants, and of my own, some on Horseback, and some on Foot, to inquire after him: At last a Servant of mine, one *William Bowman*, found him in the River, a little be West the Town. I went at the Place, and saw him lying about two Yards, or eight Foot from the Brink of the River, lying upon his Belly, just at the Top of the Water, as it were floating, only his Coat and Westcoat loose about him, and a Shirt on him that I saw. I saw the Place at the Brink of the River, where some one had stood all beaten to mash with Feet, and the Ground very open and mellow, although a very hard frosty Morning; so I gave Order to some to get a Ladder, and to set one End into the River, as near the hinder Part of *Sir James* as they could, and the other End of the Ladder to fall at the Top of the Brae, which was very steep, and so they might get him out easily; so I came away from the Place, and desired *Mr. Marr* to see the Body landed, declaring that I would go home, and write to *Mr. George Hume*, Merchand in *Edinburgh*, of the sad Sight which I had seen, desiring him to communicat the same to my Lord Advocat, with Desire to know by the Messenger his Lordship's Pleasure, what of Advice or Direction he would be pleased to give concerning it, and it should be followed: But the Messenger that I sent, after he had delivered my Letter to *Mr. Hume*, and Order given by Commissary *Dalrymple* how to proceed further with the Body of *Sir James*, which Order was directed to myself by a Letter, which when I read the Letter, the Contents was: That I should endeavour to procure two or three discreet Persons of *New-Milns* to myself, and we together view the Body of *Sir James*; and if we found no Grounds to believe that his Person had been wronged by others, that then with all speed he should be buried, and that as privatly, and with as little Noise as could be: But this Letter which was the Commissary's Order to me, was sent by the Hand of one *James Mitchel*, Kinsman to *Sir James*; for that Horse that the Express rode on to *Edinburgh*, was taken out of the Stable, where he was set up: And one *Mr. Patrick Smith*, the Brother-in-Law of *Sir James Standsfield*, mounted on him to come for *New-Milns*: So that my Express was thereby disabled to bring me the Answer of my Letter; and the said *James Mitchel*, who brought my Letter, came home at the Place by Nine of the Clock that *Sabbath-Day* at Night, and gave an Account of the Letter that he had for me; but they dissuaded him from bringing it me, so that I had it not till three Hours after *Sir James* was buried. But upon *Monday* Morning, I arose about three or four of the Clock; and coming out of my House, I saw great Lights at *Sir James's* Gate, which occasioned my going down

to see what the Matter was; and as I went, I met with one *William Robinson*, coming up of Home; I asked what the Meaning was of these Lights, and of the Horses that I then saw at Sir *James's* Gate? Who answered me, That Sir *James's* Corps were brought out at the Gate, and that they were carrying it at *Morum*, to be buried, having received Orders from my Lord Advocat for that Purpose. At which I returned to my House, thinking it very strange thus to proceed without having had the Corps viewed by some Person, as I well knew was customary in *England* in such Cases. The next Step, to my Remembrance, was, That upon the *Tuesday* Night following, after I was in Bed, one Mr. *Alexander Campbell* in *Edinburgh*, with one Mr. *James Row*, and an Gentleman, one Mr. *Hamilton*, with two Chirurgions, came at my House, and caused me to rise out of my Bed, showing me an Order, which they had from my Lord Advocat, for the taking up again the Body of Sir *James Standsfield*, and commanded me to make ready to go with them; and having seen the Order, readily submitted thereunto, and when coming upon the Place at *Morum*, caused the said Grave to be opened, and the Coffin taken up. It was carried into the Church, and there opened; and as soon as Sir *James's* Grave-Cloaths were taken off him, and all his upper Parts uncovered, home to his Privy-parts, methought his Face looked not as I expected, nor as others had insinuated, that were at the dressing of him at first; for they said, that his Body and Face was very fair and fresh; but I found his Face, at first View, of another Complexion, being blackish, with some Strakes of red, like standing, or rather strangled Blood; and under his left Ear I saw a swelling home to his Throat, of a blackish red Colour. After this I saw the Chirurgions opening his Body, beginning at the Top of his Chin, and so down to the Pit of his Stomach, and then cut his Skin on both sides his Throat, towards each Ear, and coming at the Place near his left Ear, that I saw swoln, I there saw of corroded or congealed Blood, lying a Lump of a great Thickness, and two or three Inches long, which proved to me he had been strangled: And one Thing more I observed, that when Mr. *Murehead* put off his Cap at first from his Head, in slipping it back, Sir *James's* Eye-lids opened, and his Eyes appeared, but his Eye-lids much swoln, and very red, which did also prove to me a Symptom of Strangling.

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

But my last Observation was of a Wonder more, that the Lord did show, when the Chirurgions had caused the Body of Sir *James* to be by their Servants sewen up again, and his Grave-Cloathes put on. A Speech was made to this

purpose; It is requisite now, that those of Sir *James Standsfield's* Relations, and nearest Friends, should take him off from the Place where now he lyes, and lift him into his Coffin. So I saw Mr. *James Row* at the left Side of Sir *James's* Head and Shoulder, and Mr. *Philip Standsfield* at the right Side of his Head and Shoulder; and going to lift off the Body, I saw Mr. *Philip* drop the Head of his Father upon the Furr, and much Blood in Hand, and himself flying off from the Body, crying, *Lord, have Mercy upon me! or upon us!* wiping off the Blood on his Cloaths, and so lay himself over a Seat in the Church, some supposing that he would swarff or swoun away, called for a Bottle of Water for him. After this we went for *Morum-Castle*, where Mr. *Philip Standsfield*, my self, and several others, stayed until it was Day: In which time I challenged Mr. *Philip* for his Unkindness to me, by his not inviting me to accompany the Corps of his Father, when first buried, knowing the Intimacy that there was betwixt his Father and my self; and that of all the People in or about the Town, his Father delighted in no one's Company as in mine; and that he did not give me Notice of his Burial, that I might do my last Office of Love and Service to him, by accompanying his Body to his Burial-place; I took it very ill from him. So then Mr. *Philip* swore, that he had sent two of his Servants to invite me, but if those damn'd Rogues would not do it, what could he help it? and yet did declare, as is proved, and as himself since confess'd before my Lord Advocat, that he would not invite me, assigning this as his Reason, supposing that my self and *James Marr* had been Instruments of setting his Father against him, which was a false Suggestion. All which Particulars I have before the Lords of his Majesties honourable Privy Council declared: So, by their Command, I have in this Sheet of Paper written it over with my own Hand, and do hereby subscribe my Name, the sixth of *December*, 1687.

Sic subscribitur, per me, UMPHRAY SPURWAY.

Edinburgh, the 7th of February, 1687.

In Presence of the Justices and Assisers, *Umpbray Spurway* ownes his Declaration above written to be Truth in all Poynts; as he shall answer to God.

*Sic subscribitur, UMPHRAY SPURWAY.
LINLITHGOW.*

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

Sic subscribitur, JAMES MITCHEL.

John Topping in *Monkrig*, aged twenty-five Years, married, purged, and sworn, depones, That upon the Sabbath-Morning after Sir *James Standsfield's* Death, the Deponent coming from *Monkrig* to

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New-Milns, by the side of the Water, he discovered a Body floating, and saw *Philip Standsfield* looking to that Place of the Water where the Body was, and the Deponent asked the Pannal, whose Body that was in the Water? And the Pannal made no answer; and when he came to *New-Milns*, he heard that Sir *James's* Body was found in the Water. Depones, he saw the Body taken out of the Water, and went alongst with it, near to the *Walk-Milns*, but observed no Water come from the Body. This is the Truth, as he shall answer to God. Depones he cannot write.

Sic subscribitur, LINLITHGOW.

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

Sic subscribitur, JAMES DICK.

His Majesties Advocat desired that *James Thomson*, Son to *George Thomson* in *New-Milns*, and *Anna Mark*, Daughter to *Janet Johnstoun*, Spouse to the said *James Thomson*, might be examined as Witnesses against the Pannal, for proving his Accession to his Father's Murder. And the Procurators for the Pannal having alledged, that the foresaid Persons were but Children, and so not by Law capable to be Witnesses, the Boy not being above thirteen Years of Age, and the Girl not above ten Years.

The Lords Justice General, and Commissioners of Justiciary, refused to receive them as Witnesses; but in regard the Persons on the Inquest earnestly desired the said *James Thomson* and *Anna Mark* might be examined, anent their Knowledge of the Pannal's Accession to the foresaid Murder, they allowed the forenamed Persons their Declarations to be taken for clearing of the Affise. And accordingly the said *James Thomson* being examined in Presence of the Justices and Inquest, declared as after follows; That *Janet Johnstoun* came to *George Thomson's* House betwixt nine and ten at Night, and *Philip Standsfield*, the Pannal, came there shortly thereafter: and the House being dark, the said *Philip* gave the Declarant a Turnor to buy a Candle, which he did in the neighbouring House, and after the Declarant returned with the Candle, his Mother ordered him to go to his Bed, which was in the same Roun, and beat him because he did not presently obey. Declares he heard one come to the Door, and enquire for *Janet Johnstoun*, and desired her to come home, and give her Child suck. Declares, he knew by the Voice that the Person who came was *Agnes Mark*, the said *Janet's* Daughter, and that *Janet* ordered her to go away, and she should follow her. Declares, she stayed a considerable Time thereafter, and the said *Thomson's* Wife was desired to go for a Pint of Ale, and *Philip* took out a handful of Money

to see if he had any small Money, and finding he had none, the Ale was taken on upon Trust. Furder declares, that the said *George Thomson* and his Wife, and *Janet Johnstoun* did stay together, and whisper softly a considerable Time. Declares, he heard *Philip Standsfield* complain that his Father would not give him Money, and pray the Devil take his Father, and God damn his own Soul, if he should not make an End of his Father, and then all would be his, and then he would be kind to them. Declares, *Philip Standsfield* and *Janet Johnstoun* went away about Eleven, and shortly after his Father and Mother came to the Bed where the Declarant was lying cross the Bed-foot; and the Declarant in the Night-time perceived his Father and Mother rising out of the Bed, and going out of the House, and that they stayed a considerable Time away, about an Hour and an half, or two Hours, and that the Declarant was perfectly awake when they went and were away, and he wondred what they were going about. Declares, his Mother came in first, and came softly to Bed, and within some time after his Father came in, and put a Stool to the back of the Door, without locking it, for the Lock made always a great Noise when they locked the Door, and the Declarant's Father called to him whenever he came in, but the Declarant made no Answer, that it might be thought he was sleeping; and his Mother asked, what had stayed his Father? And thereupon his Father and Mother did fall a discoursing of several things, and particularly his Father said, that the Deed was done, and that *Philip Standsfield* guarded the Chamber-door, with a drawn Sword and a bendet Pistol, and that he never thought a Man would have died so soon, and that they carried him out towards the Water-side, and they tyed a Stone about his Neck, and leaving him there, came back to the little Kiln, and reckoned whether they should cast him in the Water with the Stone about his Neck or not, and whether they should cast him in far in or near the side, and at length they returned and took away the Stone from about his Neck, and threw him in the Water. Declares, his Father said, that yet he was afraid, for all that, that the Murder would come out, and his Mother answered, Hout, Fool, there is no Fear of that; it will be thought he has drowned himself, because he will be found in the Water. Declares, when Sir *James* was missing in the Morning, the Declarant's Mother said to his Father, Rise quickly, for if ye be found in your Bed, they will say, that ye have a Hand in the Murder. Declares, the Coat and Wastecoat which were upon Sir *James* when he was found in the Water, were sent to *Thomson's* House, and *Thomson's* Wife said to her Husband and *Janet Johnstoun*, in Presence of the Declarant, that she was affrighted to see the said Coat and Wastecoat, for she thought that some evil Spirit was in it, and desired her Husband to send it away, which he would not: And further, that his Mother said to her Husband, in the Declarant's hearing, that she was affrighted to be in the Hoase alone after Night fell; and, accordingly, when ever her Husband went out, she went out with him, which was not her ordinary. Declares, the said *George Thomson* did go into *Edinburgh* several Days before the Declarant's Mother was brought in, and she did immediately after he came into *Edinburgh* send away Sir *James's* Coat and Wastecoat, and that she was never in her own House after

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

Sic subscribitur, LINLITHGOW, I.P.D.

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

Edinburgh, February the 7th, 1687.

The said *Anna Mark* being examined in Presence of the Assise and Justices, declares affirmative, conform to the above-written Declaration in all Points.

Sic subscribitur, LINLITHGOW, I.P.D.

Sir George M'kenzie's Speech to the Inquest.

Gentlemen of the Inquest,

I Am glad to see so strong and universal a Propensity for Justice in my native Country, that every Man upon first hearing this Death, concluded it a Murder, and trembled lest it should not have been discovered. Every Man became Sollicitor in it, wished to be of the Inquest; and ardent Prayers were generally put up to Almighty God for this End, with as much Earnestness as uses to be for removing general Plagues. And the Almighty, in return of those, did first make so clear Impressions on all Mens Spirits of *Philip's* being the Murderer, that he had fallen by these: But his divine Majesty, who loves to see just things done in a legal Way, furnished thereafter a full Probation in an extraordinary Manner, whereby we might not only convince our selves, but all such as are not wicked enough to have been the Authors. You will discern the Finger of God, in all the Steps of this Probation, as evidently as *Philip's* Guilt; and this extraordinary Discovery has been made, as well to convince this wicked Age, that the World is govern'd by divine Providence, as that he is guilty of this Murder. He is accused before you for three Crimes, *Treason*, the *Cursing of his Father*, and the *Murdering him*: Crimes in great Affinity, and naturally subservient to one another; for to pray Confusion to the King, who is *Pater patriæ*, is a Cursing our great Parent; and what can prove better a Design to murder his Parent, than the malicious Hatred that

prevails over a Son to curse him? What restrains vicious Men from murdering those, by whose Death they may expect licentious Liberty, and an opulent Succession, save the Fear of the Laws of the Land, or at least an innate Awe of the Law of Nature? But here you see in the *Treason*, a Contempt of the Laws of the Land, and in the *Cursing*, an Abhorrence of the Laws of Nature.

There is no Reason to suspect our Zeal in this Case from any State Design; for we took Pains to shun a Probation of the *Treason*. It was forced upon us, and not sought by us; so violent were, and are we in the Search of the Murder, that even *Treason* was not able to divert us: Nor press I it at this Time, but to let you see there is nothing so wicked or dangerous, which this Pannal durst not attempt. He not only wishes the King's Confusion, but drinks it openly; and not only drinks the King's Confusion himself, but he forces others to do so; nor needed he to be drunk, to be guilty, for this was the first Step of his drinking; and to convince you that he knew it was a Crime, it is proved that he took his Complices sworn never to detect it; the fatal Encouragement which always tempts him to commit his Villainies. The *Cursing* his Father is not from meer Humour or Dissoluteness, but it becomes yet probable by a previous Design to have his Estate, and from the Restraint he found from him, of being debarred from the ravishing Hopes of a boundless Liberty. The Expressions are various and execrable, such as, *Devil take him, drown him, rive him, let him never come back, let him never eat more*, &c. and these Expressions, which should never have been once spoke, were frequently repeated, and are proved, not by suspected Persons, or Strangers, but by his Father's, and his own Servants, and such of them too as were *Philip's* own Favourits, and who think themselves very unhappy in being obliged to depone against him.

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

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

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

I proceed now to clear to you, that I have proved, that he not only design'd and vow'd in Passion, that he would murder his Father, but that he actually attempted to murder him; and for this I have led these Witnessess, who prove, that when his Father came from the Leaden Mines, he fled into *Culter*, as a trembling Partridge pursued by a Hawk, telling some Gentlemen, that he had been pursued seven Miles by his unnatural Son, who accordingly came to the House, and shot several Pistols in at the Windows; whereupon the Gentlemen who now depone, were forc'd to watch with his Father all the Night, and were forc'd to convoy him the next Day near to *Edinburgh*. We have also produced other Gentlemen, to whom his Father declared, that he attempted against his Life; and who will not believe the best of Fathers deponing against the worst of Sons? Nor could any thing have drawn this from the Father, save the terrifying Danger to which he was hourly exposed. All the Supreme Courts of *Europe* have found the Attempt to kill sufficient to infer Parricide: This is a higher Degree of Guilt than Cursing, and yet that infers Death; and to attempt to kill a Father is more villainous than to kill a Stranger. What shall be said then of frequent and delibe-

rate Attempts? And thus you have this Son again prov'd guilty of Death, and even Parricide. That which hastened the perpetrating this Crime, was, that his Father, wearied out with his Villainies, was at last forc'd to dispoise his Estate to his second Son; and though there be nothing more ridiculous than to ask, what Reason the Son had to kill his Father, as he now does; for there can be no Reason for so barbarous an Action; yet this was a Motive to him, and may be a Proof to you; for so kind a Father, who had tryed all Means and Methods to reclaim his licentious Son, had never proceeded to this, unless he had been driven to it by those frequent Attempts made by his Son upon his Life, in hopes to enjoy his Estate by the Death that he was to give. To disappoint which Hopes, his Father designed to settle his Estate on the second Brother; after which Settlement, he could gain nothing but the Gallows, by killing his Father: Whereupon he, to prevent the Delivery of the Disposition, did associat to himself

Thomson, whom himself used to call the Devil's Taylor, *Thomson's* Wife, and *Janet Johnston*, who was his own Concubine, and his Father's known Enemy, whom he could never have frequented, except upon so barbarous a Design. *Thomson* denied that he was in the House for Eight Days before, and yet it is proved he was in *Sir James's* House the Night the Murder was committed. *Johnston* denied also before the Council, that she was out of her House after Nine o'Clock that Night, and yet it is prov'd, that she staid abroad till after Twelve, so that her Husband was forced to send for a Stranger to give Suck to her Infant. Why did they both deny, or she abandon her Child, at so suspect a Time? And it is ridiculous to pretend, as they do, that they forgot so extraordinary a Circumstance, in so extraordinary a Night, especially being examined upon it within two or three Days thereafter. By their Assistance the Murder was designed to be upon *Saturday*, the Day of *January*; but God, to discover, and revenge a Murder (which he thought fit to suffer to be committed for the Punishment of so many preceding horrid Crimes) inspired *Sir James* to bring with him that Night, a devout Minister, for preparing the Father, and proving against the Son; and this pious and grave Man, whose Merit may be laid in Ballance with many Witnessess, depones, that he heard that Night the Noise of many People within the House, which was inconsistent with *Sir James's* drowning himself without it: And depones, That his Attention followed this Noise until it died out towards the River, into which he was thrown by them; and the Brink is prov'd to have been broken, and beat by many Feet, which fortifies much this Deposition. It is also proved, that he refused that Night to come to publick Prayer with his Father, swearing, that he could not look upon him, and that the next Morning, when all went to find out his Father, he confessed he had first found him; but that he came away without discovering that he had found him, nor did he shew the least Grief when he was found by others; whereas, if Nature had not been quite devoured by Vice and Guilt, he had certainly thrown himself upon his dead Father, and had lamented that fatal Death, which no Man, except he, saw with dry Eyes; but

but whilst others were mourning for his Father, this Miscreant would not suffer him to be carried in to his own House, saying, that he died like a Dog. O criminal Moderation! that never appeared in this passionate Creature, save upon the Death of his Father. O cursed Justice! never shown, or pretended to, save in asserting, that his Father deserved no Respect, because he drowned himself. Upon this villainous Pretext, he caused throw him into a remot House, where none were allowed to see the Body, save his own Accomplices, to prevent all Discovery by Inspection of it: and for the same Reason caused bury him very suddenly, in spite of a Countermmand from his Friends at *Edinburgh*. But they, fully perswaded that Sir *James* was murdered by his own Son, sent out some Chirurgions and Friends, who having raised the Body, did see it bleed miraculously upon his touching it. In which God Almighty himself was pleased to bear a Share in the Testimonies which we produce; that divine Power, which makes the Blood circulate during Life, has oft-times, in all Nations, opened a Passage to it after Death, upon such Occasions, but most in this Case; for after all the Wounds had been sewed up, and the Body designedly shaken up and down, and which is most wonderful, after the Body had been buried for several Days, which naturally occasions the Blood to congeal; upon *Philip's* touching it, the Blood darted and sprung out, to the great Astonishment of the Chirurgions themselves, who were desired to watch this Event; whereupon *Philip*, astonished more than they, threw down the Body, crying, *O God! O God!* and cleansing his Hand, grew so faint, that they were forced to give him a Cordial. But lest any Shadow of Difficulty might remain with you, his Divine Providence, which oft-times reveals it self by the Mouths of Babes and Sucklings, has brought us two little Witnesses, whom, as no body could be so unworthy as to corrupt, so none can be such Infidels as not to believe, especially since they depone against their own Parents, and have owned firmly in their Presence, what they now depone in yours. From them we have an Account, how *Philip* that Night came into the House of their Parents, and there swore, *He would be rid of his Father that very Night*: How they went out at Midnight, and after their Return made their Reflections, how easily Sir *James* had died, and how briskly *Philip* had behaved, by guarding the Door with a Pistol in his one Hand, and a Sword in the other; how they had hung a Stone about his Neck, but had thereafter taken it away, and how the Mother durst not stay in her own House, while Sir *James's* Coat was there; and if you had seen this little Boy upon his Knees, begging his Father to confess, with so much Affection, so much Judgment, so much Piety, you had needed no other Probation but himself. The Father himself, before his Death, was convinced, and frequently foretold, that his Son would kill him; and the Mother, how soon she heard of her Husband's Death, and some of the Circumstances now insisted upon, and remembered what she had heard her Son say to her self, and what he had said at *Nunland*, concluded he was the Murderer, in spite even of that criminal Kindness which she had for him; almost the whole Nation was convinced of this before any Probation was led: And the Lords of the Privy Council, among whom many of our

Judges sit, did declare, that they thought that half of the Probation which was led before them, sufficient to convince an Inquest. How then should the least Scruple remain with you, before whom so full, so clear, and so legal a Probation has been led, that like a Bend; every Part of it supports another, and like a Chain, every Link draws on another?

I need not fortifie so pregnant a Probation, by laying out before you how often he and his Complices have contradicted one another, and even how often he has contradicted himself in the most obvious and material Points, and how he denyes every thing with Oaths, and with equal Confidence, though never so clearly prov'd: Albeit such as these are the chief things that make up the Probation in other Cases; nor how he suffered the greatest Indignities imaginable from his Complices in Presence of the Privy-Council; though this convinced many of their Lordships, that he was at the Mercy of those Complices, who were too far upon his Secrets, not to be slavishly submitted to. But I cannot omit, how that since he came into Prison, he has lived so impiouslie, and atheisticallic, as shewes, that he had no Awe upon his Spirit, to restrain him from committing any Crime from a Love to God, or a Fear to Hell; and that he constantly filled and kept himself drunk from Morning till Night, thereby to drown the Voice of his Conscience, and to make himself insensible of the Terrors of the Almighty.

The Judges have declared what was necessary to be prov'd, and you are only to judge, if we have prov'd what they thought necessary; and therefore there is no Place to doubt, if a Man's Life may be taken upon meer Presumptions; for the Judges have eased you of that Scruple, by finding the Grounds in this qualified Libel relevant; and his own Advocates have acknowledged this Probation to be so strong and unanswerable, that before the Half of it was led, they went away and deserted a Client, whom they found they could not defend; nor should any Man doubt of a Probation, which one's own Advocats think invincible. If then such amongst you as are Fathers, would not wish to be murdered by your own Children; or such of you as are Sons, would not wish the World to believe that you are weary of your Fathers, you will all concur, to find this Miscreant guilty of a Crime that God has taken so much Pains to detect, and all Mankind had such Reason to wish to be punished. May then the Almighty God, who form'd your Hearts, convince them; and may this poor Nation cite you, as the remarkable Curbers of Vice, to all succeeding Ages.

Thereafter his Majesties Advocat protested for an Affise of Error against the Inquest, in case they should assoilzie the Pannal.

The Persons who past upon the Affise of *Philip Standsfield*, return'd their Verdict in Presence of the saids Lords; whereupon the Tenor follows.

The whole Affise called upon the Jury of *Philip Standsfield*, upon the three Points following, particularly lybel'd against him; to wit, the Crime of Treason, the Cursing of his Father, and Accession to his Father's Murder; they unanimously, in one Voice, by the Mouth of *William Baillie* of *Lamington*, their Chancelor, finds the Pannal guilty of the forsaid Crimes.

Sic subscribitur, WILLIAM BAILLIE,
of *Lamington*, Chancelor.

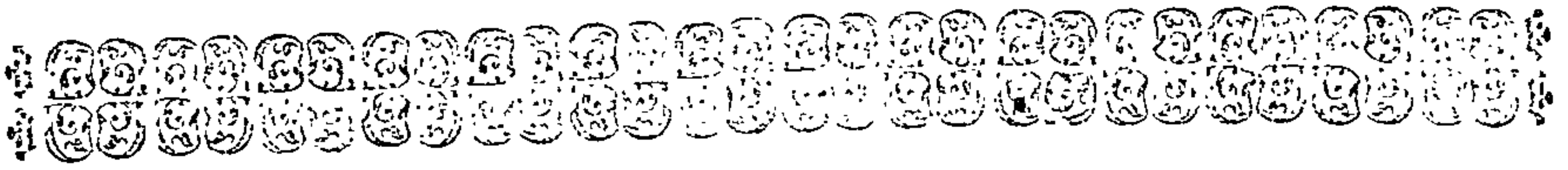
THE Lords Justice General, and Commissioners of Justiciary, having considered the Verdict of the Assise returned against *Philip Standsfield*, they, by the Mouth of *John Leslie*, Demptler of Court, decerned and adjudged the said *Philip Standsfield* to be taken upon *Wednesday* next, being the 15th of *February* instant, to the Mercat-Cross of *Edinburgh*, and there, betwixt two and four a-Clock in the Afternoon, to be hanged on a Gibbet till he be dead, and his Tongue to be cut out, and burnt upon a Scaffold, and his right Hand to be cut off, and affixt on the East-Port of *Haddingtoun*, and his Body to be carried to the *Gallowie* betwixt *Leith* and *Edinburgh*, and there to be hanged up in Chains; and ordains his Name, Fame, Memory, and Honours to be extinct, his Arms to be riven forth, and delet out of the Books of Arms, swa that his Posterity may never have Place, nor be able hereafter to bruik or joyse any Honours, Offices, Titles, or Dignities, within this

Realm in time coming, and to have forfeited, amitted and tint all and sundry his Lands, Heretages, Titles, Offices, Tacks, Stedings, Rouns, Possessions, Goods and Gear whatsoever pertaining to him, to our Sovereign Lord, to remain perpetuallie with his Highness in Property; which was pronounced for Doom: Whereupon his Majesties Advocat asked, and took Instruments.

Sic subscribitur, }
 JO. LOCKHART.
 DAVID BALFOUR,
 ROGER HOGE,
 P. LYON.

Extracted forth of the Books of Adjournal, by me Mr. *Thomas Gordon*, Clerk the Justice-Court.
 Sic subscribitur, THO. GORDON.

Which Doom and Sentence, above-written, was accordingly put to due Execution upon the Person of the said *Philip Standsfield*, in Manner above prescribed.



CXLIV. *The Trial of the most Reverend Father in God, Dr. William Sancroft, Lord Archbishop of Canterbury, and of the Right Reverend Fathers in God, Dr. William Lloyd, Lord Bishop of St. Asaph, Dr. Francis Turner, Lord Bishop of Ely, Dr. John Lake, Lord Bishop of Chichester, Dr. Thomas Kenn, Lord Bishop of Bath and Wells, Dr. Thomas White, Lord Bishop of Peterborough, and Sir Jonathan Trelawny, Lord Bishop of Bristol*, at the King's-Bench, for Publishing a Libel, June 29, 1688, Trin. 4 Jac. II.*

FRIDAY June 15, 1688.

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

THIS being the first Day of the Term his Majesty's Attorney-General (as soon as the Court of King's-Bench was fat) moved on the Behalf of the King for a *Habeas Corpus*, returnable *immediatè*, directed to the Lieutenant of the *Tower*, to bring up his Grace the Lord Archbishop of *Canterbury*, and the Bishops of *St. Asaph*, *Ely*, *Chichester*, *Bath and Wells*, *Peterborough*, and *Bristol*; which was granted.

And with great Dispatch, about eleven o'Clock the same Day, the Lieutenant returned his Writ, and brought the said Lord Archbishop and Bishops into Court, where being set down in Chairs, set for that Purpose, Mr. Attorney-General moved the Court, *viz.*

Mr. Att. Gen. My Lord, I pray
 Sir Tho. Powis. that the Writ and Return may be

read, by which my Lords the Bishops are brought hither.

L. C. J. Read the Return.

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

I Sir Edward Hales, Baronet, Lieutenant of the Tower of London, named in the Writ to this Schedule annext, To our Most Serene Lord the King, do most humbly certify, That before the coming of the said Writ, to wit, the eighth Day of June, in the fourth Year of the Reign of our Lord James the Second, King of England, &c. William Lord Archbishop of Canterbury, William Lord Bishop of St. Asaph, Francis Lord Bishop of Ely, John Lord Bishop of Chichester, Thomas Lord Bishop of Bath and Wells, Thomas Lord Bishop of Peterborough, and Jonathan Lord Bishop of Bristol, mentioned in the aforesaid Writ, were committed and delivered to, and are retained in my Custody, by Virtue of a certain Warrant under the Hands and Seals of George Lord Jefferies, Baron of Wem, Lord High Chancellor of England, Robert Earl of Sunderland, Lord President of the Privy-Council of our Lord the King, Henry Lord Arundel of Warden, Keeper of the

the Privy-Seal of our said Lord the King, William Marquess of Powis, John Earl of Mulgrave, Lord Great-Chamberlain of England, Theophilus Earl of Huntingdon, Henry Earl of Peterborough, William Earl of Craven, Alexander Earl of Murray, Charles Earl of Middleton, John Earl of Melfort, Roger Earl of Castlemain, Richard Viscount Preston, George Lord Dartmouth, Sidney Lord Godolphin, Henry Lord Dover, Sir John Ernle, Knight, Chancellor of the Exchequer of our said Lord the King, Sir Edward Herbert, Knight, Chief Justice of the Common-Bench of our Lord the King, and Sir Nicholas Butler, Knight, Lords of his Majesty's most honourable Privy-Council, to me directed: The Tenor of which Warrant follows in these Words, viz.

“THESE are, in his Majesty's Name, and
“ by his Command, to require you to take
“ into your Custody the Persons of William Lord
“ Archbishop of Canterbury, William Lord Bishop
“ of St. Asaph, Francis Lord Bishop of Ely, John
“ Lord Bishop of Chichester, Thomas Lord Bishop
“ of Bath and Wells, Thomas Lord Bishop of Peterborough, and Jonathan Lord Bishop of Bristol,
“ For Contriving, Making and Publishing a Seditious
“ Libel in Writing, against his Majesty and his Government, and them safely to keep in your Custody until they shall be delivered by due Course of Law; for which this shall be your sufficient
“ Warrant. At the Council-Chamber in White-
“ Hall, this eighth Day of June, 1688. And this
“ is the Cause of the taking and detaining, &c.”

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

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

L. C. J. Let it be filed.

Mr. Att. Gen. By this Return your Lordship observes what it is my Lords the Bishops were committed to the Tower for; it is by Warrant from the Council-Board, where, when their Lordships appeared, they were not pleased to give their Recognizances to appear here, as they were required by the King to do; and thereupon they were committed to the Tower, and now come before the Court upon this Return of the King's Writ of Habeas Corpus; and by the Return it does appear, it was for Contriving, Writing, Framing, and Publishing a Seditious Libel against his Majesty and the Government. My Lord, it is our Duty, who are the King's Counsel, pursuant to our Orders, to prosecute such Kind of Offences; and when the proper Time shall come for us to open the Nature of the Offence, your Lordships will then judge what Reason there is for this Prosecution; but in the mean Time, what we are now to offer to your Lordship is, The Officer of this Court has an Information against his Grace the Archbishop of Canterbury, and the rest of my Lords the Bishops, which we desire may be read to them, and pray that they may plead to it, according to the Course of the Court.

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

Mr. Att. Gen. My Lord, we pray for the King the Information may be read.

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

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

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

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

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

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

Mr. S. Pemberton. If your Lordship please to spare us, we will offer nothing but what is fit for us to do.

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

Mr. Soll. Gen. Gentlemen, You do know the Way of Proceeding in such Cases better than so: I am sure, as for you, Sir Robert Sawyer, you have often opposed any such Motion as irregular; and I hope the Case is not altered, however you may be, the Course of the Court is the same.

Sir Rob. Sawyer. With Submission, if your Lordship please to spare me a Word, that which I would move, is, to discharge my Lords the Bishops upon this Return, and from their Commitment upon this Warrant.

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

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

Sir Rob. Sawyer. What would not I have done? I move regularly (with Submission) to discharge my Lords the Bishops from their Commitment; if they are not here legally imprisoned, now they are before your Lordships upon this Writ, then you will give us leave to move for their Discharge, before any thing else be said to them; and that is it we have to say, to demand the Judgment of the Court upon this Return, whether we are legally imprisoned?

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

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

Mr. Soll. Gen. These Gentlemen are very forward, but certainly they mistake their Time; this is a Habeas Corpus that is brought by the King, and not by the Prisoners; and therefore they are too soon, till they see what the King has to say to them.

Mr. Att. Gen. Your Lordship cannot as yet be moved for your Judgment about the Legality of this Commitment, because this Writ was granted upon our Motion, who are of Counsel for the King, and upon this Writ they are brought here: And what is it we desire for the King? Certainly nothing but what is regular. We have here an Information for the King against my Lords, and we desire they may plead to it.

Mr. S. Pemberton. Good my Lord, will you please to hear us a little to this Matter.

L. C. J. Brother Pemberton, we will not refuse to hear you by no means, when you speak in your proper Time, but it is not so now; for the King is pleased, by his Attorney and Solicitor, to charge these noble Persons, my Lords the Bishops, with an Information; and the King's Counsel call to have that Information read, but you will not permit it to be read.

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

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

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

Mr. Att. Gen. Yes, you will, for what do we, who are of Counsel for the King, now ask of the Court, but that this Information may be read? When that is done, if we move to have my Lords the Bishops plead, then they may move what they will; but before we make that Motion, they cannot break in upon us with their Motion; and, with Submission to your Lordship, whether my Lords the Bishops were duly committed, is not yet a Question.

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

Mr. Soll. Gen. Pray will you hear us quietly what we have to say, and then answer us with Reason, if you can: I think we are in a proper Way, but they are not, my Lord; for (as I said) my Lords, the Bishops are brought by the King's Writ upon our Motion for the King, not upon theirs; and now we have them here before the Court, We for the King will charge them with an Information; which Information, that they and the Court may know what it is they are charged with, we pray it may be read to them by the Clerk; and when it is read, let these Gentlemen say what they will for them, they shall have their Time to speak; but certainly they ought not to obstruct the King's Proceedings, nor oppose the Reading of the Information to these noble Lords, who are brought here in Custody into Court, to this very Purpose, that they may be charged with this Information.

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

Mr. Soll. Gen. You ought not to be heard as yet.

Mr. S. Pemberton. Under Favour we ought to be heard.

Sir Robert Sawyer. My Lord, Mr. Solicitor has opposed our being heard, but we now desire he would hear our Answer to it, and that which we have to say, is this, That my Lords the Bishops are not here regularly in the Court to be charged with an Information; and if the Law be not with us in this Point, as we doubt not to make appear it is, no question but when your Lordship has heard what we have to say, you will give a right Rule in it. My Lord, we say, that by the Rules of Law, no Man ought to be charged with an Information or Indictment, by the express Statute of *Edward the Third*, unless he come into the Court by legal Process: That is a standing Rule, and the Practice of this and all other Courts is pursuant to it. Now in this Court you have several Processes that go out of this Court, and he that comes as taken by Virtue of a *Capias*, or an Attachment after a Summons, or by *Venire* in the Nature of a *Subpoena*: I say, he that comes in upon these Processes, may be charged with an Information; but where a Person is in Prison, committed by another Jurisdiction, and another Au-

thority, than that of this Court; when the Prisoner is brought here by *Habeas Corpus*, the first Thing the Court has to do, is to enquire whether he be legally committed; to that End the Return is filed, and the Party has leave to make his Exceptions to it, as we do in this Case. My Lords are brought here upon a *Habeas Corpus*, the Return of which has been read, and now the Return is filed, we are proper to move, that my Lords may be discharged; for you now see what they are committed for; it is for a Misdemeanor in making and publishing a Libel, that's the Matter for which they are committed; and it appears by the Return likewise, that they who are thus committed are Peers of the Realm; for so my Lords the Bishops all are, and for a Misdemeanor they ought not by Law to have been committed.

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

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

Mr. Soll. Gen. I know it has heretofore been urged by me, but denied by them who now urge it, and I am glad that they now learn of me to tack about.

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

Mr. S. Pemberton. So we would, my Lord, if the King's Counsel would let us. First, we say, we being brought here upon a Return of a *Habeas Corpus*, there was neither at the Time of the Commitment Cause to imprison us, nor was there by the Warrant any Cause to detain us in Prison; and for that, besides what has been hinted at, we say further, that here it is returned, that we were committed by such and such Persons, Lords of the Privy-Council; but the Return doth not say, that it was done by them, as Lords of the Privy-Council, which must be in Council; for if it be not in Council, they have not Power to make such a Warrant for the Commitment of any Person, and that we stand upon. Here is a Return that is not a good Return of a legal Commitment, and therefore we pray my Lords may be discharged.

Mr. Pollexfen. Pray, my Lord, spare me a Word; that is the Thing we humbly offer to your Lordship's Consideration; and, under Favour, I think we are proper both as to the Matter, and as to the Time: The Return is now filed before you; if by this Return there appears to have been such a Cause to commit these Lords to Prison, as is legal, then we acknowledge they may in a legal Course be brought to answer for their Offence; but, with Submission, it appears not by any thing that is in this Return, that my Lords the Bishops were committed by the Order of the Privy-Council. All that is said, is, That they were committed by my Lord Chancellor, and those other Persons, named Lords of the Privy-Council; which we conceive is not a good Return; for they can do nothing as Lords of the Privy-Council, except only as they are in Council, and by Order made in Council; except that do appear, they have no Power to commit: Then take the Case to be so; here is a Man committed by one that has no Authority to commit him, and he is brought by *Habeas Corpus* into this Court, what shall the Court do with him? Shall they charge him with an Information? No, it does appear that he was in Custody, but under

under a Commitment, by those who had no legal Power to commit him; and therefore he must be discharged; and that we pray for my Lords the Bishops. What the King's Counsel may have to say to them afterwards, by Way of Information or otherwise, they must take the regular Methods of the Law, to bring my Lords the Bishops to answer; but as the Case stands here before you, upon this Return, it does appear, they had no Authority to commit them, by whose Warrant they were committed; and therefore this Court has nothing to do but to discharge them.

Mr. Finch. I beg your Lordship's leave to say one Word farther on the same Side: I think, with humble Submission, this is the most proper Time for us to make this Motion; for here is a *Habeas Corpus* returned; this Return is filed, and then the King's Counsel move to charge my Lords the Bishops with an Information. That Motion of theirs (we say) is too soon, unless my Lords are here in Court, I mean legally in Court; for no Man is in Court so as to be liable to be charged with an Indictment, or Information, that is not brought into Court by legal Process, or as a Prisoner upon a legal Commitment: Then, my Lord, with humble Submission, we say, that it doth appear by this Return, that my Lords the Bishops are not here legally in Court, because this Commitment of theirs was not a legal Commitment; and two Objections we have to it, the one is, that the Persons committing had no Authority to commit; for the Return says, that it was by Virtue of a Warrant under the Hands of such and such, being Lords of the Council, and they (we say) have no Authority to do this. The other Objection is, that the Fact for which they were committed, they ought not to have been imprisoned for: The Fact charged upon them is in the Nature of a bare Misdemeanor, and for such a Fact it is the Right of my Lords the Bishops (as Peers of the Realm) that they ought to be served with the usual Process of *Subpœna*, and not to be committed to Prison. These are the two Objections that we have to this Return, and this is, under Favour, the proper Time for us to make this Objection, before the King's Counsel can charge my Lords the Bishops with an Information.

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

Mr. Att. Gen. With Submission, my Lord, these Gentlemen have out of course, and preposterously, let themselves into this Discourse; and, when all is done, we must recur to that which we moved to your Lordship before, to desire that your Lordship would order the Information to be read; and when we call my Lords to plead to the Information, then will be their proper Time to make this Objection; for 'tis a strange Thing, certainly, for Men to make Objections before they know what it is they are charged with! They say, the Ground of their Motion is, because my Lords the Bishops are here in Court upon the Return of an *Habeas Corpus*; and therefore they come in upon a Commitment (as they say) for that which they ought not to be committed for at all, and we cannot charge them, unless they be properly in Court. Now for that, it is true, if that Commitment of theirs were the only Thing that was here before the Court, then the Court would, if that Commitment were illegal, discharge them of that; but when a Man is present here in Court, brought into Court, let him

come how he will, he is not to have any longer Time than that Instant to appear to, and be charged with the Information. 'Tis true, upon a *Subpœna*, which is in the Nature of a Summons, there a Man hath, as it were, an *Essoyn*, and may make his Excuse, and he shall have Time; but when he is present in Court, either as a Person privileged, as an Officer, or as a Prisoner, he shall be charged presently; and these Gentlemen are not to let themselves into Invectives against the Commitment, thereby to keep off their being charged with the Information. Besides that, it is strange these Gentlemen should know the Privilege of my Lords the Bishops as Peers; better than all the Lords of the Council, who are most of them themselves Peers; and they that make the Objection should have considered, whether these Lords that made the Commitment, did not think themselves concerned in all the Privileges of Peers, as well as these seven Noble Lords!

Sir Rob. Sawyer. Is this an Answer to our Objection, Mr. Attorney?

Mr. Att. Gen. I say, it is a strange Objection, and I answer, 'tis out of due time; for this we say, that my Lords the Bishops being now here in Court as Prisoners upon a Commitment, and we desiring to charge them with an Information, you are not to examine the Matter of their Commitment, and therefore I do insist upon it, that the Information should be read, and then you will consider, whether they are not bound to plead to it.

Mr. Finch. My Lord, I hope Mr. Attorney-General will not think legal Objections to be Invectives.

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

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

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

Mr. Sol. Gen. My Lord, the Question is, whether we are in the right Method of Practice, as to the Course of the Court, or they? It may be these Gentlemen think to make us angry, and take Advantage of our being in a Passion.

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

Mr. Sol. Gen. Nay, if you begin to be angry, Gentlemen, we can be angry too.

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

Mr. Sol. Gen. It seems they would have an Answer to their Objections, but will not suffer us to give it; they would first examine whether my Lords the Bishops have been duly committed; that, we say, is not to be done by the Court as yet: Your Lordship sees they are actually in Custody, by a Commitment of the Lords of the Council, that appears by the Return before your Lordship, and for what they were committed. What do we now pray for the King? First, we move for a *Habeas Corpus*, then that this Information may be read, and all is in order to bring this Fact, for which they were committed, to a Trial. 'Tis said upon the Return, they were sent to the Tower, for Contriving, Writing, and Publishing a Seditious Libel against the King's Person and Government, which, I think, is Crime enough for a Man to deserve to be committed for: They would have you

you to discharge these Lords from this Commitment (the Return as they say, being not legal) before the Information be read: But we think their Motion is irregular; for here is a Crime charged in the Commitment, and upon that Commitment they are here now as Criminals before your Lordship; and Mr. Attorney has exhibited an Information for the King, which is in the Nature of a Déclaration at the King's Suit; and that in this Court, which is the supreme Court now in Being for the Trial of Matters of this Nature. We will come to that Question, whether they were legally committed, when there is a proper Time for it? But now we find my Lords the Bishops in Court, upon a Commitment for a great Crime: I repeat it again; it is for Contriving, Writing, and Publishing a Seditious Libel against the King's Person, and against the King's Government; and whether the King's Counsel shall not have Leave to make out this Charge by an Information, sure can be no Question at all in this Court. I hear them mention the Statute of *Edward* the Third; but that is not at all to the Purpose; that is but what was offered in another Case that may be remembered, and offered by Way of Plea, and pressed with a great deal of Earnestness, but rejected by the Court; and now what could not be received then by Way of Plea, these Gentlemen would, by their Importunity, have you receive by Way of Parole at the Bar. I suppose the Design is to entertain this great Auditory with an Harangue, and to persuade the weak Men of the World (for the Wise are not to be imposed upon) that they are in the Right, and we in the Wrong. Under Favour, my Lord, we are in the Right for the King; we desire this Information may be read, and let them plead what by Law they can to it, according to the Course of the Court: But that which they now urge, is untimely, and out of Course.

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

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

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

L. C. J. The King's Counsel have answered your Objections, and we must not permit Vying and Re-vying upon one another: If you have no more to say, but only as to the Matters that have been urged, you have been heard to it on both Sides already.

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

Mr. Just. Alibone. Brother *Pemberton*, I do not apprehend that the Objection you make against this Commitment has any Weight in it. The Objection (as I take it) is this, that these Lords were not legally committed, because they were committed (says the Return) by such and such Lords of the Council particularly named; and it does not specify them to be united in the Privy-Council: Now truly, with me, that seems to have no Weight at all; and I will tell you why. If my Lord Chief Justice do commit any Person and set his Name to the Warrant, he does not use to add to his Name, Lord Chief Justice, but he is known to be so, without that Addition. And would you have a different Return from the Lieutenant

of the Tower to a *Habeas Corpus*, than the Warrant it self will justify? the Lords do not use to write themselves Privy-Councillors; they are known to be so, as well as a Judge, who only writes his Name, and does not use to make the Addition of his Office.

Sir Robert Sawyer. Pray, my Lord, give me leave to be heard to this; I think truly it is a weighty Objection; for, under Favour, we say, it must upon the Return here appear, that they were legally committed, before you can charge them with an Information. I do not take Exceptions to the Warrant, because it is subscribed by such Lords, and they do not write themselves Lords of the Council; they need not do that: And the Return has averred that they are so; but the Return ought to have been, that it was by the Order of the Privy-Council, and so it must be, if they would shew my Lords to be legally committed, that they were committed by Order of the Privy-Council, and not by such and such particular Persons, Lords of the Privy-Council; so in the Case put by Mr. Justice *Alibone*, of a Commitment by your Lordship, or any of the Judges, it must be returned to be by such a Warrant, by such a one Chief Justice, for that shews the Authority of the Person committing, and then your Lordship's Name to it, indeed, is enough, without the Addition: But if it does not appear by the Return, that there was sufficient Authority in the Person to commit, your Lordship cannot take it to be a legal Commitment. But now in this Case they could have no Authority to commit but in Council; and this Return seems to make it done by them as particular Persons, and that's not a good Return, with your Lordship's Favour, upon which these Reverend and Noble Lords can be detained in Prison. But what do they on the other Side say to this? Why, we shall be heard to it anon: But, my Lord, they very well know, it would be too late for that Effect which we desire of our Motion, and therefore we lay the Objections before you now in its proper Time (say we) you ought not to read any Information against us, because we are not legally here before the Court; and sure, that which was said by the King's Counsel, that your Lordship may charge any one that you find here in Court, which way soever he comes in, cannot be legal.

Mr. Att. Gen. Who ever said so?

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

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

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

Mr. S. Pemberton. My Lord, It is not the Body being found here that intitles the Court to proceed upon it, but the Person accused is to be brought in by legal Process: Then if we be not here by legal Process, the Information cannot be charged upon us; and if we suffer it to be read, it will be too late for us to make this Objection.

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

Mr. Att. Gen. Pray, Mr. Serjeant, will you make an End: You have repeated your Objection over and over, I know not how often, and will never be contented with our Answer.

Mr. J. Allybone. Sir *Robert Sawyer*, that which you said in Answer to the Case I put, methinks does not answer it: For if the Return be as good, that it was by a Warrant from such an one, Lord Chief Justice, as if my Lord Chief Justice had added the Title of his Office to his own Name, when he subscribed the Warrant; then this Return, That this was done by such and such Lords of the Council, must be as good as if they had added that to their own Names.

Sir Rob. Sawyer. That is not our Objection.

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

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

Mr. Just. Allybone. Pray, would you have an Averment by the Lieutenant of the *Tower*, in his Return to an *Habeas Corpus*, that it was done by them in the Council-Chamber?

Mr. Finch. My Lord, the Difference is this, with Submission; a Commitment by *Sir Robert Wright*, Chief Justice, is a good Commitment, and a Return of that Nature were a good Return, because he is Chief Justice all over *England*, and hath Authority to commit wherever he is; but a Commitment by such an one, or such and such Lords of the Privy-Council, cannot be a good Return of a Commitment; because, though they be Lords of the Council, yet neither single, or apart, nor all together, have Authority to do such an Act, unless they be assembled in the Privy-Council: There their Authority is circumscribed; so that that must needs be a great Difference between a Commitment made by a Judge, who is always so, and a Commitment by a Lord, or so many Lords, by the Name of Lords of the Privy-Council, who carry not their Authority about with them, but are limited to their Assembly in Council.

Mr. Just. Allybone. *Mr. Finch*, Indeed your Objection is worth something, if my Lord Chief Justice could not act but as under the Character of Chief Justice; for you are now arguing, that these Lords could not do this Act, but as Lords of the Council in Council: The same (say I) may be said of a Commitment by the Lord Chief Justice; he cannot do it but under the Formality of his Authority, as he is Chief Justice, unless you will make it impossible for him to do any thing but as Chief Justice, or unless you make it impossible to separate his Person from his Authority.

Mr. Finch. Sir, the Difference lies here; the Authority of the one is general and universal, and goeth with him wherever he goes; the others Authority is limited to a particular Sphere.

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

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

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

peradventure a greater or a weightier has not been agitated in this Place in any Age: It concerns these Noble and Reverends Lords in Point of Liberty: It comes suddenly upon us, and therefore, my Lord, I think it very fit we should consider a little of this Matter, and consult the Precedents of Returns, how they are; for there are Multitudes of Returns of Writs of *Habeas Corpus* in this Court; therefore it were requisite, that we did consult the Forms of other Returns, and how the Precedents, as to this Matter, have always been: If they are according as this is, then all is well, but if they be otherwise, it is fit we should keep to the usual Forms.

L. C. J. What's your Opinion of it, Brother *Allybone*?

Mr. Just. Allybone. I am still of the same Mind I was, my Lord, That he could make no Return but this Return he has made; and if his Warrant was insufficient upon this Account, that these particular Persons, Lords of the Privy-Council, did this Act without saying, that they did it in Privy-Council; then 'tis not his Return that could mend it; and truly I do not know that there does need any Precedent for this; for every one knows where the Lords of the Council are; and 'tis a sufficient Averment, this that is in the Return.

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

Mr. Just. Allybone. So my Lord Chief Justice is Chief Justice every where.

Mr. Finch. And he can do judicial Acts, as such, every where; but the Lords of the Council cannot act but in the Council.

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

Mr. Finch. It is not a Presumption that is to make any thing in this Case, but the Question is, whether here be a legal Return of a legal Commitment?

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

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

L. C. J. Truly, as to this Objection and Exception that has been made by them, I have considered of it, and what has been said on all Sides, and I think 'tis the usual Way of Commitment; I never saw any other; all the Warrants that ever I saw, are of this Form; if there were any Precedents, they should be shewn of that Side.

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

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

Mr. Soll. Gen. There's no Colour for it, if they do but look upon the Statute of the 16th and 17th of the late King, which arraigns the Proceedings of his Privy-Council: That tells you what Things belong to the Cognizance of the Privy-Council, and what not; and there you have all the Distinctions about Commitments by the King

and Council, and by the Lords of the Council : And that Act will shew, that this is a Commitment according to the usual Form. They know very well what the common Stile of the Orders and Commitments of Council is, as in other Places, and other Commitments. By such an one, Chief Justice, that is the Stile that is very well known for such Warrants : So a Commitment by such and such, naming them particularly, *Lords of the Council*, that's an Order made by the *Lords in Council* ; and that Statute distinguishes between Commitments of one Sort and the other ; and it does it, because sometimes Warrants run in one Form, and sometimes in another ; but they all come within the Direction of that Statute. My Lord, we are in a plain Case, my Lords the Bishops come regularly before you, upon a Commitment by the Council ; and therefore we pray they may be charged with this Information.

Sir Robert Sawyer. Pray, will your Lordship give us leave to have that Statute look'd into, which Mr. Solicitor speaks of ; and then we shall see whether it be to his Purpose.

L. C. J. Let the Statute be read.

Mr. Soll. Gen. If it be *Keeble's Book*, it is the 16th of *Charles* the First ; if it be the old Book, it is the 16th and 17th of *Car.* towards the End.

Clerk reads. Provided always, and be it enacted, that this Act, and the several Clauses therein contained, shall be taken and expounded to extend only to the Court of Star-Chamber ; and to the said Court holden before the President and Council in the Marches of Wales, and before the President and Council in the Northern Parts.

Mr. Soll. Gen. It is the Paragraph before that.

Clerk reads. And be it also provided and enacted, That if any Person shall hereafter be committed, restrainer of his Liberty, or suffer Imprisonment, by the Order and Decree of any such Court of Star-Chamber, or other Court aforesaid, now, or at any time hereafter, having, or pretending to have the same, or like Jurisdiction, Power, or Authority to commit, or imprison, as aforesaid ; or by the Command or Warrant of the King's Majesty, his Heirs or Successors, in their own persons ; or by the Command or Warrant of the Council-Board, or of any of the Lords, or others of his Majesty's Privy-Council, that in every such Case, every Person so committed, restrained of his Liberty, or suffering Imprisonment, upon demand—

Mr. Soll. Gen. That is all : Your Lordship sees these several Distinctions of the Stile of Commitment.

Mr. Att. Gen. Now, pray favour us a little. My Lord, I think these Gentlemen will not deny, but that the Lords of the Council can commit. I must confess, they ask that which was pretty reasonable, if the Case was as they would make it. They would have my Lords the Bishops discharged, because there is not a Return of a good Commitment, and that stands upon this Pretumption, that what is here said to be done by all these Lords, at the End of whose Names this is added, *Lords of the Privy Council*, was done by them out of Council, which, I suppose, your Lordship

will not presume, but will take it, that they did this as Lords of the Council in Council ; and no Man can say, but the Lords in Council can commit.

Mr. Soll. Gen. You may as well presume upon a Warrant made by my Lord Chief Justice, because it is not said where he did it, and therefore he did it in *Scotland*.

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

Mr. Just. Allynbone. Truly (as Mr. Solicitor says) you may as well desire us to presume, that my Lord Chief Justice would commit a Man in *Ireland* or *Scotland* ; I can see no imaginable Difference.

Mr. Finch. My Lord, that which we pray, is, not that your Lordship would presume, but that you would not presume, but take the Return as 'tis before you ; and then see whether it can be thought to be a Commitment by the Lords in Council ?

Mr. S. Pemberton. Pray, my Lord, spare us a little in this Matter : Here has been the Clause of a Statute read to you, from whence Mr. Solicitor would conclude, that all Commitments by several Sorts of Persons there named, are legal ; or else the Enumeration of the several Sorts of Commitments, signifies nothing to this Purpose. But I pray your Lordship would consider this, that the very Scope and End of that Act of Parliament is, to relieve against illegal Commitments and Oppressions ; then the several Commitments therein named, can never all be called legal ; so that this signifies nothing to our Purpose. My Lord, they tell us we stand upon Presumption : No, we do not so ; we say your Lordship ought not to presume the one or the other, but to judge upon what is before you : But here is nothing before you but this Return of a Commitment of these noble Persons, my Lord the Archbishop of *Canterbury*, and the rest of the Bishops, which is said to be by these particular Lords. Now if your Lordship will please to give us Time to look into it (for this is an Exception we take at the Bar upon hearing the Return read) we would shew the constant Way has been quite otherwise than this Return makes it ; therefore we desire Leave to satisfy your Lordship concerning the usual Form of Precedents, and thereby it will appear, that it ought to have been, that they were committed by Order of the Privy-Council, and then he should have set forth the Warrant itself, which would have shewn the Names of the Privy-Counsellors, and he needed not to have put their Names in the Return, as the particular Persons that committed them : But now, my Lord, this does not appear to be an Order made in Council, as it ought to be, and the Return is that which is before you, and you are to judge only upon what is before you.

L. C. J. So we do.

Mr. Just. Allynbone. Pray, *Sir Robert Sawyer*, would the Saying of a Governor of the *Tower*, in his Return to a Writ of *Habeas Corpus*, alter the Nature of the Commitment ?

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

Mr. Just. Allynbone. I say, Brother *Pemberton*, would any collateral Saying of the Lieutenant of the *Tower* alter the Nature of the Thing, his Return in this Case is only an Inducement to the

Warrant

Warrant of Commitment, and his saying one way or t'other would neither vitiate nor mend the Commitment.

Mr. Soll. Gen. Your Lordship cannot take Notice of the Commitment but from the Warrant.

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

Mr. Just. Powell. Certainly we must judge of the Record, and nothing else, and the Return is the Record now, being filed.

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

Mr. Soll. Gen. By the Return it appears, the Bishops were committed by the Warrant of such and such Lords of the Council, and that which is before you now is, whether you will not intend it to be done by them in Council.

Mr. Just. Powell. We can intend nothing, but must take the Return as 'tis.

L. C. J. The Warrant is good enough, I think truly, and so is the Return.

Mr. Pollexfen. I think in all the *Habeas Corpus's* that have been since the King's Return, of Persons committed by the Council, the Returns have been quite otherwise than this Return is. We do all pretty well agree (for ought I can perceive) in these two Things, We do not deny but the Council-Board has Power to commit; they on the other Side do not affirm, that the Lords of the Council can commit out of Council.

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

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

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

Mr. Pollexfen. Then, my Lord, with Submission, I will compare it to any thing else of this Nature. I deny not but that the Council may commit, but the Question is, whether this Return of their Commitment be right. Suppose there should be a Return to a *Habeas Corpus*, that such a one was committed by Sir Robert Wright, and three others by Name, Justices of this Court, for a Contempt, without saying, that it was done in Court, this would be an ill Return: Although they had Power in Court to commit for a Contempt, yet it must appear, that it was done in Court, or it cannot be a good Return. If I had thought, or foreseen, that such a Return would have been made, I could easily have made out our Objection; but we could not foretel what they would return, and therefore we can only make this Objection now upon the hearing of it read. In all the Debates that have been heretofore in the great Case of the *Habeas Corpus* concerning my Lord Hollis, and those other Gentlemen who were in Prison upon Commitments by the Privy-Council, the Returns are, that they were committed by Order of the Privy-Council, as near as I can remember. I will not take it upon me to be positive in it, but I believe, if your Lordship thought fit to give us a short Time to look into it, we should be plainly able to shew you, that all the Returns of Commitments of this Nature, are said to be by Order of the Council-Board, and never any of them naming the Lords; for that may be true, and yet not a legal Commitment.

L. C. J. I have seen several Precedents of Commitments in this Form, and if you make no Exception to the Warrant, you can make no Exception to the Return, because that only sets forth the Warrant.

VOL. IV.

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

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

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

Mr. Soll. Gen. And so do we, my Lord, and pray your Rule in it.

Mr. Just. Allybone. You may by the same Reason say, That upon all Commitments by Warrant from Justices of the Peace, that the Commitment was out of the County, if the Party does not alledge in the Warrant, or Return, that the Commitment was in the County. 'Tis an Objection that would put us upon presuming what we have no Reason to presume.

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

Mr. Just. Holloway. Pray let the Return be read again [*which was done*].

Mr. Att. Gen. So that the Return says, they were committed by Virtue of a Warrant of such and such by Name, Lords of the Council, and whether this be a Warrant of the Council is the Question, and we think it is plain enough, that 'tis a good Return.

Mr. Just. Powell. I have given you my Thoughts already: I think we ought to consult Precedents in a Case of this Weight and Nature; and truly I will not take upon me to say, whether it be a good Return or not a good Return, without looking into Precedents.

Mr. Just. Allybone. For my own Part, it does not stick at all with me, for the Reasons I gave before. When any Man that has an Authority to commit, does commit a Person to an inferior Officer, and that Officer has an *Habeas Corpus* brought to him, it is enough for him to return his Warrant, by which the Party was committed, and whatsoever he says by the Bye, cannot have any Influence, one way or other, to alter the Nature of the Thing. Now unless you would make every Man that is a Justice of the Peace write his Name, and stile himself Justice of the Peace, this must be a good Commitment. Every Commitment shall be presumed to be pursuant to the Power of the Person committing; and I am sure, take these Lords separately, and they had no Power to commit, and consequently such a Warrant would be no Authority to the Lieutenant of the *Tower* to receive them: But when they send such a Warrant as this, we shall presume it to be according to the Power they have, and not according to the Power they have not. This Warrant is returned by the Officer, and I cannot but presume that it is all very well.

Mr. Just. Holloway. My Lords, I am very desirous and willing your Lordships should have all the Right and Justice done you that can be, and by the Grace of God, I will endeavour it all I can. I see in this Case it is agreed on both Sides, that the Council have a Power to commit, and the Commitment is here certified in the Words of the Warrant, and the Lieutenant has made his Return, that they were committed by Virtue of this Warrant. If the Lieutenant of the *Tower* had returned any other Commitment, you would

have blamed him for a false Return; but now you find Fault with his Return, because he does not say, the Warrant was made by the Lords of the Council, and in Council: That is a thing so notoriously known to all the Kingdom, that my Lords were sent to the Tower by the Council, that no body doubts it; and being thus sent by this Warrant, I do not see but that this is a very good Return, and my Judgment is, that the Information ought to be read.

L. C. J. I told you in the Beginning, after you had made your Objections, that I thought it was as all other Returns are; and I am of the same Opinion still, I find no fault with the Warrant, nor with the Return.

Mr. S. Pemberton. There is no Objection to the Warrant at present upon this Question.

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

Mr. Att. Gen. We pray, my Lord, the Information may be read.

Mr. Just. Holloway. There is no Question about the Fact; but whether this be a good Return which is here made, that they were committed by such and such Lords of the Council.

L. C. J. I would do as much to give my Lords the Bishops Ease, and set them at Liberty, as I could possibly by Law; but we must not break the Rules of Law for any one.

Mr. Soll. Gen. Pray read the Information.

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

Mr. Soll. Gen. Why! Will not you be satisfied with the Opinion of the Court?

Mr. Finch. We have another Thing to offer, which we must have the Opinion of the Court in, before this Information can be read.

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

Mr. Finch. My Lord, we did humbly offer one Objection more to your Lordship against the reading of the Information: The former Objection was concerning the Persons committing, in that it does not sufficiently appear upon the Return, that they were committed by the Lords in Council; the Court have given their Opinion in that: But the other Objection still remains, whether they ought to have been committed at all; and therefore when they now appear upon this *Habeas Corpus*, we say they were not legally committed to Prison, because a Peer ought not to be committed to Prison in the first Instance for Misdemeanor.

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

Mr. Finch. With Submission, that is such a Difficulty that lies in the way against the reading of the Information, that you must get over it, before you can come at the reading of it.

Mr. Att. Gen. You will have your Time for all this Matter by and by; but certainly you cannot be admitted to it yet.

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

Mr. Finch. With Submission, we think this is the proper Time, and I will tell your Lordship the Reason why.

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

World that can be said, you will say for your Clients, and you shall be heard; for we are very willing to deliver these noble Lords, if we can by Law, and if the Exceptions you make be legal.

Mr. Finch. My Lord, we do not doubt your Justice; and therefore we desire to offer what we have to say in this Point: The only Question (now it seems) is about our Time of making our Exception. Mr. Attorney (we apprehend) did say one thing which was certainly a little too large; that however any Man comes into Court, if the Court find him here, they may charge with an Information.

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

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

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

Mr. Finch. Certainly the Consequence is plain upon your own Premises.

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

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

Mr. Att. Gen. I know you thought you had got an extraordinary Advantage, by making me say what you please; but there has been very little said, but what has been grounded upon Mistakes all along. This is that I do say, If a Man comes in voluntarily upon any Recognizance, though he be not in Custody; or if he comes in upon any Process, if the Court find him here, though that Process be not for the thing charged in the Information, yet the Court is so much in Possession of the Person, that he shall plead to any Information; and that I do say, and will stand by.

Mr. Soll. Gen. My Lord, we are here in a very great Auditory, and this Court is always a very great Court, (but here is a greater and nobler Assembly than usually we have here) and these Gentlemen, to shew their Eloquence and Oratory, would, by converting Propositions otherwise than they are delivered, put another Meaning upon them, and so draw strange Inferences from them. But these Arts, we are sure, will not prevail here; we say plainly, and we are sure the Law is so (let them apprehend what they will) that your Lordship cannot exhibit an Information to any Man that you find accidentally here in Court. Then, says *Mr. Finch*, we are agreed: But withal (say I) take my other Proposition; If a Person be brought into Court by legal Process, or upon any Contempt whatsoever, by an Attachment or Warrant, or upon a *Habeas Corpus* after a Commitment, being thus found in Court, your Lordship may certainly charge him with an Information. When these Gentlemen, who are so eager on the other side, did preside here, and stood in the Places where Mr. Attorney and I now are; I can name them abundance of Cases of the like nature with this, when Men have been compelled to appear to Informations, and plead presently: They are the Persons

Persons that made the Precedents; they made the Law for ought I know: I am sure I find the Court in Possession of this as Law, and we pray the usual Course may be followed.

Mr. *Finch*. Pray, my Lord, spare us a Word in this Matter: I do agree with Mr. Attorney in this Matter, but I do not agree with Mr. Solicitor.

Mr. *Soll. Gen.* You do not agree with yourself.

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

Mr. *Soll. Gen.* You do not in 1688, agree with what you were in 1680.

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

Mr. *Att. Gen.* No, we cannot.

Mr. *Finch*. And why is that, but because the Process is illegal, and he is not truly in Court: Then is it a proper Time now to make this a Question, Whether my Lords here were legally committed, before you can lay any Thing to their Charge by way of Information? For if the Commitment be illegal, it is a void Commitment; and if the Commitment be void, the Process is void, and then my Lords are not legally in Court.

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

Mr. *Soll. Gen.* If your Lordship will permit them to go over and over the same things, we shall never have an End.

Mr. *Finch*. My Lord, we pray these Gentlemen of the King's Counsel may be a little cool with us, and then they will find, we do not talk the same things over and over again, nor meddle with that which the Court have given their Judgment in.

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

Mr. *Finch*. My Lord, we say it is the Privilege of the Peers of *England*, that none of them shall be committed to Prison for a Misdemeanor, especially in the first Instance, and before Judgment. This (we say) is the Right of my Lords the Bishops, and that which they claim as Lords of Parliament. Now it appears upon this Return and the Warrant, that the Council-Table hath committed them (for your Lordship and the Court hath rul'd it, that this Commitment must be taken to be by Order of the Privy-Council, and we meddle not with that further) but we say that the Council-Table may commit a Man unjustly, that is certain. There has been Relief often given in this Court against Commitments by the Council-Table: And that they were unjustly committed, depends upon that Point of their Privilege as Peers.

Mr. *S. Pemberton*. My Lord, we say, that the Lords of the Council have illegally committed these Noble Persons, who are Peers of the Realm, and ought to have the Privilege of their Peerage, which is not to be committed for a Misdemeanor;

that the Council ought not to have done: For the Peers of *England* ought no more to be committed for a Misdemeanor, and to be imprisoned, especially upon the first Process, than they may be in a Case of Debt. It is true, in the Case of Treason, Felony, or the Breach of the Peace, the Peers have not such a Privilege; they may be committed: But for a Misdemeanor (as this does appear to be in the Warrant of Commitment) they ought not to be committed. But they were committed by the Lords of the Council; and we now complain of this to your Lordship as illegal, and therefore pray my Lords may be discharged.

Sir *Rob. Sawyer*. Will your Lordship be pleased to favour me a Word on the same side, for my Lords the Bishops. It must be agreed to me, that if a Peer be brought into Court, as taken by a *Capias*, he cannot be charged with a Declaration; and the Reason is, because the Process is illegal: Then, my Lord, with Submission, when a Peer comes upon a Foreign Commitment, and is brought in Custody upon a *Habeas Corpus*, this is either in the Nature of a Process, or a final Commitment, as a Judgment; they will not say, that this is a good Commitment, so as to amount to a Judgment; for the Council-Board could not give a Judgment in the Case; besides, the Commitment is illegal, because it is not a Commitment till they find Security to answer an Information here, but 'tis a Warrant to keep them for a Misdemeanor: Besides, there is another thing we have to say to this Warrant (for I am making Objections against the Validity of this Commitment) it does not appear that there was any Oath made, and therefore the Court must adjudge that there was no Oath made, and then no Men ought without Oath to be committed, much less a Peer. But that which we chiefly rely upon is, That my Lords ought not to have been committed for this, which is but a Misdemeanor at most: And if they use it, as Process, to bring my Lords the Bishops to answer an Information, we say, by Law no such Process can be taken out against the Persons of Peers for bare Misdemeanors. I do agree, that for Felony, Treason, or Surety of the Peace, the Persons of Peers may be committed; and that which is called Surety of the Peace in our Books, Mr. Solicitor knows very well, in some of the Rolls of Parliament, is called Breach of the Peace, but it is all one; and the Meaning, in short, is, that it is such a Breach of the Peace, as for which a Man by Law may be obliged to find Sureties for the Peace. If it should mean a Breach of the Peace by Implication, as all Trespasses and Misdemeanors are said to be *contra Pacem* in the Indictment, or Information, then it were a simple thing to enumerate the Cases wherein Privileges did not lie; for there could be no Information whatsoever, but must be *contra Pacem*, and so there could be no such thing as Privilege at all. And besides, we say, the very Course of this Court is contrary to what they would have; for in the Case of a Peer, for a Misdemeanor, you go first by Summons, and then you do not take out a *Capias* as against a common Person, but the next Process is a *Distingas*, and so *ad infinitum*. And I do appeal to them on the other side, and challenge them to shew any one Precedent, when a Peer was brought thus into Court, to be charged with an Information, without it were in the Case of an apparent Breach of the

the Peace; for he must be charged in Custody, and there must be a *Committitur* to the Marshal, to entitle the Court to proceed. Your Lordship will find but very few Precedents of Cases of this Nature about common Persons; for till within these fourteen or fifteen Years there was no such thing ever done against a common Person: But this was the Rule: First there went out a *Subpœna*, and then an Attachment, and when the Party was taken upon the Attachment, he is taken to come in upon Process, and then the Court would charge him presently; but if he did appear upon the Summons, they would not charge him, but he had Time to take a Copy of the Information, and an Imparance of course, till the next Term, before he could be compelled to plead. But in the Case of a Peer, there never was any such Precedent as the Attaching his Person, but only a Summons and Distress: And I would be glad the King's Counsel would shew, that ever there was any such Process taken out against the Person of a Peer, for a meer Misdemeanor. My Lord, 'tis plain, what Breach of the Peace means in every Information; and I only speak this to acquaint the Court how the constant Proceedings in all these Cases have been. These Informations were antiently more frequent in the *Star-Chamber*; and what was the Process there? Not the common Process of a *Subpœna*, that was not the Course there; but the Process was a Letter from the Chancellor; that if the Party upon that Letter did not appear, in a common Case, there went out an Attachment; but in a Peer's Case never: And so it appears by *Crompton's Jurisdiction of Courts, Tit. Star-Chamber 33*. This appears likewise by the Proceedings in Chancery against the Peers, till the Queen's Time. They did not so much as take out an Attachment after Default upon a *Subpœna*, but they would then, in the Queen's Time, be so bold as to take out an Attachment against a Lord for not appearing; but that Course was condemned as illegal; so we find in my Lord *Dyer*.

Mr. *Att. Gen.* That was at a common Person's Suit.

Sir *Robert Sawyer*. But the Proceedings in the *Star-Chamber* were at the King's Suit, and I am sure Mr. Solicitor knows that the Peers Privileges reach to Informations; but, as I was saying, it was so adjudged as to the Chancery in my Lord *Cromwell's Case, 14 Eliz. Dyer, 315*.

L. C. J. You take a great Compass, Sir *Robert Sawyer*; but pray remember what you laid down at first, for the Ground of your Discourse, That there was never any Commitment of a Peer for a bare Misdemeanor: You must keep to that; that is the Point you are to look after.

Sir *Robert Sawyer*. My Lord, I will so; I do not cite these Cases but for this Purpose, to shew, that in all Courts the Peers have particular Privileges; and I am sure they can produce you no Precedents for any such Proceedings against a Peer. In my Experience of these Matters, I never knew any such; nay, I knew it always to be otherwise, that in Informations for Misdemeanors, there did never issue out a *Capias* against a Peer: And Mr. Attorney knows very well, it was so in the late Case of my Lord *Lovelace*; for that Case of my Lord *Devonshire*, that it was an express Breach of the Peace, though it was debated and disputed then; so that I take it, these Noble Lords cannot be charged with this Information, because

they do not come in by legal Process; and unless they can shew me any Cases, where a Peer did ever come in upon such a Commitment, and answered to an Information upon that Commitment, it must certainly be allowed not to be the legal Course; though if such a Precedent could be shewn, that pass'd *sub Silentio*, without Debate or solemn Determination, that would not do, nor could bind the rest of the Peers. If one Man would lose a particular Benefit he has, all the whole Body must not lose it; and the Benefit is not small, of Time to make his Defence; of Imparling, of taking a Copy of the Indictment, and preparing himself to plead as his Case will bear; and indeed a common Person has used to have these Privileges, though in some Cases of late, they have taken the other Course; and if a *Capias* went out (which we say cannot go against a Lord) and the Party were brought in, he was to answer immediately. Now, my Lord, I take it, that the Privileges of Peers is in all Times the same with the Parliamentary Privilege in Parliament-Time, which reacheth to Informations, as well as other Actions. My Lord *Coke* is express in this Point, in the 4. *Instit. 25*. If that Objection should hold good, that every Information being *contra Pacem*, that should be a Breach of the Peace, then (as I said before) Privilege will hold in no Information, which is contrary to that and all our other Books: 'Tis only such a Breach of the Peace, as for which Security of the Peace may be required. But further, that this is a Privilege enjoyed by the Peers, Spiritual as well as Temporal, I suppose will not be denied; for I think they will not question, but that the Bishops and Abbots that were Lords of Parliament were Peers; and we find in our Books, when the Court has been moved for a *Capias* against an Abbot, if he were a Mitred Abbot, and sat in the Lord's House, it was always said, that no such Process ought to go; and so it is in the Case of Bishops: But indeed for other Noblemen, the Difference is this: Where it does not appear upon Record, that they are Lords in Parliament, there the Courts have put them to bring their Writs of Privilege; but where it does appear upon Record, that they are Peers, the Court is to allow and take Notice of their Privilege; and there needs no such Writ. Now that the Parliament Privilege, and the Privilege of Peers (as to their Persons) is the same, appears by the Form of the Writ in the *Register, Fol. 287. Fitz. Herb. Nat. Brev. 247*. The Words of the Writ are these, That if such a one be sued at the Suit of another, the Writ commands, that a Peer out of Parliament-Time should have the same Privilege with those summoned by the King to the Parliament; and I know not any Difference that can be put between them; and it cannot be denied, that all Informations whatsoever, unless such as are for Breaches of the Peace, for which Surety of the Peace may be required, are under the Controul of the Parliament Privilege: So that upon these Grounds, I do press that my Lords the Bishops may be discharged. If there be any Information against us, we are ready to enter our Appearance, to answer it according to the Course of the Court: But if the Information be for no other thing than what is contained in the Warrant of Commitment, then their Persons ought to be privileged from Commitment.

Mr. *Pellican*.

Mr. *Pollexfen*. If your Lordship please to take it altogether, you will find it a Case very well worth your Consideration, it being the Case of all the Peerage of *England*.

Mr. *Att. Gen.* My Lord, these Gentlemen have taken a great deal of Liberty, and spent much of your Time in making long Arguments, and after all, truly, I do not know where to have them, nor can understand what they would be at. It seems they agree, that for Treason, Felony, and Breach of the Peace, a Peer may be committed.

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

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

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

Mr. *Att. Gen.* Can then any Man in the World say, that a Libel does not require Sureties of the Peace? For we must now take it as it is here upon this Return. How my Lords the Bishops will clear themselves of it, is a Question for another Time; but the Warrant says, they were committed for Contriving, Framing, and Publishing a Seditious Libel against his Majesty, and his Government: Is there a greater Misdemeanor? Or is there any thing on this Side a capital Crime that is a greater Offence? Is there any thing that does so tread upon the Heels of a capital Offence, and comes so near the greatest of Crimes that can be committed against the Government? Not to enlarge at this Time upon what the Consequences of such Things may be; is there a greater Breach of the Peace than such Seditious Practices? No doubt, any Man may be committed for it, and may be bound to find Sureties for his good Behaviour.

Sir *Rob. Sawyer*. I say Sureties of the Peace, not of the good Behaviour.

Mr. *Soll. Gen.* Pray my Lord, would you consider where we are; we are going towards *France*, I think, or some farther Country: They have set us out to Sea, and I do not see after this rate, when we shall come to Land. Certainly, these Gentlemen are mightily out of the Way, and would fain have us so too! We are here upon a single Question, as this Case stands before your Lordship, upon the Return. Here is a Libel, a Seditious Libel, said to be contrived, made and published against the King and his Government, by these Noble Lords the Prisoners. This is the Accusation; suppose this be true, that is to be proved hereafter; I hope they are innocent, and will prove themselves so: But suppose it to be true, that they have made a Seditious Libel against the King and his Government, will any Man say, that this is not done *Vi & Armis*? This is a Libel with a Witness; nay, two or three Degrees more will carry it to High-Treason, and all the Informations that were exhibited by Sir *Robert Sawyer*, when he was Attorney-General (and he exhibited a great many for Libels) constantly these Words were in, *Vi & Armis & contra Pacem*.

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

Mr. *Soll. Gen.* Yes, it was so in my Case, and you were one of them that prosecuted me, for ought I know; or if you did not prosecute me, you preached against me; or if you did not, some

of your Tribe did: But so, my Lord, it was in many other Cases, within Time of Memory. Sir *Robert Sawyer* has pass'd a Complement upon me, of my great Skill in Parliament Matters; but truly there needs no great Skill in Matters where the Law is so plain. A Peer they agree may be in Prison for Treason, Felony, or Breach of the Peace; but that Breach of the Peace, say they, is where the Law requires Sureties of the Peace: But is there any Certainty where Sureties of the Peace shall be required, and where not? Then I would put this Case; These Lords have contrived and published a Seditious Libel against the King and His Government; and whether this be not such a Breach of the Peace, as will require Sureties of the Peace, is the Question before you: And it plainly appears to be so, in Sir *Baptist Hicks's* Case, in *Hobart*. If a Man write a private Letter provoking another to fight, although there be no Fighting, this is a Breach of the Peace. Now a Letter can do no Wrong in that kind, but as it incites and stirs up to Fighting, which may occasion Blood-shed; and I think there cannot be a greater Breach of the Peace, than for a Man to come to the King's Face, and publish a Libel against him, and yet, according to their Doctrine, this Man shall go away, and you shall not take him up, but take a *Subpœna* against him, and wait for the Delay of all the ordinary Proceſs; and they tell you another Thing, that a *Capias* does not lie upon an Information against the Person of a Peer, and that there is no Precedent of any such Thing; but I would pray them to remember the Case of my Lord *Lovelace*, about some three Years ago, for breaking a Foot-man's Head. It seems, if a Man libels the King in his own Presence, that is not so great a Matter as a little Correction to an insolent Foot-man; but there he was bound in a Recognizance to appear there in this Court, and accordingly he did appear, and was charged with an Information; and as to that Precedent, I do believe Sir *Robert Sawyer* and Mr. *Finch* won't contradict me. This was in the first Year of this King. There was likewise my Lord of *Pembroke's* Case, who went to a disorderly House, and there frightned some People: We moved the Court, and had an Attachment against him for a Misdemeanor, and he was glad to compound the Thing, or it had not ended so soon as it did; and yet if a Lord comes to the King's Person, and affronts Him to his very Face, will not an Attachment lie against him for it? Certainly it will. My Lord, we have gone out of the Way too much already, and these Gentlemen will lead us farther; but we hope your Lordships will reduce us to the Methods of the Law. Here is an Information which we desire may be read; if they have any thing to plead to it, their Time for that will come after it is read: If they think they have been illegally imprisoned, it appears plainly upon this Return, who they were that did commit them. Here are a great many Noble Lords to answer an Action of false Imprisonment, if these Lords think fit, and may have these learned Gentlemen, that are very well able to advise them what they should do in it.

Sir *Rob. Sawyer*. We pray your Lordship's Judgment, whether the Cases put by Mr. Solicitor are like our Case?

Mr. *Soll. Gen.* They are as like, as Sir *Robert Sawyer* is to Mr. Attorney that was.

Sir *Rob. Sawyer*. Those Cases are of apparent Breaches of the Peace; so likewise was my Lord of *Devonshire's* Case; but certainly that was not at all like this.

Mr. *Finch*. With our Lordship's Favour, I would add but one Word, and I would repeat nothing of what has been said: All that I shall say is this; There is a great deal of Difference between an actual Breach of the Peace, and that which in the bare Form of an Information is a Breach of the Peace, by Construction of Law, it being *contra Pacem*. Suppose it be laid that a Man did *Vi & Armis* speak Words, will that make the Words a Breach of the Peace?

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

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

Mr. *Soll. Gen.* My Lord, I hope, Mr. *Finch* remembers what I heard him say in *Algernoon Sidney's* Case, *scribere est agere*.

Mr. *Finch*. I think it is so, Mr. Solicitor, but every Action is not a Breach of the Peace.

L. C. J. Well, let my Brothers deliver their Opinions, I will give you mine.

Mr. *Just. Allybone*. The single Question now is, Whether or no that which Mr. Solicitor was pleased to name as the Crime, and lay it to the Charge of my Lords the Bishops, that is a Seditious Libel, be a Breach of the Peace. I do confess that there is little of Argument to be drawn from Forms of Indictments; and I shall put no great Strefs upon the Words, *Vi & Armis*, where the Fact will not come near it; but if a Commitment may ensue (as they seem to agree) wherever Surety of the Peace may be required, nothing seems more important to me, than that Surety of the Peace should be required, where there is any thing of Sedition in the Case; and wherever there is a Seditious Act, I cannot tell how to make any other Construction of it, but that it is an actual Breach of the Peace; that is my Opinion.

Mr. *Just. Powell*. I am of the same Opinion in this Point too, as I was in the other Point before: It was a Matter of great Consequence, I thought, upon the former Point, but now it appears to me, to be of far greater Consequence than it did at first; for here, all the Great, High, and Noble Peers of *England* are concerned in it, as to their Privilege. Our Predecessors in this Court heretofore would not determine the Privileges of the Peers, but left them to themselves to make what Judgment they pleased of them. I think truly 'tis a Thing of that Weight, that it may be very fit for the Court to take Time to consider of it, and I declare for my own Part, I will not take upon me to deliver any Opinion in a Matter of this Consequence, before I have consulted all the Books that can give me any Light in the Case.

Mr. *Just. Allybone*. Brother *Powell*, I am not determining, limiting, or cramping the Privilege of Peers, but I am only considering whether or no a Seditious Libel be a Breach of the Peace. 'Tis agreed to be on all Hands a Breach of the Peace. Is there any thing that will require Sureties of the Peace to be given upon the doing of it? For there Sir *Robert Sawyer* has laid the Foundation of his Distinction, and if that shall draw any Person under a Commitment, then, say I, in my Judgment, wherever there is a Seditious Libel,

there is that which is an actual Breach of the Peace; for I am sure there is that which is sufficient to require Sureties of the Peace. I controvert not the Right of the Peers one Way or other, but only declare my Opinion, That this is a Fact that comes within the Rule laid down by them, that what will require Sureties of the Peace, is a Breach of the Peace.

Mr. *Just. Holloway*. God forbid that in a Case of this Nature, any one should take upon him here to say, that every Misdemeanor were a Breach of the Peace, I say not so; but certainly there are some such Misdemeanors as are Breaches of the Peace; and if here be such a Misdemeanor before us, then it is acknowledged, that even in Parliament-time, a privileged Person might be committed for it: For in Treason, Felony, and Breach of the Peace, Privilege does not hold. I will not take upon me, as my Brother said, to determine concerning the Privilege of the Peers, it is not of our Cognizance, nor have we any thing to do, either to enlarge or confine Privilege, nor do we determine whether this be such a Libel as is charged in the Information, that will come in Question another Time; but certainly as this Case is, the Information ought to be read, and my Lords ought to appear and plead to it.

L. C. J. Certainly we are all of us here as tender of the Privileges of the Peers as any in the World can be, and as tender as we would be, and ought to be in trying any Man's Right: It becomes us to do it with great Respect and Regard to my Lords the Bishops; and therefore I would be as careful (if that were the Question before me) to consider very well before I give my Opinion, as ever I was in my Life. But when I see there can come no Mischief at all to the Privileges of the Peers, by what is agreed on all Hands, I think I may very justly give my Opinion: For here is the Question, Whether the Fact charged in the Warrant be such a Misdemeanor as is a Breach of the Peace? and the Words of the Warrant (which is now upon the Record) being such as have been recited, I cannot but think it is such a Misdemeanor as would have required Sureties of the Peace; and if Sureties were not given, a Commitment might follow; and therefore I think the Information must be read.

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

Clerk reads. *Middlesex, ff. Memorandum*. That Sir *Thomas Powis*, Knight, Attorney-General of our Lord the King, who for our said Lord the King in this Behalf sues, comes in his own Person here into the Court of our said Lord the King, before the King himself at *Westminster*, on *Friday* next, after the Morrow of the *Holy-Trinity* in this Term, and for our said Lord the King, gives the Court here to understand, and be informed, that our said Sovereign Lord the King, out of his signal Clemency ———

Mr. *Soll. Gen.* Read it as it is in *Latin*.

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

Mr. *Soll. Gen.* No, my Lords the Bishops are very learned Men, we all know; pray read it in *Latin*.

Clerk reads. *Memorandum, Quod Thomas Powis, Miles, Attornatus Domini Regis nunc Generalis, qui pro eodem Domino Rege in hac parte sequitur, in propria Persona sua venit hic in Curia aucto Domini Regis coram ipso Rege apud Westmonasterium,*

rium, *Die Veneris proxime post crastinum Sanctæ Trinitatis, isto eodem Termino, & pro eodem Domino Rege, Dat Curie hic intelligi & informari, quod dictus Dominus Rex, nunc ex insigni Clementia & benigna Intentione suis erga Subditos suos Regni sui Angliæ per Regiam suam Prerogativam, quarto die Aprilis, Anno Regni Dicit' Domini Regis nunc Tertio, apud Westmonasterium in Comitatu Middlesexiæ, Declarationem suam Intitulatam, His Majesty's Gracious Declaration to all his Loving Subjects for Liberty of Conscience, gerentem Datum eisdem Die & Anno, Magno Sigillo suo Angliæ Sigillatam publicavit; in qua quidem Declaratione continetur.*

JAMES REX.

IT having pleased Almighty God, not only to bring Us to the Imperial Crowns of these Kingdoms through the greatest Difficulties, but to preserve Us by a more than ordinary Providence, upon the Throne of Our Royal Ancestors, there is nothing now that We so earnestly desire, as to establish Our Government on such a Foundation as may make Our Subjects happy, and unite them to Us, by Inclination as well as Duty, which We think can be done by no Means so effectually, as by granting to them the free Exercise of their Religion for the Time to come, and add that to the perfect Enjoyment of their Property, which has never been in any Case invaded by Us since Our coming to the Crown; which being the two Things Men value most, shall ever be preserved in these Kingdoms during Our Reign over them, as the truest Methods of Our Peace, and Our Glory. We cannot but heartily wish, as it will easily be believed, that the People of Our Dominions were Members of the *Catholic* Church, yet We humbly thank Almighty God, it is, and hath long Time been Our constant Sense and Opinion (which upon divers Occasions We have declared) that Conscience ought not to be constrained, nor People forced in Matters of meer Religion. It has ever been directly contrary to Our Inclination, as We think it is to the Interest of Government, which it destroys, by spoiling Trade, depopulating Countries, and discouraging Strangers; and finally, that it never obtained the End for which it was employed. And in this we are the more confirmed by the Reflections We have made upon the Conduct of the four last Reigns. For after all the frequent and pressing Endeavours that were used in each of them, to reduce these Kingdoms to an exact Conformity in Religion, it is visible, the Success has not answered the Design; and that the Difficulty is invincible. We therefore, out of Our Princely Care and Affection unto all our loving Subjects, that they may live at Ease and Quiet, and for the Increase of Trade, and Encouragement to Strangers, have thought fit, by Virtue of Our Royal Prerogative, to issue forth this Our Declaration of Indulgence, making no Doubt of the Concurrence of Our two Houses of Parliament, when We shall think it convenient for them to meet. In the first Place We do declare, that We will protect and maintain Our Archbishops, Bishops, and Clergy, and all other Our Subjects of the Church of *England*, in the free Exercise of their Religion, as by Law established, and in the quiet and full Enjoyment of all their Possessions, without any Molestation or Distur-

bance whatsoever. We do likewise declare, that it is Our Royal Will and Pleasure, that from henceforth the Execution of all and all manner of *Penal Laws* in Matters Ecclesiastical, for not coming to Church, or not receiving the Sacrament, or for any other Non-conformity to the Religion established, or for or by reason of the Exercise of Religion in any manner whatsoever, be immediately suspended, and the further Execution of the said *Penal Laws*, and every of them, is hereby suspended. And to the end that by the Liberty hereby granted, the Peace and Security of Our Government, in the Practice thereof, may not be endangered, We have thought fit, and do hereby streightly charge and command all Our loving Subjects, that as We do freely give them Leave to meet and serve God after their own Way and Manner, be it in private Houses, or Places purposely hired or built for that Use, so that they take special Care that nothing be preach'd or taught amongst them which may any ways tend to alienate the Hearts of Our People from Us or Our Government, and that their Meetings and Assemblies be peaceably, openly, and publickly held, and all Persons freely admitted to them; and that they do signify and make known to some one or more of the next Justices of the Peace, what Place or Places they set apart for those Uses. And that all Our Subjects may enjoy such their Religious Assemblies with greater Assurance and Protection, We have thought it requisite, and do hereby command, that no Disturbance of any kind be made or given unto them, under Pain of Our Displeasure, and to be further proceeded against with the uttermost Severity. And forasmuch as We are desirous to have the Benefit of the Service of all Our loving Subjects, which by the Law of Nature is inseparably annexed to, and inherent in Our Royal Person, and that none of Our Subjects may for the future be under any Discouragement or Disability (who are otherwise well inclined and fit to serve Us) by reason of some Oaths or Tests that have been usually administered on such Occasions, We do hereby further declare, That it is Our Royal Will and Pleasure, that the Oaths commonly called the Oaths of Supremacy and Allegiance, and also the several Tests and Declarations mentioned in the Acts of Parliament made in the twenty-fifth and thirtieth Years of the Reign of Our late Royal Brother King *Charles* the Second, shall not at any Time hereafter be required to be taken, declared, or subscribed by any Person or Persons whatsoever, who is, or shall be employed in any Office or Place of Trust, either Civil or Military, under Us, or in Our Government. And We do further declare it to be Our Pleasure and Intention, from Time to Time hereafter, to grant Our Royal Dispensations, under Our Great Seal, to all Our loving Subjects so to be employed, who shall not take the said Oaths, or subscribe or declare the said Tests or Declarations in the above-mentioned Acts, and every of them. And to the end that all Our loving Subjects may receive and enjoy the full Benefit and Advantage of Our Gracious Indulgence hereby intended, and may be acquitted and discharged from all Pains, Penalties, Forfeitures and Disabilities by them, or any of them incurred or forfeited, or which they shall or may at any Time hereafter be liable to, for or by reason of their Nonconformity, or the Exercise of their Religion, and from all Suits, Trou-

bles or Disturbances for the same, We do hereby give Our free and ample Pardon unto all Nonconformists, Recufants, and other Our loving Subjects, for all Crimes and Things by them committed, or done contrary to the *Penal Laws* formerly made relating to Religion, and the Profession or Exercise thereof; hereby declaring that this Our Royal Pardon and Indemnity shall be as good and effectual to all Intents and Purposes, as if every individual Person had been therein particularly named, or had particular Pardons under Our Great Seal, which We do likewise declare shall from Time to Time be granted unto any Person or Persons desiring the same, willing and requiring Our Judges, Justices, and other Officers, to take Notice of and obey Our Royal Will and Pleasure herein before declared. And although the Freedom and Assurance We have hereby given, in relation to Religion and Property, might be sufficient to remove from the Minds of Our loving Subjects all Fears and Jealousies in relation to either; yet We have thought fit further to declare, That we will maintain them in all their Properties and Possessions, as well of Church and Abby Lands, as in any other their Lands and Properties whatsoever.

Et idem Attornatus dicti Domini Regis nunc Generalis pro eodem Domino Rege ulterius dat Curie hic intelligi & informari, quod postea scilicet vicesimo septimo die Aprilis Anno Regni dicti Domini Regis nunc, &c. quarto, apud Westmonasterium predictum in Comitatu Middlesexie predicto, idem Dominus Rex nunc ex eadem Clementia & benigna intentione suis erga subditos suos Regni sui Anglie, per Regiam suam Prærogativam, aliam Regalem suam Declarationem Intitulatam, His Majesty's gracious Declaration, gerentem datum eisdem die & anno ultimo mentionatis, magno sigillo suo Anglie similiter sigillatam, publicavit; in qua quidem Declaratione continetur.

JAMES REX.

“OUR Conduct has been such in all Times,
 “as ought to have persuaded the World,
 “that We are firm and constant to Our Resolutions;
 “yet, that easy People may not be abused
 “by the Malice of crafty wicked Men, We think
 “fit to declare, that Our Intentions are not
 “changed since the 4th of April, 1687, when
 “We issued out Our Declaration for Liberty of
 “Conscience in the following Terms.——

His Majesty's Gracious Declaration to all his loving Subjects for Liberty of Conscience.

JAMES REX.

IT having pleased Almighty God, not only to bring Us to the Imperial Crowns of these Kingdoms through the greatest Difficulties, but to preserve Us by a more than ordinary Providence upon the Throne of Our Royal Ancestors, there is nothing now that We so earnestly desire as to establish Our Government on such a Foundation as may make Our Subjects happy, and unite them to Us by Inclination as well as Duty; which We think can be done by no Means so effectually, as by granting to them the free Exercise of their Religion for the Time to come, and add that to the perfect Enjoyment of their Property, which has never been in any Case invaded by Us since Our coming to the Crown; which being the two Things Men value most, shall ever be preserved in

these Kingdoms during our Reign over them, as the truest Methods of their Peace and Our Glory. We cannot but heartily wish, as it will easily be believed, that the People of Our Dominions were Members of the Catholick Church; yet We humbly thank Almighty God, it is, and hath long time been Our constant Sense and Opinion (which upon divers Occasions We have declared) that Conscience ought not to be constrained, nor People forced in Matters of meer Religion. It has ever been directly contrary to Our Inclination, as We think it is to the Interest of Government, which it destroys by spoiling Trade, depopulating Countries, and discouraging Strangers, and finally, that it never obtained the End for which it was employed. And in this We are the more confirmed by the Reflections We have made upon the Conduct of the four last Reigns. For after all the frequent and pressing Endeavours that were used in each of them, to reduce these Kingdoms to an exact Conformity in Religion, it is visible the Success has not answered the Design; and that the Difficulty is invincible. We therefore, out of Our Princely Care and Affection unto all Our loving Subjects, that they may live at Ease and Quiet, and for the Increase of Trade, and Encouragement to Strangers, have thought fit, by virtue of Our Royal Prerogative, to issue forth this Our Declaration of Indulgence, making no Doubt of the Concurrence of Our two Houses of Parliament, when We shall think it convenient for them to meet. In the first Place We do declare, that We will protect and maintain Our Archbishops, Bishops, and Clergy, and all other Our Subjects of the Church of *England*, in the free Exercise of their Religion, as by Law established, and in the quiet and full Enjoyment of all their Possessions, without any Molestation or Disturbance whatsoever. We do likewise declare, that it is Our Royal Will and Pleasure, that from henceforth the Execution of all and all manner of *Penal Laws* in Matters Ecclesiastical, for not coming to Church, or not receiving the Sacrament, or for any other Non-conformity to the Religion established, or for or by reason of the Exercise of Religion in any manner whatsoever, be immediately suspended, and the further Execution of the said *Penal Laws*, and every of them, is hereby suspended. And to the end that by the Liberty hereby granted, the Peace and Security of Our Government, in the Practice thereof, may not be endangered, We have thought fit, and do hereby straightly charge and command all Our loving Subjects, that as We do freely give them Leave to meet and serve God after their own Way and Manner, be it in private Houses, or Places purposely hired or built for that Use, so that they take special Care that nothing be preach'd or taught amongst them which may any ways tend to alienate the Hearts of our People from Us or Our Government, and that their Meetings and Assemblies be peaceably, openly and publickly held, and all Persons freely admitted to them; and that they do signify and make known to some one or more of the next Justices of the Peace, what Place or Places they set apart for those Uses. And that all Our Subjects may enjoy such their Religious Assemblies with great Assurance and Protection, We have thought it requisite, and do hereby command, that no Disturbance of any kind be made or given to them, under Pain of Our Displeasure, and to be further proceeded against with

with the utmost Severity. And forasmuch as We are desirous to have the Benefit of the Service of all our loving Subjects, which by the Law of Nature is inseparably annexed to, and inherent in Our Royal Person, and that none of Our Subjects may for the future be under any Discouragement or Disability (who are otherwise well inclined and fit to serve Us) by reason of some Oaths or Tests that have been usually administered on such Occasions, We do hereby further declare, That it is Our Royal Will and Pleasure, that the Oaths commonly called the Oaths of Supremacy and Allegiance, and also the several Tests and Declarations mentioned in the Acts of Parliament made in the twenty-fifth and thirtieth Years of the Reign of Our late Royal Brother King *Charles* the Second, shall not at any Time hereafter be required to be taken, declared, or subscribed by any Person or Persons whatsoever, who is or shall be employed in any Office or Place of Trust, either Civil or Military, under Us, or in Our Government. And We do further declare it to be Our Pleasure and Intention, from Time to Time hereafter, to grant Our Royal Dispensations under Our Great Seal, to all Our loving Subjects so to be employed, who shall not take the said Oaths, or subscribe or declare the said Tests or Declarations in the above-mentioned Acts, and every of them. And to the end that all our loving Subjects may receive and enjoy the full Benefit and Advantage of Our Gracious Indulgence hereby intended, and may be acquitted and discharged from all Pains, Penalties, Forfeitures, and Disabilities by them or any of them incurred or forfeited, or which they shall or may at any Time hereafter be liable to, for or by reason of their Nonconformity, or the Exercise of their Religion; and from all Suits, Troubles or Disturbances for the same, We do hereby give Our free and ample Pardon unto all Nonconformists, Recusants, and other Our loving Subjects for all Crimes and Things by them committed or done, contrary to the *Penal Laws* formerly made relating to Religion, and the Profession or Exercise thereof; hereby declaring, that this Our Royal Pardon and Indemnity shall be as good and effectual to all Intents and Purposes, as if every individual Person had been therein particularly named, or had particular Pardons under Our Great Seal, which We do likewise declare shall from Time to Time be granted unto any Person or Persons desiring the same; willing and requiring Our Judges, Justices, and other Officers, to take Notice of, and obey Our Royal Will and Pleasure herein before declared. And although the Freedom and Assurance We have hereby given in relation to Religion and Property, might be sufficient to remove from the Minds of our loving Subjects all Fears and Jealousies in relation to either; yet We have thought fit further to declare, That We will maintain them in all their Properties and Possessions, as well of Church and Abby Lands, as in any other their Lands and Properties whatsoever.

Given at our Court at Whitehall the fourth Day of April, 1687, in the Third Year of Our Reign.

Ever since We granted this Indulgence, We have made it Our principal Care to see it preserved without Distinction, as We are encouraged to do daily by Multitudes of Addresses, and many other Assurances We received from Our Subjects of all Perswasions, as Testimonies of their Satisfaction

and Duty, the Effects of which We doubt not but the next Parliament will plainly shew; and that it will not be in vain that We have resolved to use our uttermost Endeavours to establish Liberty of Conscience on such just and equal Foundations as will render it unalterable, and secure to all People the free Exercise of their Religion for ever; by which future Ages may reap the Benefit of what is so undoubtedly for the general Good of the whole Kingdom. It is such a Security We desire, without the Burden and Constraint of Oaths and Tests, which have been unhappily made by some Governments, but could never support any. Nor should Men be advanced by such Means to Offices and Employments, which ought to be the Reward of Services, Fidelity and Merit. We must conclude, that not only good Christians will join in this, but whoever is concerned for the Increase of the Wealth and Power of the Nation. It would perhaps prejudice some of our Neighbours, who might lose Part of those vast Advantages they now enjoy, if Liberty of Conscience were settled in these Kingdoms, which are above all others most capable of Improvements, and of commanding the Trade of the World. In pursuance of this Great Work, We have been forced to make many Changes both of Civil and Military Offices throughout Our Dominions, not thinking any ought to be employed in Our Service, who will not contribute towards the establishing the Peace and Greatness of their Country, which We most earnestly desire, as unbiassed Men may see by the whole Conduct of our Government, and by the Condition of our Fleet, and of Our Armies, which, with good Management, shall be constantly the same, and greater, if the Safety or Honour of the Nation require it. We recommend these Considerations to all Our Subjects, and that they will reflect on their present Ease and Happiness, how far above three Years, that it hath pleased God to permit Us to reign over these Kingdoms, We have not appeared to be that Prince Our Enemies would have made the World afraid of, Our chief Aim having been not to be the Oppressor, but the Father of Our People, of which We can give no better Evidence than by conjuring them to lay aside all private Animosities, as well as groundless Jealousies, and to choose such Members of Parliament as may do their Part to finish what We have begun, for the Advantage of the Monarchy over which Almighty God hath placed Us, being resolved to call a Parliament, that shall meet in *November* next at farthest.

Quam quidem Regalem Declarationem dicti Domini Regis nunc ultimo mentionatam idem Dominus Rex nunc postea scilicet tricesimo die Aprilis Anno Regni sui quarto supradicto, apud Westmonasterium predictum in Comitatu Middlesexie predicto, imprimi & per totam Angliam publicari causavit, & pro magis solenni demonstratione, notificatione, & manifestatione gratie suae Regiae benignitatis & benevolentiae suae ad omnes ligeos suos in eadem Declaratione ultimo mentionata specificatos, postea scilicet quarto die Maii Anno Regni sui quarto, apud Westmonasterium predictum in Comitatu Middlesexie predicto idem Dominus Rex debito modo ordinavit prout sequitur.

At the Court at *Whitehall*, the 4th of *May*, 1688. It is this Day ordered by his Majesty in Council, That his Majesty's late Gracious Declaration, bearing Date the 27th of *April* last, be read at the usual Time of Divine Service, upon the

the 20th and 27th of this Month, in all Churches and Chapels within the Cities of *London* and *Westminster*, and ten Miles thereabout; and upon the 3d and 10th of *June* next, in all other Churches and Chapels throughout this Kingdom. And it is hereby further ordered, That the Right Reverend the Bishops cause the said Declaration to be sent and distributed throughout their several and respective Dioceses, to be read accordingly.

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

The humble Petition of William Archbishop of Canterbury, and of divers of the Suffragan Bishops of that Province (now present with him) in Behalf of themselves and others of their absent Brethren, and of the Clergy of their respective Dioceses.

Humbly sheweth,

THAT the great Averseness they find in themselves to the distributing and publishing in all their Churches, your Majesty's late Declaration

for Liberty of Conscience, proceedeth neither from any want of Duty and Obedience to your Majesty; our holy Mother, the Church of *England*, being both in her Principles, and in her constant Practice, unquestionably Loyal, and having, to her great Honour, been more than once publicly acknowledged to be so by your Gracious Majesty; nor yet from any Want of due Tenderness to Dissenters, in relation to whom they are willing to come to such a Temper as shall be thought fit, when that Matter shall be considered and settled in Parliament and Convocation. But among many other Considerations, from this especially, because that Declaration is founded upon such a dispensing Power, as hath been often declared illegal in Parliament, and particularly in the Years 1662, and 1672, and the Beginning of your Majesty's Reign; and is a Matter of so great Moment and Consequence to the whole Nation, both in Church and State, that your Petitioners cannot in Prudence, Honour, or Conscience, so far make themselves Parties to it, as the Distribution of it all over the Nation, and the solemn Publication of it once and again, even in God's House, and in the Time of his Divine Service, must amount to, in common and reasonable Construction.

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

T. POWYS.

W. WILLIAMS.

Mr. Att. Gen. My Lord, we humbly pray, that according to the Rules of the Court in such Cases, my Lord Archbishop of *Canterbury*, and my Lords the Bishops, may plead to the Information.

Mr. Sol. Gen. My Lords the Bishops are here in Custody in the Court, upon the highest Commitment that can be in this Kingdom, to wit, that of the King in Council; and we pray, that according to the Course of the Court, they may plead to the Information presently.

L. C. J. What does his Grace and my Lords the Bishops say to it?

Mr. S. Pemberton. Will your Lordship give us leave, who are of Council for his Grace my Lord of *Canterbury*, and the rest of my Lords the Bishops, to speak a Word in this Matter?

L. C. J. Ay, Brother, go on.

Mr. S. Pemberton. That which we have to desire of your Lordship, and the Court, is this; we have now heard this Information read, and 'tis plain we could know nothing of this before, the Warrant of Commitment being only in general for a Libel; and this being a Case of the greatest Consequence, peradventure, that ever was in *Westminster-Hall* (that, I think, I may boldly say, it

it is a Case of the greatest Consequence that ever was in this Court) and it being a Matter of this Nature, that these great and noble Persons, my Lords the Bishops, are here taxed with; that is, for making a seditious Libel, contained in such a Petition (as though it was a Libel to petition the King) we do beg this of your Lordship, that (it being of this great Importance) to the End we may come prepared to say what we have against it, we may have an Imparance till the next Term.

Mr. *Finch*. Pray, my Lord, favour me with a Word on the same Side, for my Lords the Bishops. Your Lordship sees now how necessary the Trouble we gave you before, in making our Objections against the reading of the Information was, and what the Drift and Aim of the King's Counsel was, in the desiring the Information to be read first; for now it is read, What is it that they desire of your Lordship? They desire that my Lord Archbishop, and my Lords the Bishops, being in Custody, and brought here in Custody, they may be now so charged with this Information, as to plead presently. This, my Lord, we oppose, and with humble Submission we ought to have Time to imparle, and a Copy of the Information, that we may consider what we have to plead to it; for however we come here into Court, whether legally or not legally, yet ought we in the one and in the other Case, to have Time to consider of our Defence. And, my Lord, till of latter Time this Practice, which the King's Counsel now calls the Course of the Court, was never used, nor was any Man required to plead immediately; and, my Lord, if the Practice of the Court has not been antiently so (as I do believe they will scarce shew it to be antienter than a few Years last past) then with humble Submission, though the Course of the Court have been so for some little Time past, yet it is not in the Power of the Court (as we humbly conceive) to make a Course in Prejudice of all the Privileges that the King's Subjects are by the antient Rules of Law entitled to; they cannot make a new Law in prejudice of any Right or Privilege which the Subject hath, and call it the Course of the Court. Now that this which we desire for my Lords the Bishops, is the Right and Privilege of the Subject, is most manifest; for there might be many Defences that a Man may have to make to an Accusation of this Nature, which it is impossible for him to know at the first hearing of an Information read, and yet which would be necessary for him to make use of, or at least it would be impossible for him to make use of in such a Manner as the Law doth allow of and require. It may be the Pleas which he has to plead may be such as that he has not Time to put into Form; there may be Matters upon the hearing the Information read, that it would be necessary for him to give Answer to, which he knew not of before, and therefore may neither have Materials ready, nor be capable of putting them (if he had them ready) into such Form as the Law requires. They tell you on the other Side, that if a Man be brought into Court by legal Process, he may be charged with any Information whatsoever; that they are not tied to the Fact alledged in the Commitment, but finding the Party under a legal Imprisonment, they can exhibit an Information against him for any other Offence. Then, my Lord, would I fain know, which way any Man alive can be prepared to make his just and legal Defence, for he knows

not his Accusation; for though he think it may be for that for which he was committed, yet it may prove otherwise, and then he can be no way provided with Materials for his Defence, but he must lose all Advantages which the Law gives him for his Defence. My Lord, if this be the Course of latter Times, yet you will not take that to be such a Law as is binding to all future Times; and we are sure the King's Counsel cannot shew that this was the antient Practice, for that was quite otherwise.

L. C. J. Mr. *Finch*, you were not here, I suppose, when this Question came in Debate in this Court lately, in the Case of a very great Person: 'Twas urged very earnestly and very learnedly by one that stands by you. We upon that Debate asked Sir *Samuel Astry*, what the Course of the Court was? and he told us, that the Course of the Court (of his own Knowledge for all the Time that he had sat as Clerk of the Crown in this Court) was, that when any one was brought in Custody, or upon a Recognizance, they were to plead presently.

Mr. *Finch*. Sir *Samuel Astry* has not been here so very long, as to make the Practice of his Time the Course of the Court.

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

Mr. *S. Pemberton*. My Lord, I hope the Course of the Courts of *Westminster-Hall* shall not depend upon the Certificate of such a one as Mr. *Waterhouse*, who is a Man, we all know, superannuated, and very defective in his Memory.

Mr. *Just. Powel*. Certainly what they desire for the Defendants is very reasonable, for I take the Point to be only this; whether a Man may be compelled, being in Custody, to plead to an Information presently.

Mr. *Just. Allybone*. Pray, Brother *Powel*, spare me a Word in this Matter. Mr. *Finch*, I suppose you labour for what the Court will not deny you, that you may have Time to plead according to the Course of the Court. We are not making Courses for particular Facts, that by my Consent we will never do; but if you say such a Thing is not the Course of the Court, and the King's Counsel affirm it is, how shall this be determined? And from whom can we take our Information to determine what is the Course? I am sure there is none of us that are here now, can pretend to tell what the antient Course was; for my Part, I declare it, I cannot; and I know no Reason there should be any Novelty introduced into the Court upon any Ground or Reason whatsoever, nor will I consent to any while I sit here: Therefore I desire to know what is the antient Course, and how we shall come to the Knowledge of that Course, if not by the Certificate of those who have been antient Officers of the Court?

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

Mr. *Just. Allybone*. If that hath not been the antient Course without Exception, I am against it; I know no Reason my Lords the Bishops should have any thing new put upon them: On the other Side, they must not expect to have the antient Course of the Court declined in their Case.

Mr. *Pollexfen*. Pray, my Lord, hear me a little in this Matter: 'Tis not my Desire that any Law should be alter'd for any particular Case, and the Course of the Court I know is the Law of the Court; but I humbly crave leave to say, That I take the antient Course of the Court to be quite otherwise than what the King's Counsel would have it. There may be particular Things done now and then, perhaps in particular Cases, and upon particular Occasions, which will not make what is so done to be the Course of the Court, nor be a binding Rule to you. Now, as to this Matter of Time or no Time, to plead to an Information, I remember the Time very well, when I and some others that stood at the Bar, and wondred when we saw this Practice coming in, and thought it a very hard and mischievous Thing; for, in Truth, the several Plots that have been, and the Heats of Men about those Things, have brought in this Course: For certain I am, and I dare affirm, there never was any such Course here before, neither upon Warrant from the Chief Justice, nor upon Recognizance, or any other Process, was a Man compelled to plead instantly, without having a *Capias* in the regular Form, after a Contempt for not appearing upon Summons. Truly, my Lord, we had no Interest in the Matter one way or other, to make us scruple it any otherwise than as we were concerned that the Law and Justice of the Nation should have its true and antient Current. And this I can assure your Lordships, that here was both my Lord Chief Justice *Saunders*, and Mr. Searjeant *Holt*, and myself, who taking Notice when this was first offered at, to make a Man plead immediately, without giving him Time to consider what he should plead, could not but say among ourselves, that it was an unreasonable Thing; and we were inclined to speak to the Court to inform them of the Consequence of it, which needs must be very mischievous. Sir *Samuel Astry*, we know, came to be Clerk of the Crown in my Lord *Scroggs's* Time. We know 'tis usual and customary for the Court to ask what is the Course of the Court in doubtful Cases, and to receive the Information from the Officers of the Court on both Sides. If it be on the Plea-side, from Mr. *Aston*; if on the Crown-side, from Sir *Samuel Astry*, concerning Things of Practice; but I did never think that what they reported was final and conclusive to the Court: But to make this Matter clear, I humbly pray, that you would please to give Order for the Search of old Precedents, how the old Practice really hath been: Every thing that has been done in hot Times, is not to be made a standing Rule. If there do any such thing appear to have been done and practised antiently, truly, my Lord, I will submit, and say I am under a mighty Mistake; but if this which is now urged for the Course of the Court, is nothing but what the Zeal of the Times, and Heat of Persecutions hath introduced, surely that is not fit to be a constant Rule for the Court to go by; for every one knows, that the Zeal of one Time may bring in that by Surprise upon one Man, which when things are cool, at another time will appear to be plain Injustice. We have indeed seen strange Things of this kind done before, but I hope to God they are now at an End, and we shall never see any such thing done hereafter; and as for this particular Point, I think it is a wonderful Thing in the Consequence of it, if the Law should be as they would have it. Here is a long In-

formation just read over to a Man (but whether long or short, as to the main Point, 'tis the same) and you say the Course of the Court is, he must plead to it immediately. Surely Matters of Crime that require Punishment to be inflicted on Men, are of as much Consequence and Concern, as any Civil Matter whatsoever; and Men are to have their Rights in those Matters preserved, as well as in other Matters, which is all I press: For suppose a Man has a special Matter to plead, as particularly suppose it be the King's Pardon, I cannot give this in Evidence upon a Trial after not guilty pleaded, then I ought to plead it; but what if I have it not ready? 'Tis not telling the Court of it, without shewing of it, that will do; and it may be a Man that is taken up, and brought hither in Custody, cannot have it ready to shew; but yet then by this Rule a Man shall lose the Benefit of his Plea, by being compelled to answer immediately: But they say, the Court will do right, I suppose they will; and my Lords the Bishops in this Case I believe do not distrust but that the Court will do right; but I never thought the Law was brought to that Pass, that such things as these were left wholly in the Discretion of the Court. Certainly Imparances, Time to plead, and just Preparations for a Man's Defence are things that the Law has settled, and not left in the Discretion of the Court; and truly to me it seems all one utterly to take away a Man's Defence, as to hinder him of the Means to prepare for it. My Lord, here is an Information before you against these noble Lords, it is a Matter of great Moment, and though I hope in God there is no great Cause for it, yet however, since such Persons are concerned, and 'tis a Matter of such great Weight, I hope you will give us such an Imparance, as if we had this Day appeared upon the ordinary Process, which is an Imparance until the next Term.

L. C. J. There is a Difference between this and that other Case: If my Lords the Bishops had appeared upon the Summons, they would have had an Imparance of Course; but when they are brought up hither in Custody, that mightily alters the Case. But that we may not be too hasty in a thing of this Nature, let the Clerk of the Court be consulted with, that we may know what the true Course is.

Mr. Att. Gen. My Lord, we pray Sir *Samuel Astry* may be examined a little about it.

Mr. Just. Allybone. Mr. *Pollexfen*, I believe the Court is unanimous in their Resolutions of making nothing new in this Case; but pray give me leave to tell you, this is not the first Time that this Question has come to be agitated in this Court since I came hither. Now from whence can the Court take their Measures to be rightly informed what the Practice of the Court is, but from the Information of the Officers of the Court? who by their constant Employment, are most capable of knowing what the Course is. Now if you come to offer any thing that may be Matter of Doubt to the Court, concerning the Practice of the Court, you having known that this thing was controverted before (for so it has been) should have provided yourself with something that must be a reasonable Motive for us to doubt; for this has not been only once, but often-moved, and our Officers have been consulted with concerning this Question, which took its Rise from such Objections as you have made now. Now for you to tell us, That you desire that we would look into Precedents,

dents, is, methinks, pretty odd. If you had brought us any Precedents, it had been something: And withal I must tell you, that you must not reckon the Favour of the Court, in any particular Case, to be the standing Rules for the Practice and Course of the Court; but instead of bringing Precedents, you only offer your own Thoughts, and those would create no Doubt in us but what has been before satisfied upon Examination of the Officers of the Court.

Mr. Pollexfen. Pray, Sir, will you give me leave to answer one Word.

Mr. Just. Powell. Truly I have not observed that ever this Point was started so as to beget a Question since I came hither, but only in the Cases of the *Quo Warranto's*; and truly in that Case I thought it hard they should be denied Time to plead, especially the Consequence being so fatal.

L. C. J. Yes, yes, Brother, it has been several Times.

Mr. Just. Powell. Truly, my Lord, I have not observed it, nor do I remember it.

Sir Robert Sawyer. My Lord, I have always taken the Distinction, as to these Matters, to be this ———

Mr. Just. Powell. But, my Lord, if the antient Course of the Court hath been to grant an Imparlance, and a Copy of the Information before they plead, I see no Reason why my Lords the Bishops should not have the Benefit of that antient Course: For if a Man that is sued at Law for a two-penny Trespass, shall have that Advantage as to receive a Declaration, and have Time to plead what he can to it, why should not my Lords the Bishops, in a Matter of so great a Weight, have the same Advantage too? But indeed, if the Course of the Court had been antiently otherwise, I can say nothing to it; for the Course of the Court is certainly the Law of the Court.

Mr. Just. Albyone. Brother Powell, you say well, if they did produce any one Precedent to give us Occasion to doubt in the Matter.

Sir Robert Sawyer. Pray, good my Lord, will you give me leave ———

Mr. Att. Gen. Why, Sir Robert Sawyer, will you never have done?

Mr. Soll. Gen. No, they are so zealous and eager in this Case, that they won't permit either the Court, or any body else to speak a Word but themselves.

Mr. S. Pemberton. Good Mr. Solicitor, give us leave to answer the Objection that the Court hath made to us; we would satisfy your Lordship where the Distinction really lieth, where there has been an Opportunity for the Party to come in, as by Summons or *Subpœna*, or the like, and he has slipped that Opportunity, and so the King is delayed. In that Case they always used to put the Party upon Pleading presently, when he was taken up upon a *Capias*, and brought in Custody; but when there was never any *Subpœna* taken out (as the Case is here) so that the Party never had an Opportunity to come in and render himself, and appear to answer it according to the due Course of Law, an Imparlance was never yet denied, nor Time to plead; and that is the Case here.

Sir Rob. Sawyer. My Lord, Mr. Serjeant has given you the true Distinction, where Process has gone out to summon any one to appear to an Information, and he hath failed to appear according to the Summons, and the Prosecutor for the King

takes out a *Capias*; if he be brought in upon that *Capias*, the antient Course has been so as they say: But for that other Matter, where a Man comes in upon a Commitment at the first Instance, and an Information is put in just as this is, the same Morning, and not before; if they can shew any one Precedent of this Kind fifteen Years ago, I would be contented to yield that they are in the right; but I am sure they are not able to do it. In Sir Matthew Hale's Time when this was moved, it was refused; and he was clear of another Opinion.

Mr. Att. Gen. I hope now, my Lord, we shall be heard a little for the King; and I cannot forbear observing in the first Place, somewhat that these Gentlemen have offered at, who are now inveighing against the Heat of the Times, when a great Part of that Heat we know who were the Inflamers of; but what is all this to the Purpose? The Question is barely this, Whether when a Man is brought into Custody into this Court, and charged with an Information, he shall not by the Course of the Court be compelled to plead presently?

Sir Robert Sawyer. To Indictments for Treason and Felony he shall be compelled to plead presently, but not to an Information for Misdemeanors.

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

Mr. Att. Gen. Sir, there are many Things that seem hard in Law, but yet when all is done, the Judges cannot alter the Law. 'Tis a hard Case that a Man that is tried for his Life for Treason or Felony, cannot have a Copy of his Indictment, cannot have Counsel, cannot have his Witnesses sworn; but this has been long practised, and the Usage is grown to a Law, and from Time to Time it hath been so taken for Law; it cannot be altered without a new Law made; as it hath been heretofore, so it must be now, till a greater Authority alter it; and so, as to the Case here at present, if it were a new Case, and it was the first Instance I must confess, I think I should not press it; but if this be the constant Practice of the Court, and if these Gentlemen that now oppose it, some of them ministerially, some of them judicially, have themselves established this Practice, they have no Reason to wonder that we follow them in it. We do not blame them for what they do now; for Men when they are of Counsel may be permitted to argue for their Client contrary to their former Opinions; but if these Things, by their Procurement, have been done thus before, surely without Offence we may pray the like may be done now. 'Tis our Duty, on Behalf of the King, to desire that he may have Right done him, as well as they on Behalf of my Lords the Bishops; and for the Usage, to cite Precedents were endless, especially of late Times, and these Gentlemen know them all very well, for they were some of them Parties to them themselves, and we can do no more, nor need, than to put them in mind of their own Doings; whether it was so before their Time or not, it concerns them to make out and retract their own Errors; but in our Observation, if ever this was pressed, or insisted upon on the King's Behalf, this Course has always been pursued.

Sir Rob. Sawyer. For a Precedent, my Lord, there is the Case of my Lord *Hollis*, where there was given Time after Time.

Mr. *Soll. Gen.* That was only Time to argue the Plea to the Jurisdiction of the Court.

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

Mr. *Soll. Gen.* If you please to ask Sir *Samuel Astry*, he will inform you how the Course has been.

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

Sir *Samuel Astry.* My Lord, when I came into this Place, there was an antient Gentleman that had been long a Clerk in the Office.

L. C. J. How many Years is it since you came into this Office?

Sir *Samuel Astry.* About a Dozen Years, I think, my Lord; and he sat in this Place where Mr. *Harcourt* does now. He was always accounted a loyal, honest, and intelligent Man, that is Mr. *Waterhouse*, who is now alive; and when I came into my Office, I took my Instructions in a great Measure from him, and asked him what the Course of the Court was, in such Cases which I myself did not understand; for though I had been an Attorney twenty Years, yet it was on the other Side, the Civil Side; and though I knew some Things of my own Knowledge, yet I did not so well know the whole Practice of the Court; and particularly I asked him, what was the Course of the Court in this Case that is now in Question, and he told me, that in all his Time and Experience, if a Man appears upon a Recognizance, or was a Person in Custody, or appeared in *propria persona*, as a Person privileged, he ought to plead at the first Instance; and according to that Practice, when Sir *Robert Sawyer* was Attorney-General, it was the constant Practice, and I am sure he knows it is no new Thing.

Sir *Rob. Sawyer.* But upon what Information, Sir *Samuel Astry*, were they Informations upon Misdemeanors?

Sir *Samuel Astry.* Yes, several.

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

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

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

Sir *Sam. Astry.* About a Dozen Years.

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

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

Mr. *S. Pemberton.* Do you find any such Case as this is?

Mr. *Soll. Gen.* Nay, pray Mr. Serjeant, give us your Favour, and let us ask our Questions according to your own Doctrine. How do you find the Practice to have been as to that Distinction they have made?

Sir *Sam. Astry.* Sir, I would be very loth to enlarge the Precedents of the Crown-Office further than the Truth is; I tell you whence I took my Instructions, from Mr. *Waterhouse*, who was an antient Clerk in the Office; he has been in that Office sixty Years, and the Instructions I took from him, were, that this was the Practice all his Time, and it has been asserted all my Time. It

has been often contested, I confess, and Mr. *Pollaxfen* has always opposed it, and moved against it, but it has been always ruled against him: I know it was against his Judgment, but the Court always over-ruled it.

Sir *Rob. Sawyer.* Sir *Samuel Astry*, can you give any one Precedent before you came into this Office?

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

Sir *Rob. Sawyer.* What is all this but a Certificate from Mr. *Waterhouse*?

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

Mr. *S. Pemberton.* Alas, he is a Child, and not fit to do any thing.

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

Mr. *Soll. Gen.* Pray, my Lord, will you hear us a little for the King.

The Bishop of Peterborough whispering with Sir Robert Sawyer, Mr. Solicitor said to him, My Lord, you had better look another way, and look towards the Court, for there your Business lies.

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

Mr. *Soll. Gen.* My Lord, it appears plainly, that the King is in Possession of this Privilege, and has been so for these Dozen Years; for so long the Justice of the Kingdom towards all the Subjects, hath run in all the Instances of it in this Channel; and though it hath been contested as often as Mr. *Pollaxfen* has been of Counsel for the Defendant, in such Cases it has always been ruled against him. He indeed has made his continual Claims (Sir *Samuel Astry* says) he has raised the Dust, and made a Hue and Cry, but it has always gone against him: And I would ask the rest of you Gentlemen that are of Counsel for my Lords the Bishops (for some, or one of you, I am sure, has been concerned in every Information that has been exhibited in this Court for these nine or ten Years last past, I would ask you) whether in any Information that you have been concerned in, if the Party being brought in by Process, insisted to have Time and an Imparlance, it was ever granted him? I know you will not say it ever was; why then should there be more done in this Case, than has been done in all other Cases these ten Years? 'Tis not sufficient to make Declarations against the Unreasonableness of the Practice, for it is but what you have done yourselves, and insisted upon for Law; and all those Men that upon Informations have been compelled to plead, have had Injury done them; or else these Lords will have no Injury by the Court's taking the same Course. It is true, my Lords the Bishops are Peers, and here are seven of them, and seven Lords go a great Way; they make a Committee, I think, in the House of Peers, and a mighty Matter is made of it, that this is the Case of so many Lords! But will you alter the Course of the Court, because seven of my Lords the Bishops are concerned in it, and they make a mighty Stir about the Reasonableness of the Thing? How can it be believed that the Law will not give a Man Time to make his Defence? They agree themselves, that if it were in the Case of Life and Death, they must plead presently; and

and doth not the same Reason hold? And may not an Argument be drawn *à fortiori*, in the Case of a Misdemeanor? If I am not to have Time when I plead for my Life, there is less Reason I should have Time to answer a Trespass: But, my Lord, 'tis not Reason that weighs in the Case, 'tis the Course of the Court, which is the Law of the Court that we are contending for: And what is there in the Case that should require so much Time for my Lords the Bishops to plead to it? It is charged in the Information, that these noble Prelates did make a Libel which was produced by them, and published in the King's Presence; they can easily tell whether they have done this, or not done it. What can they plead but the general Issue? They talk of special Matter to be pleaded, but can they shew any more that they can say, than what any poor ordinary Countryman, if he were here to plead to an Information, could say? That is, whether he was guilty or not guilty. These Lords can tell whether it be true, that they did publish the Paper laid in the Information, and then your Lordship will tell them what will be the Consequences of that Publication in Point of Law. We say all this was done at *Westminster*; there the Scene is laid, and it is not an Information for an old stale Thing done a great while ago, but a Thing that was done Yesterday, and a Thing notorious enough, their contesting with the King about his Declaration of Indulgence. And as to what Mr *Finch* has said, that this is a Novel Invention, and a Trick to rob a Man of his just Defence; sure he forgets who it is that taught us the Trick. If it be a Trick, we have learnt it from those that trick'd before us; and what is it that these Lords do desire? They would have an Imparance till *Michaelmas* Term: Does, or can your Lordship think they ask that which is reasonable? To have six Months Time to plead not guilty to an Information for a Libel, and when so many Men have been denied it formerly upon the Instigation of those very Gentlemen that now press so very hard to have it granted, sure they must expect to be denied it too; and all this while these Lords lie under this Accusation, which is not so trivial a Matter as some would make it. I believe my Lords the Bishops have a Desire to be cleared, I suppose it is only their Counsel that desire to delay it, upon what Ground I know not; I believe they themselves would be glad to remove the Imputation, which would be best done by a Trial, and the sooner the better: If they have a Mind to justify themselves, that is the readiest Course for it, and they may do it presently, by pleading Not Guilty. My Lord, I know I am in a great Auditory, and Abundance of your Lordship's Time has been taken up already; I press it therefore for the Sake of the King, and for the Sake of my Lords the Bishops, we shall else have all hang in suspense, and hang in the Air for six Months longer; therefore let the Matter be put upon a fair Issue, so as it may come to a speedy Determination. I am sure if these Lords be innocent to Day, they will be innocent to Morrow, and if it were my own Case, I would desire to have it tried as speedily as I could, and therefore I pray they may plead immediately.

Mr. *Just. Powell*. Mr. Solicitor, what do you say to the Difference that was taken between a Person that was brought in Custody at the first Instance, where there is no Contempt to the Process

of the Court, and one that comes here by *Capias*, upon Default of appearing at the Summons?

Mr. *Finch*. My Lord, if I apprehend them aright, they give us more than we did ask, for Mr. Solicitor has laid it down as a Rule, that if a Man is taken upon a *Capias* in a mean Process, he shall have no Imparance.

Mr. *Soll. Gen.* No, you are greatly mistaken, Sir, and I pray don't lay down Rules for me.

Mr. *Finch*. If I am Sir, I beg your Pardon, but this I am sure of, if a *Venire Fac* goes out, which is in the Nature of a *Subpœna*, and the Party appear to it, that being the first Time he could come into Court, you cannot force him to plead to an Information, but he has an Imparance of Course.

Mr. *Just. Powell*. Methinks it seems very reasonable, that this forcing a Man to plead presently should be only a Punishment for a Contempt of the Court, and pray, were my Lords the Bishops in Contempt to the Court when they came here to Day? Certainly they were not, for no Man is in Contempt, but he that being served with Process, disobeys that Process; and if my Lords the Bishops had been served with a *Subpœna* and had not appeared, then there would have gone out a *Capias* to bring them in, and then they would have come in upon a Contempt, and then they would have come within the Rule.

Mr. *Soll. Gen.* If you have a Mind to it, you may ask Sir *Samuel Astry* again.

Mr. *Att. Gen.* If they come in upon Bail, they ought to plead presently.

Mr. *Just. Albyone*. Mr. *Finch*, I'll tell you what sticks with me, truly you could not but be aware that this would be required of you; for this very thing was in Debate last Term, and you know what Rules the Officer said was the Course of the Court, why did you not therefore come prepared with some Precedents, to shew us what the Course of the Court is?

Mr. *Att. Gen.* Truly, my Lord, at this rate, we shall keep your Lordship here all this Afternoon, if these Gentlemen will not be satisfied with the Rule of the Court; and for an Answer to what Mr. Justice *Powell* says, if any Riot be committed in the Country, and the Parties are bound by Recognizance to appear here, that is no Process of this Court, and so consequently there can be no Contempt, and yet they must plead presently.

Mr. *Just. Powell*. There is a particular Reason for that, because they are bound by Recognizance, Sir *Samuel Astry* and others say, that if they come in by Recognizance they must plead presently.

Mr. *Soll. Gen.* But for the Thing itself (that the People that hear us may not imagine that this Court puts a Hardship upon my Lords the Bishops, more than is done in other Cases) it is best to keep the same Rule as in all other Cases; for when all is done, when Justice goes with an equal Current, without any regard to one Person or other, then every body is safe, and all Persons concerned do their Duty: So in this Case, here be no Precedents produced wherein it has been otherwise; then can no Person complain but that Things go in this Case as they do in all other Cases; perhaps such a Case (as to the Fact of it) never happened before; but for the Law of it, that is plain, and the same is in all other Cases; for that there may be an Information against my Lords the Bishops, as well as other People, if they

make Libels, sure it is no doubt at all; and if an Information lies against them for it, they are under the same Rules as others are: But these Gentlemen talk of being surprized, and that this is the first Time they have heard of this Information, but have we told any News in this Information? Was not all that is contained in it, notoriously enough known before? Was not the King's first Declaration very well known? Was not his second Declaration very well known? Was not his Order of Council for reading of the Declaration very well known? Is not your own Petition a Thing very well known to yourselves and all the World? Then these being the particular Facts of which this Information is made up, and we only say you did this Fact, and we ask you, did you do it, or did you not? Can there be any great Surprise in this? My Lord, I cannot see any thing that alters this from the common Case, but only their being Peers; and since this Question has been heretofore under Contest, these Gentlemen have had Time enough to have prepared Precedents, to differ this from the common Rule, if they could; but since they cannot, we desire they may have the same Rule that is in all other Cases, and then to be sure all will go right.

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

Mr. S. Pemberton. Have you ever known it disputed and denied?

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

L. C. J. Is it the Course of the Court to give an Impar lance?

Sir Sam. Astry. No, 'tis the Favour of the Court, and if the Defendants have at any Time shewed a reasonable Cause, that they have a special Matter to plead, or any other Cause allowed by the Court, the Court has sometimes indulged them so far as to give them Time.

L. C. J. But how is the ordinary Course, *Sir Samuel Astry*?

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

Sir Sam. Astry. I have told your Lordship the Course is this, that any Person that appears upon a Recognizance, or is taken up by your Lordship's Warrant, or by a Warrant from a Justice of Peace, or any other way in Custody, or any Officer of the Court that is a privileged Person, and that must appear in *propria persona*, must plead presently, if the Court upon particular Reasons do not give him Time; and this I received Information of, as the Practice of the Court, from *Mr. Waterhouse*, who had been a Clerk in the Office sixty Years.

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

Mr. Pollexfen. My Lord, I would not unnecessarily trouble your Lordship; but truly this is a Case of great Concern. And first of all, I think we shall all agree, that what has been used for ten or twelve Years past will not make the Course of the Court, and next I perceive they do not bring any one Instance for any Proceeding of this Sort

above ten or twelve Years old. But then say they on the other Side, why do not you bring Precedents that it has gone otherwise heretofore? My Lord, that cannot be done, for it is a Negative on our Side, that this which they desire is not the Course of the Court: But then, as it is impossible to prove a Negative, so the Proofs should come on the other Side, that this has been done: They ought to shew it, if there has been any such thing as a standing Rule, or else it shall be presumed an Innovation, as being contrary to all Reason. But, my Lord, because they put it upon us, there is this Proof on our Side, as much as a Negative can afford. In those Proceedings that were in the great Case of the *Habeas Corpus*, there was an Information against *Elliot* and others; they had Time given them to plead over and over, so that there is one Precedent: And as many of these Cases in former Times as can be found, will shew that this was always the Course. But pray, say they, produce us one Instance, that ever there was a Man that came in upon a Recognizance, that had Time to plead. Truly, my Lord, I cannot just now tell whether any such Instance can be produced, but I verily believe there may be a great many; but I turn it upon them, and that with great Reason. With Submission to your Lordship shew me any Man, if you can, above a Dozen Years ago, that had not Time allowed him to plead. Ay but, say they, *Mr. Waterhouse*, an ancient Clerk of the Crown-Office, that has been there these sixty Years, hath certified that this hath been the Practice of all his Time. My Lord, we that have been conversant in the Business of this Court, did all very well know *Mr. Waterhouse* when he was here, and sat in Court in the Place of *Sir Samuel Astry*.

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

Mr. Pollexfen. Well, he executed a Place here, and 'tis no Matter whether he were Master of the Office or no; but I think we all knew him very well, he was a Man as lame in his Business as could be; for there are some Men that will never do Business well, let them be never so long at it; and he was as weak in the Practice of the Court, and every thing else, as 'tis possible for one that has been bred in an Office can be; and at this Time he is grown so decrepit and superannuated, that you may as well depend upon the Certificate of an old Woman, as any thing that he shall say in such a Matter as this: He is now almost fourscore Years of Age, and has lost that little Memory and Understanding he had; but if his Certificate must be depended upon, because of his standing in the Office, pray, my Lord let him come hither, and do you ask him what he has to say in this Matter.

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

Mr. Pollexfen. Good *Mr. Solicitor* spare us, certainly there needs not such great Hasten in this Matter, we are upon a Business of very great Weight and Concernment; for you are now making a Law for the whole Kingdom, in Point of Practice, in Cases of this Nature. We do say indeed, that by the Reason of the Heat and Zeal of these last ten Years, such a Usage has been introduced, but *Sir Samuel Astry* tells you, it was opposed, and I hope that neither I, nor the Thing will be the worse thought of, because I opposed what I thought an unreasonable and new Invention. My Lord, I know in the Case of the City of *London*,

we had Time to plead a whole Vacation after an Imparlance, and were not at all hurried on, as the King's Counsel would do in this Case. My Lord, if they can produce any antient Precedent for it, I will say no more; but there is no Case in Print in any of our Books that ever I read, or can remember, that countenances such an Opinion. A Man by this Means may lose his just Defence, and he has no Remedy, nor will it ever be in his Power to retrieve it, for he may be brought on a sudden into Court upon a Warrant, and when he is here, he shall be charged with an Information, and presently he must plead not guilty, because he has not Time to prepare a Plea of any other Nature, let him have never so much other special Matter or Occasion for it. If you please to let this Matter be examined what the Precedents are, and of what Age those Precedents are, then perhaps your Lordship will get some Satisfaction; but otherwise, if the bare Certificate of the Master of the Office is to be a Guide to the Court what is Law, and what is not, we shall be in a very uncertain Condition, especially when the Matter carries in the very Face of it, a great deal of Unreasonableness and Injustice. They on the other Side will argue, that is not more unreasonable than the Practice in the Case of Treason and Felony, where Persons are compelled to plead instantly. But under Favour, my Lord, there is no Comparison between this Case and that, though I know it was always thought a Hardship and Defect in our Law, that a Person should be denied Time to plead in Case of Life and Death, except he can shew some special Matter of Law that he has to plead, and then he has always Time allowed him to put it into Form; and I could never think there was any Reason to be given for it, but because the common Defences of Felons would be little Shifts and Arts, which would destroy Proceedings, and make them tedious, and that would be an Encouragement to People to commit Felony; and besides there is a Trust which the Law reposes in the Court in capital Cases, to take Care that these Men should not suffer upon any little Tricks in Law; but if you come below Treason and Felony, the Law puts no such Hardship upon the Defendant, nor reposes such a special Trust in the Court; but a Man may plead any thing he has to plead; and can any Man plead before he sees what he is to plead to? And shall the Law allow him Counsel to prepare his Plea, and not allow him Time to consult with that Counsel about it? These are Things, my Lord, that truly to me seem unreasonable: But as to the Practice and Course of the Court, I pray your Lordship to give Order, that the Precedents may be searched, that you may know what the antient Practice was.

Mr. Finch. Whether you will grant an Imparlance now or no, yet I hope, however, you will think fit to give my Lords the Bishops Time to plead.

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

Mr. Pollexfen. My Lord, there are Persons here that will upon their Oaths declare, That Mr. Waterhouse has often told them the Practice was otherwise, even in his Time, and afterwards

a long Time before this new Way of Proceeding came in.

Mr. Ince. My Lord, If I might have Liberty to speak, I can say Mr. Waterhouse has told me —

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

Mr. Just. Allybone. But pray Mr. Pollexfen give me leave to mind you how the Evidence stands against you; the Objections are, that this has been a Practice but for twelve Years last past: If that be true, I think it goes a great Way, for the Practice of twelve Years is Precedent enough, *Prima Facie*, that such is the Practice; for how shall we come to the Knowledge of the Practice, but from our Officer Sir Samuel Astry, who has been here examined? And he tells you, that upon his coming into the Office, when it could not be so doubtful as now, it seems, it is, he took Instructions from Mr. Waterhouse: I allow you 'tis but his Certificate, but that must go a great Way with the Court.

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

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

Mr. Just Allybone. Do you, Mr. Finch, give us any one Reason or Precedent that may make us doubt, whether this be the Course of the Court or no? And you could not but be aware of this before, and therefore should have come prepared to make out your Objection.

Mr. Finch. Mr. Pollexfen and the rest of the Practisers in my Lord Hale's Time will tell you, that the Course was otherwise in his Time. Sir Samuel Astry indeed tells you, it has been so since his Time; but this was one of the Points, it seems, that he was ignorant of, which made him enquire of Mr. Waterhouse, so doubtful was his Practice.

Sir Samuel Astry. I was an Attender upon this Court before I came into this Office, but it was in another Place, on the other Side of the Court; and therefore was not concerned so much to know what was the Course on this Side, till I came into this Office.

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

Sir Samuel Astry. Here are two Clerks that sit by me, that have been a long Time in the Office, Mr. Harcourt, my Secondary, and the Clerk of the Rules; I pray they may be asked their Knowledge of this Matter.

Mr. Att. Gen. Certainly these Gentlemen think they have a Privilege above all other People, that they must not be subject to the same Rules as others are! We on our Parts have taken all the Methods that we could to make this Matter manifest, and what is it that these Gentlemen now propose? They pray you to take Time to consider, but have they used the right Means of creating a Jealousy or Suspicion in the Court, that the Course is otherwise? They can give no Instance of it, and all they say is, 'tis a Negative, that this is not the Course of the Court, but the

Impar lance that they beg is in the Affirmative, surely that they can find Proof of, if it be so. As for my Lord *Hollis's* Case, that is with us, and not against us; let Mr. *Pollexfen* shew that ever any one of the Men that were brought into Court in Custody, either had Time to plead, or an Impar lance.

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

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

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

Mr. *Harcourt*. About seventeen or eighteen Years, my Lord.

L. C. J. How long have you known the Practice of the Court in this Matter, and what is it?

Mr. *Harcourt*. I cannot charge myself so with Particulars from the Time of my coming into the Office, but for these ten or twelve Years past (I remember) it has been as the King's Counsel prescribed, and as Sir *Samuel Astry* has declared.

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

Mr. *Sillyard*. I have been a Clerk here about thirty Years.

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

Mr. *Sillyard*. I have not sat here as Clerk of the Rules but a little while, but since I have sat here, I have always observed it to be the Practice, that one that comes in Custody should plead immediately; it was a Thing heretofore that did not so often happen as it hath done here of late, therefore I cannot so well speak to it; but it hath fallen out frequently within some Years last past, and that hath been the constant Course.

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

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

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

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

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

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

Mr. *Soll. Gen.* They that make the Objection ought to prove it; but I will name Sir *Robert Saw-*

yer another Case, and that is the Case of Sir *Samuel Barnardiston*, which was the Case of a Libel too, he was forced to plead immediately, and it cost him 10,000 *l.* Fine.

L. C. J. Well, Gentlemen, have you done on either Side?

Mr. *S. Pemberton*. If your Lordship will please to give us Time till to-morrow Morning, we will come hither by Rule of Court, and bring you some Certificates and Affidavits, or else some Precedents that we hope will satisfy your Lordship in this Matter.

L. C. J. No, Brother, we cannot do that; the Question is what the Course of the Court is, we have an Account of that from Sir *Samuel Astry*, for twelve Years of his own Knowledge, and from Mr. *Waterhouse* by him for sixty Years; but for Mr. *Waterhouse* they except against him, and say he was a Person that was always lazy and did not so well understand his Business, and now is superannuated, that is said, but is but *gratis dictum*, perhaps it may be so, perhaps not; and they have offered to examine Mr. *Ince* about some Opinion that he has had from this Mr. *Waterhouse*; it may be he may have asked him some Question that may lead to it, and he may have given him some slight Answer, but then here are these two Persons, Mr. *Harcourt*, and Mr. *Sillyard*, and the one has been a Clerk these sixteen or seventeen Years, and the other has known the Office thirty Years, though there were not heretofore so many Informations of this Nature and Kind as now of late, but still they say, that a Person that comes in upon a Commitment, or a Recognizance, shall never have any Impar lance.

Mr. *Soll. Gen.* Can they give any one Instance that has any the least Shadow to the contrary?

Mr. *Pollexfen*. My Lord, if we had Time, we hope we should be able to satisfy you in this Matter.

Mr. *Soll. Gen.* You have had time enough to prepare yourselves for this Question, if you had thought you could do any good in it.

L. C. J. Would the Course of the Court be otherwise to-morrow than it is to Day, we have taken all the Care we can to be satisfied in this Matter, and we will take Care that the Lords the Bishops shall have all Justice done them, nay they shall have all the Favour by my Consent that can be shewn them, without doing wrong to my Master the King; but truly I cannot depart from the Course of the Court in this Matter, if the King's Counsel press it.

Mr. *Att. Gen.* My Lord, we must pray your Judgment in it, and your Direction, that they may plead,

L. C. J. Truly I think they must plead to the Information.

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

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

L. Archbisp. of Cant. My Lord, I tender here a short Plea (a very short one) on Behalf of myself and my Brethren the other Defendants; and I humbly desire the Court will admit of this Plea.

L. C. J. If it please your Grace, it should have been in Parchment.

Mr. *Soll. Gen.* What is that my Lord offers to the Court?

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

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

Mr. Soll. Gen. But not received.

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

Sir Rob. Sawyer. Mr. Attorney, if they will plead, the Court sure is obliged to receive it.

L. C. J. If it is a Plea, your Grace will stand by it.

L. Archbish. of Cant. We will all stand by it, my Lord; it is subscribed by our Counsel, and we pray it may be admitted by the Court.

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

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

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

Clerk reads the Plea; which in English is thus:

THE BISHOPS PLEA.

AND the aforesaid William Archbishop of Canterbury, William Bishop of St. Asaph, Francis Bishop of Ely, John Bishop of Chichester, Thomas Bishop of Bath and Wells, Thomas Bishop of Peterborough, and Jonathan Bishop of Bristol, being present here in Court in their own Persons, pray Oyer of the Information aforesaid; and it is read to them, which being read and heard by them the said Archbishop and Bishops, the said Archbishop and Bishops say, that they are Peers of this Kingdom of England, and Lords of Parliament, and each of them is one of the Peers of this Kingdom of England, and a Lord of the Parliament, and that they being (as before is manifest) Peers of this Kingdom of England, and Lords of Parliament, ought not to be compelled to answer instantly for the Misdemeanor aforesaid, mentioned in the said Information exhibited here against them in this Court; but they ought to be required to appear by due Process in Law issuing out of this Court here upon the Information aforesaid, and upon their Appearance to have a Copy of the said Information exhibited against them, and reasonable Time to imparle thereupon, and to advise with Counsel learned in the Law, concerning their Defence in that Behalf, before they be compelled to answer the said Information: Whereupon, for that the said Archbishop and Bishops were imprisoned, and by Writ of our Lord the King, of Habeas Corpus, directed to the Lieutenant of the Tower of London, are now brought here in Custody, without any Process upon the Information aforesaid issued against them, and without having any Copy of the said Information, or any Time given them to imparle, or be advised, they pray Judgment, and the Privilege of Peers of this Kingdom, in this Case to be allowed them; and that they the said Archbishop, and Bishops, may not be compelled instantly to answer the Information aforesaid, &c.

ROBERT SAWYER.

HEN. FINCH.

HEN. POLLEXFEN.

Mr. Att. Gen. My Lord, with your Lordship's Favour, this, in an ordinary Person's Case, would perhaps be thought not fair Dealing, or that which (it being in the Case of these Reverend Prelates) I shall not now name; to make all this Debate and Stir in a Point of this Nature; to take the Judgment of the Court after three or four Hours arguing, and when the Opinion of the Court has been delivered, then to put in a Plea to the Jurisdiction of the Court—

Sir Rob. Sawyer. It is no such Plea.

Mr. Att. Gen. It is so in Effect; but certainly it is such an Irregularity, and such an unfair way of proceeding as would not be endured in an ordinary Case; and I hope you will give so little Countenance to it, as to reject it, and make them plead according to the usual Course and Way of Proceedings. Certainly a Plea of this Nature, after so long an Argument, would be reckoned nothing but a Trick.

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

Mr. Att. Gen. With Submission, the Court is not bound to receive Pleas that are put in purely for Delay, as this is; for the Judgment of the Court has been already given in the very Matter of this Plea; and for rejecting a Plea, it is done every Day; if a Man puts in a meer trifling dilatory Plea, the Court may reject it. Does this Plea contain any thing in it, but what has been argued and debated *pro & con*, and settled by the Court already? If they will put in any Plea in Chief they may, but such a Plea as this, I hope shall not have so much Countenance as to be received by the Court.

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

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

Mr. Soll. Gen. Surely the Court will never give so much Countenance to it, as to receive it.

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

Mr. Soll. Gen. If you were here, you would say the same thing that we do. My Lord, this Plea is, That my Lords the Bishops are not bound to plead instantly; so that 'tis not a Question, Whether they ought to answer, or not to answer, but whether they ought to answer immediately, and what do they say more? They would have an Imparance, and Time to consult with their Counsel what they shall plead, which is all but one and the same Thing; and what is the Reason they give for this? They induce it thus, These Noble Persons are Peers of the Realm, and so ought not to be compelled to plead immediately: This, if I mistake not, is the Sum of their Plea. Now, pray my Lord, what sort of Plea is this? It is not a Plea to the Jurisdiction of the Court, though it do in a sort decline the Justice of the Court: Is it a Plea in Abatement? No, it is not; for it is only to gain Time: And do they now offer any thing more for themselves, than what was said by their Counsel before? only, that we are Peers of the Realm, and that such is the Privilege of Peers, that they ought to have an Imparance, and Time to plead, and that they ought not to answer presently. My Lord, this Matter hath been long agitated in the Court already; your Lordship, and the Court, have given your Judgments, and we know your Lordship, and the Court, will not admit of Tricks to delay the King's Causes. We all know the Term is a short Term; and what I said in the Beginning upon this Matter, I say again, it is the Interest, and for the Honour of my Lords the Bishops (if they understand their own Interest, and value their Honour) to have this Cause tried as soon as may be; but this Trifling and Tricking

is only for Delay: For what Issue can be taken upon this Plea? Certainly none. And if we should demur, what will be the End of that, but only to get Time to slip over the Term? If there were any thing worth the considering in this Plea, and that had not been already debated and settled, then it might concern us to give some Answer to it; but we have spent three Hours, by my Watch, in the Dispute, and the Matter having been over-ruled already, it is Time to have an End of it. Sure the Court will never be so treated by these Persons that are of Counsel for my Lords the Bishops, for it cannot be thought that my Lords the Bishops do it of themselves; and whether the Court will be so served, we submit to your Lordship. Certainly you will not receive such a Plea as this, especially it being in Paper, you will never countenance such a Practice so far as to give these Lords Time to trifle with the Court. If any such thing as a Plea be tender'd to the Court, it ought to be in Parchment; and if they would have an Imparance, there ought to have been an Entry of a *Petit Licentiam interloquendi* upon the Roll, but not such a Plea as this; for this in effect is no more than desiring an Imparance, which if it be granted of course, upon such a Prayer entered upon the Roll, you take it of course; but if it be not of course, you cannot come in by way of Plea, it must be by Suggestion upon the Roll, and a *Conceditur* entred. If this be admitted as a Precedent, every Man hereafter that comes in upon any Information, will take Advantage of it, and plead such a Plea as this; and if you grant an Imparance in this Case upon this Plea, you must grant an Imparance in every Case. Certainly the Law is not to be altered, the Methods of Proceedings ought to be the same in every Case. And I hope you will not make a particular Rule in the Case of my Lords the Bishops, without a special Reason for it.

Mr. S. Pemberton. We put in this Plea, my Lord, and are ready to abide by it; and we say, that according to the Course of the Court, it ought to be received.

Mr. Att. Gen. No, but good Mr. Serjeant, 'tis in the Discretion of the Court whether they will receive it or not; for the Matter has been in Debate already, and has received a Determination; the Court has over-ruled them in this very Point already, and there is no more in this Plea than was in the Argument before, and therefore it ought to be rejected as a frivolous Plea.

Mr. Soll. Gen. Here is a Plea offered in Writing, and in Paper; the Court sees what it is, and I hope you will give no Countenance to it.

Mr. Pollexfen. I do hope, my Lord, you will not judge this is a frivolous Plea; I think our Case is such, that you will not do that; if you think fit you may over-rule it, but I hope you will not refuse it.

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

Mr. Pollexfen. But, Mr. Solicitor, I hope the Court will consider of it, whether it be a frivolous Plea or not. It is true, there has been a Debate about the Course of the Court, and there has been an Examination of the Clerk of the Office, and the Court has gone upon his Certificate; but yet still perhaps it may remain in Doubt, and it being a Question of such a Consequence as this, it may very well deserve the Court's Consideration. There never was a judicial Settlement of it that I know

of yet; nor do I know any way of having it satisfactorily settled, but by the Judgment of the Court entred upon Record. Here we offer a Plea that contains the Matter in Debate, and this Plea will appear upon Record; and if upon Consideration of the Plea your Lordship shall think fit to over-rule it, and be of Opinion against the Plea, then will you, by your Resolution, in a judicial way, settle the Question that has hitherto been in Controversy.

L. C. J. Mr. Pollexfen, I would ask you whether the Counsel have dealt ingenuously with the Court or no in this Matter, after four Hours Debate, and the Opinion of the Court delivered, to come and sum up all the Arguments in such a Plea as this, and so put us upon debating it over again?

Mr. Pollexfen. My Lord, certainly this has been done before, without Offence. After we had moved for a Thing which was denied upon Motion, it is no such great Disrespect to the Court, with Submission, to put the same Matter into a Plea, for the judicial Opinion of the Court.

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

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

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

Mr. Soll. Gen. I don't ask it as if I questioned it; for I assure you, I don't doubt it of your Part at all.

L. C. J. Pray Gentlemen don't fall out with one another at the Bar; we have had Time enough spent already.

Mr. Pollexfen. Truly, my Lord, I would not trick with the Court in any Case, nor on the other side would I be wanting to advise, and do for my Client what I am able, and lawfully may. We have laboured all we could to get Time for my Lords the Bishops to imparle to this Information; and we have been the more earnest in it, because it concerns us, who attend this Bar, to take what Care we can that the Course of the Court may be observed; but as for this Matter, we suppose this Practice of the Court is not in Law a good Practice. Now what Way in the World has any Man to bring this so in question, as to have a judicial Resolution of the Court about it, but by such a Plea? We take it, that it is usual and legal for us to have an Imparance, and a Man would imparle, but the Court upon Motion refused to give him an Imparance. Is it not, think you, very fit for the Party to have this judicially entered upon Record? where all this Matter will appear, and the Party may be relieved by Writ of Error, if the Judgment of the Court should be wrong; but truly I cannot see how the Court can refuse the Plea; for if so be a Plea be pleaded, they have their Liberty to answer it on the other side by a Replication, or else to demur, and the Judgment of the Court may be had upon it one Way or other; but the Court will never go about to hinder any Man from pleading where here he may plead by Law. Here is a Plea put in, and the Court sure will take no Notice what is the Matter of the Plea, till the other Party have either replied or demurred. The same thing may happen in any other Plea that is pleaded, and the Party will be without Remedy upon a Writ of Error, because the Plea being rejected, there does nothing appear upon Record.

Truly

Truly for the Court to reject and refuse the Plea, would be as hard as the refusing of the Imparlance, and we know no Way we have to help ourselves.

Mr. *Soll. Gen.* You might have entered your Suggestion for an Imparlance upon the Roll, and then it would have appeared upon Record, and if the Court had unjustly denied it you, you would have had the Benefit of that Suggestion elsewhere. Truly, my Lord, I think if any thing be tricking this is, for it is plainly ill pleading.

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

Mr. *Soll. Gen.* No, Sir, 'tis fencing with the Court, and that the Court won't suffer. It is only to delay; and if we should demur, then there must be Time for arguing; and what is the Question after all, but whether you would be of the same Opinion to Morrow, that you are to Day?

Sir *Robert Sawyer.* I would put Mr. Solicitor in Mind of *Fitz-Harris's* Case, which he knows very well: He put in a Plea, and we for the King desired it might not be received; but the Court gave him Time to put it into Form, and I was fain to join in Demurrer presently, and so may these Gentlemen do if they please.

Mr. *Soll. Gen.* Yes, Sir *Robert Sawyer*, I do know the Case of *Fitz-Harris* very well; I was assigned of Counsel by the Court for him; we were four of us, and there was a Plea put in, but no such Plea as this. There was an Indictment of High-Treason against him, in which Case it is agreed on all Hands, that the Party must answer presently; but because he suggested here at the Bar, says he, I have Matter to plead to the Jurisdiction of the Court, and shewed what it was. I was impeached before the Lords in Parliament for Treason, for the same Matter of which I am here accused. The Court did give him Time to put this into Form, and we were assigned his Counsel to draw it up for him, and accordingly we did put that Matter into a Plea, that we were here indicted for one and the same Treason for which we were impeached in Parliament, and that that Impeachment was still depending, and so we rested in the Judgment of the Court, whether we should be put to answer it here. This was a Plea that carried something of Weight in it, and not such a trifling one as this. It is true, Sir *Robert Sawyer*, who was then Attorney-General, did press the Court to over-rule it immediately; but it being a Matter of some Importance, the Court would not do that, but had it argued solemnly by Counsel on both Sides, and at last there was the Opinion of three Judges against one, that the Plea was no good Plea. But what is that to such a trifling Plea as this?

Mr. *Att. Gen.* Pray, my Lord, favour me a few Words about that Case of Mr. *Fitz-Harris*. It is true, there was a Plea put in, and it is true also, that that which brought that Plea to be argued, was the Demurrer that was put in by Sir *Robert Sawyer*, who was so zealous and hasty in the Matter, that because the Court did not presently over-rule the Plea, as he desired, he immediately demurred, before the rest of the King's Counsel could offer at any thing about it; and thereupon it was put to the Judgment of the Court, and no doubt must be argued, and spoke to on both Sides; but where Pleas are really in Abuse of the Court,

the Court never gives any Countenance to them: Nay, truly I have known another Course taken; I am unwilling to mention a Case that happened much about that Time too in this Court, because of that Regard I have to my Lords the Bishops, but Sir *Robert Sawyer* remembers it very well, I am sure: It was the Case of one *Whitaker*, who for a Thing like this, putting in a trifling Plea, not only had his Plea rejected, but something else was ordered. I could shew the Precedent, but that I am more tender than to press it in this Case, because there the Court order'd an Attachment to go against him; but I will put these Gentlemen in Mind of another Case, and that is the Case of a Peer too: It is the Case of my Lord *Delamere*, which they cannot but remember, it being in the highest Case, a Case of Treason. When my Lord *Delamere* was arraigned, and to be tried for High Treason, he put in a Plea before my Lord Chancellor, who was then High Steward, and Sir *Robert Sawyer*, who was then Attorney General, prayed the Lord Steward, and the Peers, to reject it, and the Court did reject it (as we hope the Court will do this) and would never so far delay Justice as to admit of a Plea that carried no Colour in it, and there was no Demurrer put into the Plea, but it was absolutely refused. My Lord, in this Case we have had the Judgment of the Court already, and therefore we must now desire that this Plea may be rejected.

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

Sir *Robert Sawyer.* My Lord, we are in your Judgment, whether you will receive this Plea or not.

L. C. J. You shall have my Judgment presently; but my Brothers are to speak first.

Mr. *Just. Allynbone.* Mr. *Polluxfen* makes it a Question, whether this Plea may be rejected or not, or whether it ought to be received, and the Court give their Judgment upon it.

Mr. *Just. Powell.* Truly I do not know whether the Court can reject this as a frivolous Plea.

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

Mr. *Att. Gen.* You do it every Day; 'tis a frequent Motion: If a frivolous Plea be put in, before it be entred upon Record as a Plea, the Court may refuse it, if they see Cause.

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

Mr. *Just. Powell.* I do not know how the Court can reject any Plea that the Party will put in, if he will stand by it, as they say they will here; and I cannot think this a frivolous Plea, it concerning the Privilege of Peers and Lords of Parliament.

Mr. *Just. Allynbone.* Brother *Powell*, I would be as tender of the Privileges of Parliament, and speak with as much Respect of the Privileges of the Peerage, as any body else; but for the Matter of the Plea, truly it appears to me, that the Peers are named in it only for Fashion sake, and it is frivolous.

Mr. *Justice Powell.* The Matter of the Plea, except only their being said to be Peers and Lords of Parliament, was spoke to before, but it was only *obiter*, and by way of Motion; but now it may come before us for our Judicial Determination.

Mr. *Just.*

Mr. *Just. Allybone*. Pray let the Plea be read again. [*Which was done.*]

Mr. *Just. Allybone*. This Plea is no more but that which has been denied already upon solemn Debate; and if it be in the Power of the Court to reject any Plea, surely we ought to reject this. Indeed I know not what Power we have to reject a Plea; but if we have Power, this ought to be rejected.

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

Mr. *Just. Holloway*. I think as this Case is, this Plea ought not to be received, but rejected, because 'tis no more than what has been denied already. I am not ashamed to say, that I should be very glad and ready to do all things that are consistent with my Duty, to shew Respect to my Lords the Bishops, some of whom are my particular Friends; but I am upon my Oath, and must go according to the Course of Law.

L. C. J. We have asked, and informed ourselves from the Bar, whether we may or can reject a Plea; and truly what they have said, hath satisfied me that we may, if the Plea be frivolous; and this being a Plea that contains no more than what has been over-ruled already, after hearing what could be said on both Sides, I think the Court is not bound to receive the Plea, but may reject it, and my Lords the Bishops must plead over.

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

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

Archbishop of Cant. Not guilty.

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

Bishop of St. Asaph Not guilty.

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

Bishop of Ely Not guilty.

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

Bishop of Chichester Not guilty.

Clerk. My Lord Bishop of *Bath and Wells*, is your Lordship guilty of the Matter charged upon you in this Information, or not guilty?

Bish. of Bath and Wells Not guilty.

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

Bishop of Peterborough Not guilty.

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

Bish. of Bristol Not guilty?

Mr. *Att. Gen.* My Lord, I pray the Clerk may join Issue on the Behalf of the King, that so we may come to Trial; and we would have these Gentlemen take Notice, that we intend to try this Cause on this Day Fortnight; and we pray Liberty of the Court, that we may try it at Bar.

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

Mr. *Att. Gen.* My Lord, we should indeed make it the Motion of another Day; but we do now tell them this *ex abundanti*, because my

Lords the Bishops are now here, and will, I suppose, take Notice, that we do intend to move it another Day.

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

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

Mr. *Att. Gen.* Well then you take Notice it will be tried this Day Fortnight.

L. C. J. Well, what shall we do with my Lords the Bishops?

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

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

Sir *Robert Sawyer*. We desire your Lordship would be pleased to take their own Recognizance.

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

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

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

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

Sir *Robert Sawyer*. What Necessity is there for so much?

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

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

Sir *Robert Sawyer*. Only I have one thing more to beg of your Lordship, on the Behalf of my Lords the Bishops, that you will please to order, that in the Return of the Jury there may be forty-eight returned.

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

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

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

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

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

L. C. J. They say it shall be this Day Fortnight, and let there be a Jury according to the usual Course.

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

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

Sir *Samuel Astry*. My Lord, the Course is both ways, and then it may be as your Lordship and the Court will please to order it.

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

Mr. At. Gen. We agree to it; we desire nothing but a fair Jury.

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

L. C. J. Take a Recognizance of his Grace my Lord of Canterbury in 200 l. and the rest of my Lords in 100 l. a-piece.

Mr. At. Gen. What your Lordship pleases for that, we submit to it.

Clerk. My Lord of Canterbury, your Grace acknowledges to owe unto our Sovereign Lord the King the Sum of 200 l. upon Condition that your Grace shall appear in this Court on this Day Fortnight, and so from Day to Day, till you shall be discharged by the Court, and not to depart without Leave of the Court. Is your Grace contented?

Archbish. of Canterbury. I do acknowledge it.

Clerk. My Lord Bishop of St. Asaph, you acknowledge to owe unto our Sovereign Lord the King the Sum of 100 l. upon Condition that your Lordship shall appear in this Court on this Day Fortnight, and so from Day to Day, until you shall be discharged by the Court, and not to depart without Leave of the Court. Is your Lordship contented?

Bish. of St. Asaph. I do acknowledge it.

[The like Recognizances were taken of all the rest of the Bishops, and then the Court arose.]

FRIDAY, June 29th, 1688.

Clerk. Crier, make Proclamation thrice.

Crier. O yes! O yes! O yes! Our Sovereign Lord the King streightly charges and commands every one to keep Silence, upon Pain of Imprisonment.

Clerk of the Crown. Call the Defendants.

Crier. William Lord Archbishop of Canterbury.

Archbish. Here.

Crier. William Lord Bishop of St. Asaph.

Bish. of St. Asaph. Here.

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

Clerk. Gardez votres Challenges.

Swear Sir Roger Langley.

Crier. Take the Book Sir Roger. You shall well and truly try this Issue between our Sovereign Lord the King and William Lord Archbishop of Canterbury, and others, according to your Evidence. So help you God.

The same Oath was administred to all the Jury, whose Names follow, viz.

Sir Roger Langley, Bar.	William Avery, Esq;
Sir William Hill, Knt.	Thomas Austin, Esq;
Roger Jennings, Esq;	Nicholas Grice, Esq;
Thomas Harriot, Esq;	Michael Arnold, Esq;
Jeoffery Nightingale, Esq;	Thomas Done, Esq;
William Withers, Esq;	Richard Shoreditch, Esq;

Clerk. You Gentlemen of the Jury who are sworn, hearken to the Record: Sir Thomas Powys, Knight, his Majesty's Attorney General, has exhibited an Information, which does set forth as followeth,

ff. Memorandum, That Sir Thomas Powys, Kt. Attorney General of our Lord the King, who for our said Lord the King in this Behalf prosecutes, came here in his own Person into the Court of our said Lord the King, before the King himself at Westminster, on Friday next after the Morrow of the Holy Trinity in this Term; and on the Behalf of our said Lord the King, giveth the Court here

to understand and be informed, That our said Lord the King, out of his signal Clemency, and gracious Intention towards the Subjects of his Kingdom of England, by his Royal Prerogative, on the 4th Day of April, in the third Year of the Reign of our said Lord the King, at Westminster in the County of Middlesex, did publish his Royal Declaration, entituled His Majesty's Gracious Declaration to all his loving Subjects for Liberty of Conscience, bearing Date the same Day and Year, sealed with the Great Seal of England; in which Declaration is contained, James R. prout in the first Declaration before recited.

And the said Attorney General of our said Lord the King, on Behalf of our said Lord the King, further giveth the Court here to understand and be informed, That afterwards, to wit, on the 27th Day of April, in the fourth Year of the Reign of our said Lord the King, at Westminster aforesaid, in the County of Middlesex aforesaid, our said Lord the King, out of his like Clemency, and gracious Intention towards his Subjects of his Kingdom of England, by his Royal Prerogative, did publish his other Royal Declaration, entituled, His Majesty's Gracious Declaration, bearing Date the same Day and Year last mentioned, sealed with his Great Seal of England; in which Declaration is contained, James R. Our Conduct has been such, &c. prout in the second Declaration before recited.

Which said Royal Declaration of our said Lord the King last mentioned, our said Lord the King afterwards, to wit, on the 30th Day of April, in the fourth Year of his Reign aforesaid, at Westminster aforesaid, in the County of Middlesex aforesaid, did cause to be printed and published throughout all England; and for the more solemn Declaring, Notification, and Manifestation of his Royal Grace, Favour, and Bounty towards all his Liege People, specified in the Declaration last mentioned, afterwards, to wit, on the 4th Day of May, in the fourth Year of his Reign, at Westminster aforesaid, in the County of Middlesex aforesaid, our said Lord the King in due manner did order as followeth.

At the Court at Whitehall, 4th of May, 1688.

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

It is this Day ordered by his Majesty in Council, That his Majesty's Gracious Declaration, bearing Date the twenty seventh of April last, be read at the usual Time of Divine Service, upon the twentieth and twenty-seventh of this Month, in all Churches and Chapels within the Cities of London and Westminster, and ten Miles thereabout; and upon the third and tenth of June next, in all other Churches and Chapels throughout this Kingdom. And it is hereby further Ordered, That the Right Reverend the Bishops cause the said Declaration to be sent and distributed throughout their several respective Dioceses, to be read accordingly.

W. BRIDGMAN.

And further, the said Attorney General of our said Lord the King, on behalf of our said Lord the King, giveth the Court here to understand and be informed, that after the making of the said Order, to wit, on the 18th Day of May, in the fourth Year of the Reign of our said Lord the King, at Westminster aforesaid, in the County of Middlesex aforesaid, William Archbishop of Canterbury, of Lambeth in the County of Surry; William Bishop of St. Asaph, of St. Asaph in the County of Flint; Francis Bishop of Ely, of the Parish of St. Andrew Holbourn in the County

County of *Middlesex*; *John* Bishop of *Chichester*, of *Chichester* in the County of *Suffex*; *Thomas* Bishop of *Bath and Wells*, of the City of *Wells* in the County of *Somerfet*; *Thomas* Bishop of *Peterborough*, of the Parish of *St. Andrew Holbourn* in the County of *Middlesex*; and *Jonathan* Bishop of *Bristol*, of the City of *Bristol*, did consult and conspire among themselves to diminish the Regal Authority and Royal Prerogative, Power and Government of our said Lord the King, in the Premises, and to infringe and elude the said Order; and in Prosecution and Execution of the Conspiracy aforesaid, They the said *William* Archbishop of *Canterbury*, *William* Bishop of *St. Asaph*, *Francis* Bishop of *Ely*, *John* Bishop of *Chichester*, *Thomas* Bishop of *Bath and Wells*, *Thomas* Bishop of *Peterborough*, and *Jonathan* Bishop of *Bristol*, on the said eighteenth Day of *May*, in the fourth Year of the Reign of our said Lord the King aforesaid, with Force and Arms, &c. at *Westminster* aforesaid, in the County of *Middlesex* aforesaid, falsely, unlawfully, maliciously, seditiously, and scandalously, did frame, compose and write, and caused to be framed, composed and written, a certain false, feigned, malicious, pernicious and seditious Libel in Writing, concerning our said Lord the King, and his Royal Declaration and Order aforesaid, (under pretence of a Petition) and the same false, feigned, malicious, pernicious and seditious Libel, by them the aforesaid *William* Archbishop of *Canterbury*, *William* Bishop of *St. Asaph*, *Francis* Bishop of *Ely*, *John* Bishop of *Chichester*, *Thomas* Bishop of *Bath and Wells*, *Thomas* Bishop of *Peterborough*, and *Jonathan* Bishop of *Bristol*, with their own Hands respectively being subscribed, on the Day and Year, and in the Place last mentioned, in the Presence of our said Lord the King, with Force and Arms, &c. did publish and cause to be published; in which said false, feigned, malicious, pernicious and seditious Libel is contained, *The humble Petition, &c. prout before in the Petition, to these Words* [reasonable Construction] in manifest Contempt of our said Lord the King, and of the Laws of this Kingdom, to the evil Example of all others in the like Case offending, and against the Peace of our said Lord the King, his Crown and Dignity, &c. Whereupon the said Attorney General of our said Lord the King, on Behalf of our said Lord the King, prays the Advice of the Court here in the Premises, and due Process of Law to be made out against the aforesaid *William* Archbishop of *Canterbury*, *William* Bishop of *St. Asaph*, *Francis* Bishop of *Ely*, *John* Bishop of *Chichester*, *Thomas* Bishop of *Bath and Wells*, *Thomas* Bishop of *Peterborough*, and *Jonathan* Bishop of *Bristol*, in this Behalf, to answer our said Lord the King in and concerning the Premises, &c.

T. POWIS.

W. WILLIAMS.

To this Information the Defendants have pleaded Not guilty, and for their Trial have put themselves upon their Country, and his Majesty's Attorney General likewise, which Country you are. Your Charge is to enquire whether the Defendants, or any of them, are guilty of the Matter contained in this Information that hath been read unto you, or not guilty. If you find them, or any of them guilty, you are to say so; and if you find them, or any of them, not guilty, you are to say so, and hear your Evidence. Crier, make Proclamation.

Crier. O-yes! If any one will give Evidence on Behalf of our Sovereign Lord the King, against the Defendants, of the Matters whereof they are impeached, let them come forth, and they shall be heard.

Mr. Wright. May it please your Lordship, and you Gentlemen of the Jury, this is an Information exhibited by his Majesty's Attorney General against the most Reverend my Lord Archbishop of *Canterbury*, and six other Honourable and Noble Bishops in the Information mentioned: And the Information sets forth, That the King, out of his Clemency and benign Intention towards his Subjects of this Kingdom, did put forth his Royal Declaration, bearing Date the fourth Day of *April*, in the third Year of his Reign, entituled, *His Majesty's Gracious Declaration to all his loving Subjects for Liberty of Conscience*; and that afterwards, the twenty-seventh of *April*, in the fourth Year of his Reign, he published another Declaration, both which have been read to you; and for the further Manifestation and Notification of his Grace in the said Declaration, bearing Date the twenty-seventh of *April* last, his Majesty did order, that the said Declaration should be read on the twentieth and twenty-seventh of *May* in the Cities of *London* and *Westminster*, and ten Miles about; and on the third and tenth of *June* throughout the whole Kingdom: And that the Right Reverend the Bishops should send the said Declaration to be distributed throughout their respective Dioceses, to be read accordingly. But that the said Archbishop and Bishops the eighteenth of *May*, in the said fourth Year of his said Majesty's Reign, having conspired and consulted among themselves to diminish the King's Power and Prerogative, did falsely, unlawfully, maliciously, and scandalously, make, compose, and write a false, scandalous, malicious and seditious Libel, under pretence of a Petition; which Libel they did publish in the Presence of the said King; the Contents of which Libel you have likewise heard read. To this they have pleaded not guilty: You, Gentlemen, are Judges of the Fact; if we prove this Fact, you are to find them guilty.

Mr. At. Gen. May it please your Lordship, and you Gentlemen of the Jury, you have heard this Information read by the Clerk, and it has been likewise opened to you at the Bar; but before we go to our Evidence, perhaps it may not be amiss for us, that are of Counsel for the King, now in the Beginning of this Cause, to settle the Question right before you, as well to tell you what my Lords the Bishops are not prosecuted for, as what they are. First, I am to tell you, and I believe you cannot your selves but observe, that my Lords are not prosecuted as Bishops, nor much less are they prosecuted for any Point or Matter of Religion, but they are prosecuted as Subjects of this Kingdom, and only for a Temporal Crime, as those that have injured and affronted the King to his very Face; for it is said to be done in his own Presence. In the next Place, they are not prosecuted for any Nonfeasance, or not doing or omitting to do any thing, but as they are Actors, for censuring of his Majesty and his Government, and for giving their Opinion in Matters wholly relating to Law and Government: And I cannot omit here to take Notice, that there is not any one thing that the Law is more jealous of, or does more carefully provide for the Prevention

and Punishment of, than all Accusations and Arraignments of the Government. No Man is allowed to accuse even the most inferiour Magistrate of any Misbehaviour in his Office, unless it be in a legal Course, though the Fact is true. No Man may say of a Justice of Peace to his Face, that he is unjust in his Office. No Man may tell a Judge, either by Word or Petition, you have given an unjust, or an ill Judgment, and I will not obey it; it is against the Rules and Law of the Kingdom, or the like. No Man may say of the great Men of the Nation, much less of the great Officers of the Kingdom, that they do act unreasonably or unjustly, or the like; least of all may any Man say any such thing of the King; for these Matters tend to possess the People, that the Government is ill administr'd; and the Consequence of that is, to set them upon desiring a Reformation; and what that tends to, and will end in, we have all had a sad and too dear brought Experience: The last Age will abundantly satisfy us, whither such a Thing does tend. Men are to take their proper Remedies for Redress of any Grievances they lie under, and the Law has provided sufficiently for that. These things are so very well known to all Men of the Law, and indeed to all the People of *England* of any Understanding, that I need not, nor will not, stand any longer upon it, but come to the Matter that is now before you, Gentlemen, to be tried. The Fact that we have laid we must prove, rather to keep the Formality of a Trial, then to pretend to inform you, or tell you what you do not know: It is publickly notorious to the whole World; but because we must go on in the regular Methods of Law, we shall prove the Facts in the Order they are laid in the Information. First, we take Notice, that his Majesty, of his great Clemency and Goodness to his People, and out of his Desire that all his Subjects might live easily under him (of which I think never Prince gave greater or more plain Evidence of his Intentions that Way) the fourth of *April*, 1687, he did issue forth his Royal Declaration for Liberty of Conscience. This Matter, without all Question, was welcome to all his People that stood in need of it; and those that did not could not but say, the Thing in the Nature of it was very just and gracious; but presently it must be surmised, that the King was not in Earnest, and would not, nor could not, make good his Promise: But to take away all Surmises, his Majesty was pleas'd by his Declaration of the twenty-seventh of *April* last, not only to repeat his former Declaration, but likewise to renew his former Promises to his People, and to assure them that he still was, and yet is, of the same Opinion that he had at first declared himself to be of; nay, we further shew you, that to the End that this thing might be known to all his People, even to the meanest Men, who, it may be, were not willing or able to buy the Declaration, and that the King himself might be under higher Obligations, if it were possible, than his own Word, he was desirous it should be repeated in the Churches, and read in that sacred Place, that all his People might hear what he had promised, and given his own sacred Word for; and he himself might be under the solemn Tie and Obligation to keep his Word, by remembering that his Promises had, by his own Command, been published in the Time of Divine Service, in the House of God; and there-

upon was the Order of Council made, that has been likewise read to you, which does direct, that it should be read in all the Churches and Chapels in the Kingdom; and you have heard and we shall prove, what a Return his Majesty has had for this Grace and Kindness of his: You'll find when they come to read that which they call a Petition, all their Thanks his Majesty had for his Favour and Goodness to his People, 'tis only hard Words, and a heavy Accusation, such as a private Person would be little able to bear. I will not aggravate the Matter, but only say thus much, that his Majesty, who was always a Prince of as great Clemency as ever this Kingdom had, and who was represented for all that, as a Prince of the greatest Cruelty, before his Accession to the Crown, by his Enemies, is now accused by his Friends for this Effect of his Mercy. My Lord, and Gentlemen of the Jury, his Majesty repented this ill Usage so far, that he has ordered, and thought fit to have a publick Vindication of his Honour in this Matter, by this Trial; and we shall go on to our Proofs, and we do not doubt but you will do his Majesty (as you do all other Persons) Right.

Mr. *Sol. Gen.* My Lord, we will go on to prove the Parts of this Information; and we will proceed according to the Method which Mr. Attorney has opened, and which is pursuant to the Order of the Facts laid in the Information. Give us the first Declaration under the Great Seal; the Declaration of the 4th of *April*, 1687.

[*The Declaration was delivered into the Court.*]

Mr. *Sol. Gen.* Read the Date of it first.

Clerk reads. *Given at Our Court at Whitehall, the 4th Day of April, 1678, and in the third Year of Our Reign.*

Mr. *Sol. Gen.* Read the Title of it, Sir.

Clerk. It is entituled, *His Majesty's Gracious Declaration to all his loving Subjects for Liberty of Conscience.*

Sir *Rob. Sawyer.* Is it under Seal? Is the Great Seal to it?

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

Sir *Rob. Sawyer.* No, we would save as much of the Time of the Court as may be.

Mr. *Sol. Gen.* Then pray put in the second Declaration of the 27th of *April* last.

Clerk reads. *Given at Our Court at Whitehall, the 27th Day of April, 1688, in the fourth Year of Our Reign; and it is entituled, His Majesty's Gracious Declaration.*

Sir *Robert Sawyer.* Is that under the Great Seal too?

Clerk. Yes it is.

Mr. *Sol. Gen.* Deliver that down likewise, that they may see it.

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

Mr. *Sol. Gen.* Then where is the Order of Council for the reading of it?

Mr. *At. Gen.* Swear Sir *John Nicholas*.—There he is.

[*Sir John Nicholas sworn.*]

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

Mr. *Sol. Gen.* Hand the Order to Sir *John Nicholas*.—Is that the Order of Council, Sir *John*?

Sir John Nicholas. The Book, Sir, is not in my Custody.—There is the Register that keeps it, he has it here to produce.

Mr. Sol. Gen. Swear *Mr. Gantlett.*

[*Mr. Gantlett* sworn.]

Mr. Sol. Gen. Is that the Council-Book?

Mr. Gantlett. Yes, this is the Council-Book.

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

Mr. Gantlett. There it is, Sir.

[*The Book delivered into Court.*]

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

Clerk. reads. *At the Court at White-hall, the fourth of May, 1688.*——— and so reads the Order of Council.

Mr. Sol. Gen. My Lord, we have one Thing that is mentioned in the Information, that this Declaration was printed; if that be denied, we will call *Henry Hills*, his Majesty's Printer, because we would prove all our Information as it is laid.

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

Mr. Sol. Gen. Crier, call *Henry Hills.*

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

Mr. Sol. Gen. Call *Mr. Bridgman.*——— Though these Declarations prove themselves, we have them here printed——— But swear *Mr. Bridgman.*

[*Mr. Bridgman* sworn.]

Mr. Sol. Gen. Shew *Mr. Bridgman* the two Declarations.

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

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

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

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

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

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

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

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

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

Mr. Bridgman. I did not compare them, Sir *Robert Sawyer.*

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

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

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

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

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

Mr. Sol. Gen. We must ask him Questions as well as you *Sir Robert.*——— What say you, Do you believe it to be the same?

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

Mr. Bridgman. Yes, my Lord, I do believe it,

L. C. J. Well, that's enough.

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

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

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

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

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

Sir Robert Sawyer. Then that is no Proof.

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

Sir Robert Sawyer. Is that Proof of an Information?

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

Mr. At. Gen. Then swear *Sir John Nicholas.*

Sir John Nicholas. I am sworn already.

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

Sir John Nicholas. I will give you an Account of it as well as I can.

Mr. Pollexfen. Before they go to another thing, my Lord, we think they have failed in their Proof of their Information, about the Printing this Declaration.

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

Mr. Just. Allybone. They have laid, that it was printed by the King's Order; and it is such a Matter, Mr. Solicitor, as you may clear, if you will, sure.

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

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

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

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

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

Mr. Sol. Gen. No, you put Straws in our Way; we shall be able enough to clear it without your Help. Swear *Mr. Hills*, and young *Mr. Graham* here.

[*Hills and Graham* sworn.]

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

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

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

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

Crier. He is sworn.

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

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

Mr. At. Gen. You printed them, I think.

Hills. Yes, I did print them.

Sir Rob. Sawyer. Mr. *Hills*, you say they were printed: Upon your Oath, after they were printed, did you examine them with the Original under Seal?

Hills. They were examined before they were printed.

Sir Rob. Sawyer. Did you examine them?

Hills. I did not, here's one that did.

Mr. Sol. Gen. Who is that?

Hills. It is Mr. *Williams* here.

Mr. Sol. Gen. Swear him.

[*Williams* sworn.]

Mr. Sol. Gen. Do you hear, *Williams*? Do you know that the King's Declarations for Liberty of Conscience, two of them, one of the 4th of *April*, and the other of the 27th of *April*, were printed?

Williams. Yes, my Lord.

Mr. Sol. Gen. Did you examine them after they were printed, by the Copy they were printed from?

Williams. I did.

Mr. Sol. Gen. Where had you the Copy? who had you it from?

Williams. I had it from Mr. *Hills*.

Sir Rob. Sawyer. Mr. *Williams*, did you examine them with the Original under the Great Seal?

Williams. The first Declaration I did.

Sir Rob. Sawyer. The second Declaration is the main.

Williams. The second was compos'd by the first.

Sir Rob. Sawyer. Why, is there no more in the second Declaration than there was in the first?

Williams. Yes, there is, Sir.

Sir Rob. Sawyer. Did you examine that with the Original under the Great Seal?

Williams. No, I did not.

Mr. Sol. Gen. Can any one tell who did examine it under the Great Seal?

Mr. Finch. Pray what did you examine it by, Mr. *Williams*?

Williams. By a Copy that I receiv'd from Mr. *Hills*.

Mr. At. Gen. Then we will go on; and we desire Sir *John Nicholas* to give an Account where he had that Paper that he has in his Hand.

Mr. Finch. My Lord, it does not appear that the Copy that was printed is the true Copy of the Declaration.

Mr. At. Gen. He says he had it from Mr. *Hills*.

Mr. Finch. Pray, Mr. *Hills*, what did you examine that Copy by which you gave to Mr. *Williams*?

Hills. I had the Copy from Mr. *Bridgman*.

Mr. Finch. Did you examine it with the Original under the Great Seal?

Hills. I did not examine it, I had it from Mr. *Bridgman*.

Mr. Finch. What, was it under Seal?

Mr. Bridgman. It was the Original signed by the King.

Mr. Finch. But I ask you, was it under Seal?

Mr. Bridgman. Not under the Great Seal it was not, it was the very Declaration the King signed.

Sir Rob. Sawyer. But it ought to be compared with the Original, or it is no good Proof that it is the same.

Mr. Sol. Gen. Sir *Robert Sawyer*, you understand Collation better sure; you should be asham'd of such a weak Objection as this.

Williams. We never bring our Proof to the Great Seal.

Sir Rob. Sawyer. But if you will have it Proof at Law, you must have it compared with the Original.

Mr. Sol. Gen. Do you think there is any great Strefs to be laid upon that? We only say it was printed.

Sir Rob. Sawyer. But you have made it part of your Information, and therefore you must prove it.

L. C. J. I think there's Proof enough of that; there needs no such Nicety.

Mr. Pollexfen. Well, my Lord, we must submit, let them go on, we won't stand upon this.

Mr. At. Gen. Then pray let me go on. Where had you that Paper, Sir *John Nicholas*?

Sir John Nicholas. I had this Paper from the King's Hand.

L. C. J. Put it in.

Mr. Sol. Gen. Who had you it from, do you say?

Sir John Nicholas. From the King.

Mr. Sol. Gen. About what Time had you it from the King, Sir?

Sir John Nicholas. I had it twice from the King.

Mr. Sol. Gen. When was the first Time, Sir?

Sir John Nicholas. The first Time was in Council the 8th of this Month.

Mr. Sol. Gen. What became of it afterwards?

Sir John Nicholas. The King had it from me the 12th, and the 13th I had it from the King again.

Mr. Sol. Gen. Pray deliver it this way into the Court: We will now go on, and prove the Bishops Hands to it. This is the Paper upon which we bring this Information: Gentlemen, it is all the Hand-writing of my Lord Archbishop, and signed by him and the rest of the Bishops.

Mr. At. Gen. I suppose my Lords the Bishops will not put us to prove it, they will own their Hands.

L. C. J. Yes, Mr. Attorney, their Counsel will put you to prove it; I perceive your best way is to ask nothing of them.

Mr. At. Gen. My Lord, we will desire nothing of them, we will go on to our Proofs. Call Sir *Thomas Exton*, Sir *Richard Raynes*, Mr. *Brooks*, Mr. *Recorder*, and Mr. *William Middleton*.

[*Sir Thomas Exton* appeared, and was sworn.]

L. C. J. What do you ask Sir *Thomas Exton*?

Mr. At. Gen. Pray convey that Paper to Sir *Thomas Exton*.

Mr. Sol. Gen. Shew that Paper to Sir *Thomas Exton* — Sir *Thomas*, I would ask you one Question: Do you know the Hand-writing of my Lord Archbishop of *Canterbury*?

Sir Tho. Exton. I'll give your Lordship what Account I can.

Mr. Sol. Gen. Pray, Sir, answer my Question; Do you know his Hand-writing?

Sir Tho. Exton. I never saw him write five Times in my Life.

Mr. Sol. Gen. But I ask you, upon your Oath; do you believe that to be his Hand-writing?

Sir Tho. Exton. I do believe this may be of his Hand-writing.

Mr. Sol. Gen. Do you believe all the Body of it to be of his Hand-writing, or only part of it?

Sir Tho. Exton. I must believe it to be so, for I have seen some of his Hand-writing, and this is very like it.

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

Sir Tho. Exton. Yes, Yes, I do.

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

Sir Tho. Exton. No, I do not.

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

Sir Rob. Sawyer. No, my Lord.

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

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

Mr. Sol. Gen. We have no need of him. Call Mr. Brooks.

[Mr. Brooks sworn.]

Mr. At. Gen. Pray shew Mr. Brooks that Paper.

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

Mr. Brooks. Yes, my Lord.

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

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

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

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

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

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

Mr. Sol. Gen. Call Mr. William Middleton.

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

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

Mr. Brooks. I have seen my Lord Archbishop of Canterbury, and the Bishop of St. Asaph's Hand-writing, and I do believe this is his Hand.

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

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

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

Mr. Brooks. Yes, I have.

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

Mr. Brooks. It is like it.

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

Mr. Brooks. Truly I do believe it.

Sir George Treby. Did you ever see him write?

Mr. Brooks. No, Sir.

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

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

Mr. Brooks. Because he own'd it.

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

Mr. Brooks. I know it, I say, because I have seen a Letter that he writ to another Person, which he afterwards own'd.

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

Mr. Brooks. That he wrote a Letter to another Person, which I saw.

Sir George Treby. To whom, Sir?

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

Mr. Brooks. No, Sir, the Letter was writ to my Lord Bishop of Oxford.

Sir George Treby. Can you tell what was in that Letter?

Mr. At. Gen. What is that to this Question? You ask him, how he knows his Hand-writing, and, says he, I did not see him write, but I have seen a Letter of his to the Lord Bishop of Oxford.

L. C. J. And he does say, my Lord of Ely own'd it to be his Hand that is there.

Mr. Sol. Gen. No, my Lord, that's a Mistake, he own'd a Letter that he had writ to the Bishop of Oxford to be his Hand-writing, and by Comparison of this with that, says he, I take this to be his Hand-writing.

Mr. Brooks. That is my Meaning, my Lord.

Mr. Sol. Gen. Pray speak out, and tell us what are the Reasons that make you say you believe this to be the Bishop of Ely's Writing.

Mr. Brooks. Because it resembles a Letter that I have by me of his Writing to the Bishop of Oxford.

Mr. Sol. Gen. And you say he own'd that Letter to be his?

Mr. Brooks. My Lord Bishop of Oxford did answer it, and I waited upon the Bishop of Ely with the Answer, and he did own it.

Sir George Treby. How did he own it, Sir?

Mr. Brooks. I had some Communication with my Lord of Ely about the Substance of that Letter, and therefore I apprehended he own'd it.

Mr. Just. Powell. That's a strange Inference, Mr. Solicitor, to prove a Man's Hand.

Mr. At. Gen. We have more Evidence; but let this go as far as it can.

Mr. S. Pemberton. Certainly, my Lord, you will never suffer such a Witness as this!

L. C. J. Brother Pemberton, I suppose they can prove it otherwise, or else this is not Evidence.

Mr. Just. Powell. So they had need, for it is a strange Inference of Mr. Solicitor, that this is a Proof of my Lord of Ely's Hand-writing.

Mr. Just. Holloway. The Bishop of Oxon. was dead before any of this Matter came in Agitation.

Mr. Sol. Gen. My Lord, we will bring other Proofs. — Call Mr. Chetwood and Mr. Smith.

[Mr. Chetwood and Mr. Smith sworn.]

Mr. Sol. Gen. Mr. Chetwood, we would know of you if you know my Lord Bishop of Ely's Hand-writing?

Mr. Chetwood. I never saw him write.

Mr. Sol. Gen. That's not an Answer to my Question: Do you know his Hand-writing?

Mr. Chetwood. I do not certainly know it.

Mr. Sol. Gen. Have you seen any of it?

Mr. Chetwood. I have seen my Lord of Ely's Writing, that has been said to be his.

L. C. J. But surely you had better take a Witness that has seen him write.

Mr. Just. Powell. I think 'tis hardly possible for a Man to prove his Hand, that has not seen him write.

L. C. J. I think 'tis better Proof indeed, to bring some that has seen him write.

Mr. Chetwood. My Lord, 'tis a long Time since I saw my Lord of Ely's Writing.

L. C. J. Pray bring some other Proof, if you have it.

Bish. of Peterborough. My Lord, we are here as Criminals before your Lordship, and we are prosecuted with great Zeal: I beg your Lordship that you will not be of Counsel against us, to direct them what Evidence they shall give.

L. C. J.

L. C. J. My Lord of *Peterborough*, I hope I have not behaved myself any otherwise hitherto than as becomes me: I was saying this (and I think I said it for your Lordship's Advantage) that this was not sufficient Proof; and I think, if your Lordship observed what I said, it was for you, and not against you.

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

Mr. S. Pemberton. Pray, my Lord of *Peterborough*, sit down, you'll have no Wrong done you.

Sir Rob. Sawyer. We that are of Counsel will take Care of that; and pray, my Lord, will you please to pass it by?

L. C. J. We are not used to be so serv'd, and I will not be used so.

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

Mr. At. Gen. Pray, *Mr. Chetwood*, do you look upon the Name of my Lord of *Ely*; do you believe that to be his Hand-writing?

Mr. Chetwood. I do believe it is.

Sir Rob. Sawyer. That's very well, when he says he never saw him write.

Mr. Just. Powell. What is the Reason of that Belief of his I would fain know?

Mr. Chetwood. I have formerly seen his Hand, I think it was his; but I never saw my Lord of *Ely* write his Hand.

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

Mr. Finch. How do you know that that which you saw formerly was my Lord of *Ely's* Hand?

Mr. Chetwood. I have no such Certainty as positively to swear that that was his Hand.

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

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

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

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

Mr. Smith. I have seen it often.

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

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

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

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

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

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

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

Mr. Smith. I say, I was better acquainted with it heretofore than I am now.

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

Mr. Smith. I believe it may, Sir.

Sir Rob. Sawyer. Why do you believe it?

Mr. Smith. I have no other Reason to believe it, but because I have seen something like it.

Mr. Just. Powell. How long ago is it since you saw him write?

Mr. Smith. I have not seen him write, so as to take Notice of it, for some Years: I could better judge of it when he writ his Name *Turner*, than now it is *Ely*, because there was more Letters to judge by.

[*Mr. Middleton* sworn.]

L. C. J. Here's *Mr. Middleton*? what do you call him for?

Mr. Sol. Gen. To prove many of their Hands.

Mr. At. Gen. Pray shew him that Paper.

Mr. Sol. Gen. First, *Mr. Middleton*, do you know my Lord Archbishop's Hand-writing?

Mr. Middleton. I have seen his Grace's Hand-writing.

Mr. Sol. Gen. Do you believe it to be his?

Mr. Middleton. It is very like it.

Mr. Sol. Gen. But do you believe it, or do you not?

Mr. Middleton. I do believe it.

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

Mr. Middleton. I never saw it as I know of.

Mr. Sol. Gen. What do you say to my Lord of *Ely*? His Name is next.

Mr. Middleton. It is like his Lordship's Hand.

Mr. Sol. Gen. Do you believe it, or do you not?

Mr. Middleton. It is like it, that's all I can say.

Mr. Sol. Gen. Cannot you tell whether you believe it, or not believe it?

Mr. Middleton. I do believe it is his Hand.

Mr. Sol. Gen. Did you ever see him write? For I would clear this Matter beyond Exception.

Mr. Middleton. I have seen his Lordship write, but I never stood by him so near as to see him make his Letters.

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

Mr. Middleton. It is like it, I believe it is his.

Mr. Sol. Gen. You did not guide his Hand I believe — Do you know my Lord of *Chichester's* Hand-writing?

Mr. Middleton. Sir, I am acquainted with none of their Hands but with my Lord of *Canterbury's*, and my Lord of *Ely's*.

Mr. Sol. Gen. Do you know my Lord of *Peterborough's* Hand-writing?

Mr. Middleton. I had my Lord of *Peterborough's* Writing two Years ago for some Money, but I cannot say this is his.

Mr. Sol. Gen. Do you believe it to be his?

Mr. Middleton. I never took Notice of it so much as to say, I believe it to be like it; I never saw it but once.

Mr. Sol. Gen. Do you know any other of the Names there? What say you to the Bishop of *Bristol's* Name?

Mr. Middleton. I saw once my Lord of *Bristol's* Hand-writing.

Mr. Sol. Gen. What say you to that Writing there?

Mr. Middleton. It is like it.

Mr. Sol. Gen. Do you believe it to be his or no?

Mr. Middleton. Truly, that I cannot say, for I never saw it but once.

L. C. J. You never saw him write, did you?

Mr. Middleton. No, my Lord, I never did.

Mr. Sol. Gen. Then we will call *Sir Thomas Pinfold*, and *Mr. Clavel* — *Sir Thomas Pinfold* is there, swear him.

[*Sir Thomas Pinfold* sworn.]

Mr. Sol. Gen. Sir Thomas Pinfold, do you know my Lord Bishop of Peterborough's Hand-writing?

Sir Tho. Pinfold. Truly, not very well; I never saw but one Letter from him in my Life: Shew me his Hand, and I will tell you — [Which was done.]

Mr. Sol. Gen. Well, Sir, what say you to it?

Sir Tho. Pinfold. Then upon my Oath, I say, I cannot well tell upon my own Knowledge that it is his Hand.

Mr. Sol. Gen. I ask you, do you believe it to be his Hand?

Sir Tho. Pinfold. Sir, upon the Oath that I have taken I will answer you, that upon this Account, that I have heard there was a Paper delivered by my Lords the Bishops to the King, and this Paper that you offer me, I suppose to be the same; upon that Score I do believe it, but upon any other Score I cannot tell what to say.

Mr. Sol. Gen. I ask you upon your Oath, Sir, do you believe it is his Hand-writing or no?

Sir Tho. Pinfold. Sir, I have answered you already, that upon my own Knowledge I cannot say it is his Hand-writing; but because I have heard of such a Paper, I do believe it may be his.

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

Sir Tho. Pinfold. I have been in his Chamber several Times when he has been writing, but I had more Manners than to look upon what he writ.

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

Sir Tho. Pinfold. I do not know that I ever saw him write his Name, but I have seen him writing, I say, and so my Lord Bishop may have seen me writing, but I believe he does not know my Hand.

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

Sir Tho. Pinfold. I tell you, Mr. Solicitor, I have been in his Chamber when he has been writing, but I had more Manners than to look over him.

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

Sir Tho. Pinfold. I cannot say I did, my Lord.

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

Sir Tho. Pinfold. No, not that I remember.

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

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

[Mr. Clavel sworn.]

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

Mr. Clavel. I have seen it many Times.

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

Mr. Clavel. I believe I do, Sir.

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

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

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

Mr. Clavel. No, I do not.

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

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

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

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

Mr. Sol. Gen. I suppose you have had some Dealings with them in the Way of your Trade. Did you never see any of their Writing?

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

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

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

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

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

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

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

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

Mr. Clavel. I cannot say I ever did.

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

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

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

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

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

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

Mr. Clavel. They were about several Businesses.

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

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

Mr. Clavel. Yes, they were.

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

Mr. Clavel. Yes, I did.

Mr. Sol. Gen. Now I would ask you, Do you believe that Name of my Lord Bishop of Peterborough to be the Hand-writing of my Lord Bishop?

Mr. Clavel. I believe it is.

Mr. Just. Powell. Do you know that those Letters that you say you received from my Lord, were of my Lord's own Hand-writing, Do you swear that?

Mr. Clavel. My Lord, I cannot swear that.

Mr. Finch. Do you know whether the Letters that you received, as you say, were written by my Lord himself, or by his Secretary?

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

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

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

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

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

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

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

Mr. Sol. Gen. We have given Evidence against my Lord Archbishop, Lord Bishop of *Ely*, *St. Asaph*, *Peterborough*, and *Bristol*.

Mr. Just. Powell. Certainly, Mr. Solicitor, you mistake——But go on——

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

[*Mr. Chetwood* appeared.]

Mr. Sol. Gen. Do you know the Hand-writing of my Lord Bishop of *Bath* and *Wells*?

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

Mr. Sol. Gen. Do you believe that is his Hand-writing?

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

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

Mr. Chetwood. I believe it may, but I do not certainly know it to be his Hand; I rather believe it is my Lord Bishop of *Bath* and *Wells* his Hand, than I believe that other to be my Lord of *Peterborough's*.

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

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

Mr. Sol. Gen. Call *Mr. Hooper*.

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

Mr. Sol. Gen. The Witnesses are unwilling, and we must find out the Truth as well as we can.

[*Mr. Hooper* did not appear.]

Mr. Sol. Gen. Call *Mr. James* and *Mr. Powell*.

[*Mr. James* appeared and was sworn.]

Mr. Sol. Gen. Do you know my Lord Bishop of *Bristol's* Writing, *Mr. James*?

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

Mr. Sol. Gen. Shew him the Paper: Is that my Lord of *Bristol's* Hand?

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

Mr. Sol. Gen. What do you believe?

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

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

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

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

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

Mr. Sol. Gen. Sir, remember you are upon your Oath, and answer my Question.

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

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

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

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

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

Mr. Sol. Gen. It may be your Hand.

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

Mr. Sol. Gen. What do you believe?

Mr. James. I believe it may be his Hand, or it may not be his Hand, that is all I can say.

L. C. J. Come, Sir, you must answer fairly, Do you believe it to be his Hand, or do you not?

Mr. James. Yes, I do believe it.

Mr. At. Gen. You are very hard to believe me: thinks.

Mr. James. No, I am not.

Mr. Sol. Gen. You do very well now, *Mr. James*; when you do well, we'll commend you.

Mr. At. Gen. Call *Mr. Nathaniel Powell*.

[*Mr. Powell* was sworn.]

Mr. Sol. Gen. Pray, Sir, let's know what's your Name?

Mr. Powell. My Name is *Nathaniel Powell*.

Mr. Sol. Gen. Pray do you know the Hand-writing of my Lord Bishop of *Chichester*?

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

Mr. Sol. Gen. Do you know his Hand-writing?

Mr. Powell. Yes, I believe I do.

Mr. Sol. Gen. Look upon that Name of his.

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

Mr. Sol. Gen. Who says you did? No body asks that of you; how you answer! Pray Sir, remember your Oath, and answer seriously, Do you believe it to be his Writing or no?

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

Mr. Sol. Gen. No body says you did.

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

Mr. Sol. Gen. We do not ask that neither.

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

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

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

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

Mr. Powell. I cannot say that neither.

Mr. Sol. Gen. Once again, I ask you, upon your Oath, Do you believe it to be his Hand? I ask you plainly, and let Mankind judge of you.

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

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

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

Mr. Sol. Gen. He is obliged to answer Questions when they are fairly put to him.

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

Mr. Sol. Gen. Make your Exceptions to the Evidence if you please.

L. C. J. First he says, he knows his Hand; then he says, he has seen him write; and then he says, he did not see him write this; but he shuffles, he won't answer whether he believes it or not.

Mr. Pollexfen. The Question is, Whether Belief in any Case be Evidence?

Mr. Sol. Gen. If they have a Mind to a Bill of Exceptions upon that Point, let them seal their Bill, and we'll argue it with them when they will; in the mean Time we'll go on, and that which we now pray, my Lord, is, that this Paper may be read.

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

Mr. Serj. Levinz. My Lord, before this Paper be read, we hope you will let us be heard to it: We think that what they desire (to have this Paper read) ought not to be: For what is all the Proof that they have given of this Paper? They have a Proof by Comparison of Hands, which in a criminal Case ought not to be received: And besides, my Lord, what is that Comparison of Hands that they have offered? Some Persons come here and say, they cannot tell whether it be their Hand's, they believe it may or may not, for ought they know; how shall we convict any Man upon such a Testimony as this? Can we have our Remedy against him for Perjury, for saying, he believes it to be our Hand? Therefore here is not any Evidence to charge us. For first, It is only a Comparison of Hands; and secondly, That Comparison is proved in such an uncertain Manner: Some of them tell you, they do not know what to believe; another tells you, I believe it is rather such a Lord's Hand, than the others are such a Lord's Hand; I believe 'tis rather his Hand than that above it, or that below it. What Sort of Proof is all this? Therefore we pray it may not be read, till they prove it better.

Mr. S. Pemberton. Pray, my Lord, spare me a Word or two in this Matter for Evidence sake; there is a great Deal of Reason we should take Exceptions to the Evidence that has been given: For truly, I think I never heard such a Sort of Evidence given before. It is a Case of as great Concernment as ever was in *Westminster-Hall*; and for them to come to prove Hands only by those that saw Letters, but never saw the Persons write, this, I hope, will not amount to so much as a Comparison of Hands. Your Lordship knows, that in every petty Cause, where it depends upon the Comparison of Hands, they use to bring some of the Party's Hand-writing which may be sworn to, to be the Party's own Hand, and then it is to be compared in Court with what is endeavoured to be proved, and upon comparing them together in Court, the Jury may look upon it, and see if it be right; and never was there any such a Thing as this admitted in any poor petty Cause, that is but of the Value of forty Shillings. And therefore as to this Evidence, First, We say Comparison of Hands ought not to be given at all in the Cases of Criminals; and I believe it was never heard of that it should. In the next Place, if it be admitted to be Evidence, yet it is not such an Evidence, as that by Comparison of Hands the Jury can take Notice of it; for in such Manner of Proofs by Comparison of Hands, the Usage is, that the Witness is first asked, concerning the Writing he produces, Did you see this writ by the Defendant, whose

Hand they would prove? If he answers yes, I did, then should the Jury upon Comparison of what the Witness swears to, with the Paper that is to be proved, judge whether those Hands be so like as to induce them to believe that the same Person writ both; and not that the Witness should say, I had a Letter from such a Person, and that is like the Hand of that Letter, therefore I believe it to be his Hand: My Lord, I hope this shall never be admitted for Evidence in this Court.

L. C. J. I do take it, that the Witness himself is judge of the Comparison; for if he does know the Party's Hand, and a Paper be offered him to prove the Party's Hand, he is to compare it in his own Mind.

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

Mr. Sol. Gen. You may remember several Cases about that, particularly *Sidney's Case*.

Mr. Pollexfen. Pray, my Lord, hear me a little as to that: It is a Point of very great Moment, whether in the Case of a Misdemeanor, either in an Indictment or Information, it be good Evidence to offer Comparison of Hands; and that this Court did adjudge quite contrary upon an Indictment of Forgery against my Lady *Carr*, appears in *Sydenham's Reports*: They went to prove her Letters written by her to *Cox*; the Court rejected it, and gave their Judgment here, that it was no Evidence; and that for this Reason, because of the evil Consequences of it: For, said they, it is an easy Matter for any Man's Hand to be counterfeited; that they sure will agree, for frequent daily Experience shews how easily that may be done: Is it not easy then to cut any Man down in the World, by proving it like his Hand? And proving that Likeness by comparing it with something that he hath formerly seen? This strikes mighty deep; the honestest Man in the World, and the most innocent may be destroyed, and yet no Fault to be found in the Jury or in the Judges; if the Law were so, it would be an unreasonable Law. Next, my Lord, for the Case of *Sidney*, that was a Case of Treason. Now in the Case of Treason there is always other Evidence brought; and this Evidence comes in but as a collateral Evidence, to strengthen the other; but in this Case it is the single Evidence, for ought that appears, for there is nothing more, for ought I can see, in the Case, but whether this were their Hands, and proved only by what another believes: Now shall any be condemned by another's Belief without Proof? Surely, my Lord, that was never Evidence yet to convict any one; so that their Proof fails in both Points; for first, it ought to be considered whether Comparison of Hands be Evidence in a Case of Misdemeanor; and next, if it be Evidence, whether you will take it, that the Belief of a Man that brings nothing to compare with it, or never saw the Party write, but has received Letters, and says, this is like it, and therefore he believes it to be his Hand, be good Evidence as a Comparison of Hands.

Mr. S. Pemberton. My Lord, they are pleased to mention——

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

Mr. S. Pemberton. I would only speak to that Case of *Sidney*: My Lord, that Case differs from this *totò Cælo*, the Writing was found in his
Pos-

Possession, in his Study ; there was the Proof that nailed him.

Mr. *Sol. Gen.* You shall see how we'll apply it by and by.

Mr. *At. Gen.* Pray, my Lord, favour me a Word in this Matter : That there is stronger and weaker Evidence no Man doubts ; but that which these Gentlemen say, that in this Case there is no Evidence, must needs be a Mistake. If they mean that it is not so strong an Evidence as is possible to be given, I agree with them, it is not : For if we had brought three or four Men that had seen them write this very Paper, and put their Names to it, that had been a stronger Evidence than this that we have given ; but whether we do not give such a sort of Evidence as may induce the Jury to believe that this is their Paper, and their Hands to it, we submit. They say, this is such a Method as never was taken ; but I admire that that should be said by Men of their Experience and Knowledge in the Law ; for is there any thing more usual, or any other Course taken for the Proof of Hands, than for a Witness to say, He knows the Hand of the Party very well, for he has often seen his Hand-writing, or received Letters from him ? And if you shew him the Thing that you would prove to be his Hand, and he says, I do believe this to be his Hand, for this Reason, because I have had other Things of his Writing : Certainly, in the Experience of any Man that has practised, this is an Evidence that is given every Day, and allowed for Evidence. For the Case of Mr. *Sidney*, which your Lordship has heard mentioned, it is certainly very opposite to this Purpose ; it is insisted upon and pretended, That that was Evidence, because it was found in his Study : But without all doubt, that would not be the Reason : For may not a Book of another Man's writing be found in my Study ? And he insisted upon it in his own Defence : But the Answer was, That it should be left as the Question, Whether the Jury would believe it upon the Evidence that was given, of its being his own Hand-writing : And so in this Case, though it be not so strong Evidence as if we had brought those that had seen them write it ; yet Evidence it is, and whether it be sufficient to satisfy the Jury, may be a Question ; but no Question, it is good Evidence in Law.

Mr. *Sol. Gen.* It is a wonderful Thing, they say, that such Evidence should be offered : But truly, my Lord, it is a much stranger Thing to hear Mr. Serjeant *Pemberton* say, it was never done before ; and then to make that Remark to your Lordship upon the Case of *Sidney*, which I'll put to your Lordship and the Court as a Case, and let him contradict me if he can ; and then we shall see how far it goes. *Sidney* was indicted for High-Treason ; and the Treason insisted upon was, a Writing supposed to be his, it being found in his Study : The Question was, Whether it was his Hand-writing or no ? There was no positive Evidence that it was his Hand-writing ; there was no Evidence produc'd, that prov'd it to be his Hand-writing ; for there was no one that swore that they saw him write it ; there was nothing proved but the Similitude of Hands. Ay, but says Mr. Serjeant *Pemberton*, it was found in his Study. Will Mr. Serjeant *Pemberton* be content, that all the Libels that are found in his Study, shall, for that Reason, be adjudged to be Libels, to be his Hand-writing, and he to be a Libeller for them ? I think he will make a severe Declaration against

that, and he would have very good Reason for it : Certainly that which was Evidence in one Man's Case, will be Evidence in another. God forbid there should be any such Distinction in Law ; and therefore I conclude, that this is good Evidence.

Mr. *S. Pemberton.* The Court went upon this, That it was found in his Study, and compared with Letters and Bills of Exchange produced in Court, which were sworn to be of his Hand-writing.

Mr. *Sol. Gen.* My Lord, I was by all the Time ; for I was ordered to attend him in the *Tower* ; and therefore I can tell what passed as well as any body. My Lord, they proved no more as to that Libel, but only by Comparison of Hands ; they had no other Proof in that Case, but by comparing the Hand-writing ; and that was insisted upon to be a mighty fallible Thing : That which they would have for us to compare, Paper with Paper, it is true, would make the Proof somewhat stronger, if we could, in such a Case as this, be able to produce such Evidence : But I appeal to your Lordship, and shall leave it to the Jury, to consider which is better Evidence ; these Men, that have been produced, that have been conversant with these Lords, and acquainted with their Hand-writing, and who (as your Lordship sees) are not willing Men to give Evidence, they avoid it as much as they can ; and they swear it all to be the Hand-writing of the Archbishop of *Canterbury*, as they believe ; which is as far as any Man can swear. One says the whole Body of the Paper is my Lord of *Canterbury's* Hand, and he knows it very well ; so that we are not upon a single Name, but a whole Paper that contains many Lines ; and this is as much as can be proved by any one that did not see the Thing written. Then, my Lord, for the rest of the Company, the Evidence is not so strong against every one of them, as it is against my Lord Archbishop ; but is strong enough certainly to convict them of what we accuse them of : And pray, my Lord, what was the Objection in *Sidney's* Case, but what has been mentioned here ? That any Man's Hand might be counterfeited. I remember in that Case, there was one Mr. *Wharton*, a young Gentleman, then in the Court, that undertook to the Court, that he would counterfeit that Hand presently ; and he that was to swear the Comparison, should not know which was the one, and which was the other ; which certainly was a stronger Case than this : And I see some of the Gentlemen that are now standing at the Bar, who pressed this Matter very hard against Mr. *Sidney*, and Mr. *Sidney* lost his Life upon that Comparison of Hands ; though Mr. *Wharton* did testify how easy a Matter it was to have a Man's Hand counterfeited, and we all know was a Man of Value and Quality ; so there is a Precedent for Mr. Serjeant *Pemberton*, that never heard of this Law before. They say the proving of Similitude of Hands is no Evidence, unless you prove the actual Writing ; what a Condition then will *England* be in, when Witnesses are dead ? Is it not the most common Practice that can be, to produce Witnesses to prove such Men are dead, whose Names are set as Witnesses to Deeds ; and they swear, they believe it to be the Hand-writing of those Witnesses ? Can there be any greater Evidence of such a Case, unless it be the Confession of the Party himself ? My Lord, we are now only upon reading this Paper. We have been heard, and they

have been heard; now we pray the Paper may be read.

Mr. Recorder. We pray it may be read.

Mr. Serj. Levinz. If your Lordship please—

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

L. C. J. You have spoke Brother Levinz, and you have spoke Brother Pemberton, and I would willingly hear you what you have to say; but we must not have vying and revying, for then we shall have no End.

Mr. Serj. Levinz. I would offer your Lordship some new Matter, which has not been touched upon yet, why it is not to be read.

L. C. J. What's that, Brother?

Mr. Serj. Levinz. All the Proof that has been given, whatsoever it amounts to, has been only of its being written, but no Proof has been given of its being written in the County of *Middlesex*, where the Information is laid, and the Matter is local.

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

Mr. Recorder. My Lord, as to the Evidence that has been given, I would only put your Lordship in Mind of one Case; and that was the Case of Sir Samuel Bernardiston: And the great Evidence there, was the Proof of its being his Hand-writing; and that being proved, was sufficient to convict him of a Libel; for they could not believe Sir Samuel Bernardiston was guilty of making Libels, unless they were proved to be his Hand-writing.

Sir Rob. Sawyer. He owned them to be his Hand-writing.

L. C. J. If you do expect my Opinion in it, whether this be good Evidence, and whether this Paper be proved or no, I am ready to give it.

Mr. Finch. My Lord, I desire to be heard before the Opinion of the Court be given.

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

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

Mr. Sol. Gen. Why, is this fit to be suffered?

L. C. J. Mr. Solicitor, I am always willing to hear Mr. Finch.

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

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

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

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

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

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

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

Sir Rob. Sawyer. If the Court will please to hear us, we have that to offer against the reading of the Paper, which has not been offered yet.

L. C. J. Sir Robert Sawyer, I take it, it is in the Breast of the Court to hear when they will, and as much as they will, and whom they will; for if three or four have been heard of a Side to speak what they will, the Court may very well depend upon the Learning of those three or four, that they say what can be said upon the Point, and that's enough; but if six or seven desire to be heard over and over to the same Thing, certainly the Court may stop at three or four, if they will.

Sir. Rob. Sawyer. This is a new Objection that none of us have been heard to yet.

Mr. Finch. My Lord, that which I offer is not contrary to the Rules of Law, nor contrary to the Practice of the Court; nor was I going any way to invade that Privilege which Mr. Solicitor claims of making Objections, and not receiving an Answer.

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

Mr. At. Gen. Pray, my Lord, let's come to some Issue in this Matter.

L. C. J. I will hear you; but I would not have you introduce it with a Reflection upon the King's Counsel.

Mr. Sol. Gen. My Lord, if you impose that upon him, you stop his Mouth; for some Men cannot speak without Reflection.

L. C. J. On the other Side, pray, Mr. Solicitor, give us leave to hear fairly what they have to say; for I perceive he cannot offer to speak, but you presently stop his Mouth.

Mr. Finch. My Lord, that which I was going to say, is another Matter than any thing that has been yet offered: We say, that this Paper ought not to be read; for that they are obliged by Law to prove their Information; and consequently, having laid a particular Place where the Thing was done, in the Information they ought to prove that this was done in that Place. The Evidence that they have given, is of my Lords the Bishops writing this Paper; and they have laid it to be done in *Middlesex*: And this, with Submission to your Lordship, is local; and they must prove it to be written in *Middlesex*, where they have laid it, or else they fail in their Proof. This is another Objection, which as yet hath not been spoken to. That if there be a Proof of their Hand-writing, yet there is no Proof where that Hand was written; and therefore they are not yet got so far, as to have it read against my Lords.

Mr. At. Gen. For that Point, my Lord, we say, This would have been as properly said after the Paper had been read, when they come to make Objections against our Proof, by way of Defence: And, with Submission, it had been more proper then, than it is now: For what are we now doing? My Lord, we are proving that such a Paper was subscribed by my Lords the Bishops; and Sir John Nicholas gives you an Account, that he had it from his Majesty at the Council; and that certainly is in the County of *Middlesex*; and it will concern you to prove that it was written elsewhere.

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

Mr. At. Gen. Here is a paper composed and written by you, that Sir John Nicholas says he had from his Majesty: How he came by it, I suppose

suppose you will tell us by and by. This is your Hand-writing, that I think we have proved sufficiently; this is found in the County of *Middlesex*, and you come and tell us, that we must prove that it was written in the County of *Middlesex*; and it is taken to be written where it was found, unless you prove the contrary.

Mr. *S. Pemberton*. That's pretty Doctrine indeed, and very new.

Mr. *Sol. Gen.* My Lord, here's an Objection made too timely: We are now upon reading of this Paper; and the Question is, Whether it shall be read, or not be read? Surely we have given Evidence enough to induce the Court to read it; and it is another Question, that will come time enough afterwards, where it was written?

L. C. J. Truly, I do not think it was proper for you to stand upon the Place where it was written as yet.

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

Mr. *Sol. Gen.* We are not to be driven by these Gentlemen; we are to be directed by the Court.

L. C. J. I think truly it is yet too early to make this Objection.

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

Mr. *Just. Powell*. Mr. Solicitor, I think you have not sufficiently proved this Paper to be subscribed by my Lords the Bishops.

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

Mr. *Just. Powell*. No, not to read it; it is too slender a Proof for such a Case. I grant you, in Civil Actions a slender Proof is sufficient to make out a Man's Hand, by a Letter to a Tradesman, or a Correspondent, or the like; but in Criminal Causes, such as this, if such a Proof be allowed, where is the Safety of your Life, or any Man's Life here?

Mr. *Sol. Gen.* We tell you a Case where it was allowed; and that is Mr. *Sidney's* Case; a Case of Treason, and printed by Authority: We tell you nothing but what was done t'other Day.

L. C. J. I tell you what I say to it: I think truly there is Proof enough to have it read, and I am not ashamed, nor afraid to say it; for I know I speak with the Law. Say what you will of Criminal Cases, and the Danger of People's Lives, there were more Danger to the Government, if such Proof were not allowed to be good.

Mr. *Just. Powell*. I think there is no Danger to the Government at all, in requiring good Proof against Offenders.

L. C. J. Here's my Lord Archbishop and the Bishop of *St. Asaph*, and my Lord of *Ely*, their Hands are proved: It is proved to be my Lord Archbishop's Writing by Mr. *Brookes*, and he proves my Lord of *Ely's* Hand by Comparison, and so my Lord of *St. Asaph's*. Now, Brother *Pemberton*, there's an Answer to your Objection, it being proved that it is all my Lord Archbishop's Hand. Then they come and say, we'll prove the Hands of the others by Comparison; and for that they bring you Witnesses that say, they have received Letters from them, and seen their Hand-writing several times; and comparing what they have seen with this very Paper, says the Witness, I do believe it

to be his Hand. Can there be a greater Evidence, or a fuller?

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

Mr. *Just. Allyn*. Brother *Pemberton*, as to the Objection you make of comparing of Hands, it is an Objection indeed, I do agree; but then consider the Inconvenience which you and Mr. *Pollexfen* do so much insist upon: If a Man should be accused by Comparison of Hands, where is he? He is in a lamentable Case; for his Hand may be so counterfeited, that he himself may not be able to distinguish it. But then you do not consider where you are on the other Side: That may be an Objection in Matters of Fact, that will have very little Weight, if compared and set altogether: For, on the other side, where shall the Government be, if I will make Libels, and traduce the Government with Prudence and Discretion, and all the Secrecy imaginable? I'll write my Libel by my self, prove it as you can; that's a fatal Blot to the Government; and therefore the Case is not the same, nor is your Doctrine to pass for current here, because every Case depends upon its own Fact. If I take upon me to swear I know your Hand, the Inducements are to my self, how I came to know it, so as to swear it. Knowledge depends on Circumstances: I swear that I know you, but yet I may be under a Mistake; for I can have my Knowledge of you no other Way but from the Visibility of you, and another Man may be so like you, that there is a Possibility of my being mistaken; but certainly, that is Evidence, good Evidence. Now here are several Gentlemen that swear as to my Lord Archbishop's Hand-writing: I do agree, as to some of the others, that the Evidence is not so strong; for what that Man said, that he did believe it was rather such a Lord's Hand, than that which went before, or that which came after, it is of no Weight at all, and so some of the others; but it is positively proved against my Lord Archbishop and one or two more; so that that's enough to induce the reading of this Writing.

Mr. *Just. Holloway*. Good my Lord, let me give my Opinion.

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

Mr. *Just. Holloway*. My Lord, I think as this Case is, there ought to be a more strong Proof; for certainly the Proof ought to be stronger and more certain in criminal Matters, than in civil Matters: In civil Matters, we do go upon slight Proof, such as the Comparison of Hands, for proving a Deed, or a Witness's Name, and a very small Proof will induce us to read it; but in criminal Matters we ought to be more strict, and require positive and substantial Proof, that is fitting for us to have in such a Case; and without better Proof, I think it ought not to be read.

L. C. J. You must go on to some other Proof, Mr. Solicitor; for the Court is divided in their Opinions about this Proof.

Mr. *Sol. Gen.* Then, my Lord, we will come to the Confessions of my Lords the Bishops; and I hope that will be believed by all Mankind.

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

Sir Robert Sawyer. Mr. Attorney, give us Leave to defend our Clients all the Ways we can: I think we do nothing but what is fair; the Court you see is divided, therefore we did not without Reason insist upon it.

L. C. J. You must go on as you can, for they will put you upon it.

Mr. At. Gen. Swear Mr. Blatbwayt.

[Mr. Blatbwayt sworn.]

Mr. Sol. Gen. Pray hand the Writing to him.

[The Writing shewn to him.]

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

Mr. Blatbwayt. Yes, Sir.

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

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

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

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

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

Mr. Blatbwayt. On the Council-day, the 8th of this Month.

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

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

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

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

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

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

Mr. Sol. Gen. The Bishop of Chichester?

Mr. Blatbwayt. In the same manner.

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

Mr. Blatbwayt. Yes, my Lord.

Mr. Sol. Gen. The Bishop of Peterborough?

Mr. Blatbwayt. Yes, my Lord.

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

Mr. Blatbwayt. Yes, my Lord.

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

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

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

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

Mr. S. Pemberton. Pray Mr. Blatbwayt, upon what Occasion did they own it? You are sworn to tell the whole Truth: Pray tell all your Knowledge, and the whole Confession that they made.

Mr. Blatbwayt. My Lord, I am called here by a Subpœna to answer on Behalf of the King; my Lord, I am ready to do my Duty, and I beg of your Lordship that you would please to tell me what is my Duty; for whatsoever I shall answer, I shall speak the Truth in.

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

Mr. Blatbwayt. My Lord, I am easily guided by your Lordship what I ought to answer to.

L. C. J. What is it you ask him, Brother Pemberton?

Mr. S. Pemberton. We desire Mr. Blatbwayt to

tell the whole Discourse that passed at the Council; when he says my Lords the Bishops own'd this Paper.

Mr. Sol. Gen. That's a very pretty Thing indeed!

L. C. J. Look you, Mr. Blatbwayt, you must answer them what they ask you, unless it be an ensnaring Question, and that the Court will take Care of.

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

L. C. J. You must answer them.

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

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

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

Mr. Blatbwayt. My Lord, the Occasion was this: This Paper was read in Council, and I had the Honour to read it before the King; and it having been read before his Grace the Archbishop, and my Lords the Bishops, they were asked whether they did own that Paper, and, my Lord, they did own it.

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

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

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

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

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

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

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

Mr. Sol. Gen. My Lord, we desire they may only ask reasonable and proper Questions.

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

Sir Rob. Sawyer. Sir, I will ask you a plain Question upon your Oath; Did not my Lord Archbishop, and the rest of my Lords the Bishops, at first refuse to own it, or to answer whether it were their Hands or not?

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

Mr. S. Pemberton. Then I ask you in short, What did they refuse? I am sure that is a fair Question; for God forbid that any should hinder the King's Evidence from telling Truth.

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

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

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

Mr. Blatbwayt. Sir, I have begg'd the Favour of my Lords the Judges to tell me what I am to answer, and what Questions are proper for me to answer to.

L. C. J. You must answer any Questions that are not ensnaring Questions.

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

Mr. Blatb-

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

Mr. Just. *Allybone*. Answer to the Question that they ask you.

L. C. J. We observe what they ask you; we'll take Care that they ask you nothing but what they should.

Mr. *Blatbwayt*. I desire the Question may be repeated.

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

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

Mr. S. *Pemberton*. What did they say?

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

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

Mr. Sol. Gen. That's a leading Question, Mr. Serjeant *Pemberton*; you cannot leave your Way of leading Witnesses.

Mr. S. *Pemberton*. It is a very strange thing; if we ask a Question that's general, that's excepted to; if we ask any Question in particular, then they find Fault with us, that it is a leading Question; so that we can never ask a Question that will please them. Pray Mr. *Blatbwayt*, what did they say concerning the King's Pleasure, whether they would answer if the King commanded them?

Mr. S. *Trinder*. How can it be material what they said?

L. C. J. It is material that it should be asked, and that it should be answered.

Mr. S. *Levinz*. You are to tell the whole Truth, Sir. Pray tell us what did my Lords the Bishops say about submitting to the King's Pleasure?

Mr. Sol. Gen. What is that to the Purpose?

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

Mr. S. *Pemberton*. You are mighty loth, Mr. Solicitor, to let us hear the Truth: I would not willingly lead him in any thing; and I cannot see that this is any leading Question, unless his Oath be against Law, which says he is to tell the whole Truth.

Mr. At. Gen. My Lord, I do beg your Lordship's Favour of a Word in this Thing. It is certain, if they ask any thing that shall take off the Evidence that was first given, that it is not true, I cannot oppose it; but if they ask Questions only to enflame, and to possess People with foolish Notions and strange Conceits, that is not to the Fact that we are now trying —

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

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

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

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

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

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

Mr. *Blatbwayt*. There has been so much said between the asking of the Question and this Time, that I desire it may be repeated, that I may know what to answer to.

Mr. S. *Pemberton*. I ask you in short, Sir, What did my Lords the Bishops say at the Time of their appearing in Council concerning the King's Pleasure, whether they should answer or not?

Mr. *Blatbwayt*. The first Time my Lords the Bishops came into the Council, they were asked the Question whether they did own that Paper; they did immediately answer, They humbly hoped, as they stood there as Criminals, his Majesty would not take the Advantage against them, but however they would obey his Majesty's Command.

Sir *Robert Sawyer*. Were they commanded to withdraw?

Mr. *Blatbwayt*. Yes; thereupon they were commanded to withdraw, which they did.

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

Mr. *Blatbwayt*. They came in several times, more than twice, I have reason to remark this, that they did so: Do you mean the second Time, Sir?

Mr. S. *Pemberton*. Yes, Sir.

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

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

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

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

Mr. S. *Pemberton*. When they express'd their Unwillingness, what did they say farther?

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

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

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

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

Sir *Robert Sawyer*. And what Answer did they make?

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

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

Mr. *Blatbwayt*. They did withdraw after the second Attendance.

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

Mr. *Blatbwayt*. I have said two Things already, that they were unwilling to answer, and that they denied the publishing.

L. C. J. This is a strange Usage of a Witness, to put him to tell every thing that was said.

Mr. S. *Pemberton*. I would ask you this Question, Sir. When they came in the second Time, whether they did desire to know if it were