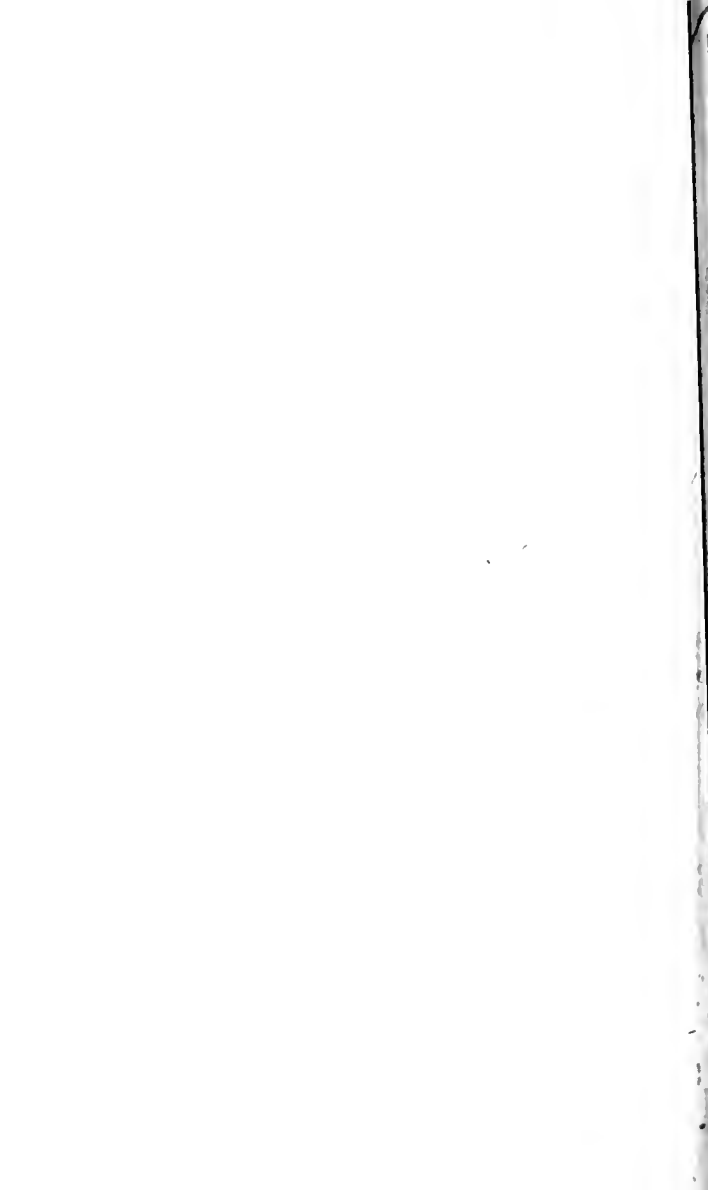


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I N A

Recapitulation of the Barbarities of the late Times ; more particularly in Relation to the Proceedings of the Commissioners of Ecclesiastical Affairs, against the present Bishop of *London*, the University of *Cambridge*, and *Magdalen College* in *Oxon*.

To which, is added,

The Tryal of the Seven Bishops: With a Preface shewing the present Danger of Our Religion and Liberties, from the Pretender and the Jacobites in *Great Britain*.

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The INTRODUCTION.

Nothing teaches us more effectually to prevent future Mischiefs, than the recital of our Escapes from past Dangers; and the best Lectures in Politicks, are deduced from Occurrences of Moment, that have hapned either within the Compass of our own Memories, or those of our Predecessors. These we are furnished with from History, which points us out the Rocks and Shelves whereupon others or our selves have been like to split, and from these it is, we are to take Precautions for a prudent and well advised Demeanour: For how can a Man better Exercise himself, than in the Contemplation of those Providential Deliverances, by the Means of which, he, and his Posterity, have been rescued from the Jaws of Destruction? Or how indeed can he acquit himself of the Sin of Ingratitude, not to reflect upon them with Pleasure and Satisfaction; not to take a Review of them with a Disposition of Mind, that becomes one who ought to be affected with the Remembrance of them? But an Universal Indolence of Temper now seems to reign among us, and the People of this Age are so far from doing Justice to the Instruments of Divine Mercy, that its now grown fashionable to revile and speak evil of them, and the only way for one to be loaded with Infamy and Detraction, is to have the Misfortune to be our Benefactor. This is a Truth so well attested by some past Actions,

that I perswade my self the Reader will not be urgent with me for a Proof of it ; therefore I shall apply my self to the Business I have taken in Hand, with a Resolution to give him to understand, that I shall extricate my self out of the number of the Unthankful, with whom it is an Instance of Demerit to deserve well of them. Good Deeds will best speak for themselves, as Ill ones will do the contrary, and I have nothing more upon my Hands, than by pointing out the Miscarriages of a Popish Reign, to justify the Revolution that was the Consequence of it : A Revolution so glorious in the Effects of it, and so necessary in its Causes, that it will not only vindicate the Memories of these illustrious Personages who were concerned in it, but Eternize them to all succeeding Ages, how unwarrantable soever the *Principles* that go under that Denomination are Esteemed in Publick Addresses and other Tolerated Papers.

What has been, may be, said a Peer of a Complexion, some of the *Unlimited* Authors are no strangers to, and from the Precepts that are now insill'd into the People in all Quarters, and the over-spreading of the Land by swarms of *Foreigners*, that are no *Palatines*, and have not been burn'd out of their Houses by *French* Incendiaries, we may judge there are some Designs in View which are necessary to be prevented. I would not be here misunderstood, as if I designed to insinuate, that these Practices are any way conniv'd at by the Persons who have the Honour to be at the Head of our Affairs ; for these Gentlemen have had too great a share
in

in the late Revolution, to wink at Practices that are quite opposite to it, and bear a tendency towards introducing the same Principles they have shewn their Abhorrence of; but my Intention is only to lay before them, in the humblest manner, the great increase of Papists in and about *London*, as well as all over the Kingdom, which if not speedily remedied, *may be* productive of Events I dread to think of, and which nothing but their great Wisdom and Care can secure us from.

The same Causes in all probability must one Day or other have the same Effects, and tho' during her present Majesty's Life, who has so much at Heart the security of our Religious and Civil Rights, the Enemies of the Reformation will find it impossible to bring about their Designs; yet since this Great and Good Queen, who is the *Breath of our Nobles*, must *Die* and *fall like one of the Princes*, it behoves every one to lend a helping hand to provide Antidotes against the spreading of the poisonous Contagion.

This cannot be better done, than by taking a Cursory Review of those Flagrant and Enormous Mismanagements in the Administration, during the Reign of the late King *James*, who was misled by Evil Counsellors, and the pernicious Dictates of Cruel and Blood-thirsty Priests, and had overturned the whole Constitution by Imprisonments, Arraignments, and Unjust and Arbitrary Sentences; but Providence step'd in, and interposed between us and inevitable Ruin, by the happy arrival of his Late Majesty, of Glorious and Immortal Memory.

To go thro' all the Steps that were taken to establish Popery in these Protestant Kingdoms, would take up more Sheets than are necessary to make the Sale of this Pamphlet general, which it is intended for; and more time than I, who am the Collector of it, can allow myself from other necessary Avocations; I have purposely therefore omitted the most unheard of, and barbarous Proceedings against *Dr. Oates*, who, tho' a Person of no great Character, had a Claim to the Liberties of an *English* Subject, after having discover'd a most damnable Popish Plot against the Government and Protestant Religion; the Tryal and Inhumane Punishment of *Mr. Dangerfield* for the same Cause; the Horrid and most Unchristian Executions in the *West of England*; the Arraignment of *Richard Baxter* a Learned Divine and Eminent for his pious Life, for Writing and Publishing Notes upon the New Testament; the Murthers of the Lady *Alicia Lisle*, *Henry Cornish*, *Richard Nelthorp*, and *John Ailoffe Esq*; for pretended Crimes; as also the severities which were exercised against *Mr. Charles Bateman* Surgeon, who was Hang'd Drawn and Quarter'd for the *Meal Tub Plot*; with the most unjust and illegal Tortures that were inflicted upon *Mr. Samuel Johnson*, for no other Reason, than that he did his Duty as became an *English* Man and a Christian, by endeavouring to stem the Torrent of Popery and Arbitrary Power, which was then breaking in upon the Nation. To which might be added, the Condemnation of *John Hambden Esq*; the Lord *Brandon Gerrard*, &c. with the Tryal of the Lord *Delamere*; as also the Exorbitant Fines

Fines put upon the late Duke (then Earl of *Devonshire*) and Mr. Sheriff *Pilkington*. Nor am I in want of sufficient Matter to give my Reader a just Abhorrence of that Tyrannical Reign, even tho' I forgoe the mention of those Particulars, since the making such bold Invasions upon the Rights of the Two Universities, and the Proceedings against so many Reverend Fathers of the Church, the Lords the Bishops, whose Tryals are here submitted to his perusal, cannot but be the Work of much greater Volumes.

The Reflections that must necessarily flow from hence, are, That if the Succession to the Crown as now settled in the House of *Hannover*, should not remain in its full Force, as it is secured by several Acts of Parliament, Our Posterity (for we of this Age must be safe during Her Majesty's Life) may fall into the same Dangers which we have happily escaped; since the same Religion will of Consequence make use of the same Means and Instruments to bring about its Designs; and all Papists hold themselves obliged by the Obedience they owe to Mother Church, to root out and extirpate what they call Heresie. It therefore rests upon all People, in their several Orders and Callings, so to bestir themselves, as to defeat the Intentions of those, who by instilling Sentiments about the Legitimacy of the Pretender, and other Illusions, would Unhinge the very Being of the Constitution, and make way for the Introduction of that Anarchy and Confusion, which they lay to the Charge of Men of Moderate and less Turbulent Principles. It is the Duty of every one of us, that has any Regard for the Welfare of his dear Country, any Love for his Family, or Bowels of Compassion for them that are to succeed him, to provide himself against the Sinister endeavours that are made use of by Priests and Jesuits in Masquerade, that infest our Cities, and go prouling

ing about like Wolves in Country Towns, to debauch our Understandings, and draw us from the Rules of Faith and Reason which we have hitherto entertain'd. Let us examine our selves for what Reason King *Jamies* and his Popish Posterity was entirely excluded for ever, from enjoying the Imperial Crown of these Realms, and we shall find the same Arguments to hold good for keeping them out, as we had at first to dispatch them from hence; not that there is any Reason to fear, whatsoever hints the Conduct of the Allies, the *Examiner*, or his Brother *Abel* give of their Aversion to the Succession by Law established, and their willingness to see Alterations made in that Settlement, but that it is so fix'd and secured upon an immoveable *Base* that nothing can shake it: But it is high time to look about us, when the Odium of Burning the City of *London*, is in our Publick Prints, taken off from the Papists, and cast upon the Protestants; and Dissenters are charged not only with setting Ambassadors Houses on Fire, but of new Designs to do further Mischiefs; to look out and see if there is not something more than ordinary upon the Anvil in a certain Popish Quarter, (I mention no one,) but its easy to judge by the following Pamphlet, what sort of Principles they were of that gave Being to the Truths contained in it.

testant Persecution upon the Protestants themselves, in the Month of *August* 1687, constituted several Ecclesiastical Commissioners, of which Number were the Lord Archbishop of *Canterbury*, Dr. *San-croft*, the Lord Chancellor *Jefferies*, the present Bishops of *Durham* and *Rochester*, the Lord *Crew*, and Dr. *Sprat*, the late Earl of *Rochester*, the late Earl of *Sunderland*, and the Lord Chief Justice *Herbert*: The Tenor of the Commission was, that on all, or any three of them, of whom the Lord Chancellor was always to be one, devolved the whole Care of the Church, and it was the largest in extent for Power, that had been known in *England*. ‘ For they had Power to sup-
 ‘ press all sorts of Abuses, or whatever
 ‘ they thought fit to call so; to inform
 ‘ themselves of, and to punish all Adul-
 ‘ teries, Incests, Fornications, unlaw-
 ‘ ful Marriages, and all other Crimes
 ‘ and Offences punishable by the Eccle-
 ‘ siastical Laws. They had also Power
 ‘ to proceed against all that were
 ‘ found guilty by Interdiction; Su-
 ‘ spension, and Excommunication; and
 ‘ in general, by all manner of Ecclesi-
 ‘ astical Penalties and Censures. Their
 ‘ Commission extended over all the
 ‘ whole

‘ whole Kingdom, and they had further
 ‘ Authority to visit the Two Universi-
 ‘ ties, the Cathedrals, all the Collegiate
 ‘ Churches, Parish Churches, Schools,
 ‘ Hospitals, and other Houses, under
 ‘ Ecclesiastical Jurisdiction. For the Go-
 ‘ vernment of which they had full Power
 ‘ to make new Laws and Regulations,
 ‘ and to Abolish or Reform the Ancient
 ‘ Constitution, notwithstanding any
 ‘ Priviledges, Rights, Customs, Prero-
 ‘ gatives, or Exemptions to the contrary
 ‘ whatsoever. And all their Acts were
 ‘ to pass under a peculiar Seal, in the
 ‘ Custody of their Secretary or Register,
 ‘ having this Inscription, *Sigillum Regiæ*
 ‘ *Majestatis ad Causas Ecclesiasticas.*

The most Zealous and Vigorous in the
 Execution of this Commission, as being
 thought to be the chief promoter of it,
 was the Lord Chancellor; for some of the
 rest, as well out of Honour as Conscience,
 refused to sit or meddle in it. Upon
 which the Commission was alter'd, and
 the Bishop of *Chester*, Lord Chief Justice
Wright, and Baron *Jenner* were put in
 their Rooms. Therefore whether it
 was to exert his Power and shew his Au-
 thority, or whether push'd on, by the
 Revengeful Temper of his Royal Supe-

rior, he fix'd upon one of the most Noble, most Eminent, and most Worthy Prelates in the Nation, well knowing that when the Cedars where once fell'd, the Work would be less difficult to grub up the more inconsiderable Underwood. And indeed the meaness of the Occasion carried on with so high a Hand, against so Noble a Peer and Prelate, was so trifling and frivolous, that it had been enough to convince the World, that it was a malicious Prosecution. For some Court Sycophant had been so extraordinarily Officious; to inform the Chancellor, or some other particular Favourite, that Dr. *Sharp*, Rector of *St. Giles's* in the Fields, had utter'd in his Pulpit such and such Seditious Words against the Government, or at least, such Expressions as did not agree with the Times, or suit the Humour of the Court, which in those Days was a handle sufficient to give Rise to a Complaint. These Words, as they were Penn'd down, were carried to the King, and shewed him through a multiplying Glass, with those Aggravations, that his Majesty grievously incensed, order'd one of his Secretary's of State, to send away a Letter to the Bishop of *London*, who

who was his Dioceſan, to give him to underſtand, that he was fully ſatisfied, ' That Dr. *John Sharp*, Rector of St. ' *Giles's*, contrary to his Royal Com- ' mands and Direction to the Archbishops ' of *Canterbury* and *York*, &c. had pre- ' ſumed to make unbecoming Reflecti- ' ons upon Him and his Government, on ' purpoſe to bring the People into an ' ill Opinion of both. And therefore he ' Required and Comanded the Biſhop ' to Suspend him forthwith from Preach- ' ing in any Part of his Dioceſs, till ſa- ' tisfaction ſhould be given, and the ' King's Pleaſure farther known.

In Anſwer to this, the Lord Biſhop modestly excuſed himſelf, in a Letter to the Earl of *Sunderland*, which he ſent to *Windsor*, where the King then kept his Court, by the Doctor himſelf; where- in, that good Prelate, after he had expreſſed his Readineſs to yield Obedience to the King, in all things that he could do with a ſafe Conſcience, gave his Lordſhip to underſtand, that it was impoſſible for him to comply with his Maſtey's Command, when the Proceeding was contrary to Law. Since being to be Judge in the Caſe, and fully ſatisfied, that none could Condemn any

one, before they had knowledge of the Cause, and had heard what the Person could say in his Defence, he found himself obliged to go by the Ordinary Forms of Justice. However, he intimated to his Lordship, that he had sent to the Doctor, and inform'd him of the King's Displeasure, and found him ready to give full Satisfaction to his Majesty. To which purpose, he made him the Bearer of his Letter, no doubt, in hopes that being introduc'd into the Royal Presence, the Doctor might have had an Opportunity of clearing himself. But neither could the Doctor obtain Admittance, nor the Bishop a Return of his Answer to the King's Commands.

The Doctor therefore returning *re infecta* to London, and consulting what was the best Course to be taken in that Conjunction, within a Day or Two drew up a Petition to the King, with which he hastned again to Court, setting forth his great unhappiness to lie under the King's Displeasure, by reason of which, he had, ever since notice given of it, obtain'd from the publick Exercise of his Function, and had ceased giving his Instructions to that Flock of which the Holy Ghost had made him
Over-

Overseer. In the next place he declar'd how faithfully he had endeavour'd. in his Station, to serve both his Majesty, and the late King his Brother, and how he had been so far from venting any thing in his Pulpit, that might tend to the Disturbance of his Majesty's Government, that he had always set himself against all sorts of Doctrines and Principles that tended that Way. Yet notwithstanding all this, that if any thing had unwarily slip'd from him, that might have been capable of giving his Majesty-Offence, he testified his Sorrow for so doing, and his Resolutions for the future to be more careful of his Duty, professing that he had no ill Intentions in what he had said, and praying that his Majesty would lay aside his Displeasure conceived against him, and restore him to his Favour.

But the Doctor, who would fain have presented this Petition to the King, found all his Labour was in vain, for he was denied access to his Majesty, which was no more than what he might have well foreseen; tho' it behov'd him to try all means to recover his Reputation from the severe Oppression of such a Contumely.

All this while the High Commissioners, not finding the Doctor Suspended, according to the King's Order, had what they look'd for, in regard the Pique was not so much against the Rector of *St. Giles's*, as their great Eye sore, the Bishop of *London*. To him therefore they dispatch'd their Citation to make his Appearance in their Court, and to Answer to such Matters as should be objected against him. Accordingly upon the Fourth of *August*, his Lordship appeared in the Council Chamber at *White-hall*, when were present the Lord Chancellor, the Bishops of *Durham* and *Rocheſter*, the Lord Treasurer, the Lord President, and the Lord Chief Justice *Herbert*: And then it was that the Chancellor directing his Speech to the Lord Bishop of *London*, told him to this Effect, *That the Lords there present had received Orders to inspect all Ecclesiastical Affairs and Persons, and had commanded him to Cite his Lordship before them, and therefore desired his Lordship to give a positive and direct Answer to his Question, which was, Why he did not Suspend Dr. Sharp, when the King had sent Him express Orders so to do, and had signified to him, that it was for Preaching seditiously, and against*
the

the Government? His Lordship gave in for Reply, ‘ That true it was, he had
 ‘ received such an Order, and that if he
 ‘ had done contrary to his Duty it was
 ‘ his Ignorance, and not a Willful Neg-
 ‘ lect: That he had been always ready
 ‘ to serve his Majesty ; but it in this
 ‘ Affair he had not complied, it was
 ‘ because he was told he could not Le-
 ‘ gally do it.

The Chancellor answer’d, *That his Lordship ought to have known the Law, and that it was a wonder he did not: However that the King was to be obey’d, and therefore if his Lordship had any thing to say, the Court was ready to hear him.* Upon which his Lordship desired a Copy of the Commission, and of his Charge, and
 ‘ an Allowance of Time, as one that
 ‘ was not appriz’d before this, of what
 ‘ would be the substance of his Accusa-
 ‘ tion, and consequently could not be
 ‘ provided for his Defence.

The Chancellor, then said to his Lordship, *That if by desiring a Copy of the Commission his Lordship designed to with quarrel the Jurisdiction of the Court, he knew what farther to say: Otherwise, that as no Commission could be granted, so it was unreasonable for his Lordship to desire it, since it*
 might

might be had at every Coffee-house for a Penny, and he made no Question but his Lordship had seen it.

But the Bishop denied that ever he had seen it, or that he desired it with any intent to dispute the Legality of the Court: But because it was a Thing altogether *new* to this Generation, and therefore something might be found in it to instruct him in his Answer; And then proceeded to desire that he might read the Commission himself, or hear it Read: Which being a Request that the Chancellor pretended he could not grant of himself, his Lordship withdrew for a Quarter of an Hour, and then returning, the Chancellor address'd himself to him, and told him, *That the Commissioners were of Opinion, That his Request was unreasonable, since if every one that appear'd before them should Challenge a sight of their Commission, it would be too great a waste of their Time, who sat there for the Dispatch of many Affairs, and so put the Question again to his Lordship, in short, Why he did not Obey the King?* To which his Lordship replied, 'That tho' it was a short Question, it required more Words to be Answer'd by, desiring the Court likewise to consider, That
' he

‘ he was a Peer and a Bishop, and one
 ‘ that had a Publick Trust, and there-
 ‘ fore was willing to behave himself as
 ‘ became a Person in those Capacities.

After this his Lordship desired Time to be allow’d him, and insisted that it might be prolonged to the first Day of the following Term. But that was judg’d too unreasonable, in Regard that the King’s Business could not admit of such Delays: So that all the Respite the Bishop could obtain was only for a Week, and so the Court adjorn’d to the Ninth of *August*. When his Lordship again appearing told the Chancellor, ‘ That he
 ‘ could not meet with the Commission,
 ‘ which had been told Him was upon
 ‘ Record, and in every Coffee-house,
 ‘ tho’ he had employ’d a whole Week
 ‘ in searching for it. But as to that the
 Chancellor again Observ’d to him, *That the Court would admit no Quarelling with their Commission, not being such Fools to sit there, if they were not well assured of the Legality of it* Whereupon his Lordship signified to the Chancellor, ‘ That he
 ‘ had other Reasons to desire a sight of
 ‘ the Commission: For that perhaps it
 ‘ might not reach Him as a Peer, and a
 ‘ Bishop, or not come up to the parti-
 ‘ cular

cular Case, and therefore insisted upon a longer Day ; yet not refusing to give in such an Answer as he had prepared, if there were no other Remedy. He also farther urged, that the Council in whom he most confided was out of Town.

Upon this his Lordship being desired to withdraw, and after a Quarter of an Hours Debate, called in again, the Chancellor harped upon the same string, of not admitting any Quarrels with the Jurisdiction of the Court. However, being willing, as he pretended, to pay all due Respects to his Lordship, he put the Question to him, What longer Time he desired the Grant of ? And his Lordship saying, he should be contented with a Fortnight (for he found they were very sparing of their precious Moments) it was readily agreed to by the Court.

And now the Day came when the Bishop was to make his last and peremptory Appearance, who after he had, by way of a preparatory Address, desired all the Court, That no Misrepresentation might be put upon his Words, gave the Court to understand, that his Council had informed Him, ‘ That their
‘ Pro-

‘ Proceedings were directly contrary to
 ‘ the Statute Law, which they were
 ‘ ready to make out, if the Court would
 ‘ be pleased to hear them. To which,
We will not hear you, nor your Council nei-
ther in this matter, replied the Chancel-
 lor. Words that certainly could not be
 spoke without a prevailing Passion.

Then his Lordship reminded the
 Court, ‘ That he was a Bishop of the
 ‘ Church of *England*, and by the parti-
 ‘ cular Law of the Land, was to be
 ‘ Tryed by his Metropolitan and Suffra-
 ‘ gans; and therefore hoped his Lord-
 ‘ ship would not deny Him the Right
 ‘ and Priviledge of Christian Bishops.
 But this was over-ruled by the Chancel-
 lor, with a pretence, That *the Court had*
Original Jurisdiction.

After this his Lordship proceeded in
 his Plea, by saying, ‘ That what He was
 ‘ accused of, was before the Date of the
 ‘ Commission, which empower’d them
 ‘ only to censure Faults committed after-
 wards. In answer to which, the Lord
 Chancellor seem’d to grant some part of his
 Lordship’s Assertion, but cursorily told
 Him, *There were general Clauses that took in*
Things past, as well as those that were to
come. Hereupon his Lordship protesting
 in

in his own Right, as a Subject to the Laws of the Realm, and as a Bishop to the Rights and Privileges of the Church, gave in his Answer, and as he withdrew, left Dr. *Sharp's* Petition upon the Table, which the King had refused to accept.

Upon the Bishop's return, the Chancellor told Him *They were not concerned in Dr. Sharp's Petition, but that, if he desired it, his own Answer should be read:* To which his Lordship replied in the Affirmative, and farther added, ' That he had consulted his Council, and that the Law said, That what was done by Advice of Council, should not be interpreted to be done *Maliciously* or *Obstinately*. That if a Prince required a Judge to execute a Command not agreeable to Law, it was his Duty, *rescribere & reclamare Principi*, which he had done in Writing back to the Lord President. And in the next place, That he had done in effect what the King Commanded, for that he advis'd Dr. *Sharp* to forbear Preaching in his Diocese, which he had done accordingly. After this the Bishop's Answer was read, and then his Lordship being ask'd, *What he had more to say?* Desired his Council might be heard. The Consideration of which Request

Request took Half an Hours Debate, when his Lordship being called in again, his Council were admitted, (*viz.*) Dr. *Oldys*, Dr. *Hedges*, Dr. *Brice*, and Dr. *Newton*.

Dr. *Oldys*, insisted, ‘ That there was no such Thing as *Suspending* in their Laws; so that it should have been *Silencing* the Doctor: For that, *Suspensions* required Citation, Form of Proceeding, Judgment, and Decree, and that to act otherwise was contrary to the Law of God, of Nature, and of all Nations in all Ages. *To this he added*, ‘ That if it were only Silencing the Doctor, then the Bishop had Executed the King’s Commands, by sending for Dr. *Sharp*, shewing Him the Letter from Court, and advising Him not to Preach, which the Doctor had not done after the Time of Advice; so that the King’s Injunction was in Effect obey’d and fulfill’d.

Dr. *Hedges* argued, ‘ That the Bishop could not *Suspend* the Doctor, in regard that the Act of Suspension was a Judicial Act: And therefore if the Bishop, as a Judge, had Suspended the Doctor before Hearing, he had be-

‘ gun

‘ gun at the wrong End, seeing it had
 ‘ been a Judgment before press’d.

Dr. *Brice* Pleaded much to the same
 purpose; but Dr. *Newton* went farther,
 and affirm’d, ‘ That the Bishop was so
 ‘ far from being Disobedient, that he
 ‘ was Obedient to the King. For since
 ‘ he did *rescribere*, and heard not the
 ‘ further Pleasure of the King, he ought
 ‘ to conclude, that the King was satisfi-
 ‘ ed with what he had Written, ac-
 ‘ cording to his Duty, and that His Ma-
 ‘ jesty had revers’d his Commands.

After the Bishop’s Council had con-
 cluded, his Lordship offer’d to the Court,
*That if through Mistake he had erred in any
 Circumstances, he was ready to beg the King’s
 Pardon, and should be very willing to make
 any Reparation of which he was capable.*
 Which said, his Lordship withdrew for
 Half an Hour, while the Commissioners
 debated among themselves, whether it
 appear’d that he was any ways guilty of
 Contumacy, and came to a Decisive Con-
 clusion that he was, contrary to all Rea-
 son, Truth and Justice. But not having
 consulted the Will of the King, which
 was more prevalent with them than
 Truth, Reason, Justice, or any other
 Con-

Consideration, they determin'd with themselves to put off passing Sentence upon Him, till his Majesty's Opinion was known. Pursuant to which, his Lordship was again call'd in, and told by the Chancellor, who was not only the Mouth, but the Guide and Director of the rest of the Commissioners, that the Court expected his Appearance again upon the *Monday* following. Which being complied with on the part of his Lordship, he was desired to sit down (a Request never made to Him before) and to hear his Sentence. It was set down in Writing, and read according to the Order of the Commissioners, after the Chancellor had Harangued upon the Lenity of it, importing, That *Henry* Lord Bishop of *London*, being conven'd before the Commissioners for Ecclesiastical Affairs, for his Disobedience and other Contempts; and being fully heard, upon mature Deliberation of the Matter, was by them declared, decreed, and pronounc'd Suspended from the Function and Execution of his Episcopal Office.

In pursuance of which Sentence, an Order was sent by the Messengers attending the Court, to the Dean of *St. Pauls*, enjoining him to cause the said

Sentence to be affixed upon the Door of the Chapter-House, and the *South* Door of the said Cathedral, That publick Notice might be taken of the said Suspension ; an Office which the Reverend Dean, Doctor *Stillington*, little cared to Execute ; but the Asperity of the Times was such that he reluctantly submitted to it, not knowing what the Consequences might be of a Refusal.

The Twelve Judges had it seems, previous to this Act of the Commissioners for Ecclesiastical Affairs, to which that Court owed its very Being, after Debating together for some time, whether the King could dispense with any Person from taking the Oaths and Test, before he was admitted into any Office, or Place of Trust ; all unanimously concluded except one, who was Sir *Francis Pemberton*, ‘ That the King was an In-
 ‘ dependent Prince ; That the Laws of
 ‘ the Kingdom were the King’s Laws ;
 ‘ That the Kings of *England* might di-
 ‘ spence with all Laws that Regarded
 ‘ Penalties and Punishments, as often as
 ‘ necessity required : That they were
 ‘ Judges and Arbitrators, who had
 ‘ Power to Judge of the necessity,
 ‘ which might induce them to make
 ‘ use

' use of those Dispensations: And lastly,
 ' That the Kings of *England* could not
 ' renounce the Prerogatives annexed to
 ' the Crown. By Vertue of which
 Concessions and Opinions of the Judges,
 a Gate was open'd to all the Roman Ca-
 tholicks to enter into all Employments of
 the Kingdom. Accordingly his Army,
 his Fleet, his Council, his Courts of
 Judicature, and his own Royal Pallace
 were open to them; upon which a cer-
 tain Gentleman was pleas'd to make
 these Observations upon the change of
 Laws, according to Times and Places.
There is nothing, said he, which goes by
the Name of Just or Unjust, which does not
change its Quality, according to the change
of the Climate. Three Degrees of Elevation
of the Pole ranverse all Law. The di-
stance of a Meridian, determins the Right
of Possession. Fundamental Law alters,
and Property has its Epochs. A pleasant
 sort of Justice, when a River or a
 Mountain shall set Bounds and Limits
 to it; Truth on this side the *Pyreneans*,
 and Error beyond it.

The Result of this Determination was,
 That his Majesty issued out his Declara-
 tion for Liberty of Conscience, and taking
 off the Penal Laws, which was ordered

to be read in all Churches, and to be sent and distributed by the Bishop, throughout their severall and respective Dioces for that purpose: But notwithstanding Legions of Loyal Adresses and returns of Thanks to his Majesty for his great Indulgence to tender Consciences, yet the Rigorous Proceedings of his Commissioners against the Lord Bishop of *London* the foregoing Year, and against the Vice-Chancellor of *Cambridge*, and the Fellows of *Magdalen* College in *Oxford* in 1688, were such Evident Breaches of the Declaration, that the Dissatisfaction of the Nation becoming so general, it was easie to portend, that nothing so violent could be diuturnal. For such was the precipitancy of the Popish Counsels at that Time, that they failed by their own haste to introduce Popery into *England*, as some Men lose their Aim by making haste to be Rich. These two Prosecutions being both of the same Year, it may not be improper to put them both together for the Series of the Story's sake.

The first of these two Tempests fell upon the Vice-Chancellor, and Delegates of the Universities of *Cambridge*, for refusing to admit one *Alban Francis*
a Bene-

a Benedictin Monk, to the Degree of Master of Arts, without taking the Oaths. For this *Alban Francis* being for his Religion Sake a Favourite at Court, had so far prevailed with those who were resolved to lay violent Hands upon all those Privileges and Properties of the Protestants, which they had made the King promise to preserve and protect; that he obtained a Letter under the King's Sign Manual, the Substance whereof was, ' That hearing much in Commen-
' dation of one *Alban Francis* a Bene-
' dictin, the King was pleased to Com-
' mand the University to admit him to
' the Degree of Master of Arts, without
' administering to him any Oath or Oaths
' whatsoever. notwithstanding any Law
' or Statute to the contrary, which the
' King was pleased to dispense with in
' Favour of the said *Alban Francis*.

This Letter arriv'd at *Cambridge* on the Ninth of *February*, but the Chancellor not being over hasty, did not read it to the Senate, till the Twenty first of the same Month, where it was Unanimously agreed by the Members voluntarily to testify their Concurrence with the Vice-Chancellor, and to advise him to forbear admitting the said

Francis, till the King had been Petition'd to revoke his Mandate. Upon which, the Vice-Chancellor wrote a Letter to the Duke of *Albemarle*, then Chancellor, to beg his Intercession with the King. To this the Duke returned for Answer, ' That he had been a Suitor for that end, ' but without any Effect, nevertheless, ' it was probable that such a Body as the ' University, Concurring and Signing a ' Petition, would prove much better ' and more successful. However to prevent the Inconvenience of being deem'd Tumultuary Petitioners, it was thought more advisable to send up the Sense of the whole Body, by particular Messengers from each House. To which purpose, Mr. *Smault*, Professor of Cusuistical Divinity, was made choice of by the Non Regents, and Mr. *Norris* Fellow of *Trinity* College by the Regents. The Substance of what they deliver'd was, *That the Senate thought the Admission of Mr. Francis, without the usual Oaths, Illegal and Unsafe, and therefore judg'd it advisable that the King should be Petitioned*: Which Opinions were so freely given to the Messengers from each House, and the Thing so unanimously approved of, that the only Persons who

oppos'd

oppos'd were three Papists and One or Two more, that were for running with the stream of the Times. In the mean time the Squire Beadles and Registers were sent to let Mr. *Francis* know, *That the Senate was ready to admit him, provided he would Swear as the Law appointed*; which he refused, insisting upon the King's Dispensation, and instantly took Horse for *London*, to prepossess his Patrons at *Whitehall*, with the behaviour of the University.

This the Senate being given to understand, dispatch'd after him a Squire Beadle with two Letters; One to the Duke of *Albemarle*, and another to the Earl of *Sunderland*. He readily was admitted to the first, but could get no Access to the last, and therefore sent in his Letter, ' That imported a most humble
' Submission to the King. with most
' Solemn Protestations, That what was
' done proceeded from no Principle of
' Stubborness or Disobedience, but a
' Conscientious Sense of their Obligati-
' ons to Laws and Oaths, and a Re-
' spectful Intimation, That they were
' ready to Petition the King that it might
' be admitted: But not daring to ap-
' proach Him without some significati-

' ons, that it would be acceptable, they
 ' applied themselves to his Lordship,
 ' desiring him, to do the University the
 ' Favour to mediate for them. But the
 Officer was dismiss'd without any Satis-
 factory Answer: Instead of which a
 second Letter was sent down to the Uni-
 versity, with an Additional Clause to
 give their Compliance to the King's Will,
 and refuse it at their Peril. Which being
 likewise read in a full Senate, two other
 Letters were prepared, one more large
 and copious for the Duke of *Albemarle*,
 and another shorter and less particular
 for the Earl of *Sunderland*; and Mr.
Bradock of *Catherine Hall*, and Mr. *Stan-*
hope of *Kings College* were dispatch'd
 away to *London* with the said Letters,
 and other Instructions to make the most
 proper Applications for the service of the
 University: Upon their coming to
London, the Duke of *Albemarle* omitted
 nothing that lay in his Power to serve
 them, though to no purpose. But from
 the Earl of *Sunderland*, they could
 receive no other Answer than this, *That*
the King had seen the Vice-Chancellor's
Letter, was offended at the Proceedings of
the University, and would issue out his
Orders very shortly to give a further An-
swer.

What

What that Answer was, in a little time appear'd; for *Atterbury* the Messenger soon was sent to *Cambridge* with a Summons from the Ecclesiastical Commissioners, Commanding the Vice-Chancellor to appear in Person, and the Senate by themselves or their Deputies, to answer to such things as should be objected against them in his Majesty's behalf, who were

Dr. *Peachell*, Vice Chancellor.

Dr. *Eachard*, Master of *Catherine* Hall.

Dr. *Babington*.

Dr. *Smault*.

Dr. *Cook*.

Mr. *Billers*.

Mr. *Newton*.

Mr. *Smith*. And

Mr. *Stanhope*, all Fellows of particular Colleges.

Upon their Appearance in the Council-Chamber, where were present the Lord Chancellor *Jefferies*, the Lord President the Earl of *Sunderland*, the Earl of *Mulgrave* now Duke of *Bucks*, the Earl of *Huntingdon*, the now Bishops of *Durham* and *Rochester*, and Lord Chief Justice *Herbert*, the Vice Chancellor was
ask'd

ask'd, Why he had not obey'd the King's Command in behalf of Mr. *Francis*? To which the Respondent desiring Time to make a suitable Reply, after Three Quarters of an Hours Debate, the Register was order'd to tell him by word of Mouth, that the Lords had granted Him a Weeks Time.

The Day appointed being come, the Vice-Chancellor put in his Answer in Writing in the Name of the University and Senate of *Cambridge*, containing a Citation of several Statutes, one made in the first year of Queen *Elizabeth*, Entituled, *An Act to restore to the Crown the Antient Jurisdictions over the State Ecclesiastical and Spiritual, and abolishing Foreign Powers repugnant to the same*, Wherein it was Enacted, *That every Person that should be promoted to any Degree of Learning in the University, should take the Oath therein mentioned, whereby he should declare and acknowledge the King or Queen Reigning to be the only Supreme Governour of this Realm, as well in Spirituals as in Temporals.* A second Act made in the Fifth Year of the Queen to the same effect. Likewise a Third Statute made in the Third year of King *James* the First, together with a Fourth made in the Ninth year of the same

same King, Entituled, *An Act for Admi-
 nistring the Oath of Allegiance*, by which it
 was Enacted, *That the said Oath should be
 taken by the Vice Chancellor, all the Princi-
 pals of Houses, and by every other Person
 that should be promoted to any Degree, &c.*
 Upon which it was farther insisted,
 ‘ That both Himself as Vice-Chancellor,
 ‘ and every Member of the Senate had
 ‘ taken the said Oath: That the said Sta-
 ‘ tutes were made for the Preservation of
 ‘ the Doctrines professed by the Church
 ‘ of *England*, and the King’s Rightful
 ‘ Power and Prerogative; and that they
 ‘ had offer’d the said Oath to *Alban Francis*,
 ‘ but he refused to take it. That the
 ‘ admitting him without the said Oaths,
 ‘ had been contrary to the said Statutes,
 ‘ and a Breach of Trust as well in the
 ‘ Vice-Chancellor as the Senate, and a
 ‘ Violation of their Oaths, and there-
 ‘ fore they could not admit him. Lea-
 ‘ ving it further to their Lordships Con-
 ‘ sideration, whether their Case were
 ‘ under their Cognizance or no, since
 ‘ the taking a Degree of Master of Arts,
 ‘ and the admitting, or refusing to ad-
 ‘ mit to such a Degree, was no Ecclesi-
 ‘ astical Matter, but of Temporal Con-
 ‘ cern. Lastly, They offer’d to their
 ‘ Lord-

‘ Lordships, that by the Statute of the
 ‘ 16th year of King *Charles*, there was a
 ‘ Clause, *That no New Court should be*
 ‘ *erected or appointed within the Realm,*
 ‘ *which should have like Power, Jurisdiction*
 ‘ *or Authority as the High Commission then*
 ‘ *had, or pretended to have; but that all*
 ‘ *such Commissions and Grants, and all*
 ‘ *Powers and Authority granted thereby,*
 ‘ *should be utterly void.*

The Answer being read, and the
 Court up, the Register sent to the Vice-
 Chancellor and Delegates to speak with
 them in the Council Chamber, where he
 acquainted them, That the Commission-
 ers had put off all further Consideration
 of their Business till the next *Saturday*
 following, which would be the 7th of
May, at what time the Commissioners
 expected their attendance again. In the
 mean time there was a Report spread
 about the Town, that the Lords had re-
 ceiv'd a new Commission, which tho' it
 were true, as appear'd by the Alteration
 of some Commissioners, and would have
 been a good Pretence for Beginning all
 again, and gaining of Time; yet, be-
 cause the Gentlemen of *Cambridge* could
 not prove it, they went on as before.

—And now *Saturday* being come, and the Vice-Chancellor and Delegates appearing, the Lord Chancellor *Jefferies* started a Question to the First, and ask'd him, What the Oath was which he had taken? To this, the Vice-Chancellor replyed after some Heitiation, ‘ That it
 ‘ was in substance, to Administer or Exe-
 ‘ cute the Office of the Vice-Chancellor,
 ‘ as it was Stated by the Statutes of the
 ‘ Univerſity, and the Laws of the Land. From hence another Question aroſe, Whether he did not remember any Maſter of Arts made without Oaths? And one Doctör *Lightfoot* was inſtanc'd. But then Doctör *Cook* affirmed that Doctör *Lightfoot* did ſubſcribe to the Thirty Nine Articles, of which the Firſt was the King's Supremacy, and the Lord Chancellor himſelf acknowledg'd that *Subſcribing* was *Swearing*.

Hereupon a Third Question was put, Whether the Vice-Chancellor knew any Mandates from the King reſuſed by the Univerſity before? In Answer to which the Caſe of one *Tatnel*, a Nonconformiſt Miniſter was urged, in whoſe Behalf King *Charles* the Second, ſent his Mandate to the Univerſity, but that *Tatnel* reſuſing to take the Oaths, and the Mat-
 ter

ter being represented to the King, he recalled his Mandate. After these and some other Trifling Questions put by the Lord Chancellor, he shortned the Business, commanded the Company to withdraw, and in a little time, ordering them to be called again, proceeded to pronounce Sentence upon the Vice-Chancellor, as being Guilty of great Disobedience to the King's Commands, and other Crimes and Contempts, which was,

‘ That he should be deprived of his Office of Vice-Chancellor, and Suspend-
 ‘ ed *ab Officio* and *Beneficio* of his Head-
 ‘ ship of *Magdalen College*, and that he
 ‘ should not presume to meddle with any
 ‘ of the Publick Business of the Univer-
 ‘ sity. Which Sentence, was afterwards drawn up in Form, put in Writing, and fix'd upon the Publick School Doors, and the Gates of *Magdalen College*; and Dr. *Balderson* of *Emanuel College* was chosen to succeed him in the Office of Vice-Chancellor. Thus was the Gravity and Learning of the Famous University of *Cambridge* in a fair way of being trampled down, to let in an Inundation of Silly and Illiterate Popish Priests and Monks, who lay ready to pop into the Betheldas of every Vacancy, by the

Af-

Assistance of their Angels at Court.

The next *Religious and Inevitable* Observance of the Declaration, was the Prosecution of the Gentlemen of *Magdalen College* in *Oxford*, upon a Court Quarrel of the same Nature. For, the Presidentship of that College being vacant, by the Death of *Dr. Clark*, a very Learned and Worthy Person, Notice was given according to the Tenor of the Statute for that Purpose, by the Vice-President, for a New Election, by fixing a Citation upon the Chappel Door, intimating the Vacancy, together with the Time and Place, when and where it was to be made. However, understanding that the King had granted his Letters Mandatory, in Behalf of one *Mr. Farmer*, they sent a Petition to Court, wherein they represented to the King, ‘ That in
 ‘ Regard the said *Mr. Farmer* was inca-
 ‘ pable, by their Statutes, of being Pre-
 ‘ sident, they therefore besought his
 ‘ Majesty to leave them to a free Ele-
 ‘ ction, or to recommend to them some
 ‘ other Person, who was capable by those
 ‘ Statutes of being admitted into that
 ‘ Office. Soon after this, the King’s Letters arriv’d, and the Fellows were Summon’d together, to know of them,
 whe-

whether they would Elect Mr. *Farmer* in Obedience to the King's Mandate? To which they Answer'd, That in Regard they had a Petition then lying before the King, they thought to stay till his Majesty's Pleasure was known thereupon. At length, but not before the utmost Time appointed by the Statutes was come, they received only a short Answer from the Lord President, *That the King expected to be obeyed.* But then it being the Sense of the Fellows, that they ought to proceed to the Election of a President, according to the Statute, Dr. *Hough* (now Bishop of *Litchfield* and *Coventry*) was Duly and Legally chosen, and declared President; who being afterwards presented to the Visitor, Dr. *Peter Mew*, Bishop of *Winchester*, was Sworn, Admitted and took his Seat in the Chappel.

In the mean time to mitigate the King's Displeasure, the Fellows had taken all the Care imaginable by Petitioning the King, and by Writing to their Visitor, and Duke of *Ormond* Chancellor of the Univerſity, ' setting forth
 ' their deep Affliction to find themselves
 ' reduced to that Unfortunate Necessity
 ' of either disobeying the King's Will,
 ' or violating their Conſciences by No-
 ' torious

• torious Perjuries. And all this after
 • a gracious Declaration of *Indulgence*
 • and *Liberty* to tender Consciences.

The News of this Election soon reaching *White-hall*, a Letter was presently sent from the Lord President of his Majesty's Council, the Earl of *Sunderland*, to the College, giving the Fellows to understand, That the King was surpriz'd at their Proceedings, and expected they should send him an Account of what had pass'd upon that occasion, upon which their Case was stated, and sent up to *London*, setting forth the Incapacity of the Person recommended, and the Obligation of Oaths, which they lay under, not to admit of any Dispensations by whomsoever procured or granted.

Hereupon a Citation follow'd from the Commissioners for Ecclesiastical Affairs, &c. requiring the Fellows, or such as they should depute, to appear at *White-Hall*.

The Delegates were Dr. *Aldworth*, Vice-President, Dr. *Fairfax*, Dr. *J. Smith*, Mr. *Hammond*, Mr. *Dobson*, and Mr. *Fairer*. Which Gentlemen appearing, and being demanded, why they refus'd to obey the King's Mandate, at the end

of the time limited by the Commissioners to make their Reply, put in their Answer in Writing to this Effect.

‘ That *Magdalen* College in *Oxford*
 ‘ was a Body Corporate, govern’d by
 ‘ Local Statutes granted by *Henry* the
 ‘ Sixth, for Him, His Heirs and Suc-
 ‘ cessors, and confirmed by several
 ‘ Kings of *England* : That by the said
 ‘ Statutes, the President was to be a
 ‘ Man of a Good Life and Understand-
 ‘ ing, and otherwise Qualified, so as to
 ‘ render him fit for such a Charge,
 ‘ That they were bound by Oath, not
 ‘ to admit any to that Office, but Fel-
 ‘ lows of their own, or of *New-College*,
 ‘ which their Founder himself was Fel-
 ‘ low of : That no Fellow was admit-
 ‘ ted, but he was first Sworn to observe
 ‘ all the Statutes and Ordinances of the
 ‘ College : And that they were further
 ‘ Sworn not to make use of, or consent
 ‘ to any Dispensations by what Autho-
 ‘ rity soever, or under what Form of
 ‘ Words soever granted. And therefore
 ‘ in Regard they could not comply with
 ‘ his Majesty’s Letters for the Election
 ‘ of *Mr. Farmer*, being a Person no way
 ‘ qualified, as the Statutes of the College
 ‘ required, without a manifest vio-
 ‘ lation

lation of their Oaths, and Hazard of
 ‘ their Legal Interest and Property ;
 ‘ they had Elected Dr. *Hough*, a Person
 ‘ every way Qualified as the Statutes
 ‘ directed, and according to their In-
 ‘ dispensible Obligations to observe the
 ‘ Founders Laws.

Here Dr. *Fairfax* desired to put in a particular Plea for himself, why he did not subscribe to the former, and further insisted, *That the Matter then before the Commissioners did not lie in that Court.* To which the Chancellor replied, *He was a Doctor of Divinity, not of Law.* But the Doctor desiring to know by what Commission they sat? The Chancellor grew into so violent a Heat, as to ask him, What Commission he had to be so impudent in Court? Told him he ought to be kept in a Dark Room: Ask’d the Fellows, Why they suffer’d him without a Guardian, and why they did not bring him, to him, to beg him? And then ordering the Fellows to withdraw, and after a full Hours Debate, order’d the Vice-President and the Delegates to appear upon *Wednesday* the Second of *June*. At which time the Fellows gave in their Reasons, why they did not Elect Mr. *Farmer*, ‘ As being a Person that had

' misbehaved himself while he was at
 ' *Trinity College in Cambridge*, where he
 ' had received Admonition from the
 ' Master, in Order to his Expulsion.
 ' That he had taught School in *Chippen-*
 ' *ham in Wilts*, without a License and
 ' under a Non-conformist Minister.
 ' That being enter'd in *Magdalen Hall*
 ' in *Oxford*, he was of so violent and
 ' troublesom a Temper, that to preserve
 ' the Peace of the Society, he was de-
 ' sired to leave the Hall. After which,
 ' being admitted into *Magdalen College*
 ' in *Oxford*, he declar'd, *That there was*
 ' *no Protestant but would Cut the King's*
 ' *Throat: However that he was really of the*
 ' *Church of England, only he made an*
 ' *Interest with some Roman Catholicks to*
 ' *get Preferment.* That at the very time
 ' the King's Letters came to the College
 ' in his behalf, he was at *Abingdon* in
 ' very ill Company, Drinking to ex-
 ' cess; and was one of those, that in the
 ' Night time, threw the Stocks into the
 ' River: For Proof of which, they
 ' deliver'd in Letters and Certificates
 ' under the Hands of several Persons.

These Objections against Mr. *Farmer*
 prevailed so far, that he was laid aside;
 but the Vice-President and Dr. *Hough*
 were

were both Suspended; the last under pretence of being unduly Elected; and the first, together with the rest of the Delegates, for Contempt of the King's Letters.

Yet, notwithstanding all this severity, the King was not thus satisfied, but at the Instigation of his Popish and other Evil Counsellors, resolved to clear the College of all its Protestant Members, and make that Wealthy and Lovely Foundation a Seminary for Priests of his own persuasion: For an Occasion had been found whereupon to ground a second Quarrel. The King upon the pretended Invalidity of Dr. *Hough's* choice, had sent another Mandate for admitting Dr. *Parker* the Bishop of *Oxford* to the Presidentship, well knowing that he was a Person that would be as certainly rejected as *Farmer*, being in every Respect as uncapable as he, only that the Bishop surpass'd him in Title.

These Letters Mandatory, were accompanied with a Letter from the Earl of *Sunderland* to the Senior Fellow, to let him know, That the King expected a ready Obedience to be paid to his Pleasure, and to desire him to send him a speedy Account of the Fellows Proceeding.

ceeding. But the Fellows still persisting in their Resolutions to observe the Statutes of the College according to their Oaths, nothing was done to the King's Satisfaction: So that upon his Majesty's coming in his Progress to Oxford, they were order'd to attend him at *Christ-Church* where then he lay, and where the King told them, *They had not dealt with Him like Gentlemen; but very Uncivily and Undutifully.* Upon which the Fellows falling upon their Knees, presented a Petition to his Majesty, containing their Reasons why they could not admit the Bishop, they being to the same Effect as those they had given for the Refusal of *Farmer*. But the King refus'd to receive it, and told them, *That they had been a stubborn and a turbulent College, and that he had known them to be so for Six and Twenty Years, taxing them with their Church of England Loyalty, and bidding them to be gone, and to know he was their King and would be obeyed.* After this he still persisted in his Passion, Commanding them again to be gone, and admit the Bishop of Oxford, threatening that they who refused it, should feel the weight of their Sovereign's Displeasure. And after a Second Election, which they went to

out

out of Complaisance to the King's Humour, rather than out of any Intention to disannul their former Choice, upon their confirming the Election of Dr. *Hough*, after the Royal Inhibition, bid them go and Elect the Bishop of Oxford for their President, or else they might expect to feel the weight of his Fland. Which Passion of the King, for such a Person as the then Bishop of Oxford, shew'd that either he cared very little what Persons he recommended, so they were proper for his turn; or else that he did it on purpose to be Vexatious to, and harraiss the Members of the Church of England.

But all these Threats not being of Force sufficient to induce the Fellows to give into the Sin, and contract the Guilt of Perjury, a sort of Sub-Commissioners for Ecclesiastical Causes, and Visitations, &c (*viz.*) the Bishop of *Chester*, Dr. *Cartwright*, Sir *Robert Wright*, Lord Chief Justice of the King's Bench, and Sir *Tho. Jenner*, one of the Barons of the Exchequer, were sent down to Oxford to Visit *Magdalen* College in particular. These Commissioners sat in the College Hall, when the Fellows appearing upon Summons before them,

desired a Copy of their Commission; which was denied them: After which Dr. Hough being ask'd, *Whether he would submit to the Visitation or no?* Declar'd in his own and a greater Number of the Fellows, *That they did submit to the Visitation as far as it was consistent with the Laws and the Statutes of the College, and no farther;* and desired it might be Recorded. Upon this the Lord Chief Justice, putting the Question, *Whether the Doctor thought they came to act against the Laws?* It was plainly told them by Him, *That their Commission gave them Authority to change and alter the Statutes, and to make new ones as they thought convenient: But that he had Sworn to admit, neither of any New Statutes, nor Alterations in the Old: And therefore he neither could nor would admit of any Alterations.* Several other Disputes fell out occasionally at that Appearance, but all concluded in this, *That the Bishop of Chester demanded all their Registers, with an Account of the Benefactors, what Money every one gave, for what Use, and how employ'd; as likewise a Copy of all their Leases which they had Lett for Two Years last past, to whom Lett, and what Fines they had received?*

At

At the next Sitting, Dr. *Hough* the President being called in by himself, was ask'd, Whether he submitted to the Decree of the Commissioners by which his Election had been declar'd Void? And gave for Answer, *That the Decree was a Nullity in it self, he having never been Cited, nor having ever appeared before them, and therefore he could not submit to that Decree.* The next Question put to him was, Whether he would deliver up the Keys of the Presidents Office and Lodgings to the Person appointed by the King to be the President? To which he replied with great Presence of Mind and Brevity, *That he had neither Seen nor Heard any thing to induce him to it.* Hereupon the King's Proctor stood up, and accused the Doctor of Contumacy: And the Bishop of *Chester* admonish'd Him three times to depart peaceably out of the Lodgings, and to Act no longer as President of the College; which being done, His Name was struck out of the Buttery Book, and the Fellows, and the rest of the Society, admonish'd in like manner no longer to submit to his Authority.

At the following Sitting, the Question was put to all the Fellows in general, Whether

whether they would assist at the Admission of the Bishop of *Oxford* to be Installed President by Vertue of the King's Mandate? To which it was Answer'd, almost *nemine Contradicente*, That they were under Oaths to the contrary, and therefore they could not do it.

The next Sitting, the Question being again put to several of the Fellows *seriatim*, Whether they would admit the Bishop of *Oxford* for their President? It was generally Answer'd, *That without deliberate and premeditated Perjury they could not do it.* But in the midst of this Examination, the President came into the Court without any Attendants, and applying himself to the Commissioners, 'Protested against all their Proceedings, and against all that they had done, or hereafter should do in Prejudice of his Right, as Illegal, Unjust, and Null, and therefore he appeal'd to the King in his Courts at *Westminster*. Upon which the Strangers and Scholars that were in the Hall gave a Hum, (which among them is a Token of Approbation,) which so incensed the Commissioners, that notwithstanding all the Protestations the President and Fellows could make, the

the Lord Chief Justice would not be pacified, but charging it upon the President, bound him in a Bond of a Thousand Pounds, with security to the like value, to appear at the King's Bench Bar.

This Act of Injustice being done, the Commissioners finding the Fellows so resolute in their Answers, Adjourned into the Chappel, and put Mr. *Wiggens* the Bishop of *Oxford's* Chaplain into the Presidents Stall (not one of the Fellows being present but only Mr. *Charnock*, who was afterwards Hang'd for the Assassination Plot in King *William's* time) where, as the Bishops Proxy, he took the Oaths, which the Statutes enjoin, together with the Oaths of Supremacy and Allegiance: After which he was conducted by the Commissioners to the Door of the Presidents Lodgings, where having knock'd thrice, and finding that no Body open'd the Doors, they returned to the common Room, and order'd a Smith to be sent for, to force them open: In pursuance of which, they gave Mr. *Wiggens* Possession of the Lodgings, where he Dined that Day, in Token of Absolute Possession.

After this, the former Question was again repeated to the Fellows, Whether they would submit to the Bishop of Oxford, as then Intalled President by Vertue of the King's Mandate. To which Dr. *Fairfax* resolutely made Answer, *That he neither could nor would obey the Bishop of Oxford.* And being ask'd, Whether he submitted to the Authority of the Court? He replied in the Negative, and denied it then, as he had formerly protested against it at *White-Hall.* Whereupon his Fellowship was immediately declared Vacant, and he commanded quietly to depart the College within Fourteen Days.

Dr. *Fulham* was the next who was particularly interrogated, whether he would obey the Bishop of Oxford? And made Reply, *That Dr. Hough being duly Elected and Admitted President, and having no way forfeited his Right, he could obey no other Person as President:* Adding withal, *That the Bishop had not Possession in due Form of Law, nor by proper Officers:* Which the Chief Justice looking upon as an Affront to his profound Knowledge in Law, Suspended him forthwith from the Profits of his Fellowship, till the King's Pleasure should be farther known.

The

The Commissioners had Thoughts of Cajoling the rest of the Fellows into an Absolute Submission to the King, by
 ‘ Acknowledging their Contempt of his
 ‘ Sacred Person, and his Letters, by
 ‘ promising to behave themselves after
 ‘ a more Loyal Manner for the Future,
 ‘ by owning the Proceeding and Legality
 ‘ of the Court, by imploring his Ma-
 ‘ jesty’s Pardon, and laying themselves
 ‘ at his Feet. But they finding that a
 general Submission, without Acknow-
 ledging themselves to have acted in
 Contempt of the King’s Authority
 would not serve, and being again de-
 manded, *Whether they would obey the Bishop
 of Oxford as their President?* All but one
 or two Unanimously Answer’d in the
 Negative. Thereupon after the Bishop
 of *Chester* who was premier Commis-
 sioner, had made a long Harangue, setting
 forth and aggravating to a high degree,
 the Quarrellom and Factious Humour
 of the Society in general, and their par-
 ticular Disobedience and Contumacy
 shewn to the King, in the Refusal, first
 of *Farmer*, and afterwards, of the Bishop
 of *Oxford*, proposd a Submission, for
 them to Sign, to the same Effect just
 mentioned: Which when all the Fellows,
 except

except Mr. *Thomas Smith*, and Mr. *Robert Charnock*, refused to Sign, they were all, to the Number of Six and Twenty, pronounced Guilty of Disobedience to his Majesty's Commands, and of persisting in their Contempt, and therefore adjudg'd to be deprived of, and Expell'd from their Respective Fellowships.

And, as if that Order had not been enough, by another Order of the Commissioners, they were all made incapable of being received or admitted into any Ecclesiastical Dignity, Benefice, or Promotion. And such as were not then in Holy Orders, were declared incapable of receiving, or of being admitted into the same. An apparent Badge of Popish Inhumanity against abominated Heresie, and no less vigorously prosecuted by their Protestant Fools.

And thus we come to one of the most daring Pieces of Malice, carried on by Wicked and Malevolent Counsellors, whose corrupt Dispositions push'd the King upon all manner of Extremes, and who, by running down all like a Torrent before them, were grown so hardy with success, as to attack no less than Seven of the Chief Prelates in the Nation at one Time.

For the King having made an Order in Council, by which the Bishops, as aforesaid, were required to cause his Declaration to be distributed through all their Dioceses, and to be read in all the Churches and Chappels throughout the whole Nation, through the pernicious Consequences of his Dispensing Power, the Lord Archbishop of *Canterbury*, together with the Bishops of *St. Asaph*, *Ely*, *Chichester*, *Bath and Wells*, *Peterborough*, and *Bristol*, drew up the following Petition, Entituled,

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,

‘ **T**HAT the great Aversness they find
 ‘ in themselves, to the Distri-
 ‘ buting and Publishing in all their
 ‘ Churches, your Majesty’s late Declara-
 ‘ tion for Liberty of Conscience, pro-
 ‘ ceedeth neither from any want of Duty
 ‘ and Obedience to your Majesty; Our
 ‘ Holy

‘ 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 Publickly acknow-
 ‘ ledg’d to be so by your Gracious Ma-
 ‘ jesty; 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 Convo-
 ‘ cation. But among many other Con-
 ‘ siderations, from this especially, be-
 ‘ cause that Declaration is founded upon
 ‘ such a Dispensing Power, as hath been
 ‘ often declared Illegal in Parliament, and
 ‘ particularly in the years 1662, and
 ‘ 1672, and the Beginning of your Ma-
 ‘ jesty’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 over all the Nation,
 ‘ and the solemn Publication of it, once
 ‘ and again in God’s House, and in the
 ‘ Time of Divine Service, must amount
 ‘ to in Common and Reasonable Con-
 ‘ struction.

they could. But the main Matter was how to pick a Quarrel with Persons of the Bishops exalted Stations and Characters; an Occasion for which soon presented it self from the Inventions of Court Lawyers: The Petition in their Opinion was brought in a Tumultuous Manner, and consequently was to be adjudged a Seditious Libel, and therefore liable, if not to a Legal, yet to a Formal Prosecution: In order whereunto the Bishops were sent for to appear before the Council, and by a Warrant of the Board committed to the *Tower*, which Warrant is necessary to be inserted *Verbatim*, because of the Pleadings that happen'd after by the Council Learned in the Law, on the part of the King as Plaintiff, and the Bishops the Defendants.

The Warrant ran thus: ' These are in
 ' his Majesty's Name, and by his Com-
 ' mand, 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 *Peter-*
 ' *borough*, and *Jonathan* Lord Bishop of
 ' *Bristol*, For Contriving, Making, and
 ' Publish-

‘ *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.*

It was Directed on the Top to Sir *Edward Hales* Baronet, Lieutenant of his Majesty’s *Tower of London,* or his Deputy; and Sign’d and Seal’d by *George Lord Jefferies,* Baron of *Wem,* Lord High Chancellor of *England;* *Robert Earl of Sunderland,* Lord President of the Privy Council; *Henry Lord Arundel of Warder,* Lord Keeper of the Privy Seal; *William Marquess of Powis,* *John Earl of Mulgrave* Lord Chamberlain, *Theophilus Earl of Huntington,* *Henry Earl of Peterborough,* *William Earl of Craven,* *Alexander Earl of Moray,* *Charles Earl of Middleton,* *John Earl of Melfort,* *Roger Earl of Castlemain,* *Richard Lord Viscount Preston,* *George Lord Dartmouth,* *Sidney Lord Godolphin,* *Henry Lord Dover,* Sir *John Earnly* Kt. Chancellor of the Exchequer, Sir *Edward Herbert* Kt. Chief Justice of the Common Pleas, and Sir *Nicholas Butler*

Kt. Lords of his Majesty's Privy Council.

Upon the 15th of the same Month, which was the first Day of the Term, after a Weeks Imprisonment, these Illustrious Fathers of the Church, were brought by a Writ of *Habeas Corpus*, to the *King's Bench Bar*, in order to be Charged with an Information, where they were attended in Court by these Noble Lords, who shar'd with them in their Concern for the Good of the Church, tho' not in their Sufferings for it; (*viz.*) the Lord Marquess of *Hallifax*, the Lord Marquess of *Worcester*, the Earl of *Shrewsbury*, the Earl of *Kent*, the Earl of *Bedford*, the Earl of *Dorset*, the Earl of *Bolingbroke*, the Earl of *Manchester*, the Earl of *Burlington*, the Earl of *Carlisle*, the Earl of *Danby*, the Earl of *Radnor*, the Earl of *Nottingham*, the Lord Viscount *Faulconbridge*, the Lord Grey of *Ruthyn*, the Lord *Paget*, the Lord *Chandos*, the Lord *Vaughan*, Earl of *Carbery*; besides abundance of Nobility under the Degree of Peerage, and other Gentry.

Being seated in the Court, where the Lords the Bishops had Chairs brought them near the Bar, the Return of the Writ of *Habeas Corpus* by the Lieutenant of the
Tower

Tower was first Read, after which Sir *Thomas Powis* Attorney General, desired of the Lord Chief Justice *Wright*, and the other Three Judges on the Bench, who were Mr. Justice *Holloway*, Mr. Justice *Powel*, and Mr. Justice *Alybone*, that the Information might be Read, and was oppos'd by Sir *Robert Sawyer*, Mr. Serjeant *Pemberton*, the Honourable Mr. *Finch*, now Lord *Guernsey*, Council for the Prisoners, who Pleaded to have the Lords the Bishops Discharg'd upon the abovemention'd Return of the Writ, and from their Commitment upon the Warrant aforesaid, as being not regularly in Court, to be charged with an Information. Mr. *Finch* in particular saying, when it was urged by the Chief Justice and the Council for the King, that it was not proper for those on the other side to speak, till the Information was read, ' That he beg'd leave of the Court with
 ' humble Submission, to affirm, this
 ' was the most proper time for them to
 ' make that Motion; for there was a
 ' *Habeas Corpus* Returned, that Return
 ' was Filed, and then the King's Council
 ' moved to charge the Lords with an
 ' Information, which Motion of theirs
 ' was too soon, unless the Lords were
 there

' there in Court, He meant *Legally* in
 ' Court; for no Man was in Court so as
 ' to be liable to be charged with an In-
 ' dictment, or Information, that was
 ' not brought into Court by Legal Pro-
 ' cess, or as a Prisoner upon a Legal
 ' Commitment: Thence he infer'd, that
 ' it did appear by the Return, that the
 ' Lords the Bishops were not there Le-
 ' gally in Court, because that Commit-
 ' ment of theirs, was not a Legal Com-
 ' mitment, and Two Objections he and
 ' the other Council had to it: The one
 ' was, That the Persons Committing
 ' had no Authority to Commit; for the
 ' Return said, that it was by Vertue of a
 ' Warrant under the Hands of such and
 ' such, being Lords of the Council; and
 ' they had no Authority to do this.
 ' The other Objection was (said he)
 ' that the Fact for which they were
 ' Committed they ought not to have
 ' been Imprison'd for, which he strength-
 ' en'd by declaring, That the Fact char-
 ' ged upon them was in the Nature of a
 ' bare Misdemeanour, and for such a
 ' Fact it was the Right of the Bishops
 ' (as Peers of the Realm, that they
 ' ought to be served with the usual Pro-
 ' cess of *Subpoena*, and not to be Com-
 ' mitted

'mitted to Prison. So that the *first* Ex-
 'ception was against the *Persons Commit-*
 'ting (*viz.*) The Lords of the Coun-
 'cil, who could Commit from no Place
 'but the Council, wherefore it should
 'have been the Lords *in* Council: The
 'Second was against the *Legality of their*
 'Commitment, because a Peer ought not
 'to be Committed in the First Instance,
 'that is without Tryal, for a Misdemean-
 'our.

Then after the King's Council had
 affirm'd, that the Lieutenant of the *Tower*
 could not well make any other Return;
 That it was well known, that the Lords
 who Sign'd the Warrant, were Lords of
 the Council, and that it could not be
 thought otherwise, but that they were
in Council when they Sign'd the War-
 rant, and therefore the Return was
 good, and the Bishops Legally before the
 Court: It was refer'd to the Judges to
 put an end to the Dispute upon that
 Head, which they did after the following
 manner,

Mr. Justice *Powel*. 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 Re-

turn, without looking into Precedents.

Mr. Justice *Allybone*. For my own part it does not stick at all with Me, for 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 Style 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 the 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.

Mr. Justice *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 shall 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 Vertue 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.

Lord Chief Justice Wright. 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
the

the Warrant, nor with the Return.

Hereupon the Attorney General press'd hard for Reading the Information, and the Officer for that purpose was order'd by Sir *William Williams* to do so, but was oppos'd by Mr. *Finch*; who being ask'd Why he would not be satisfied with the Opinion of the Court? Made answer in these Words: ' My Lord, We did humbly offer one Objection more to your Lordship against the reading of the Information: The former Objection was against 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 Misdemeanour.

In Answer to this, it was urged with ill Manners enough, by Sir *William Williams*'s the Solicitor General, That the Bishops were committed for a Breach

Breach of the Peace, which required Sureties, since they had written a Seditious Libel *Vi & Armis*. To which the Noble Person last mentioned reply'd, There was a great deal of difference between an *Actual* Breach of Peace, and that which in the bare Form of an Information was a Breach of the Peace by Construction, in being *contra Pacem*: Suppose it were laid, said he, that a Man did *Vi & Armis* speak Words, would that make the Words a Breach of the Peace? And afterwards ask'd him, Whether if a Man wrote a Petition, were the Pen and Ink which he used the Arms? To which he receiv'd a Reply more pertinent than Sir *William Williams* gave all the rest of the Tryal, (*viz.*) That he hoped Mr. *Finch* remember'd what he heard him Alledge in *Algernoon Sidney's* Tryal, that *Scribere est Agere*. In a Word, after a long dispute on both Sides, wherein Mr. Justice *Powell* shew'd great Force of Reason among the Judges, and Mr. *Finch* among the Council, tho' every one on the side of the Prisoners spoke convincingly well, the Question was left to the Decision of the Bench, which being, Whether the Information should be read? They gave their Sentiments,

ments, beginning with the Junior Judge after this manner.

Mr. Justice *Allybone*. The single Question now is, Whether or no that which Mr. *Solicitor* was pleased to name as the Crime (*for the whole Matter turn'd upon the second Particular,*) 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 there is a little Argument to be drawn from Forms of Indictments; and I shall put no great stress upon the Words *Vi & Armis*, when the Fact will not come near it; but if the Commitment may ensue (as they seem to agree) where-ever Surety of the Peace may be required, nothing seems more important to me, than that Surety of the Peace should be required, where there is any Act of Sedition in the Case; and where-ever there is a Seditious Act, I cannot tell how to make any other Construction of it, but that it is an actual Breach of that Peace, That is my Opinion

Mr Justice *Powel*. I am in the same Opinion in this Point too (*for he was before for referring the Legality of the Commitment to a search into the Records.*) as I was in the other Point before. It

was

was a matter of great Consequence (I thought) upon the former Point ; but now it appears to me, to be of so 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 Priviledge. Our Predecessors in this Court would not heretofore determine the Priviledges 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. Justice *Allybone*. Brother *Powel*, I am not Determining, Limiting, or Cramping, the Priviledges 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 it? For there Sir *Robert Sawyer*, has laid the Foundation of his Distinction, and if that shall draw
any

any Person under a Commitment ; then, say I, in my Judgment, where-ever 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 contravert not the Right of the Peers one way or other, but only declare my Opinion, That this is a Fact that comes within the Rules laid by them, That what will require Sureties of the Peace, is a Breach of the Peace.

Mr. Justice *Holloway*. God forbid that in a Case of this Nature, any one should take upon him here to say, that every Misdeameanour were a Breach of the Peace, I say not so ; but certainly there are some such Misdeamenours as are Breaches of the Peace, and if here be such a Misdeamenour before us, then it is acknowledged that even in Parliament Time, a Priviledg'd Person may be Committed for it : For in Treason, Felony, and Breach of the Peace, Priviledge does not hold. I will not take upon me (as my Brother said) to determine concerning the Priviledge of the Peers ; it is not of our Cognizance, nor have we any thing to do, either to enlarge or confine Priviledge, nor do we determine, whether
 this

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.

Then the Clerk began to read the Information in *English*, which made the Solicitor General cry out with great Vehemence, *Read it as it is in Latin*. Upon this the Bishop of *Peterborough* desired of the Lord Chief Justice that it might be read to them in *English*, because he and his Brethren did not understand *Law Latin*; but was over-ruled by the Gentleman just mention'd, who cryed in a Jocosè manner, *No, my Lords the Bishops are very Learned Men (we all know) pray read it in Latin*.

The Information being read, Mr. Serjeant *Pemberton*, Sir *Robert Sanyer*, Mr. *Pollexfen*, and Mr. *Finch*, very Learnedly moved for an Impar lance, and to have a Copy of the Information, that the Bishops might have time to Plead. This the King's Counsel with great warmth oppos'd, and mov'd that the Bishops might Plead forthwith, which occasion'd a long Contest on both Sides: Bur the Master of the Coroner's

ner's Office, Sir *Samuel Astry*, affirming that it had been the practice of the Court for a Dozen Years, That every Person that appear'd upon Recognizance, or was any way in Custody, was to Plead presently ; which Assertion was back'd by one Mr. *Waterhoase*, of much longer standing in the Court of the King's Bench ; the Judges overru'd that Debate too, after they had given their Opinions consonant to the Coroner's, except Mr. Justice *Powel* ; tho' the Council for the Prisoners desired but one Days time, to bring some Certificates and Affidavits, or else some Precedent to prove, that an Impar lance was usually granted.

Hereupon his Grace the Lord Archbishop of *Canterbury* stood up, and Addressed himself to the Chief Justice thus. 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 of the Court to admit of this Plea.* This the Court agreed should be Read, but not Received ; upon which the Clerk read it in *English*, after this manner, tho' his Grace was first told by the Chief Justice, *that it ought to have been in Parchment.*

The BISHOPS PLEA.

‘ And the aforefaid *William* Arch-
 ‘ bithop of *Canterbury*, *William* Bithop
 ‘ of *St. Afaph*, *Francis* Bithop of *Ely*,
 ‘ *John* Bithop of *Chichefter*, *Thomas*
 ‘ Bithop of *Bath* and *Wells*, *Thomas*
 ‘ Bithop of *Peterburgh*, and *Jonathan*
 ‘ Bithop of *Bristol*, being prefent here
 ‘ in Court in their own Perfons, pray
 ‘ Oyer of the Information aforefaid; and
 ‘ it is read to them, which being Read
 ‘ and Heard by them the faid Arch-
 ‘ bithop and Bithops, The faid Arch-
 ‘ bithop and Bithops fay, that they are
 ‘ Peers of this Kingdom of *England*, and
 ‘ Lords of the Parliament, and each of
 ‘ them is one of the Peers of this King-
 ‘ dom of *England*, and a Lord of the
 ‘ Parliament, and that they being (as
 ‘ before is manifelt) Peers of this
 ‘ Kingdom of *England*, and Lords of
 ‘ Parliament, ought not to be com-
 ‘ pelled to Answer instantly for the
 ‘ Mifdemeanour aforefaid, mentioned in
 ‘ the faid Information exhibited here
 ‘ againft them in this Court: But they
 ‘ ought to be required to appear by due
 ‘ Procefs in Law, iffuing out of this

‘ Court here upon the Information a-
 ‘ foresaid, and upon their Information
 ‘ exhibited against them, and reason-
 ‘ able Time to Imparl thereupon, and
 ‘ to advise with Council Learned in the
 ‘ Law, concerning their Defence in that
 ‘ behalf, before they be compelled to
 ‘ Answer the said Information; *Where-*
 ‘ *upon*, for that the said Archbishop,
 ‘ and Bishops were Imprisoned, and by
 ‘ the Writ of our Lord the King, of
 ‘ *Habeas Corpus*, directed to the Lieute-
 ‘ nant of the *Tower of London*, are now
 ‘ brought here in Custody, without any
 ‘ Process upon the Information afore-
 ‘ said issued against them, and without
 ‘ having any Copy of the said Infor-
 ‘ mation or any Time given them to
 ‘ Imparl, or be Advised: *They pray Judg-*
 ‘ *ment*, and the priviledge 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.

Rob. Sawyer.

Hen. Finch.

Hen. Pollixfen,

This occasion'd a warm Debate between the Council on both Sides, Whether it ought to be received or no; Those for the King insisting, That it was a Plea to the Jurisdiction of the Court, and not to be received; the others on the side of the Bishops arguing that it was nothing like it, and deserv'd the Acceptance of the Bench: Whereupon it was left as before to the Determination of the Judges, who gave their Opinions in these Words.

Mr. Justice *Allybone*. The 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. Justice *Powel*. I am for receiving the Plea, and considering of it.

Mr. Justice *Holloway*. I think as this Case is, this Plea ought not to be Received, but Rejected, because it is no more than what has been denied already. I am not ashamed to say, that I should be very glad and ready to do all things that are consistent with my Duty, to shew Respects 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 the Law.

Lord Chief Justice *Wright*. We have ask'd, and Informed our selves 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 again.

Wherefore after their Lordships had severally Pleaded Not Guilty, by Answering to their Names, the King's Attorney gave notice of the Tryal at the Bar the same Day Fortnight, and the Court took single Recognizances of each of the Noble Prisoners, to appear on that Day ; the Lord Archbishop being bound in a Bond of Two Hundred Pound, and the rest in a Hundred each.

And now came the Nineteenth of *June* a Memorable Day in Story, and which then drew a Concourse of People to see one of the greatest Sights, that ever

ever had been known in *England*, to behold Seven of the greatest Prelates, and most Venerable Fathers of the Church, Arraign'd before Two Creatures of a Roman Catholick Prince at his own Suit, and the Third a known Papist.

Upon the Bishops appearance near the Bar, where they had Chairs brought them, and the seating of the Noble Peers who came in Company with them into Court, and were the Lord Marquess of *Hallifax*, Lord Marquess of *Worcester*, Earl of *Shrewsbury*, Earl of *Kent*, Earl of *Bedford*, Earl of *Pembroke*, Earl of *Dorset*, Earl of *Bolingbroke*, Earl of *Manchester*, Earl *Rivers*, Earl of *Stamford*, Earl of *Carnarvon*, Earl of *Chesterfield*, Earl of *Scarsdale*, Earl of *Clarendon*, Earl of *Danby*, Earl of *Suffex*, Earl of *Radnor*, Earl of *Nottingham*, Earl of *Abingdon*; Lord Viscount *Faulconbridge*, Lord *Newport*, Lord *Grey of Ruthyn* Lord *Paget*, Lord *Chandoys*, Lord *Vaughan* Earl of *Carbery*, Lord *Lumley*, Lord *Carteret*, Lord *Ossulston*, The Names of the Jury sworn, to their Immortal Honour, were,

Sir *Roger Langley*, Bart.

Sir *William Hill*, Kt.

Roger Jennings, Esq;

Thomas Harriot, Esq;
Jeoffery Nightingale, Esq;
William Withers, Esq;
William Avery, Esq;
Thomas Justus, Esq;
Nicholas Grice, Esq;
Michael Arnold, Esq;
Thomas Dome, Esq;
Rich. Shoreditch, Esq;

Clerk. You Gentlemen of the Jury who are sworn, hearken to the Record; Sir *Thomas Powis, Kt.* His Majesty's Attorney-General, has exhibited an Information, which does set forth as followeth:

ff. **M**emorandum, That Sir *Thomas Powis, 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 his Subjects of his Kingdom

dom of *England*, by his Royal Prerogative, on the fourth 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 Twenty-seventh 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 Leige-People, specified in the Declaration last mentioned, afterwards, to wit, on the fourth 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 the Fourth of
May, 1688.*

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

I*T is this day Ordered by His Majesty in
Council; That his Majesty's late Gracious
Declaration bearing date the 27th of April
last,*

last, be read at the usual time of Divine Service upon the 20th and 27th of this Month. in all Churches and Chappels 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 Chappels 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 severall and respective Diocesses, to be read accordingly.

William Bridgeman.

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 *Surrey*; *William* Bishop of *St. Asaph*, of *St. Asaph* in the County of *Flynt*; *Francis* Bishop of *Ely*, of the Parish of *St. Andrew Holbourn* in the County of *Middlesex*; *John* Bishop of *Chichester*, of *Chichester* in the County of *Suffex*;
Thomas

Thomas Bishop of Bath and Wells, of the City of Wells in the County of Somerset; Thomas Bishop of Peterborough, of the Parish of St. Andrew 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 18th 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

Pe-

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 *Peterburgh*, 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 Proccets of Law to be made out against the aforesaid *William* Archbishop of *Canterbury*, *William* Bishop of *St. Asaph*, *Francis* Bishop

Bishop of *Ely*, *John* Bishop of *Chichester*, *Thomas* Bishop of *Bath* and *Wells*, *Thomas* Bishop of *Peterburgh*, 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.

After this, several Proofs were brought to prove his Grace's Hand-writing, and the Hand-writings of their Lordships, by Comparison of Hands; but that Comparison was proved in a very uncertain manner: Some cry'd they knew not what to believe; others that it was rather such a Lord's Hand, and others believ'd 'twas rather this Hand than that above or below. Neither would the Bishops Council allow Comparison of Hands to be good Evidence in case of a Misdemeanour, which being refer'd to the Bench, was carried by equal Voices, after *Col. Sydneys* Case had been insisted on by the Solicitor General, and controverted by *Mr. Serjeant Pemberton*: And *Mr. Justice Powell*, and *Mr. Justice Holloway*, were both of Opinion, that Comparison of Hands was too slender a proof in Criminal Matters, and more particularly in the first,

first, who told the Solicitor-General that the Paper was not sufficiently Subscrib'd by the Lords the Bishops: So that when it was offer'd to be read in Court, with the Bishops Names to it, it was rejected by the Division aforesaid.

But then Mr. *Blaithwait* one of the Clerks of the Council was produced, who Swore that his Grace and the rest of their Lordships own'd their Hands to the Petition at the Council Table, and then the Petition was openly read, after Mr. *Finch* had spoke thus: ' Pray my
' Lord Spare us: Here are two parts of
' this Information, the one is for Con-
' sulting and Conspiring to diminish the
' King's Royal Prerogative; *and for that*
' *End they did Make and Write a Seditious*
' *Libel*; the other Part is, That *they did*
' *Publish this Seditious Libel*. We are
' hitherto upon the first Part, the Ma-
' king and Writing it, both parts are
' Local; until they have proved the
' Making and Writing of it to have
' been in *Middlesex*; it is not Evidence
' upon this Matter. Mr. Serjeant *Levinz*
likewise said on the same Side, ' That
' the owning of their Hands, did not
' own that it was Written in the County
' of *Middlesex*, or that it was Contrived
' or

‘ or made there: And that their Infor-
 ‘ mation was, That they did Consult and
 ‘ Contrive to *diminish the King’s Pre-*
 ‘ *rogative at Westminster in Middlesex,*
 ‘ *and they did Write, and cause to be*
 ‘ *Written, this Libel,* and there they
 ‘ did publish it. After which he A-
 ‘ firm’d, ‘ That tho’ the Supposition
 ‘ was granted that the Archbishops
 ‘ Hand, &c had been proved, there
 ‘ was no Inference to be drawn from
 ‘ thence, that any thing of this was
 ‘ done in *Middlesex,* which was the
 ‘ thing to be proved. Mr. *Somers* also
 (now Lord *Somers*) applying himself to
 the Bench, deliver’d himself thus: ‘ My
 ‘ Lord, if your Lordship pleases, all
 ‘ Matters of Crime are so Local, that
 ‘ if it be not proved to be done in the
 ‘ County where it is laid, the Party
 ‘ accused is as Innocent, as if he never
 ‘ had done the Thing; and with Sub-
 ‘ mission, it is the very Point of the In-
 ‘ formation, that it be proved they are
 ‘ Guilty of the Fact in the place where
 ‘ it is laid to be done.

Then others of the Bishops Council
 urged, That there was no Evidence of the
 Fact, either of Writing or Publishing
 the Petition in *Middlesex,* as it was laid
 in

in the Information; and in the next place Alledged, That the Information set forth, the Title of Address, and the Petitionary part was omitted, which was both Disingenious and Injurious, in Regard the part omitted might alter the Sence of the Whole. The same Council likewise proved that it was not Writ in *Middlesex*; for that the Bishop had not been out of *Lambeth* House, not in Two Months before the Order was made, till he was before the Council. As to the publishing of it by the Bishops, neither was that proved on the side of the Crown, since the owning of a Paper, upon a Question put by the King himself, could be no publication of a Libel; for that if a Man were ask'd by Authority, Whether such a Paper was his Hand, and he acknowledged it in Answer to the Question, to turn that to a Crime, was a thing that could never be done, nor was ever done. And Sir *George Treby* was of Opinion, That the King's Council were so far from proving, that the Bishops did publish the Paper, that they had rather proved that their Lordships had not publish'd it; And at Length the Court it self was of Opinion, That there was not sufficient

Evidence of the Bishops publishing the Paper in *Middlesex*. And tho' Mr. *Blaithwait*, Mr. *Bridgman*, and Sir *John Nicholas*, were all called again to try if they could have made a publication of it. by the Bishops, yet they could make nothing, but that the King was rather the Publisher of it, by bringing it Himself into Council.

But after all this, came the Lord President of the Council into Court, and made Oath, ' That the Bishops of St. ' *Asaph* and *Chichester* came to his Office, ' and told him, That they came in the ' Names of the Lord Archbishop of ' *Canterbury* and Four of their Brethren, ' with a Petition, which they desired to ' deliver to the King, and attended him ' to know which was the best way of do- ' ing it, and, whether the King would ' give them leave to do it or no: That ' they would have him read the Petition; ' which he refused, as not at all belong- ' ing to him. However that he would ' let the King know their desires, and ' bring them an Answer immediately: ' That accordingly he acquainted the ' King, who commanded Him, to let ' the Bishops know, they might come ' when they pleased: With which
' Answer

• Answer he returned to the Bishops,
 • who then went and fetch'd the rest
 • of their Brethren, and when they
 • came, they immediately went into the
 • Bed-Chamber, and so went into ano-
 • ther Room where the King was.

This seem'd to turn the Scales of the
 Evidence very much against the Bishops,
 but not so much against the Lord Arch-
 bishop : So that the Business was here
 left to the Jury. Thereupon Sir *Robert*
Sawyer observed to the Jury, That the
 Petition contained nothing of Sedition
 in it, but only a bare Excuse for their
 Non-compliance with the King's Order,
 and a begging of the King with all Hu-
 mility and Submission, That he would
 be pleas'd not to insist upon Reading
 his Declaration, because the Dispensing
 Power upon which it was founded, had
 been several Times in Parliament declar-
 ed to be against Law, and because it
 was a Case of that Consequence, that
 they could not in Prudence, Honour
 and Conscience, concur in it.

Which tho' Mr. Attorney General had
 charged in his Information, to be a False,
 Malicious, and Scandalous Libel, yet he
 doubted not to make out the contrary :
 For that if a Subject were Commanded

to do a Thing, which he thought contrary to the Dictates of the Law, and his own Conscience, there was no Reason but he might apply himself to the King, and tell Him the Reason why he could not concur with him in such a Command: So that the whole amounted to no more, but that the Lords the Bishops being thus aggrieved, made their Petition to the King in the most private and respectful manner they could. And therefore for the Attorney and Solicitor-General to load it with such horrid and black Epithets, could not but be a great Trouble to their Lordships, when there was so little Evidence to make so severe a Charge out; Because there was no such *Falshood* and *Malice* in it as was pretended, which he made appear from the Duty Incumbent upon the Bishops, in Reference to the People under their Charge, and their Interest in the Government; as also the Reasons they gave, which were grounded upon the Illegality of the King's Suspending Power so declared in Parliament. Mr. *Finch*, Mr. *Pollixsen*, Mr. Serjeant *Pemberton*, Mr. Serjeant *Levinz*, and Sir *George Treby*, made Learned Speeches to the same Intent, in Vindication of the Bishops,

Bishops, which ended in a long Dispute concerning the King's assumed Power to Suspend the Laws and Statutes of the Realm at his Pleasure: Which the Chief Justice at first seem'd desirous to have waved; But Mr. Justice *Powel* Affirming, That it was necessary for them to fall upon that Point; for that if the King had no such Power (as clearly he had not in his Judgment) the natural Consequence would be, that the Petition was no Diminution of the King's Regal Power, and so neither seditious nor Libellous, which satisfied the Chief Justice, and so both sides went briskly to work upon the Records that were produced, on the part of the Defendants: But the Arguments upon this Head being too tedious for a Pamphlet of the Bulk this is intended to be, the Reader is referred to the Tryal of the Bishops at Large, which will undoubtedly give him full Satisfaction: Tho' I find my self under a necessity, to insert two Speeches Verbatim, which were made on the side of the Defendants; the one by Mr. *Finch*, the present Lord *Guernsey*; the other by Mr. *Somers*, now Lord *Somers*, who grew into great Reputation thereby, and was made Keeper

of the Great Seal, and afterwards High Chancellor of *England* for the sake of it. Their Arguments were in these Words:

Mr. *Finch*. May it please your Lordship, and you, Gentlemen of the Jury, This Information sets forth (as you may observe upon opening it) that the King having, by his Royal Prerogative, set forth his Declarations that have been read, and made an Order of Council for the Reading the said Declarations in the Churches; and that the Archbishop and Bishops should severally send them into their Diocesses, to be read; my Lords the Bishops, that are the Defendants, did consult and conspire together to diminish the Kingly Authority, and Royal Prerogative of the King, and his Power and Government in his Regal Prerogative, in setting forth his Declaration; and that, in prosecution of that Conspiracy, they did contrive (as it was laid in the Information) a malicious, seditious, scandalous, false, and feigned Libel, under pretence of a Petition, and so set forth the Petition; and that they published the Petition in the presence of the King.

To this Charge in the Information, *Not Guilty* being pleaded, the Evidence that hath been given for the King, I know hath been observed by the Court and the Jury, and I know will be taken into Consideration, how far it does come up to the Proof of the Delivery of this Petition by my Lords the Bishops; for all that was said till my Lord President was pleased to come, was no Evidence of any Delivery at all; and my Lord President's Evidence is, that they were going to deliver a Petition; but whether they did deliver it, or did it not, or what they did deliver, he does not know. This is all the Evidence that has been given for the King.

But supposing now, my Lord, that there was room to presume that they had deliver'd this Petition set forth in the Information, let us consider what the Question is between the King and my Lords the Bishops: The Question is, Whether they are guilty of Contriving to diminish the King's Regal Authority, and Royal Prerogative, in his Power and Government, in setting forth this Declaration? Whether they are guilty of the making and presenting a malicious, seditious and scandalous Libel; and whether

whether they have published it, as it is said in the Information, in the King's Presence ?

So that the Question is not now reduced to this, Whether this Paper, that is set forth in the Information, was deliver'd to the King by my Lords the Bishops ; but whether they have made a malicious, seditious and scandalous Libel, with an Intent to diminish the King's Royal Prerogative, and Kingly Authority? And then, if you, Gentlemen, should think that there is Evidence given, sufficient to prove that my Lords the Bishops have deliver'd to the King that Paper which is set forth in the Information ; yet, unless they have delivered a false, malicious, seditious and scandalous Libel ; unless they have published it, to stir up Sedition in the Kingdom ; and unless they have contrived this by Conspiracy, to diminish the King's Royal Prerogative and Authority, and that Power that is said to be in the King, my Lords the Bishops are not guilty of this Accusation.

There are in this Declaration several Clauses, which, upon reading of the Information (I am sure) cannot but have been observed by you, Gentlemen of the
 Jury ;

Jury ; and one special Clause hath been by the Council already opened to you, and I shall not enlarge upon it.

My Lord, This Petition that is thus delivered to the King, if it be a Libel, a scandalous and seditious Libel, (as the Information calls it) it must be so, either for the Matter of the Petition, or for the Persons that delivered the Petition, or for the manner of their presenting and delivering it: But neither for the Matter, nor for the Persons, nor for the manner of presenting it, is there any Endeavour to diminish the King's Royal Prerogative, nor to stir up Sedition, nor Reflection upon the King's truly Royal and Kingly Authority.

The Petition does humbly set forth to His Majesty, that there having been such a Declaration, and such an Order of Council, they did humbly represent to his Majesty, that they were not averse to any thing commanded them in that Order, in respect to the just and due Obedience that they owed to the King, nor in respect of their want of a due Tenderness to those Persons to whom the King had been pleased to shew Tenderness; but the Declaration being founded upon a Power of Dispensing, which had
been

been declared illegal in Parliament several times, and particularly in the Years 1662, 72, and 85. they did humbly beseech his Majesty (they not being able to comply with his Command in that matter) that he would not insist upon it.

Now, my Lord, Where is the Contrivance to diminish the King's Regal Authority, and Royal Prerogative?

This is a Declaration founded upon a Power of Dispensing, which undertakes to Suspend all Laws Ecclesiastical whatsoever; for not coming to Church, or not Receiving the Sacrament, or any other Non conformity to the Religion Established, or for, or by reason of the Exercise of Religion in any manner whatsoever; Ordering that the Execution of all those Laws be immediately suspended, and they are thereby declared to be suspended; as if the King had a Power to suspend at once all the Laws relating to the established Religion, and all the Laws that were made for the Security of our Reformation. These are all suspended by his Majesty's Declaration (as it is said) in the Information, by virtue of his Royal Prerogative, and Power so to do.

Now, my Lord, I have always taken it, with Submission, that a Power to abrogate Laws, is as much a part of the Legislature, as a Power to make Laws: A Power to lay Laws asleep, and to suspend Laws, is equal to a Power of Abrogating them; for they are no longer in Being, as Laws, while they are so laid asleep, or suspended: And to abrogate all at once, or to do it time after time, is the same thing; and both are equally parts of the Legislature.

My Lord, In all the Education that I have had, in all the small Knowledge of the Laws that I could attain to, I could never yet hear of, or learn, that the Constitution of this Government in *England* was otherwise than thus, That the whole Legislative Power is in the King, Lords and Commons; the King, and his two Houses of Parliament. But then, If this Declaration be founded upon a part of the Legislature, which must be by all Men acknowledged, not to reside in the King alone, but in the King, Lords and Commons, it cannot be a legal and true Power, or Prerogative.

This, my Lord, has been attempted but in the last King's time; it never was pretended till then; and in that first Attempt, it was so far from being acknowledged, that it was taken notice of in Parliament, and declared against: So it was in the Years 1662. and 1672.

In the Year — 62. where there was but the least Umbrage given of such a Dispensing Power; although the King had declared, in his Speech to the Parliament, that he wish'd he had such a Power, which his Declaration before seem'd to assume; the Parliament was so jealous of this, that they immediately made their Application to his Majesty, by an Address against the Declaration; and they give Reasons against it, in their Address: One, in particular, was, *That the King could not dispense with those Laws, without an Act of Parliament.*

There was another attempt in 1672. and then, after his Majesty had, in his Speech, mentioned his Declaration to them, the Parliament there again, particularly the House of Commons, did humbly Address to his Majesty; setting forth, That this could not be done by Law, without an Act of Parliament: And your Lordship, by and by, upon reading

reading the Record, will be satisfied what was the Event of all this. His Majesty himself was so far pleased to concur with them in that Opinion, that he cancell'd his Declaration, tore off the Seal, and caus'd it to be made known to the House of Lords, by the Lord Chancellor, who, by his Majesty's Command, satisfied the House of it, that his Majesty had broken the Seal, and cancell'd the Declaration; with this further Declaration, which is enter'd in the Records of the House, *That it should never be drawn into Example or Consequence.*

My Lord, The Matter standing thus, in respect to the King's Prerogative, and the Declarations that had been made in Parliament; consider next I beseech you, how far my Lords the Bishops were concerned in this Question, humbly to make their Application to the King.

My Lords the Bishops lying under a Command to publish this Declaration, it was their Duty, as Peers of the Realm, and Bishops of the Church of *England*, humbly to apply themselves to His Majesty, to make known their Reasons, why they could not obey that Command; and they do it with all Submissi-

on, and all Humility, representing to his Majesty what had been declared in Parliament; and it having been so declared, they could not comply with his Order; as apprehending that this Declaration, was founded upon that which the Parliament declared to be illegal; and so his Majesty's Command to publish this Declaration, would not warrant them so to do. This they did, as Peers; and this they had a Right to do as Bishops; humbly to advise the King.

For, suppose, my Lord, (which is not to be supposed in every Case, nor do I suppose it in this; but suppose that there might be a King of *England* that should be mislead;) (I do not suppose that to be the Case now, I say, but I know it hath been the Case formerly) that the King should be environed with Counsellors that had given him evil Advice; it has been objected as a Crime against such evil Counsellors, that they would not permit and suffer the Great Men of the Kingdom to offer the King their Advice. How often do we say in *Westminster-Hall*, That the King is deceived in his Grant? There is scarce a Day in the Term, but it is said in one Court, or other; but it was never yet thought

thought an Offence to say so : And what more is there in this Case ?

My Lord, If the King was misinformed, or under a misapprehension of the Law, my Lords, as they are Peers, and as they are Bishops, are concerned in it; and if they humbly apply themselves to the King, and offer him their Advice, where is the Crime ?

My Lord, These noble Lords, the Defendants, had more than an ordinary Call to this ; for, besides the Duty of their Office, and the Care of the Church, that was incumbent on them as Bishops, they were here to become Actors ; for they were, by that Order of Council, commanded themselves to publish it, and to distribute it to the several Ministers in their several Diocesses, with their Commands to read it : Therefore they had more than ordinary Reason to concern themselves in the Matter.

Next, we are to consider, my Lord, in what manner this was done ; They make their Application to the King, by an humble Petition, with all the Decency and Respect that could be shewn ; asking leave, first to approach his Person ; and having leave, they offer'd my Lord President the Matter of their Petition, that

that nothing might seem hard, or disrespectful, or as if they intended any thing that was unfit to be avowed. When they had taken all this Care in their Approach, and begging leave for it, they come secretly to the King, in private, when he was all alone, and there they humbly present this Petition to His Majesty. Now, how this can be called the Publication of a malicious and seditious Libel, when it was but the presenting of a Petition to the King alone: And how it can be said to be with an Intent to stir up Sedition in the People against His Majesty, and to alienate the Hearts of his People from him, when it was in this private manner deliver'd to him himself only, truly, I cannot apprehend.

My Lord, I hope nothing of this can be thought an Offence: If the Jury should think that there has been Evidence sufficient given, to prove that my Lords the Bishops did deliver this Paper to the King, yet that is not enough to make them Guilty of this Information, unless this Paper be likewise found to be in Diminution of the King's Royal Prerogative, and Regal Authority, in dispensing with, and suspending all Laws, without Act of Parliament: Un-
less

less it be found to be a Libel against the King, to tell him, That in Parliament it was so and so declared : And unless the presenting this by way of Petition (which is the Right of all People that apprehend themselves aggrieved, to approach His Majesty by Petition) be a Libelling of the King : And unless this humble Petition, in this manner presented to the King in private, may be said to be a malicious and seditious Libel, with an Intent to stir up the People to Sedition : Unless all this can be found, there is no Man living can ever find my Lords the Bishops Guilty upon this Information.

Mr. Somers. My Lord, I would only mention the great Case of *Thomas and Sorrel* in the Exchequer Chamber upon the validity of the Dispensation of the Statute of *Edward* the Sixth, touching Selling of Wine. There it was the Opinion of every one of the Judges, and they did lay it down as a settled Position, That their never could be an Abrogation, or a Suspension, (which is a Temporary Abrogation) of an Act of Parliament, but by the Legislative Power. That was a Foundation laid down quite thorough the Debate of that Case : Indeed it was disputed, how far the King might dispense

dispense with the Penalties in such a particular Law, as to particular Persons, but it was agreed, by all, that the King, had no power to suspend any Law: And, my Lord, I dare Appeal to Mr. Attorney General himself, whether in the Case of *Godden and Hales*, which was lately in this Court, to make good that Dispensation, he did not use it as an Argument then, that it could not be expounded into a Suspension. He admitted it not to be in Kings power, to suspend a Law; but that he might give a Dispensation to a particular Person, was all, that he took upon him to justify at that time.

My Lord, by the Law of all civilized Nations, if the Prince does require something to be done, which the Person (who is to do it) takes to be unlawful, it is not only lawful, but his Duty, *Rescribere Principi*, this is all that is done here, and that in the most humble manner that could be thought of; your Lordship will please to observe how far it went, how careful they were, that they might not any way justly offend the King. They did not interpose by giving Advice, as Peers, they never stir'd till it was brought home to themselves, when they made their Pe-

tition,

tition, all they beg, is, that it may not so far be insisted upon by his Majesty, as to oblige them, to read it, whatever they thought of it, they do not take upon them to desire the Delaration to be revoked.

My Lord, as to Matters of Fact alledged in the said Petition, that they are perfectly true, we have shewn by the Journals of both Houses, in every one of those Years, which are mentioned in the Petition; this Power of Dispensation was consider'd in Parliament, and upon Debate, Declared to be contrary to Law, there could be no design to diminish the Prerogative, because the King hath no such Prerogative.

Seditious, my Lord, it could not be, nor could possibly stir up Sedition in the minds of the People, because it was presented to the King in private and alone; false it could not be, because the Matter of it is true. There could be nothing of Malice, for the occasion was not sought, the thing was pressed upon them; and a Libel it could not be, because the intent was innocent, and they kept within the bounds set by the Act of Parliament, that gives the Subject leave to apply to his Prince by Petition, when he is agrieved.

After this, the Attorney-General, the Solicitor-General, and the rest of the Council for the King, harangued upon the Heinousness of the Bishops Crime, and endeavoured to set aside the Arguments raised on the part of the Defendants, when the Lord Chief Justice applied himself to the Jury, and summed up the Evidence in these Words.

Lord Chief Justice Wright. I do assure you, if it had not been a Case of great Concern, I would not have heard you so long: It is a Case of very great Concern to the King, and the Government, on the one side, and to my Lords the Bishops on the other; and I have taken all the Care I can to observe what has been said on both sides. 'Tis not to be expected that I should repeat all the Speeches, or the particular Facts, but I will put the Jury in mind of the most material things, as well as my Memory will give me leave; but I have been Interrupted by so many Long, and Learned Speeches, and by the length of the Evidence which has been brought in, in a very broken, un-methodical way, that I shall not be able to do so well as I would.

Gentle-

Gentlemen, thus stands the Case: It is an Information against my Lords the Bishops, his Grace my Lord of *Canterbury*, and the other six Noble Lords; and it is for Preferring, Composing, Making, and Publishing, and Causing to be Published, a Seditious Libel; the way that the Information goes is special, and it sets forth, That the King was Graciously pleased, by his Royal Power and Prerogative, to set forth a Declaration of Indulgence for Liberty of Conscience, in the Third Year of his Reign; and afterwards upon the 27th of *April*, in the Fourth Year, he comes and makes another Declaration; and afterwards, in *May*, orders in Council that this Declaration should be published by my Lords the Bishops in their several Diocesses; and after this was done, my Lords the Bishops come and present a Petition to the King, in which were contained these Words which you have seen.

Now, Gentlemen, the Proofs that have been upon this, you'll see what they are; the two Declarations are proved by the Clerks of the Council, and they are brought here under the Great Seal; a Question did arise, whether the Prints were the same with the

Original Declarations, and that is prov'd by *Hills*, and his Man, that they were Examined, and are the same; then the Order of Council was produced by Sir *John Nicholas*, and has been likewise read to you; then they come to prove the Fact against the Bishops, and first they fall to proving their Hands; they begun indeed a great way off, and did not come so close to it as they afterwards did; for some of their Hands they could hardly prove, but my Lord Archbishop's Hand was only proved, and some others, but there might have been some Question about that Proof; but afterwards it came to be proved, that my Lords the Bishops owned their Hands, which, if they had produced at first, would have made the Cause something shorter than it was.

The next Question that did arise, was about the publishing of it, whether my Lords the Bishops had published it, and it was insisted upon, That no body could prove the Delivery of it to the King; it was proved, the King gave it to the Council, and my Lords the Bishops were called in, and there they acknowledged their Hands; but no body could prove how it came to the King's Hands. Up-

on which, we were all of Opinion, That it was not such a publishing, as was within the Information; and I was going to have directed you to find my Lords the Bishops Not Guilty: But it hapned, that being Interrupted in my Directions, by an Honest, Worthy, Learned Gentleman, the King's Council took the Advantage, and informing the Court that they had further Evidence for the King, we staid till my Lord President came, who told us how the Bishops came to him to his Office at *White-hall*, and after they had told him their Design, That they had a mind to Petition the King, they asked him the Method they were to take for it, and desired him to help them to the Speech of the King: And he tells them he will acquaint the King with their desire, which he does; and the King giving leave, he comes down and tells the Bishops, that they might go and speak with the King when they would; and (says he) I have given direction that the Door shall be opened for you, as soon as you come. With that the Two Bishops went away, and said they would go and fetch their other Brethren, and so they did bring the other Four, but my Lord Archbishop was not there; and

and immediately when they came back, went up into the Chamber, and there a Petition was deliver'd to the King. He cannot speak to that particular Petition, because he did not Read it, and that is all that he knew of the Matter; only it was all done the same Day, and that was before my Lords the Bishops appear'd at the Council.

Gentlemen, after this was proved, then the Defendants came to their Part; and these Gentlemen that were of Council for my Lords let themselves into their Defence, by notable Learned Speeches, by telling you that my Lords the Bishops are Guardians to the Church, and great Peers of the Realm, and were bound in Conscience to take care of the Church. They have Read you a Clause of a Statute made in Queen *Eliz.* time, by which they say, my Lords the Bishops were under a Curse, if they did not take care of that Law. Then they shew you some Records; One in *Richard* the Seconds time, which they could make little of, by reason their Witnesses could not Read it; but it was in short, a Liberty given to the King, to Dispense with the Statutes of Provisors. Then they shew you some Journals of Parliament;

ment ; First in the Year 1662. where the King had Granted an Indulgence ; and the House of Commons Declared it was not fit to be done, unless it were by Act of Parliament. And they Read the King's Speech, wherein he says, he wish'd he had such a Power, and so likewise that in 1672. which is all nothing, but Addresses and Votes, or Orders of the House, or Discourses, either the King's Speech, or the Subjects Addresses ; but these are not Declarations in Parliament that is insisted upon by the Council for the King. That what is a Declaration in Parliament is a Law, and that must be by the King, Lords and Commons ; the other is but common Discourse, but a Vote of the House, or a Signification of their Opinion, and cannot be said to be a Declaration in Parliament: Then they come to that in 1685. where the Commons take notice of something about the Soldiers in the Army that had not taken the Test, and make an Address to the King about it ; but in all these things (as far as I can observe) nothing can be gathered out of them, one way or other, it is all nothing but Discourses. Sometimes this Dispensing Power has been allowed, as in *Ric. 2.* time ; and some-

sometimes it has been denied, and the King did once waive it; Mr. Solicitor tells you the Reason, There was a Lump of Money in the Case: But I wonder indeed to hear it come from him.

But those Concessions which the King sometimes makes for the Good of the People, and sometimes for the profit of the Prince himself; (but I would not be thought to distinguish between the profit of the Prince, and the Good of the People, for they are both one; and what is the profit of the Prince is always for the Good of the People;) but I say, those Concessions must not be made Law, for that is reserved in the King's Breast, to do what he pleases in it at any time.

The truth of it is, the Dispensing Power is out of the Case, it is only a Word used in the Petition; but truly I will not take upon me to give my Opinion in the Question, to determine that now, for it is not before me: The only Question before me is, and so it is before you, Gentlemen, it being a Question of Fact, Whether here be a certain Proof of Publication? And then the next Question is, a Question of Law indeed, Whether if there be a Publication proved, it be a Libel?

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Gentlemen, upon the point of the Publication, I have summed up all the Evidence to you; and if you believe, that the Petition which these Lords presented to the King was this Petition, truly, I think, that is a Publication sufficient; if you do not believe it was this Petition, then my Lords the Bishops are Not Guilty of what is laid to their Charge in this Information, and consequently there needs no Inquiry whether they are Guilty of a Libel: But if you do believe, that this was the Petition they presented to the King, then we must come to inquire whether this be a Libel.

Now, Gentlemen, any thing that shall disturb the Government, or make Mischief and a Stir among the People, is certainly within the Case of *Libellis Famosis*, and I must in short give you my Opinion, I do take it to be a Libel. Now, this being a point of Law, if my Brothers have any thing to say to it, I suppose they will deliver their Opinions.

Mr. Justice *Holloway* declared, That the End and Intent of every Action was to be consider'd: That the Bishops were charged with Delivering a Petition, which according as appear'd by their Defence, was done with all the Humi-

lity and Decency imaginable; and That as they were not Men of evil Lives, or the like, but on the contrary most excellent Patterns of Piety, so the Delivery of a Petition by such could be no Fault, in regard it was the Right of every Subject to Petition. Therefore if the Jury were satisfied that they deliver'd the Petition with an ill Intent, then they were to find them Guilty; but if they did it only to save themselves harmless, and to free themselves from Blame, by shewing the Reasons of their Non-compliance with the King's Command, he could not think it to be a Libel.

Mr. Justice *Powell* more plainly declared, That he could not see any Thing of Sedition, or any Crime, fix'd upon those Reverend Fathers, the Lords the Bishops: For that there was nothing offer'd by the King's Council to make the Petition either False or Malicious. He further admonish'd the Jury to consider what was propounded in the Petition; which was plainly this: That the Bishops apprehended the Declaration to be Illegal, as being founded upon a Dispensing Power which the King claim'd, to dispense with the Laws in Ecclesiastical Affairs; but that for his part, he did not remember
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in any Case in all the Law, that there was any such Power in the King. So that if there were no such Power in the King, the Petition could not be a Libel, which alledg'd that the Declaration being founded upon such a pretended Power, was Illegal; but that the Dispensation assumed in the King's Declaration, was a Dispensation with a Witness, as amounting to a Repeal and Abrogation of all the Laws, and he knew of no Difference between the King's Power to Dispense with Laws Ecclesiastical, and his Authority to Dispence with any other Laws whatsoever; which if it were allow'd, there would be no need of Parliaments, since all the Legislative Power would be in the King, which was worth their Consideration.

Mr. Justice *Allybone* launch'd out so far in the height of his Popish Zeal, that he ran himself into Misquotations; for which being Corrected by Judge *Powell*, he was farther inform'd by the Solicitor-General of his Error, and forced to acknowledge it. So that there was little heed given to his Speech.

To come to a Conclusion, the Jury withdrawing, sat up all that Night without Fire or Candle, and the next Morning

Morning brought in the Seven renowned Prelates, *Not Guilty*: To the great satisfaction of all the Good People in the Nation.

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