

his Majesty's Command that they should own it?

L. C. J. That I must not permit you to ask, Brother; that is to lead the Witness.

Mr. S. Pemberton. My Lord, he will not answer general Questions; I have asked him all along general Questions, and I cannot yet get an Answer from him to them.

Mr. Blatbwayt. I am ready to answer any Questions that the Court thinks I should answer; I am not backward to answer according to my Duty.

L. C. J. Let one of you ask a Question at a time, and not chop in one upon another.

Mr. Sol. Gen. In all the Trials that ever I have been in, in all the Cases of Criminals, the King's Witnesses used to be treated with Respect, and not to be fallen upon in this manner.

L. C. J. He shall be sure to have all Respect paid him.

Mr. Sol. Gen. He is in Office under the King.

Mr. S. Pemberton. I do not think *Mr. Blatbwayt* does believe I would shew him any Disrespect more than he would shew me.

Mr. At. Gen. I beg one Word, my Lord.

L. C. J. *Mr. Attorney*, what do you say?

Mr. At. Gen. My Lord, I say I do oppose the asking of this Question; not but that every Man has a Right to cross-examine a Witness, but if they ask such a Question, let them tell us what Use they would make of it.

L. C. J. *Mr. Attorney General*, for that Matter —

Mr. S. Pemberton. My Lord, if you please, I'll give *Mr. Attorney* an Answer.

L. C. J. Brother *Pemberton*, I was speaking to *Mr. Attorney*, and pray hear me; I will not ask you what Use you'll make of the Question you ask, but do you ask fair and regular Questions, and I'll take Care you shall have an Answer to them.

Mr. S. Pemberton. I will deal plainly with the Court, and tell you what Use we intend to make of our Question. If they answered under a Promise from his Majesty, that it should not be given in Evidence against them, I hope they shall not take Advantage of it.

Mr. Sol. Gen. I say that is a very unmannerly Question; but however it shall be answered.

Mr. S. Pemberton. Why so, *Mr. Solicitor*?

Mr. Sol. Gen. My Lord, it is to put something upon the King, which I dare hardly name.

L. C. J. We do not know what Answer will be made to it yet, but it does look like an odd kind of Question.

Mr. Sol. Gen. If Men will be so pressing, I, for the King, desire the Question may be entred.

Sir Rob. Sawyer. What do you mean, *Mr. Solicitor*?

Mr. Sol. Gen. I know very well what I mean, Sir; I desire the Question may be recorded in Court.

Mr. S. Pemberton. Record what you will, I am not afraid of you, *Mr. Solicitor*.

Mr. Sol. Gen. Are you afraid of the Law?

Mr. S. Pemberton. No, nor of you neither.

L. C. J. Pray be quiet, Gentlemen.

Mr. At. Gen. Pray, *Mr. Blatbwayt*, answer whether there was any Promise made to my Lords the Bishops from the King.

Mr. Blatbwayt. My Lord, I take the Question to be, whether the King was pleased to make my

Lords the Bishops any Promise of not taking Advantage of what Answer they made.

Mr. At. Gen. That is the Question.

Mr. Blatbwayt. As that Question is stated, there was no such made.

L. C. J. Look you, he tells you there was no such Promise made. There is an Answer to your Question, Brother.

Mr. S. Levinz. We made no such Question; but the Question I would ask is this, —

Mr. Sol. Gen. For the Satisfaction of the Court repeat what you said just now, *Mr. Blatbwayt*.

Mr. Blatbwayt. I take the Question to be, whether the King made any Promise to my Lords the Bishops, that no Advantage should be taken of what they said, and I say, the King made no such Promise.

Mr. S. Pemberton. We did not ask you the Question, but we only told you what Use we would have made of another Question.

Mr. Pollexfen. *Mr. Blatbwayt*, I see you can very well distinguish what Questions are to be answered. I ask you in short, upon your Oath, when they were first called in, what was said to them, and what was answered by them?

L. C. J. Here has been a great deal of Wrangling, but this is a fair Question, and may reduce us to Order again. Tell us over again from the Beginning, what passed when my noble Lords the Bishops came in the first, second, and third Time, when they were examined about this Paper?

Mr. Blatbwayt. My Lord, I shall comply with your Lordship's Directions. I apprehend I am to answer together concerning the first, second, and third Comings of my Lords the Bishops into the Council. The first Time, as I said before, my Lords the Bishops were unwilling to own the Paper, and did say, they humbly hoped his Majesty would not take Advantage against them, but that they were ready to obey his Command. The second Time they were called in they did repeat it again, that they hoped his Majesty would not take Advantage against them: After that there was mention made of the Paper being published, I remember my Lords the Bishops said they had not published it —

Sir Robert Sawyer. Is that all?

Mr. Sol. Gen. You have no Mind to hear all, I think.

L. C. J. How do you expect to be answered your Questions, if you interrupt them? Go on, *Mr. Blatbwayt*.

Mr. Blatbwayt. Sir, I said last, that they having prayed the King that no Advantage might be taken against them for what they should say, there was mention made of the Paper its being published, and my Lords the Bishops did say they had not published it; and his Grace my Lord Archbishop said it was written with his own Hand, and that he had not made Use of his Clerk.

Sir Rob. Sawyer. Is that all you can remember that passed at that Time?

Mr. Blatbwayt. This is the Substance of what I remember.

L. C. J. Was this the third Time?

Mr. Blatbwayt. No, that was the second Time, my Lord.

Mr. Pollexfen. If there be not some Order in this Evidence, my Lord, we shall not be able to observe any thing upon it. — Pray what was done afterwards?

Mr. *Blatbwayt*. My Lord Chancellor, upon their coming in, did require them to answer, whether they did own that Paper or not; my Lords the Bishops did own the Paper.

Mr. *Pollexfen*. Do you remember in what Words or Expressions, as near as you can, they did own it?

Mr. *Sol. Gen.* Is this a Practice to be endured?

Mr. *Finch*. Why, he may apprehend and take that to be an owning of it, which was not.

Mr. *Sol. Gen.* Has not he sworn the Manner of it, and almost the very Words?

Mr. *Serj. Levinz*. We desire nothing of him but that he will tell us what Words they said when they owned it.

Mr. *Blatbwayt*. It was the third Time that they came in that they owned it.

Mr. *S. Pemberton*. Why, what did they say?

Mr. *Blatbwayt*. My Lord Chancellor required them to answer, whether they owned the Paper or no.

Mr. *S. Pemberton*. What did they say then?

Mr. *Blatbwayt*. As near as I can remember, his Grace and the Lords the Bishops did own the Paper.

Mr. *S. Pemberton*. What Words did they own it in? Tell the Manner of it.

Mr. *Sol. Gen.* What's this to the Purpose?

Mr. *Finch*. Mr. *Blatbwayt*, did you take Notes of what passed there?

Mr. *Blatbwayt*. I answer, Sir, I did not take Notes, for I attended the King at his Elbow, and did not take Notes. Mr. *Finch*, you know the Manner of the Council in such Cases very well.

Mr. *At. Gen.* Then we ask you for the King, because they shall not enflame People by such an Expression, In what Words did they own it, if you can remember?

Mr. *Blatbwayt*. Sir, I have declared my Memory as well as I can; whether the other Clerks come to be examined, if they can tell any more, let them.

Mr. *Sol. Gen.* But we will have no Discourse to enflame the World: Did the King promise or declare that no Advantage should be taken of their Confession?

L. C. J. I would ask him that Question, What was the Manner that my Lord Chancellor express'd himself in to them, when they came in the third Time?

Mr. *Blatbwayt*. As soon as my Lord Chancellor had required them to declare whether they owned that Paper, as well as I remember, his Grace took the Paper in his Hand, and it was handed over, or shewed to my Lords the Bishops, and they owned and declared so, just as if they should lay it before the Court, just so. I do not recollect my self of all the Circumstances that passed; I only can tell you the Substance.

Mr. *Sol. Gen.* He does not remember what they said particularly.

Mr. *At. Gen.* Mr. Solicitor, I know well enough what they mean by the Question; I know they would fain possess the World with a Belief that there was such a Promise made them, and yet they are prosecuted notwithstanding that Promise: Therefore I do ask you, Mr. *Blatbwayt*, and for the King's Honour I must ask it: Did the King make any Promise or Declaration, that no Advantage should be taken, or Use made of it?

Mr. *Blatbwayt*. The King did not any make Promise or Declaration that no Advantage should be taken, or Use made of it.

Mr. *Sol. Gen.* He only put them upon it, whether they did own it or not.

Mr. *At. Gen.* I ask you upon your Oath, Did my Lord Archbishop own it to be his Hand-writing?

Mr. *Blatbwayt*. Yes, he did, and said he writ it with his own Hand, and would not let his Clerk write it.

Mr. *At. Gen.* Did he own the whole to be his Hand-writing, or not?

Mr. *Blatbwayt*. Yes, he did.

Mr. *At. Gen.* Did every one of the Bishops own their Names subscribed to it?

Mr. *Blatbwayt*. Yes.

Mr. *Sol. Gen.* Then, my Lord, we pray now that it may be read.

L. C. J. I suppose now they will be content it should be read.

Mr. *Finch*. If your Lordship please to favour me one Word, I think it cannot yet be read; and my Objection is this——

L. C. J. I thought you had made all your Objections before, as to the reading of it.

Mr. *Finch*. Pray, my Lord, spare us. Here are two Parts of this Information; the one is for Consulting and Conspiring to diminish the King's Royal Privilege, 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 Making and Writing of 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 Information.

Mr. *Sol. Gen.* We have it proved it written and published in *Middlesex*.

Mr. *S. Pemberton*. The Contrivance and Writing of a Libel is in itself penal, and they may be punished for it, if they be found guilty. Now if they could give an undeniable Evidence concerning the publishing of it, that is nothing to this Point; but if they should not give such Evidence, or any Evidence at all of the Publication, yet if it be proved that it was written and contrived by them, they would be guilty for so much, if it be a Libel; and this we say is local, as well as all the rest: And therefore we insist upon it, that the Writing and Contriving must as well be proved to be in *Middlesex*, as the Publication, for all is local.

L. C. J. There is no Publishing yet proved.

Mr. *Serj. Levinz*. It is true, my Lord, here is nothing of a Publication yet, with your Lordship's Favour; for their Answer to his Majesty in Council was, that they did not publish it: All that is said yet is, that they owned the Paper to be their Hands. My Lord, does the owning of that own that it was written in the County of *Middlesex*? or that it was contrived or made there? No surely, upon this Evidence the Place is clearly at large. My Lord, this might have been done in the County of *Surry*, or *Somerset*, or any other County: Their Information is, that they did consult and contrive to diminish the King's Privilege at *Westminster* in the County of *Middlesex*, and there they did write, and cause to be written, this Libel, and there they did publish it. Suppose it should be

granted that it is proved that this is the Archbishop's Hand-writing, and these are their Names to it, is there any one Evidence that any thing of this was done in *Middlesex*? And, my Lord, that is the Thing they are to prove.

Mr. *Sommers*. If your Lordship please, 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 Submission, it is the very Point of the Information, that it be proved they are guilty of the Fact in the Place where it is laid to be done.

L. C. J. This is the same Thing over and over again; but I am content to hear you, Mr. *Sommers*, at any Time: I have told you my Opinion about reading of the Paper already, if you'll have it again you may.

Mr. *Pollexfen*. Pray, good my Lord, spare us before it be read.

Mr. Just. *Holloway*. Mr. *Pollexfen*, you have not yet had the Directions of the Court for the reading of it.

Mr. *At. Gen.* My Lord, when this Paper is read, which we pray it may be, we will answer their Objections, but at present we say they are out of Time.

Mr. *Pollexfen*. Good Lord, what a strange thing is this! We object against the reading of it, and you'll answer us after it is read.

Mr. *Sol. Gen.* Certainly, my Lord, we have done enough to prove that this is a Paper owned by them in the County of *Middlesex*, and we pray it may be read.

L. C. J. Truly I am of the same Mind I was before, that it is too soon to make the Objection, and that the Paper ought to be read.

Mr. *Sol. Gen.* We submit to your Rule.

Mr. *Pollexfen*. If it be the Will of the Court, I have nothing to say.

Mr. Just. *Powell*. My Lord, the Contrivance and Publication are both Matters of Fact, and upon Issue joined, the Jurors are Judges of the Fact, as it is laid in the Information; but how can they be Judges of a Matter of Fact done in another County? and it must be presumed, in favour of Innocence, not to be done in this County, but in another, except they prove it.

Mr. *At. Gen.* We are not yet ripe for arguing that Point.

Mr. *Sol. Gen.* We are speaking only to the Court now for the reading of this Paper, and the Jury are not Judges of that, whether the Paper ought to be read or no; that is merely a Matter of Law, and under the Direction of the Court; and therefore I pray, since it is now in your Lordship's Judgment, whether that Paper should be read, that you would please to order it to be read.

L. C. J. I can only give you my own Opinion, let my Brothers give theirs.

Mr. Just. *Holloway*. There is no body against the reading of it, my Lord. I suppose my Brother *Powell* is not against its being read.

Mr. Just. *Powell*. But they say the King's Counsel must make it out first, that the writing of it, and the conspiring about it, was in the County of *Middlesex*, or there can be no Judgment, so much as to read it.

Mr. *Pollexfen*. My Lord, if the Objection be saved to us, we shall not so much oppose the

reading it, only we would not be surprized in Point of Time.

Mr. Just. *Powell*. Nay, if they consent to the reading, we have no Reason to hinder it.

L. C. J. Brother, I believe they know well enough what they have to say for their Clients; let the Paper be read.

Clerk reads. *The humble Petition of William Archbishop of Canterbury* —

Sir *Rob. Sawyer*. Read the whole Petition; pray, my Lord, that the whole may be read. Read the Top first, Sir, to whom it was directed.

L. C. J. Read the whole.

Clerk reads.

To the KING's most Excellent MAJESTY.

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

Humbly sheweth,

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

Your Petitioners therefore most humbly and earnestly beseech your Majesty, that you will be graciously pleased not to insist upon their Distributing and Reading your Majesty's said Declaration:

And your Petitioners (as in Duty bound) shall ever pray, &c.

Mr. *At. Gen.* My Lord, we shall leave our Evidence here, and hear what they can object to it.

Mr. *Finch*. Have you no farther Evidence, Mr. Attorney?

Mr. *At. Gen.* We leave it here for the present.

Mr. *Sol. Gen.* The Gentlemen of the Jury desire to see the Petition.

L. C. J. Shew it them.

[*The Petition was shewn to the Jury.*]

Mr.

Mr. *Finch*. But will you give no further Evidence, Mr. Attorney?

Mr. *At. Gen.* I tell you, we'll leave it here, till we see what you say to it.

Mr. *Finch*. There is nothing that we should say any thing to.

Mr. *At. Gen.* Make your Advantage of it; if it be nothing, we can have nothing.

L. C. J. What say you for the Defendants, Gentlemen?

Mr. *Finch*. My Lord, in short, we say, that hitherto they have totally failed; for they have not proved any Fact done by us in *Middlesex*, nor have they proved any Publication at all.

Sir *Rob. Sawyer*. They have given no Evidence of any thing.

L. C. J. Pray Gentlemen, speak one at once, and then we shall understand the better what we hear.

Sir *Rob. Sawyer*. My Lord, we say, they have given no Evidence of the Conspiring, Writing, or Publishing in *Middlesex*: Nay, as to the Publication, there is none at all proved.

Mr. *Finch*. Here is no Proof of any Publication, nor of the Writing or Making in *Middlesex*; so that there is no Proof at all against my Lords the Bishops.

L. C. J. You heard what Mr. *Blatbwayt* said; they owned it in *Middlesex*.

Mr. *Finch*. That is not a Publication sure, or any Evidence where it was done.

Mr. *Serj. Levinz*. Suppose, my Lord, that I own in *Middlesex*, that I robb'd a Man in *Yorkshire*, will that make me guilty in *Middlesex*?

Mr. *At. Gen.* But if you had stole a Horse in *Yorkshire*, and had that Horse in *Middlesex*, and owned it, I doubt it would go hard with you in *Middlesex*.

Mr. *Sol. Gen.* Mr. Serjeant thinks he has put a very home Comparison; but we shall shew how little significant it is by and by.

Mr. *Serj. Levinz*. My Lord, in the first Place, we insist upon it; here is no Proof in this Case at all, as to the doing of any Fact at all in the County of *Middlesex*: In the next Place, this Information and Petition do not agree; for they have brought an Information, and set forth, that my Lords the Bishops, under pretence of a Petition, did make a Libel, and they have set forth no Petition at all; all the petitionary Part is omitted. If I will take part of a Man's Words, and not the Whole, and make a Libel of that Part, certainly that is very disingenuous and injurious: For that Part that I omit may alter the Sense of the whole. They here ought to set forth the Petition, with the Direction to the King, and the Prayer at the End, whereby it will appear what the whole is, and what was desired by their Petition. But, my Lord, to make this Matter a little more clear, whatsoever they say of its being my Lord Archbishop's Hand, we shall prove that if it were so, it could not be done in *Middlesex*; for we shall prove that my Lord of *Canterbury* hath not been in *Middlesex* for three or four Months before.

Sir *Rob. Sawyer*. Pray let the Information be read, then you will see the Variance.

Mr. *At. Gen.* There is not the latter Part, we acknowledge, in the Information.

Mr. *Sol. Gen.* There may be, and is, a *sic continetur*, and there is no Objection in that at all.

L. C. J. It is *sic continetur*, and that's——

Sir *Rob. Sawyer*. The Truth of it is, this Information hath made a very deformed Thing of it,

has left it neither Head nor Tail: They stile it a Petition, but it is without any Direction to any body, and without any Prayer for any thing; and without those two it cannot be told what it is.

Mr. *Just. Albybone*. Sir *Robert Sawyer*; if I mistake not, it is said only under pretence of a Petition.

Sir *Rob. Sawyer*. There may be more in the Paper than in the Information; and if all were in, one Part might explain another.

Mr. *Sol. Gen.* So there may be more; and I wonder to hear that Objection from Sir *Robert Sawyer*; who has exhibited so many Informations for Libels in Pieces taken out of Books.

Mr. *Recorder*. All that we alledge in the Information is contained in the Paper, and that's enough for our Purpose; we are not bound to recite the whole.

L. C. J. Indeed I think it is no material Objection at all.

Mr. *S. Pemberton*. Truly I think it is very material in this Case: Here's a Petition that is preferred to his Majesty; take the whole Petition together, and, say they, it is a reasonable Petition; chop off the Direction and the Prayer, and then here's nothing but the Body of a Petition, without Beginning or Ending; or if a Man will say any thing concerning the King, and do it by way of Petition to himself, that will alter the Case mightily from a Paper spread about, that should contain only the Body of the Petition, and nothing else.

Sir *Rob. Sawyer*. Pray read that Part of the Information.

Mr. *Pollexfen*. If so be there be an Information, and that Information charges a Man with a pretended Petition, and the Evidence comes and proves a Petition both Top and Bottom; that is not the Petition in the Information: for that lacking the proper Parts of a Petition, is called a pretended Petition, but that which is proved, is proved a real one.

Mr. *Serj. Baldock*. My Lord, there is nothing in this Objection, as this Record hath it.

Mr. *At. Gen.* Pray, my Lord, give us Leave to state it on our Side, as they have done on theirs, and it will be the better understood upon the reading: I hope it is not come to that Pass that they would have it. Sure these Gentlemen have not forgot altogether the Practice that has been so frequent in this Court: If there be an Information for a Libel, is there any thing more frequent, than only to recite the material Part? Sure they may say, in such a Libel is contained so and so, without setting forth the whole Book.

Mr. *Sol. Gen.* How many Trials have we had here, wherein there has been only a Clause taken out of a Book? as particularly, *Baxter's Bible*, and *Johnson's Book*, and all by Virtue of a *sic continetur*.

Mr. *Finch*. That comes not up to our Objection here.

Mr. *Just. Powell*. Let us hear the Record read, and then we can judge of it.

Sir *Rob. Sawyer*. We pray, Sir, the Information may be read.

Mr. *At. Gen.* We are here upon all Occasions chopp'd in upon, and I do not know how they come to take this Liberty; I am sure other People had it not in former Times, when these Gentlemen stood where we do: As soon 'as ever we offer to speak, presently there are two or three upon us.

L. C. J. Let me hear them, Mr. Attorney, make their Objection, and let the Record be read, and that will answer that Objection.

Mr. At. Gen. My Lord, as for that other thing, they come and tell us, we have set forth a Petition; we say no such thing; in the Information we say, you composed a certain Libel *pretensu Petitionis*, in which are contained such and such Things; and now I pray let it be read.

Mr. Sol. Gen. Pray, my Lord, hear me a little first: Take the Information as we have laid it, and I believe there are twenty Precedents that I could give you in an Instant of late Days Practice: So was the Information against Mr. *Baxter*; so was the Information against Mr. *Johnson*; so was the Information against Dr. *Eades*; and so was the Information against Sir *Samuel Barnardiston*. They are all in this Form, *sic continetur*; so that as for that Matter, we are well enough. But here's another thing, say they, You do not set out the Petition; we say, it is a Libel, and it is not the Name we rely on, but there is such a Libel; so we in our Information call it: If it be not a Libel, then are they very innocent; and whether it be or no, is now in Judgment before your Lordship; but if it be as we say, then it is not the speaking ill Things in the Body of a Petition, and then giving it a good Title, and concluding it with a good Prayer at the End of it: 'Tis not, I say, any of these that will sweeten this Crime, nor alter, nor alleviate it at all; if there be that which is seditious and libellous in the Body of it, call the Paper what you will, and smooth it with a Preamble, or a Conclusion, that will not make it any thing less a Libel; these Things are plain and manifest. We say there is such a Thing done, a Libel made, *pretensu Petitionis*, do you call it what you will; but we say, these, and these Things are a Libel upon the King and the Government: We have proved our Case, we have proved there was such a Paper under their Hands; we have proved it was owned in *Middlesex*, and then we are in your Judgment, whether this be not Evidence sufficient to convict the Defendants.

L. C. J. But they do make an Objection about the writing and contriving of it, that it is not proved to be in *Middlesex*.

Mr. Serj. Trinder. My Lord, our Information does not go with a continued Clause, that they framed a Libel, *ut sequitur in hęc verba*, but we only say, they made a Libel *pretensu Petitionis*; and then we say, *In quo quidem Libello continetur*, so and so; we do not tie ourselves up to a particular Recital of all that's in the Paper.

L. C. J. Read the Record.

Clerk. Reads.

Ipsi iidem Willielmus Archiepiscopus Cantuariensis (and the rest) *dicto decimo octavo die Maii, Anno Regni Dicti Domini Regis nunc quarto supradicti vi & armis, &c. apud Westmonasterium predictum in Comitatu Middlesexie predicto* illicite malitiose seditiose & scandalose quoddam falsum fictum pernitiosum & seditiosum Libellum in scriptis de eodem Domino Rege & Regali Declaratione & Ordine predictis *pretensu Petitionis* fabricaverunt composuerunt & scripserunt & fabricari componi & scribi causaverunt, & eundem falsum fictum malitiosum pernitiosum & seditiosum Libellum per ipsos predictos Willielmum Archiepiscopum Cantuariensem (and the rest) *manibus suis propriis respective subscriptum die anno & loco ultimo mentionatis* in presentia dicti Domini Regis nunc vi & armis, &c. publicaverunt & publicari causaverunt; *in quo qui-*

dem falso ficto malitioso pernitioso & seditioso Libello continetur. The humble Petition of, &c. —

Mr. Serj. Levinz. It is quite another thing; that which is produced from that which is in the Information, by this leaving out a Part; for here is the Prayer omitted, and the Direction.

Mr. Sol. Gen. Then, my Lord, I think there is nothing in the Case, but this mighty Objection of the County; and, says Mr. Serjeant *Levinz*, if my Countryman confesses in this County, that he stole a Horse in *Yorkshire*, you shall not try him in *London*, but in *Yorkshire*, because, by his own Confession, the Fact is in another County.

Mr. Serj. Levinz. I did not put the Case so.

Mr. Sol. Gen. But take the Fact of the Case as it is here: My Lord, the Bishops come in *Middlesex* and own this Paper; my Lord Archbishop owns it to be his Writing, and the rest of the Bishops own their Hands: If they had done as Mr. Serjeant's *Yorkshire*-man did, and said, we own we did this, but it was in the County of *York*, then it would have been like the Case that these Gentlemen put; but here we are in a plain Case of another Nature: My Lord Archbishop comes here in *Middlesex*, and owns that he writ the Paper, the other Bishops they signed it: Now it does lie certainly in their Knowledge where this was done, and they should have declared then; but they have owned it as their Paper, and the signing and writing of it, which is enough for us.

Mr. Finch. I own this to be my Paper, therefore I writ it in the County of *Middlesex*: Is that a Consequence? I am very glad they are no better at their Inferences.

Mr. Sol. Gen. They have owned the Thing in *Middlesex* that we insist upon, and they have not owned it with any Qualifications: If they had said, it was done in another County, then you must have taken it to be as they said it; then if they do not distinguish the Place of the Fact, your Lordship can only take it to be where they owned it; it would be supposed to be done in that Place; for when they owned the Fact, it will be supposed, if they do not say where it was done, that it was done where they owned it, because the King can't tell where it was done; but the Evidence comes out of their own Mouths, they may give Satisfaction where it was done, for they know it; and till that be done, the Supposition is against them, that it was done in the Place where they owned it; and that is a plain Case, wheresoever a Man is to speak of his own Fact. Indeed, if I publish the Writing of another Person which is libellous, then there must be a particular Proof of the Place, because it is not my own Fact; but if those Lords publish a Libel that they make themselves, it is their own Knowledge, and in their own Power to tell where it was done, because it is their own Act and Deed. It is true, if my Lords had published a Paper that was contrived by some of their Counsel, it had been some Excuse, and they must only have suffered for that Publication in the Place where it was done; but they are here for writing this they have owned in this County, and therefore it lies upon them to prove it done elsewhere. There is another Objection, my Lord, made, that here is no Evidence of a Publication. My Lord, I take it to be a Publication in itself: Is it possible for a Man to write a Libel? to set his Name? and part with it? and it coming to the Hands of the King, that this is not a Publication? It is not their

their saying, we did not publish it, that will excuse them; for can there be a greater Publication in itself than this, when Men have set their Hands to it, and owned their Names? What makes the Fact in this Case? If a Deed be denied to be *factum* of such a one, what is the Proof of it, but setting the Hand and Seal, and the Delivery? There is owning the Paper, and setting their Hands is a Publication in itself, and therefore they cannot make any such Objection. My Lord, if there were Occasion, we have Authorities enough to this Purpose, and we will give them Scope enough if they will argue this Matter; and if they have any Evidence, we desire to hear what they can say to it.

Mr. *At. Gen.* As for this Matter of Fact, my Lord, if I take it right, they do not controvert the Publishing, but, say they, pray make it out, where it was written or composed. I confess, this would be a Business worth the while, for all Persons that act in this Manner, and are concerned in making of Libels, to understand for their Advantage. No Man doubts in the Matter of Treason, but it is local: Then put the Case a Man is found in *Middlesex* with a treasonable Paper in his Pocket; I do not make a Comparison, as if this was such a Paper, I hope I am not so understood; but I only put it as a Case, and that the Law is so, is beyond all Controversy; then the Man is indicted here in *Middlesex*, for framing and composing such a treasonable Libel, and he comes to be tried, and, says he, pray prove where I made and composed it; for though you found it in my Pocket, in the County of *Middlesex*, yet I might do it in the County of *York*; and upon my Word, this had been a very good Defence for Mr. *Sidney*, who was indicted, convicted, and attainted, for making a treasonable Paper which was found in his Study; might not he have put the same Objection? Might not Mr. *Sidney* have said (it was great Pity he did not understand it) pray prove where I did it, for I did it elsewhere than in this County—

Mr. *Sol. Gen.* He did say it, I remember.

Mr. *At. Gen.* Truly, my Lord, I would not hear any Answer given to this for it would make the King in a very woful Case: Here is a Paper that is found in the County of *Middlesex*, and this is there owned by you to be written and subscribed by you; pray do you prove it, that it was written elsewhere.

Mr. *S. Pemberton.* My Lord, we will do it, we will be governed by Mr. Attorney for once.

Mr. *Serj. Levinz.* We will prove that my Lord Archbishop was not in *Middlesex* in seven Months before; and truly I think Mr. Attorney's Case of a Paper found about a Man, or in his Custody, will not come up to our Case; for was this Paper found about us? surely that is not pretended.

Mr. *S. Pemberton.* Your Lordship sees by the very Frame of the Petition, that this Petition, which they call a Libel, was made after the King's Order concerning reading this Declaration. Now we shall prove that my Lord Archbishop, whose Hand-writing they prove this to be, was not out from *Lambeth-house* in two Months before, nor till he was before the Council.

Sir *Rob. Sawyer.* Which was long after that Time when it was made.

Mr. *S. Pemberton.* So that this cannot be written in the County of *Middlesex*.

Call *Francis Nicholls.*

[Mr. *Nicholls* was sworn.]

Sir *Rob. Sawyer.* Do you remember the 18th of *May* last?

Mr. *Nicholls.* Yes, Sir.

Sir *Rob. Sawyer.* Pray how was it with my Lord Archbishop of *Canterbury* at that Time, and before that, did he go abroad?

Mr. *Nicholls.* My Lord, I am very sure that my Lord his Grace of *Canterbury*, whom I have served in his Bed-chamber these seven Years, never stirred out of the Gate of *Lambeth-house* since *Michaelmas* last.

Sir *Rob. Sawyer.* Till when, Mr. *Nicholls*?

Mr. *Nicholls.* Not till the Time he was summoned before the Council.

Mr. *S. Pemberton.* Now I hope we have given them a full Proof that it could not be in *Middlesex*.

Call *Thomas Smith.*

[Mr. *Smith* was not examined.]

Mr. *Finch.* Truly, my Lord, I think that what we have proved, or what Proof we further offer of my Lord of *Canterbury's* not being in *Middlesex* for so long a Time, is *ex abundantia*, and we need it not; for with humble Submission in Point of Law, it is incumbent upon them that are to prove the Charge in the Information, to prove where it was done; because the Locality of it is Part of the Thing, they ought to prove it. In its Nature it is local, there is a Place assigned in the Information, and unless they prove it was done in the Place that they have laid, they have not proved the Charge in the Information. Now, my Lord, they have not made Proof of that, and for Proof of Publication, I think they have offered none to your Lordship; they never did call it so yet, and truly I never did hear or know that the owning of their Hands at the Council-Table was a Publication of a Libel: It is owning the Writing, but it is not an owning where the Writing was made; but where it was written, and where it was made, is of Necessity to be proved. Before the Charge upon a Record, in a Court of Justice, can be said to be made out, it is a local Charge, and in Justice, the Locality must be proved, or the Information fails. My Lord, they have offered no Proof to it, and they have not yet gone to the second Part of the Information; for as to the Publication of it, there is not a Tittle of Proof offered, but only the owning of their Hands upon their Examination at the Council, and no Man did ever think that the answering a Question, and owning a Paper at the Council-Table, upon a Question put by the King himself, was a Publication of a Libel.

Mr. *Serj. Baldock.* Pray, my Lord, hear me a Word to that: Though the Thing be never so local, yet there must be some Place where a Thing that was done, was done. Then if nothing else appears but what was done in *Westminster*, in the County of *Middlesex*, unless they shew the contrary, that must be the very Place where it was done.

Mr. *Sol. Gen.* Here is a great deal of Prevarication in this Matter, and I would observe to your Lordship how they do use the Court ill in it: Pray, my Lord, what is it we are upon? We are proving that these seven Lords, the Bishops, signed this Paper; and I think we have proved it sufficiently out of their own Mouths: But, say they, it was not signed in the County of *Middlesex*, but in the County of *Surry*. All this is but Imagination, and they would have the

Court to imagine it too: For how do they prove it? They would have your Lordship and the Jury believe, that it was signed elsewhere, because my Lord Archbishop has not been out of his House in some Months before: It is all but Inference, and Argument, and Imagination. But still, Gentlemen, do you answer what I objected to you? Does it not lie in their Power to shew where it was signed? Here are six more, besides the Archbishop, where was it signed by them? Here are six of the Bishops, that it does not appear where they signed it; but they confess at *Whitehall*, in *Middlesex*, that they did set their Hands.—

Mr. Serj. Levinz. Ay, they did so, and what then?

Mr. Sol. Gen. Ay, and ay too; if they did so, the Presumption and common Intendment upon such Evidence is, that it was done in the Place where it was owned; and the rather, for that Reason that I said before, that it lies in their Knowledge; and therefore it is incumbent upon them to prove, that it was not in the County of *Middlesex*: So that this Objection I take rather to be an Invention of the Counsel than the Truth of the Fact, because they that can make this out, do not. And as to what they say of my Lord Archbishop, that he has not been out of Doors for so long, who can prove such a Thing? Certainly my Lord was able to come, for any thing that appears; he has been here twice, and he was able to come to the Council-Board: But when all is done, my Lord Archbishop is certainly able to put this Matter out of Doubt; for he may easily prove it, if the Fact be so; and that will satisfy the Court and every body, that it was signed by him at *Lambeth*, if he designs to deal sincerely with your Lordship and the Court, and the Jury; but certainly it is not to be proved by a Circumstance, such a one as this is, but he ought to give your Lordship and the Jury Satisfaction about this Fact: He ought to say, 'Tis true, I did sign it, but it was at *Lambeth-House*; that indeed would be a down-right Stroke to us: But to go upon a Supposition, that because my Lord Archbishop was not out of his House for so long together, therefore they are all not guilty, is a very hard and foreign Inference. My Lord, there's another Matter that they insist upon; and that is about the Publication; that is as plain as any thing can be, that here is a full Proof of a Publication; for if the Paper be Libellous, wherever that Paper is, that is a Publishing, wherever the Paper travels, how far soever it goes, it is a Publication of it by these Persons that signed it. I believe no body thinks that this should fly into the King's Hand, but somebody brought it to him; and certainly, my Lord, if your opinion should be, that this Paper is Libellous, then wherever it is, it is a Publishing, which is our Offence; wherever it is found, it is a Publication; for there is the Mistake of these Gentlemen, they fancy, that unless there was a Publick Delivery of this Paper abroad, nothing can be a Publication; but I rely upon it, they setting their Names to it, made it their Paper; and wherever it was afterwards found, that did follow the Paper wherever it went, and was a Publication of it, it was in their Power, being their own Contrivance; it was made and formed by themselves, and no body will believe, when it was their own Hands that they put to it, that any body else could have any Power over it: For ought appears, no body else was at work about it, and when

there were so many learned Prelates that had signed such a Paper, no one can believe they would let it go out of their Hands, but by their Consent and Direction: Is not this a Proof of the Publishing? Do they give your Lordships any Evidence that they had stifled this Paper? If they had so done, they had said something; but will any body believe that this Thing was done in vain? Can any body assign a Reason why so solemn a Thing as this should be done to no End and Purpose? Why a Paper should be framed that rails at the King's two Declarations? Why a Paper that gives Reasons why they could not read it in their Churches, and signed with such Solemnity by all these Noble Lords, we submit this to you in point of Law; and the Law is plain in it, that if this Paper be Libellous, and it is found in the County of *Middlesex*, there is a Publication of that Libel. I shall mention to your Lordship that Case of *Williams*, which is reported in the second Part of *Roll's Reports*; Mr. *Finch* made use of it in the Case of *Sidney*; it was the great Case relied upon, and that guided and governed that Case (as I apprehend) from the Verdict and Judgment that was given in it. This Case was 15 *Jacobi*. It seems *Williams* was a Barrister of the *Inner Temple*, and it seems, being an high Catholick for Opinion and Judgment, he was expelled the House; and he being so expelled (being a sort of a *Virtuoso*) wrote a Book called *Baalams Ass*; and therein he makes use of the Prophet *Daniel*, and he makes Application of it according to his own particular Fancy. He writes there, that this World was near at an End; and he said, Those ill Days were come that that Prophecy spoke of; and because of the Impurity of Prince, and Priest, and People, and other Things that happened, those were the worst of Days, and therefore the last; and that certainly we had the worst Prince that ever was in the World: When he wrote this Book, what does he do? He was a little more close than my Lords the Bishops, and pins it up, or seals it up, and it was brought to the King; and what is this more than the Case before your Lordship? They indeed say, I do this by way of Advice to the King; so said he, I do this by way of Advice to the King, for God forbid that any of this should happen to the King; and so what he does, was by way of Advice, and he prayed God to avert it from him. Here was as good a Prayer as there is in this Paper, and there was a good Design; he made use of the Prophet *Daniel*, and applied his Words. Well, what was done upon it? This was never published; for the Question was before the Court, whether this sealing of it up, and not delivering it to any other body were a Publication, the Court was of Opinion, that the very Writing of it was a Publication; they did not value the Delivery of it to the Prince, but it was proved he writ it, and that made it Treason. My Lord, we have Cases enough in my Lord *Hobart* for this Matter; Sir *Baptist Hicks's* Case, and my Lady *Hatton's* Case; there was only a Letter sealed up and delivered to the Party.

L. C. J. You need not trouble your self about that, Mr. Solicitor.

Mr. Sol. Gen. If the Case then be thus, I take it, it will turn upon this Fact; they have given your Lordship no Proof where this Paper was Signed by them: Here are seven Persons that had a Hand in it, and here is only one Person whom they

they have insisted upon to be infirm, and kept his House for a great while together. We say the Publishing follows the Libel wherever it goes; the Libel is in the County of *Middlesex*, they have confessed it in the County of *Middlesex*, and they did not distinguish when it was done. Then if they will not distinguish upon the Evidence, no Man ought to distinguish, but ought to presume it was done in that Place where they owned it.

Mr. *At. Gen.* I did not apprehend we were got so far, that they opposed us in the Publication.

Sir *Rob. Sawyer.* Yes, we did, for you have given no Evidence of it.

Mr. *At. Gen.* Surely, my Lord, for that we have given a sufficient Evidence, and they have given some Proof of it, as to my Lord Archbishop; that because he had not been from *Lambeth*, therefore he did not publish, nor could cause it to be published; for your Lordship sees by this Information, they are not only to answer the *Publicavit*, but also the *Publicari causavit*; for do you doubt, Gentlemen, of the Law in this Case, that if I compose a Libel in *Surry*, for Example, and send a Person over into *Middlesex*, I am not guilty of the Publishing?

Sir *Rob. Sawyer.* That is not your Case, Mr. Attorney.

Mr. *Finch.* That were clear if it were so, but it is not so.

Mr. *At. Gen.* My Lord Archbishop's Case signifies nothing, if we shew it was published in *Middlesex*, and you give no Evidence to the contrary but it might be there; and I am sure as to the rest of my Lords the Bishops, there is no Evidence at all given. Here is a Petition that we say is a Libel, they it may be will make that a Question: This is delivered to the King's own Hand in the County of *Middlesex*, and there are as many Cases as any one Man can name, that this amounts to a Publication by the Party; for if I send a Letter by the Post sealed, that no body can see but the Party himself, and he that writ it, it is adjudged over and over again, it is a Libel.

Mr. *Just. Powell.* That you need not labour, Mr. Attorney, for that's the Case of *Williams of Essex*; but how do you apply it to the Case now before us?

Mr. *At. Gen.* That's an Answer to their Objection as to the Publication.

Mr. *Just. Powell.* But what say you to the first Part, you have not proved that it was written in *Middlesex*.

Mr. *At. Gen.* There is the Case of *Barrow and Lovellin in Hobart*, and likewise the Case of Sir *Baptist Hicks*, which is reported both in *Hobart* and in *Popbam*; and in *Popbam*, towards the End of the Case, there is a remarkable Passage. Says that Case, If it should not be punishable at the Suit of the King, there would be no Remedy; for the Party cannot bring an Action, because he can be no Witness for himself, and it is only known betwixt them two; but a Witness for the King he may be, to prove his own Receipt of the Letter, and the Party's Hand.

Mr. *Just. Powell.* You need not labour that Point, I'll tell you, Mr. Attorney; for the Law is very clear in that Point, I think, if you bring it home to your Case.

Mr. *At. Gen.* Then here's the Case, in short, my Lord; that my Lords the Bishops have

caused to be made and written this Petition; they are made Parties to it by setting their Names, and this is a continued Act: Whatsoever is written there is my Lord Archbishop's Writing, wherever it goes, as I'll put a Case that's very well known. If I take away Goods from a Man in the County of *Cumberland*, and I am found with them in the County of *Middlesex*, it is a continued Act, and makes all but one Felony, and I shall be tried here in *Middlesex* for it. If a Man write a Thing in one County, and it is sent and dispersed in another County, that still continues to be his Fact, though it may be the first Part was not in the same County with the other: But suppose all this while that Part should not affect my Lord of *Canterbury*, the causing it to be published does.

Mr. *Just. Powell.* Do you think, Mr. Attorney, that writing in one County is such a continued Act, that he may be said to write it in another County?

Mr. *At. Gen.* Sir, I take it, where there is a complicated Crime of writing and publishing a Libel, and the beginning of it is in one County, and the carrying it on is in another, that is a continued Act, and may be tried in either County.

L. C. J. It is all one Act of Libelling, as they say.

Mr. *Just. Holloway.* In Cases of Felony 'tis so; taking in one County, and being found with the Goods in another, it is Felony in either County.

Mr. *Just. Powell.* But in that Case they are two Felonies; for it is Robbery in the one County, and but bare Felony in the other.

Mr. *Sol. Gen.* Suppose that my Lords the Bishops signed this Paper in another County, and my Lord Archbishop consents to have it sent into *Middlesex*, is not this a Causing it to be published in another County?

Mr. *Just. Powell.* Yes, it may be, if you prove his Consent.

Mr. *Sol. Gen.* Then suppose further, which may very well consist with my Lord Archbishop's Evidence of his not being out of *Lambeth* in so long Time, the rest of the Bishops might sign it in *Middlesex*, or it may be in that Place; and then they carry it by my Lord's Consent over hither into this County, is not this a Causing it to be published? The Delivery with his Consent certainly is a Proof of that, for our Information goes two ways; for Making, Contriving, Writing and Publishing, that's one; and then for causing it to be Made, Contrived and Published, that's the other. And if I prove that he caused it to be published, he may be found guilty as to that Part, and not guilty as to the other; for the Information is not so entire, but that the King has his Choice. If the Archbishop had not signed it, or written it, but had caused it to be published, he may be found guilty of so much: But if he be guilty of any one of these things, it is enough; and if he be guilty of none of the other things laid in the Information, yet if he be guilty of causing it to be published, by his consenting that the rest of the Bishops should do it, that will be enough to maintain this Information. Then, my Lord, is there any Evidence brought against what we have proved, that he did not consent?

Mr. *Just. Powell.* But were was this Consent of his given, Mr. Solicitor?

Mr. Sol. Gen. Pray, good Sir, give me your Favour, I think I am in a plain Case.

Mr. S. Pemberton. So are truly.

Mr. Sol. Gen. Why, good Sir, you ought to make out the Locality, if you'll take Advantage of it.

Mr. S. Pemberton. That's very well indeed, this is the first Time I ever heard that Doctrine.

Mr. Sol. Gen. I cannot help that, but certainly the Law is plain: We have proved there was such a Fact as this was done and they do not go about to prove that it was done elsewhere than where we have laid it; for if they did, their Witnesses would be cross-examined by us; and then we know what would become of them, then the Truth of the Matter would come out: Therefore I would make all this *constare*. The Archbishop might be at *Lambeth*, and yet guilty in *Middlesex*, by his Concurrence with what was done in *Middlesex*: And I say, my Lord, this is natural, upon the Evidence that has been given, because when they were interrogated at the Council, and confessed the Paper to be theirs, they made no such Explanation of their Confession, of which they can make any Advantage in their Defence. Here has been nobody produced that proves any thing to be done out of *Middlesex*; so that still if he's guilty of the Fact proved, he must be guilty in *Middlesex*.

Mr. Serj. Baldock. And it does not appear, in this Case, but that my Lord Archbishop might write the same Thing in *Middlesex*, though he was at *Lambeth* so long as the Witness speaks of.

Mr. Just. Powell. How do you make out that, Brother?

Mr. Serj. Baldock. He might do it when he came over to the Council.

Sir Rob. Sawyer. He must do it after it was presented.

Mr. Serj. Baldock. Might he not be so long here on this Side the Water, as to make such a short Thing as this, before it was delivered? Half a Quarter of an Hour would have done it.

L. C. J. That's a Thing not to be presumed, Brother, especially since he is proved not to have been in *Middlesex* for so long together.

Sir Rob. Sawyer. Mr. Serjeant is mightily mistaken, for it is not pretended, that it was delivered at the Time when the Archbishop, and my Lords the Bishops, were before the Council.

Sir Bartholomew Shower. Mr. Recorder. Either the Making and Contriving, or the Publishing of this Libel will do upon this Information; for they shall be taken to be one continued complicated Act, and then the Party may be tried in either of the Counties, as the King will; as in the Case of Treason, it has been over and over again adjudged, that if a Man does one Act of Treason in one County, and afterwards goes into another County, and does another Act of Treason, the Jury of either of the Counties may enquire of the Fact done in the other. If they then should take those two as several Acts, they were several Offences, and they may be found guilty of the one and acquitted of the other; but if they are taken as one continued Act, they are but one Offence, and the Jury of either County may try it. If then, in this Case, the Jury of this County may take Notice of the Publication which was here, as certainly they may, if they will agree, as the Law certainly is, that the Writing of a Letter will be a sufficient Publication, if the Matter be

libellous. And there are Multitudes of Precedents for that; and that the bare setting of a Man's Hand has been adjudged to be a Publication: Then give me leave, my Lord, to bring it to a similar Case: Suppose a Man write a scandalous Letter from *London*, to a Judge or Magistrate in *Exeter*, and sends it by the Post, and the Letter is received from the Post at *Exeter*, and there opened; would any Man make a Question whether the Gentleman that sent the Letter may not be indicted and prosecuted for a Libel at *Exeter*, where the Libel was received?

Mr. Just. Powell. There's no Question of that, Mr. Recorder; that comes not home to the Fact in our Case: Undoubtedly in the Case that you put, the Law is as you said, but it is far different from this Case.

L. C. J. There's nobody opposes the Publication, but the framing of it where it was made.

Mr. Recorder. Supposing then the Party were at *Exeter*, and he were interrogated before the Magistrate, whether that were his Hand or no, and he should own it to be his Hand, can any body doubt whether his owning that to be his Hand, would be a sufficient Evidence to prove a Publication?

Mr. Just. Powell. But is that any Evidence where it was written? Or if it be not proved that it was received at *Exeter*, would that be a Proof of a Publication at *Exeter*?

L. C. J. They do not deny the Publication.

Sir Rob. Sawyer. We do deny that there was any Publication; and they have proved no Place where it was made.

Mr. Sol. Gen. My Lord, we are not for turning my Lords the Bishops out of the Way of Proof that is usual in such Cases; let them take it if they will, that this was contrived and made in *Surry*. But can they publish it in *Middlesex*, without committing an Offence? and that is it we stand upon: We are not for laying a greater Load upon my Lords the Bishops than our Proof will answer.

Sir Rob. Sawyer. We thank you for your Complement, Mr. Solicitor.

Mr. Sol. Gen. Is this a fair Way of interrupting us when we are speaking? Durst any one have served you so when you were in the King's Service? We would make our Duty as easy as we can to my Lords the Bishops, and it may be easier than other Men would have made it. But, my Lord, let it be a doubtful Case, that we cannot tell which County it was made and contrived in, if it were made and contrived in another County; yet when they brought it into *Middlesex*, there was a Publication in *Middlesex*; and if my Lord of *Canterbury* consented to it, and if he caused it to be published, how can any body ever get him off from that causing of it to be published? Here is a Paper that must be supposed to be my Lord Archbishop's Paper: Now either the World must look upon it to be an Imposture put upon my Lords the Bishops, or a real Paper made by them. If it were an Imposture and an Affront put upon the Bishops, they ought to make it out for their own Vindication, and to prove themselves innocent: If they do that, they do well, and they ought to have Satisfaction made them by those that have so highly injured them; and the King cannot be better pleased, I am sure, than to find them so: But if Men will look one way and act another, they must expect to be dealt with accordingly. Will any Man that has heard this Evidence, and sees that these

these Gentlemen will not go the right Way to work to prove their own Innocence, believe them to be not guilty? 'Tis plain they contrived it and signed it; for can any one imagine that they set their Hands to a paper that was not formed and contrived by themselves? Then let it go, That this was done in another County, and we cannot punish the Writing of it in this County; yet still they are guilty of causing it to be published in this County, and for that we may punish them here: We will be content with having that found that we have proved, which certainly is an Offence.

Sir *Rob. Sawyer*. We oppose that, Sir.

Mr. *Soll. Gen.* You oppose it! I know you'll oppose common Sense; we don't speak to you, we speak to the Court. We are content with what is plain, and do not desire to insist upon any strained Construction: We say this is natural Evidence for us; If this thing be a Libel, as we say it is, then the causing it to be published, is an Offence. The Publication we say was here in *Middlesex*, and of that there is a clear Evidence, because it was found there, and came from the King's Hand, to whom it was directed, and it could not come to the King's Hand out of their Custody, without their Consent: This, we say, is a clear Evidence of causing it to be published, let the rest go as it will, because we will take the easiest part of the Case, and not go upon Strains.

Mr. *Serj. Trinder*. The greatest Question is, I think, now come to the publishing——

L. C. J. The Court is of Opinion, that its coming to the King is a publishing.

Mr. *Just. Powell*. Ay, my Lord, if it be proved to be done by them.

Mr. *S. Pemberton*. Before the Court deliver their Opinion, we desire to heard.

L. C. J. Brother, you shall be heard in good Time, but let them make an End on the other Side, and when the King's Counsel have done, we'll hear you.

Mr. *Serj. Trinder*. My Lord, upon the Question of Publishing, it has been insisted upon, and the Court seems to be very much of the same Opinion, that the Writing of it is a publishing: That it is without Controversy, if the Writing of it fell out to be in *Middlesex*, where the Information is laid; but that they would not have to be so by Argument, because the Archbishop had kept in at *Lambeth* so long. But, suppose that it were so as they would have it; that is only as to the Archbishop, he being the Writer of it; but yet notwithstanding that, the other six might subscribe it in *Middlesex*, taking it, that there is such a Face in their Argument as they would have it.

Mr. *Soll. Gen.* We will lay no greater Load on the other six than we do upon my Lord Archbishop, and we say they are all guilty of the Publication in *Middlesex*.

Mr. *Serj. Trinder*. Pray, Sir, spare me. This paper was in the Archbishop's Custody and Power, he taking of it himself; and regularly it could not have come out of his Custody, in common Supposition, but it must come with his Consent. It was afterwards in the power of the other six, they had it to subscribe; whereas the Subscription was *non constat*; they it may be can prove it themselves, but I will only deduce this Argument; That if it aiter comes into *Middlesex*, it must be taken by Presumption to be subscribed by them there and published; it must be taken by Presumption so to be.

L. C. J. No, Brother, we ought not to do any thing by Presumption here.

Mr. *Just. Powell*. No, no, by no means, we must not go upon Presumptions, but Proofs.

L. C. J. I will not presume it to be made in *Middlesex*.

Mr. *Serj. Trinder*. But it is proved to be published in *Middlesex*.

Sir *Rob. Sawyer*. My Lord, with Submission; there is no Evidence of the Publication.

Mr. *Att. Gen.* That the Court is to judge of.

Sir *Rob. Sawyer*. Pray, good my Lord, what Instance of a Publication have they given?

Mr. *Soll. Gen.* The Court has heard the Evidence, we leave it there.

Sir *Rob. Sawyer*. Was it their owning and acknowledging it was their Hands, when the King asked them the Question at the Council-Table? Surely the King's Counsel won't pretend that was a Publication, when it was done at the King's Command! It was certainly the King that published it then, and not my Lords the Bishops.

Mr. *Att. Gen.* Well said.

Sir *Rob. Sawyer*. Don't you remember that, when Mr. *Blathwayt* said the King gave it to be read, and it was shewed to the Bishops?

L. C. J. I remember what Evidence Mr. *Blathwayt* gave of the Passages at the Council-Board very well; and I know what Mr. Attorney did press about the King's promising to take no Advantage.

Mr. *Att. Gen.* My Lord, Mr. Attorney is on the other Side, he did not press it.

L. C. J. Sir *Robert Sawyer* I mean; I beg both your pardons, Gentlemen, I think I have done Injury to you both.

Sir *Rob. Sawyer*. My Lord, we say there is no Evidence at all, that ever this was sent to the King by the Archbishop, or any of my Lords the Bishops: And as for the Cases that they have put, they might have put five hundred Cases, and all nothing to the purpose.

Mr. *Soll. Gen.* So they might, and done just as others had done before them.

Sir *Rob. Sawyer*. And so are these; for here is the Question, We are in a Case where the Publication is that which makes it a Crime: Now I would have them, if they can, put me any such Case, and then apply it to this. In *Williams's* Case, the Question is quite otherwise, and so in any Case of Treason it must be: Wherever there is an Overt-Act proved, it is the treasonable Intention, and the ill Mind of the Traitor, that is the Crime, and the Treason (the Overt-Act) is only to be the Evidence of it. In that Case of *Williams*, with Submission, my Lord, the Publication was not at all necessary, but the very secretest Act that could be done by him (if it were an Act) is an Evidence of the Mind; and so the sending of the Book to the King himself, though no Body else did see it, was an Evidence of the Crime of Treason, yet it could not be called a Publication. But in the other Case of Sir *Baptist Hicks*, which was in the *Star-Chamber*, about sending a Letter of Challenge, it was plainly resolved that it was no Publication of the Letter, and that was not the Ground of the Judgment given against him there, that it was the Publication of a Libel, but the very Fact was a particular Offence; for, said the Court there, if you will send a Letter to a private Man, and that is a Letter that will provoke him to break
the

the Peace, that is an Offence punishable in the *Star-Chamber*; but that is not the Reason which was alledged, because no Action will lie for want of Proof, but quite the contrary; because they may produce the Porter or Party that brought it, and prove it that it came from this Man's Hands; and I do not question but that in the *King's-Bench* at this Day, if a Man will write a Letter privately to provoke another Man to fight, there will lie an Information, but not for a Libel; for there it will be necessary for to make an Offence, that there may be a Publication; for that is the very Form of the Crime, and upon that Ground were all those Judgments against Libels in the *Star-Chamber*. My Lord, I agree to write a Letter to the King of another Person, or to make a Petition to the King concerning another Person, as of my Lord Chancellor, or the Judges, or the like, to complain to the King of them scandalously, with provoking and reviling Language, that is a Publication; and so if I write a Letter to one Man of another; if there be Scandal in a Letter, that is a Publication of a Libel; and that is the Difference that has been always taken, where it is essential to make it a Libel, that there be a Publication, such a Publication must be proved, and the Delivery of a Letter to a Man that concerns himself, is no Publication; but in this Case they have not so much as proved that it was delivered to the King.

Mr. *S. Pemberton*. My Lord, with your Lordship's Leave, I take it, that they have given no manner of Evidence of a Publication; to say, the Writing and Subscribing of their Names to a Paper, is a Publication of that Paper, is such a Doctrine truly as I never heard before. Supposing this Paper had lain in my Study, subscribed by me, but never went further; would this have been a Publication? They never said any such thing. As to *Algernon Sidney's* Case, there was no Colour for it, that it should be a Publication; but it was an Overt-Act of Treason to compose such a Book. They have proved by our Confession here, that we have subscribed this Paper; they would take it now, that therefore it must be presumed we sent this to the King, and so surmise us into an Information for making and publishing a Libel, which we sent to the King; but they do not prove it all. My Lord, there are a thousand Ways that it might come into *Middlesex*, and perhaps come to the King's Hands too, without our Knowledge of Delivery; and sure you will not presume these noble Persons without Evidence to be guilty of such an Offence as this is suggested to be! So that, my Lord, and Gentlemen of the Jury, 'tis impossible for you to find this a Publication in *Middlesex*; and for the other Thing (the writing this Paper) they that would make it an Offence, must prove where it was done.

Mr. *Serj. Levinz*. My Lord, The Answer that I shall give to what has been said on the other Side, is very short: The Cases that have been cited are all Law, but not one Tittle to this Purpose: In *Sir Baptist Hick's* Case, and *Williams's* Case, it was proved they all sent them to the Places whither they were directed; but is there a Tittle of Proof that these Bishops sent it here? In all those Cases they must send it either by a Porter or a Carrier, and they send it as their own Act, and when it comes there, by their sending, that is sufficient Proof of their Act in the Place whither it is sent: And for *Sidney's* Case, there

was Treason in the very Libel and Book that he made; and he was not indicted for Publishing, but for Treason, in the Place where it was found, because it was found in his Possession: But was this ever in my Lord Archbishop's Possession in *Middlesex*, or the rest of the Bishops, and were they publishing of it? If it had, then it had been their Act clearly: But that is the Thing wherein they are defective, that they do not prove that my Lords the Bishops sent or brought it here; but upon the Question asked them by the King, they acknowledged it to be their Hands: So that, my Lord, there is no Proof of any Fact done here, but an Acknowledgment of a Fact done, no Body knows where, upon the King's Question here in *Middlesex*: Is that any Proof of this Information?

Mr. *Finch*. Pray, my Lord, spare me a Word on the same Side; let us see what the Evidence is. The Evidence is this, That the King brought the Paper to the Council-Table, and the Bishops owned their Hands to it: This is the Effect of the Evidence, and all that is to prove the Forming and Making a Libel in *Middlesex*, and the Publication of that Libel. And what is therefore inferred from thence? Why, having proved that the King brought the Paper to the Council-Table, and the Bishops owned their Hands; therefore, First, the Bishops made this Libel in *Middlesex*. Secondly, they brought it to the Council Table, and published it at the Council-Table, or else there is no proof at all: For here is nothing of Evidence given of any Fact, but because they acknowledged it, therefore they made it, therefore they gave it to the King in *Middlesex*: This were good Evidence if they had had the Help of a Supposition to make it good; but they want that, nor must any such thing be admitted; but I think they are such gross false Consequences, that I doubt not you'll be of Opinion, here's no proof of a Publication in *Middlesex*, and then there is no proof at all against my Lords the Bishops.

Mr. *Pollexfen*. I must confess, I hear them say, two Acts prove a Publication in this Case; the one is, the Writing of the Libel, and the Subscribing. If so, then I think, upon the Evidence that has been given, the Court must needs be satisfied, that the Writing of it was in *Surrey*: The next is their owning their Hands; for there is no Act done that appears, or any Evidence against them of any Act done, from the Time of the Writing, to the Time that they were asked, is this your Hand? Surely no Man would ever think this to be a Publication, where one is asked by Authority, whether such a paper be his Hand, and he acknowledges it in Answer to that Question! To turn this to be a Crime, I think it can never be done, nor never was before. Then there is nothing in the Case, that they can hold to for Evidence, and proof against my Lords the Bishops, but the Writing; and that is apparent to have been in *Surry*, or otherwise they must hold that the Answer to the King's Question, this is my Hand, is a Publication. But truly, my Lord, I think neither of these will do: But, my Lord, to me this is a great Evidence in itself against the proof of a Publication, the Care and Wariness that has been used, that there should be nothing at all of this Matter known, from the Time that it was written, to the Time that they came to be examined and summoned to appear as Offenders. My Lord, the Nature of Libels is to publish

publish and proclaim Scandal and Defamation, or else it loses its End, and consequently its Name. This, as it stands upon their Evidence, is a monstrous Proof for my Lords the Bishops, against the King's Counsel; for it seems, 'tis a very private Matter, so cautiously and warily carried, that there is not any Evidence of the Fact, but only the Names of the Persons that writ it, till they come to be examined by the greatest Authority, Is this your Hand? And then they own it so to be. How can this be taken to be a Publication? And it will be a Thing of wonderful Consequence, if an Answer to a Question put by Authority, should amount to a Crime, as it would in this Case: That would be as if Authority that should be employed to do Right, would be turned to do the greatest Wrong; for it is the Duty of all Men to answer when examined by a lawful Authority, and it would never be offered at sure in any other Case. If a Man comes before a Magistrate, and confesses any thing, that indeed is Evidence, but is not a Crime; for there is a great deal of Difference between Evidence and the Crime; but that this should be both an Evidence and a Crime too, is, I think, a very strange Construction; and for the other Part (the Writing of it) I suppose the Court is satisfied that it was in another County.

Sir George Treby. I desire your Lordship to spare me a Word, which I think has not been observed by the Counsel that have spoke before. The Question that remains, is, Whether my Lords the Bishops did publish this Paper? This is a Matter of Fact that lies upon the Prosecutors to prove. Now I think they are so far from having proved that the Bishops did publish it, that, on the contrary, they have proved that their Lordships did not publish it. The Evidence they have offered for this Matter is a Confession. This Confession is testified by Mr. *Blathwayt*, and he says the Bishops were asked at the Council whether they did subscribe and publish this Paper, and that their Answer was, that they did subscribe, but not publish it.

Now a Confession must be taken together, and must be admitted to be entirely true by them that produce it; they shall never be allowed to take out and use one Piece, and wave the rest.

Why then by this Evidence of Confession, taken as it ought, it appears that the Bishops, though they did subscribe, did not publish the Paper: So that, I say, the King's Counsel have hereby plainly proved, that the Bishops did not publish this Paper, and yet this is the only Evidence upon which they would infer that they did publish it.

Mr. Att. Gen. Look you, it does lie upon you, Gentlemen, to prove it was done elsewhere than in *Middlesex*.

Mr. Finch. Sure Mr. Attorney is in Jest.

Mr. Att. Gen. No, I am in good Earnest; all the Proof that we have given has been in *Middlesex*, and you can best tell whether you did it in *Middlesex* or no.

Mr. Finch. My Lord, we have done as to this Objection; for we say they have not proved their Case.

L. C. J. Mr. *Finch*, you may observe (and I am sure you do observe as well as any Body in all Cases) but I say you may observe that they are off of every thing but causing it to be published; now that does lie upon the King's Counsel to prove, that my Lords the Bishops did cause it to

be published; for their owning their Hands does not amount to Publication.

Mr. S. Pemberton. My Lord, we are upon this Point with them, whether here be any Evidence of a Publication at all.

Mr. Just. Powell. Pray let us clear this first; for if there be no Publication, there can be no causing of it to be published.

Mr. Att. Gen. My Lord, if you think fit, we shall go on, and reserve this Point till afterwards.

Mr. Soll. Gen. They may make Objections, if they think fit.

L. C. J. So they may, and they say if these Objections are with us, we need go no farther.

Mr. S. Pemberton. But, my Lord, if they be not with us, we have a Reserve to give a farther Answer to it, and to offer Evidence against the Evidence they have offered.

Mr. Soll. Gen. With all our Hearts, give in Evidence what you can.

Mr. Att. Gen. Then pray, my Lord, let us go on to answer this Objection.

L. C. J. Pray do, Mr. Attorney.

Mr. Att. Gen. My Lord and Gentlemen of the Jury, I would first observe how far we have gone. That there was such a Paper written is clear beyond all Question, and written by my Lord Archbishop of *Canterbury*, and that it was signed by the rest of the Bishops, but not in the County of *Middlesex*, and that this Paper was published, is agreed on all Hands.

Mr. Just. Holloway. No, they do not agree to that.

Mr. Att. Gen. Do I say it was published by them? But there was such a Paper published.

Mr. S. Pemberton. No, we say it was never published at all.

L. C. J. Pray, Brother *Pemberton*, be quiet; if Mr. Attorney in opening does say any thing that he ought not to say, I will correct him, as I would do any Body that does not open Things right as they are proved; but pray don't you that are at the Bar interrupt one another, it is unbecoming Men of your Profession to be chopping in and snapping at one another———Go on Mr. Attorney.

Mr. Att. Gen. I say, that the Paper is proved to be written and signed by my Lords the Bishops; that I take for granted, and that the Paper so signed and written is now published to the World, is also evident; but the Question is who it was done by, or who caused it to be done, we are reduced to that Question. Now, first, it is agreed on all Hands, that if I send a Letter to a private Man containing scandalous Things in it, though there is no Proof more, but that it was sent sealed, and received by the Party: In that Case it was a Fault punishable in the *Star-Chamber*, as a Crime; but now that this was received by the King, and written by them, there is no room for Doubt; for you hear it was produced by the King at the Council Board, and they asked upon it, if it were their Hands? That the King did receive it, there is no room for Question, or that they did write it; but the Question is, from whom the King had it? I am sure they must shew that some Body else did it; and unless they do shew that, I hope there is no manner of Question but it came from them, and they did it; though no Man living knew any thing of this Matter, but whom they thought fit to communicate it to; yet still they putting the King upon

the Necessity of shewing this Power, in order to his obtaining Satisfaction for it, or else he must remain under the Indignity without Reparation, it ought to be put upon them to clear the Fact; for if he does not produce it, then must the King put up the highest Injury and Affront that perhaps a Man can give the King to his Face, by delivering a Libel into his own Hands; and if he does produce it, then, say they, that is not our Publication, we prove it to be your Writing and Signing, and we prove it to come from the Hand of the King against whom it was composed; for we say it is a Libel against his Majesty, his Government and Prerogative: If then all those Cases that have been cited be Law, then sure there never was a stronger Case in the World than this; and I hope the Law goes a little farther in the Case of the King, than it does in the Case of a private Man. No Man must think by Policy to give private Wounds to the Government, and disparage the Administration of it, and then, when he is called in Question about it, says he, pray prove that I published it, or else you shall not punish me for it. We prove you framed it, and writ it, and signed it, and we prove it came to the King's Hand, of whom it was composed, must we produce two Witnesses of the Delivery of it to the King? Surely there will be no need of any thing of that.

Mr. Soll. Gen. My Lord, we have reduced it now to a very narrow Question; for, as Mr. Attorney has said, my Lord, there is no Doubt but that my Lords the Bishops are the Authors of this Paper; there is no Doubt but they signed it, and there is no Doubt but that their signing of it thought it were at *Lambeth*, as they say, is a Publishing of it: But however, this is plain and manifest, that this Paper was published, and that this was published in *Middlesex*, this is as plain too: Now then there is nothing left but this Question, whether my Lords the Bishops, who framed the Thing, who wrote the Thing, who signed the Thing, were not the Occasion or Cause of its Publication, or privy or consenting to it? My Lord, I will reduce it to a very plain Point; for we are upon a rational Question, before a rational Court, and a rational Jury, whether these Lords did all of them in the County of *Surry*, consent to the Publishing of this Paper in *Middlesex*? For it is published in *Middlesex* (that we see) and if they are guilty of that Part of the Information of causing it to be published, now what do they say to it? Say they, is agreed, that it is published in *Middlesex*, but it is not proved to be published by us.

L. C. J. No, they do not say so, they agree it was in *Middlesex*, but not published.

Mr. Just. Powell. Mr. Solicitor, they do agree it was in *Middlesex*, but not published to be sure, nor by them.

L. C. J. Mr. Solicitor, I'll tell you what they stand upon; they say you ought to prove it to be delivered to the King by the Bishops, or some Body employed by them; for upon that went the Resolution that was in *Williams's* Case, that he sent it to the King; but here is no Body that proves that is was delivered to the King in this Case, so that how it came to the King *non constat*.

Mr. Soll. Gen. There will be the Question between us, whether this be not a Publication.

Sir Rob. Sawyer. Pray, Mr. Solicitor, prove your Case before you argue it.

L. C. J. First settle what the Case is before you argue it.

Mr. Soll. Gen. My Lord, I'll put you the Case. Here does appear in *Middlesex* a Paper that is a Libel in it self, and this Libel is proved to be written and formed by these Persons; this Libel coming into *Middlesex*, the Question is, whether they are privy to it? I say, in point of Presumption it must come from them.

L. C. J. I cannot suppose it; I cannot presume any thing.

Mr. Soll. Gen. My Lord, I speak of that which is a common Presumption, a natural Presumption, what we commonly call a violent Presumption, which is a legal Presumption, and has always been allowed for Evidence. Now whether there be not such a Presumption, in our Case, as to induce your Lordship, and the Jury to believe that it cannot be otherwise; or at least to put the Labour upon them, to shew how it came out of their Studies, and how it came to the King's Hands; for it is in their Power to shew the Truth of this Matter, how it was; if they do not, the Presumption will lie upon them. That the Paper came to the King, that is plain enough, and its coming to the King's Hands, is a plain Proof of a Publication in *Middlesex*; and who should bring it to the King, but these Gentlemen in whose Power it was? There is no Man undertakes to say, he lost it, then what else is to be believed, but that it came from them? I speak of common Supposition and Belief; they may very well shew it, if it were not so. All that we can say in it is, here is a Paper in *Middlesex*, this you agreed was once your Paper, and in your Power, pray shew what became of it, it lies upon you to clear this Doubt.

Mr. Recorder. My Lord, there is but this Question in the Case; the Question is not, whether the owning it be a Publication, but whether here be any Evidence that they did deliver it to the King. Now if they did deliver it to the King, that will be agreed to me to be a Publication.

Mr. Just. Holloway. No doubt of it, if you can prove it.

Mr. Recorder. Pray, Sir, spare me: That they did it, you have this Evidence; first, that they were the Authors of this Paper by their own Confession, that this was in the County of *Middlesex*, and that when they were asked concerning it, they owned it to be their Hand-writing. Now whether you can in the least question after all this, their delivering of it to the King, or that it came to the King's Hands without their Knowledge or Consent, is that which lies before your Lordship for your Judgment.

L. C. J. I will ask my Brothers their Opinion; but I must deal truly with you, I think it is not Evidence against my Lords the Bishops.

Mr. Just. Holloway. Truly I think you have failed in your Information; you have not proved any thing against my Lords the Bishops in the County of *Middlesex*, and therefore the Jury must find them not guilty.

Mr. Att. Gen. I'll put you but one Case, my Lord: A Man has an Opportunity secretly to deliver a Libel into the King's Hands, when no Body is by, and so there can be no Proof of the Delivery.

Mr. Just. Powell. 'Tis a dangerous thing, Mr. Attorney, on the other side, to convict People of Crimes without Proof.

Mr. *Att. Gen.* But shall a Man be permitted thus to affront the King, and there be no way to punish it?

L. C. J. Yes, there will sure, but it will be a very strange Thing if we should go and presume that these Lords did it, when there is no sort of Evidence of it; 'tis that which I do assure you I cannot do: We must proceed according to Evidence, and Forms and Methods of Law; they may think what they will of me, but I always declare my Mind according to my Conscience.

Mr. Serj. *Trinder.* But as to that other Point, whether their owning of it be a Publication, has not been particularly spoke to.

L. C. J. Mr. Attorney, and Mr. Solicitor, if there were enough to raise Doubt in the Court, so as to leave it to the Jury, I would sum up the Evidence.

Mr. *Soll. Gen.* My Lord, we know it is with the Court, these Lords insisted upon it, that it was a great while in their Hands; but it seems as far as our Evidence has gone hitherto, their Confession went no farther than that it was their Paper, and we must not extend their Confession further than it was; but I think we shall offer a fair Evidence that they did deliver it in the County of *Middlesex.*

L. C. J. Indeed, indeed, you ought to have gone to this, Mr. Solicitor, before the Court gave their Opinions.

Mr. *Soll. Gen.* Pray call Mr. *Blathwayt* again.

[Mr. *Blathwayt* called.]

L. C. J. Mr. Solicitor, unless you are sure that Mr. *Blathwayt* is a Witness to the Publication, 'tis but spending the Court's Time to no Purpose to call him.

Mr. *Soll. Gen.* We are sure of nothing, my Lord, but we must make use of our Witnesses, according to our Instructions in our Briefs.

[Then Mr. *Blathwayt* appeared.]

Mr. *Att. Gen.* Mr. *Blathwayt*, you were sworn before.

Mr. *Blathwayt.* Yes, Sir.

Mr. *Att. Gen.* You were present when this Paper or Petition was delivered by the King, at the Council-Board.

Mr. *Blathwayt.* Yes, I was so, Sir.

Mr. *Att. Gen.* Do you remember any thing of the Bishops acknowledging their Delivery of it to the King?

Mr. *Soll. Gen.* Mr. *Blathwayt*, I would ask you, was there any mention in Discourse with my Lords the Bishops, how that Paper came into the King's Hands? Was there any mention of what it was done for, upon the Account of Religion or how?

Mr. *Blathwayt.* I don't remember any thing of that Mr. Solicitor, [at which there was a great Laughier.]

L. C. J. Pray let us have no Laughing, it is not decent; can't all this be done quietly without Noise? Pray, Mr. *Blathwayt*, let me ask you, Do you remember there was any Discourse how that Writing came into the King's Hands?

Mr. *Blathwayt.* I received it from the King's Hands, and I know it was presented to him by my Lords the Bishops.

L. C. J. How do you know it was presented to the King?

Mr. *Blathwayt.* I heard the King say so several Times.

Mr. *Soll. Gen.* Pray mind my Question, Sir, first I ask you who produced the Paper at the Council-Table?

Mr. *Blathwayt.* The King.

Mr. *Soll. Gen.* What said the Bishops when that Paper was shewed them?

Mr. *Blathwayt.* Then, as I remember, they were asked, whether that was the Paper that they delivered to the King?

Mr. *Soll. Gen.* Then what said the Bishops?

Mr. *Blathwayt.* They at first scrupled to answer, and they said it might be made use of to their Prejudice if they owned it.

Mr. *Att. Gen.* Pray, Mr. *Blathwayt*, consider again; was that the Question put to my Lords the Bishops, whether that was the Paper that was presented by them to the King?

Mr. *Blathwayt.* I do think, to the best of my Remembrance, that my Lord Chancellor did ask them to that Purpose, I cannot speak to the very Words.

Mr. *Soll. Gen.* And upon this, what Answer did they make?

Mr. *Blathwayt.* My Lords the Bishops scrupled to answer the first and second Time, as I told you before, but they did own it was the Petition that they presented to the King, to the best of my Remembrance.

Mr. *Soll. Gen.* Did the Archbishop do any thing to own it?

Mr. *Blathwayt.* Yes, both my Lord Archbishop of *Canterbury* and the rest of the Bishops did own all the same Thing.

Mr. *Soll. Gen.* Was this done at *Whitehall*?

Mr. *Blathwayt.* Yes, at the Council-Table.

L. C. J. Pray recollect yourself, and consider what you say, did they own that that was the Paper they delivered to the King?

Mr. *S. Pemberton.* Pray, my Lord, give us leave to ask a Question to clear this Matter; was the Question put to them, whether it was the Paper that they delivered, or whether it were their Hands that were to it?

Mr. *Blathwayt.* My Lord, I do not exactly recollect the Words.

L. C. J. But pray tell us, if you can, what the Question was?

Mr. *Blathwayt.* My Lord, I do not remember the very Words, but I think if Mr. Serjeant *Pemberton* be pleased to repeat his Question, I shall give him a satisfactory Answer, as well as I can.

Mr. *S. Pemberton.* Sir, that which I ask you is this, Whether the Question that was put to my Lords the Bishops at that Time was, Whether this was the Paper that they deliver'd to the King, or whether those were their Hands that were to it?

Mr. *Blathwayt.* My Lord, I did always think that it was a plain Case, that that was the Paper that they deliver'd to the King; and my Lords the Bishops did never deny but that they gave it to the King, and I had it from the King's Hands.

L. C. J. But we must know from you (if you can tell us) what the Question was that was put to my Lords the Bishops; were they asked, Whether those were their Hands that were to that Paper, or was it, Whether they delivered that Paper to the King?

Mr. *Blathwayt.* As to the first Part, that they owned 'twas their Hands, that I am sure of; but as to the other, I do not remember what the Words were.

[At which there was a great Shout.]

Mr. *Att. Gen.* Pray Mr. *Blathwayt* recollect yourself, you say the King produced it.

Mr. *Blathwayt.* Yes, Sir.

Mr. *Att. Gen.* Do you remember that the King asked them any Question upon the producing of it?

Mr. *Blatbwayt.* My Lord Chancellor asked them, if those were not their Hands to the Petition.

Mr. *Soll. Gen.* Was there any other Matter in Discourse, whether that was the Paper that was delivered by them to the King?

Mr. *Blatbwayt.* I cannot so positively say what were the Words that my Lord Chancellor used.

Mr. *Serj. Levinz.* Pray do not twist a Man so, Mr. Solicitor.

Mr. *Soll. Gen.* And you are not to untwist a Man neither, Mr. Serjeant.

Mr. *Att. Gen.* Do you remember that the King said any thing of the Paper being delivered to him?

Mr. *Blatbwayt.* The King has said it several times; I believe I have heard him say it ten times at least.

Mr. *Att. Gen.* Did he say it at that Time?

Mr. *Blatbwayt.* I cannot positively say that he did, Sir.

Mr. *S. Pemberton.* He cannot answer it; why will you press it?

Mr. *Blatbwayt.* My Lord, here is the Clerk of the Council that was then in waiting, he took Minutes, and perhaps can remember more than I.

Mr. *Soll. Gen.* Here they cry he cannot answer it, as if they could tell what he can answer better than himself. Pray, Mr. *Bridgman*, was there any Question to this Purpose, either from my Lord Chancellor, or from the King, whether that was the Paper that was presented by my Lords the Bishops, or delivered to the King; for I see you are very nice as to Words, and you do very well; but was there not a Question to that Purpose?

Mr. *Bridgman.* Sir, I do not remember; for I speak to the best of my Remembrance in all this Matter. I say, I do not remember that that Question was asked in those very Words, but I do remember something was said to that Purpose, but by whom I cannot particularly say.

Sir *Rob. Sawyer.* To what Purpose?

Mr. *Soll. Gen.* It is very strange that they won't let the Witness speak, but are continually interrupting him.

Sir *Rob. Sawyer.* Mr. Solicitor, no body interrupts him.

L. C. J. Why, do not I behave myself between you all as I ought to do? Pray Sir *Robert Sawyer* sit down, you cannot be contented, when the Man does you no Harm.

Mr. *Soll. Gen.* Pray consider, did my Lords the Bishops say any thing, or was there any Discourse concerning the Paper, whether it was delivered to the King or no?

Mr. *Bridgman.* Mr. Solicitor, I have told you as near as I can what I do remember. I know not by whom it was said, but that Question, or to that Purpose, was asked, whether that was the Petition they delivered; but I do not remember whether the Question was directly asked, or answered; there was something about it, and several Passages there were; but whether spoken by my Lord Chancellor, or who, I cannot remember.

Mr. *Soll. Gen.* You say there was that which sufficiently denoted a Question to that Purpose, and they said nothing against it.

Mr. *Bridgman.* No, there was no Denial of it.

Mr. *Soll. Gen.* I see you do not remember the Particular, nor do we desire it of you.

Mr. *Bridgman.* They did not deny it, nor confess it.

Mr. *Soll. Gen.* Then, in your Apprehension, did they own that they delivered that Paper to the King?

L. C. J. You must not ask that, Mr. Solicitor, it is not a fair Question to ask him what he apprehended.

Mr. *Soll. Gen.* He said it before himself.

L. C. J. But his Apprehensions are no Evidence, and it is a sort of a leading Question which we must not allow of.

Mr. *Soll. Gen.* Then if your Lordship do not like it, I will not ask it, but I will ask him another Question.

L. C. J. Ay, ten if you will, so they be fair ones.

Mr. *Soll. Gen.* Was it upon the first or second Time of their being examined?

Mr. *Bridgman.* I cannot tell, it was not the first Time, all of it, I believe; for at the first Time my Lords the Bishops made some Scruple of answering or owning any thing; and whatsoever they owned, they said, they hoped it should not be made use of to their Prejudice. I remember no Reply that was made, nor any thing farther, only my Lord Chancellor said, they were not to capitulate with their Prince; but they were required to answer the Questions that were asked them.

Mr. *Soll. Gen.* What were those Questions?

Mr. *Bridgman.* I have told you already, as well as I can remember.

Mr. *Soll. Gen.* But did you take it upon the main that they owned the Delivery of that Paper to the King?

Mr. *Just. Powell.* Mr. Solicitor, you have been told you are to ask no such Questions.

Sir *Rob. Sawyer.* Nor never was there such wire-drawing of a Witness in this World before.

L. C. J. Pray sit still, Sir *Robert Sawyer*, you are not to teach us what we are to do; Mr. Solicitor must ask Questions that are proper for him, and not such as these; but the Court must correct him, and not you.

Mr. *Soll. Gen.* Mr. *Bridgman* is very cautious, and he is to be commended for it; but we would get the Truth out of him if we could. Pray, Sir, if you can remember, recollect your self, whether by any Question to that Purpose, it was believed that they did own the Delivery of the Paper to the King.

Mr. *Bridgman.* I told you, Mr. Solicitor, as to that at first, that I do not remember the very Words of the Question; but I believe there was no body doubted that that was not the Paper.

Mr. *Soll. Gen.* You speak well in your way; but these Gentlemen are very unwilling you should tell your Opinion.

L. C. J. His Opinion is no Evidence, therefore you must not ask any such Questions, Mr. Solicitor.

Mr. *Bridgman.* As soon as the Petition was delivered, within a few Hours after I saw it, the King shewed it to several People, and he said, it was the Petition the Bishops had delivered; he took it into his own Custody, and afterwards commanded me to write a Copy of it, and there was no Copy made of it but that one; but notwithstanding that, I do remember I did see a Copy of the Petition, within a Day

Day or two after it was presented, about the Town.

Mr. *Soll. Gen.* Pray how many Days was this before the Discourse in Council upon their Examination?

Mr. *Bridgman.* How many Days was what, Sir?

Mr. *Soll. Gen.* When the King gave the Paper to be copied.

Mr. *Bridgman.* It was upon the Sunday.

Mr. *Soll. Gen.* But you say, as you believe, it was in a few Hours after the Paper was delivered to the King, that you did see it?

Mr. *Just. Powell.* But what makes him say, that this was delivered to the King, but only Hear-say?

L. C. J. Pray, Mr. Solicitor, will you produce that which is Evidence, and not spend our Time in that which is not.

Mr. *Soll. Gen.* My Lord, I would make no more of it than it is.

Mr. *Serj. Levinz.* 'Tis a shameful thing to offer such things in a Court of Justice.

Mr. *Serj. Pemberton.* 'Tis a Practice that ought not to be endured.

L. C. J. Pray Brothers be quiet, or I'll turn him loose upon you again, if you'll not be quiet: What is the Matter? Cannot you let us alone? We shall do every body right. Come, to shorten this Matter, I ask you but this one Question, and that may satisfy any one that has common Honesty about him; Do you remember whether or no they were asked, if that was the Petition that they delivered to the King?

Mr. *Bridgman.* My Lord, I have answered that Question as directly as I can; I do not positively remember that that was the Question.

L. C. J. Mr. Solicitor General, you must be satisfied when proper Questions are fairly answered, and therefore pray be quiet.

Mr. *Att. Gen.* However, we pray we may ask the Clerks of the Council; it may be they may remember more— Sir *John Nicholas*, you were at the Council-Table that Day my Lords the Bishops were examined about this Paper.

Sir *John Nicholas.* Yes, Sir, I was.

Mr. *Att. Gen.* Pray did you observe that the King produced the Petition?

Sir *John Nicholas.* No, indeed, I did not see it.

Mr. *Att. Gen.* Did you observe any thing that passed there in Discourse?

Mr. *Soll. Gen.* Did you observe any Questions that were asked the Bishops, either by the King or by my Lord Chancellor?

Sir *John Nicholas.* I think my Lord Chancellor did ask them, if that was their Hands to the Petition, and they owned it.

Mr. *Soll. Gen.* Do you remember whether they owned, that they delivered that Paper to the King?

L. C. J. I'll ask you, Sir *John Nicholas*, Did my Lord Chancellor ask them this Question, Is this the Petition you delivered to the King?

Sir *John Nicholas.* I do not remember that.

[Then there was a great Shout.]

Mr. *Soll. Gen.* Here's wonderful great Rejoycing that Truth cannot prevail.

Mr. *Serj. Pemberton.* No, Mr. Solicitor, Truth does prevail.

Mr. *Soll. Gen.* You are all very glad that Truth is killed, Mr. Serjeant.

Mr. *Serj. Trinder.* Pray, Sir *John Nicholas*, let me ask you one Question; Was there any Discourse about delivering that Petition to the King?

Sir *John Nicholas.* Indeed I do not remember it.

Mr. *Soll. Gen.* There's Mr. *Pepys*, we'll examine him.

[Mr. *Pepys* sworn.]

L. C. J. Come, I'll ask the Questions; Were you at the Council-Board when my Lords the Bishops were committed?

Mr. *Pepys.* Yes, I was.

L. C. J. What were the Questions that were asked, either by the King or by my Lord Chancellor?

Mr. *Pepys.* My Lord, I would remember as well as I could; the very Words, and the very Words of the Question, were, I think, My Lords, do you own this Paper? I do not remember any thing was spoken about the delivering; but I believe it was understood by every Body at the Table, that that was the Paper that they had delivered.

L. C. J. Well, have you done now? But to satisfy you, I'll ask this Question; Was this Question asked, My Lords, was this the Paper you delivered to the King?

Mr. *Pepys.* No, my Lord.

Mr. *Att. Gen.* Pray, Sir, do you remember whether the King himself asked the Question?

Mr. *Pepys.* You mean, I suppose, Mr. Attorney, that these were the Words, or something that imported their delivering it to the King.

Mr. *Att. Gen.* Yes, Sir.

Mr. *Pepys.* Truly I remember nothing of that.

Mr. *Soll. Gen.* Did you observe any Discourse concerning their Delivery of it to the King?

Mr. *Pepys.* Indeed, Mr. Solicitor, I do not.

Mr. *Att. Gen.* Swear Mr. *Musgrave*.

[Mr. *Musgrave* sworn.]

L. C. J. You hear the Question, Sir, what say you to it.

Mr. *Musgrave.* My Lord, I will give as short an Account of it as I can: The first Time after his Majesty had produced the Petition, and it was read at the Board, his Grace the Lord Archbishop of *Canterbury*, and the other six Reverend Lords the Bishops, were called in, and it was asked of them, if they owned that, or if it was their Hands; my Lord Archbishop, in the Name of the rest, did decline answering, upon the Account that they were there as Criminals, and were not obliged to say any thing to their own Prejudice, or that might hurt them hereafter; but if his Majesty would command them, and if he would promise that no Advantage should be made of whatsoever they confessed, then they would answer the Question: His Majesty made no Answer to that, but only said he would do nothing but what was according to Law; whereupon the Bishops were ordered to withdraw, and being called in a second Time, the Petition was shewn to them, and they were asked if they did own it, or if it was their Hands, and I think my Lord Archbishop did then say, we will rely upon your Majesty, and some such general thing was said, and then they did all own that it was their Hands: I cannot say the Petition was read to them.

Mr. *Just. Powell.* Mr. *Blatbwayt*, as I remember, said it was the third Time.

Mr. *Musgrave.* It was the second Time, to the best of my Remembrance.

L. C. J. Pray, Sir, was there any Question to this Purpose? Is this the Paper you delivered to the King?

Mr. Musgrave. I do not remember that ever any such direct Question was asked.

Mr. Just. Allybone. But, as my Brother *Pemberton* did very well before distinguish, there is a great deal of Difference between the owning the Subscription of a Paper, and between the owning of that Paper. *Mr. Pepys* did say that they did own the Paper, and upon my Word that will look very much like a Publication.

Mr. Musgrave. I remember, my Lord, there was at the same Time a Question asked, because several Copies had gone about the Town, whether they had published it; and my Lord Archbishop did say, he had been so cautious, that he had not admitted his own Secretary, but writ it all himself; and the rest of the Bishops did say, they did not publish it, nor ever gave any Copies of it.

Mr. Att. Gen. My Lord, I confess, now it is to be left to the Jury upon this Point, whether tho' there were not a positive Witness that was by when the thing was done, yet upon this Evidence the Jury can find any otherwise than that the thing was done; truly, I think, we must leave it as a strong Case for the King: I could have wished indeed, for the Satisfaction of every body, that the Proof would have come up to that; but we must make it as strong for the King, upon the Evidence given, as it will bear. Now, my Lord, take all this whole Matter together, here is a Paper composed, framed, and written by seven learned Men, and this must be written by such Persons, sure for some Purpose. It is directed as a Petition to the King, and this Petition did come to the Hands of the King (for the King produces it in Council) and my Lord Archbishop, and the rest of the Bishops, owned their Hands to it. Then the Question is, my Lord, whether or no there be any room for any body living to doubt in this Case that this was not delivered by my Lords the Bishops to the King, though it be not a conclusive Evidence of a positive Fact; yet unless they shew something on the other side, that may give way for a Supposition to the contrary, that it came out of their Hands by Surprise, or that any body else delivered it to the King, without their Knowledge or Consent, here must needs be a very violent Presumption that they did do it; and when nothing of that is said on their side, can any Jury upon their Consciences say, that it was not published by them? And it being found in *Middlesex*, though it might be written and composed in *Surrey*, yet surely we have given a convincing Evidence, that either they published it, or caused it to be published in *Middlesex*.

[*Pray call Mr. Grayham.*]

Crier. He is gone out of the Hall.

Mr. Soll. Gen. My Lord, there is in Law a Presumption that is Evidence, though there be no positive Proof.

Sir Rob. Sawyer. But not in an Information for a Libel.

Mr. Soll. Gen. This is a meer Question of Fact; there is no Difficulty in the Law of it at all; for it is plain, if these Lords, or any of them, did consent and agree to the publishing of this Paper in *Middlesex*, they are guilty of this Information; and whether they are guilty or not guilty, we do rely upon the Circumstances proved, which are violent: First, that they were the Men that

contrived, and set their Hands to it, and so were the Authors of it, is undeniable; for they have owned it: Men of their Learning and Parts never did any such thing in vain: And then that they were concerned in the publishing of it in *Middlesex*, we offer for Proof that which was said by *Mr. Pepys* and *Mr. Blatwayt*, who, though they do not come directly and expressly to the formal Words of such a Question, yet they tell you, especially *Mr. Blatwayt*, that they did apprehend it, and it was the Collection of all their Thoughts, and they took it for granted, as a Thing that every body was satisfied in, that they did deliver that Paper to the King. I must confess, and agree, there is no Proof of the Delivery of it by my Lords the Bishops to the King; but we know very well, that it is no Wonder, when a Paper is Libellous, that Men should use all the Skill they can to publish it with Impunity: And this is a Thing that was done after some Time of Premeditation and serious Consultation; for it was some Days after the Order for reading the Declaration was published, that this was framed and delivered, and it concerned them to be wary (as it seems they have been) but take this altogether, my Lord, the Paper being found in the King's Hands, it is in these Persons Power, and it lies upon them, to make it out plain, what became of this Paper, which once lay in their own Hands and Custody: They can give an Account of it, they can give Light unto it. If they do not, I shall submit to the Jury, whether this is not sufficient Evidence to convict them; especially when, being examined, they did not make that their Excuse. They never said, this Paper indeed we signed, but we did not intend to publish it, we intended to stifle it; that had been some Excuse: But for them to say now, they did not present it to the King, I must submit to the Jury, whether they will believe upon this Evidence, that these Lords the Bishops did present it, or cause it to be presented to the King; then they are guilty of this Matter: And I leave it to them, and their Consciences, what they will think upon the whole.

Mr. Recorder. My Lord, if your Lordship please—

L. C. J. What, again? Well, go on *Sir Bartholomew Shower*, if we must have a Speech—

Mr. Recorder. Nay, my Lord, I would not trespass upon your Lordship.

L. C. J. Gentlemen of the Jury, here is an Information against my Lords the Bishops: I think I need not trouble my self to open all of it, because I see you are Men of Understanding, Men of great Diligence, and have taken Notes your selves, some of you; therefore I shall say only something of the Proof that is required in such a Case, and of the manner of the Proof that has been given in this Case, and then tell you my Opinion in Point of Law. Here is an Information brought by *Mr. Attorney General*, on Behalf of the King, against these Reverend Fathers of the Church, the Archbishop and the rest; and it is for publishing a seditious Libel, under the Pretence of a Petition, in which are contained the Words that are seen. Gentlemen, the Information is long; it tells you, that the King, out of his Gracious Clemency to all his loving Subjects, and for other Considerations, had thought fit to publish a Declaration of Indulgence, that all his loving Subjects might have Liberty of Con-

Conscience, upon the 4th of *April*, in the third Year of his Reign, and that this was set forth by the King; and that the King, of his farther Grace, about the 27th of *April* then next following—

Mr. *Finch*. I humbly beg your Lordship's Favour.

L. C. J. What say you, Mr. *Finch*?

Mr. *Finch*. I ask your Pardon for breaking in upon you when you are directing the Jury. I know I should not do it, but I hope you will not be angry with me for it.

L. C. J. If I thought you did any Service to your Client, I should willingly hearken to you.

Mr. *Finch*. That which I humbly offer to your Lordship, is only to remember your Lordship where we were.

L. C. J. Go on, Sir.

Mr. *Finch*. I would only say this, my Lord, the Question is, whether this be Evidence, or no?

L. C. J. I am sorry Mr. *Finch*, you have that Opinion of me, as to think I should not leave it fairly to the Jury.

Mr. *Finch*. I only speak it, my Lord, because if it be Evidence, we have other Matters to offer in Answer to that Evidence, and in our own Defence.

L. C. J. If you have more to offer, why did you conclude here, and let me begin to direct the Jury? But since you say you have other Matter to offer, we will hear it.

Mr. *S. Pemberton*. My Lord, we submit to your Lordship's Direction.

L. C. J. No, no, you do not; you say you have further Matter to offer.

Mr. *Pollexfen*. My Lord, we shall rest it here.

L. C. J. No, no, I will hear Mr. *Finch*. Go on, my Lords the Bishops shall not say of me, I would not hear their Counsel: I have been already told of being Counsel against them, and they shall never say that I would not hear their Counsel for them.

Mr. *Serj. Levinz*. My Lord, we beseech your Lordship go on with your Directions; for all that Mr. *Finch* said, was only that this was not sufficient Evidence.

L. C. J. No, Brother, he says you have a great deal more to offer, and I will not refuse to hear him. The Court will think there was something more than ordinary, therefore I will hear him; such a learned Man as he shall not be refused to be heard by me, I'll assure you. Why don't you go on, Mr. *Finch*.

Mr. *Finch*. My Lord, I beg your Pardon for interrupting you; but all that I was going to say would have amounted to no more than this, that there being no Evidence against us, we must of Course be acquitted.

Mr. *Just. Holloway*. My Lord did intend to have said as much as that, I dare say.

L. C. J. Well, Gentlemen of the Jury, we have had Interruption enough—

Mr. *Soll. Gen.* My Lord, I must beg your Pardon for interrupting you now; and I am very glad these Gentlemen have given us this Occasion, because we shall now be able to clear this Point. There is a Fatality in some Causes, my Lord, and so there is in this; we must beg your Patience for a very little while, for we have Notice that a Person of a very great Quality is coming, that will make it appear, that they made

their Addresses to him, that they might deliver it to the King.

L. C. J. Well—you see what comes of the Interruption, Gentlemen, now we must stay—

[Then there was a Pause for near half an Hour.]

Mr. *Att. Gen.* Pray, my Lord, put the Case that a Man writes a Libel in one County, and it is found in another, is not he answerable, unless he can shew something that may satisfy the Jury how it came there?

Mr. *Soll. Gen.* Ought he not to give an Account what became of it?

L. C. J. No: Look you, Mr. Attorney, you must look to your Information, and then you will find the Case that you put does not come up to it: It is for Writing, Composing, and Publishing, and causing to be Published, and all this is laid in *Middlesex*: Now you have proved none of all these Things to be done in the County.

Mr. *Att. Gen.* They did in *Middlesex* confess it was theirs.

L. C. J. Ay, but the owning their Hands is not a Publication in *Middlesex*, and so I should have told the Jury.

Mr. *Finch*. I beg your Lordship's Pardon for interrupting you.

Mr. *Att. Gen.* But, my Lord, does it not put the Proof upon them, to prove how it came out of their Hands into the King's Hands?

L. C. J. No, the Proof lies on your Part.

Mr. *Pollexfen*. Pray, my Lord, give us your Favour to dismiss us and the Jury.

Mr. *Soll. Gen.* My Lord, our Witnesses will be here presently.

Mr. *Att. Gen.* Sure, my Lord, the Presumption is on our Side.

Mr. *Just. Powell*. No, the Presumption is against you; for my Lord Archbishop lived in *Surrey*, and it is proved was not out of *Lambeth-House* since *Michaelmas*, till he came before the Council.

Mr. *S. Pemberton*. Pray, good my Lord, we stand mightily uneasy here, and so do the Jury; pray dismiss us.

L. C. J. I cannot help it, it is your own Fault.—

[Then there was another great Pause.]

L. C. J. Sir *Bartholomew Shore*, now we have Time to hear your Speech, if you will.

Mr. *Pollexfen*. My Lord, there is no Body come, nor I believe will come.

Mr. *Soll. Gen.* Yes, he will come presently; we have had a Messenger from him.

[Call Mr. Graham.]

Crier. He is gone, and said he would come presently.

Mr. *Soll. Gen.* My Lord, he will bring our Witnesses with him—

[Then there was another Pause.]

Mr. *S. Pemberton*. My Lord, this is very unusual to stay thus for Evidence.

L. C. J. It is so; but I am sure you ought not to have any Favour—Mr. Solicitor, are you assured that you shall have this Witness that you speak of?

Mr. *Soll. Gen.* Yes, my Lord, he will be here presently.

L. C. J. We have staid a great while already, and therefore it is fit that we should have some Oath made that he is coming.

Mr. *Soll. Gen.* The *Crier* tells you, that Mr. *Graham* did acquaint him, that he would return presently.

L. C. J. Give him the Book.

Mr. Soll. Gen. Let your Left-Hand give your Right-Hand the Oath.

[*The Crier sworn.*]

L. C. J. By the Oath that you have have taken, did *Mr. Graham* tell you, there was any further Witness coming in this Case?

Crier. Yes, my Lord, he did; he went out of the Hall, and returned when your Lordship was directing the Jury, and he asked me what the Court were upon; and I told him you were directing the Jury, and then he said, my Lord *Sunderland* was a coming, but he would go and prevent him; and afterwards he returned, and finding your Lordship did not go on to direct the Jury, he said he would go again for my Lord *Sunderland*, whom he had sent away, and he is now gone for him, and he said he would bring him with him presently.

L. C. J. Well then, we must stay till the Evidence for the King comes, for now there is Oath made that he is coming—

[*And after a considerable Pause the Lord President came.*]

Mr. Att. Gen. My Lord, we must pray that my Lord President may be sworn in this Case, on Behalf of the King.

[*The Lord President sworn.*]

Mr. Att. Gen. My Lord, with your Lordship's Favour, I would ask my Lord President a Question: Your Lordship remembers where we left this Cause; we have brought it to this Point, That this Petition came to the King's Hands: that it is a Petition written by my Lord Archbishop, and subscribed by the rest of my Lords the Bishops; but there is a Difficulty made, whether this Petition thus prepared and written was by them delivered to the King, and whether my Lords the Bishops were concerned in the doing of it, and were privy, or Parties to the Delivery. Now that which I would ask your Lordship, my Lord President, is, Whether they did make their Application to your Lordship to speak to the King.

Mr. Soll. Gen. Did they make their Application to your Lordship upon any Account whatsoever?

Lord President. My Lord, my Lord Bishop of *St. Asaph*, and my Lord Bishop of *Chichester* came to my Office, and told me, they came in the Names of my Lord Archbishop of *Canterbury*, and four others of their Brethren, and themselves, with a Petition, which they desired to deliver to his Majesty, and they did come to me to know which was the best way of doing it, and whether the King would give them Leave to do it or not? They would have had me read their Petition, but I refused it, and said, I thought it did not at all belong to me, but I would let the King know their Desire, and bring them an Answer immediately, what his Pleasure was in it; which I did. I acquainted the King, and he commanded me to let my Lords the Bishops know, they might come when they pleased, and I went back and told them so; upon which they went and fetch'd the rest of the Bishops, and when they came, immediately they went into the Bed-Chamber, and into another Room, where the King was. This is that I know of the Matter.

Mr. Soll. Gen. About what Time was this, pray my Lord?

Lord President. I believe there could not be much Time between my coming from the King,

and their fetching their Brethren, and going in to the King.

Mr. Soll. Gen. They were with the King that Day?

Lord President. Yes, they were.

Mr. Soll. Gen. Was this before they appeared in Council?

Lord President. Yes, it was several Days before.

Mr. Soll. Gen. Then I think now, my Lord, the Matter is very plain.

Mr. Just. Allynbone. Did they acquaint your Lordship that their Business was to deliver a Petition to the King?

Lord President. Yes, they did.

Mr. Soll. Gen. And they would have had my Lord read it, he says.

Mr. Att. Gen. And this was the same Day that they did go in to the King?

Lord President. The very same Day, and I think the same Hour; for it could not be much longer.

L. C. J. Now it is upon you truly; it will be presumed to be the same, unless that you prove that you delivered another—Pray, my Lord, did you look into the Petition?

Lord President. No, I refused it; I thought it did not concern me.

Mr. Just. Powell. Did you see them deliver it to the King, my Lord?

Lord President. I was not in the Room when it was delivered.

Mr. Just. Powell. They did open their Petition to your Lordship, did they?

Lord President. They offered me to read it, but I did refuse.

L. C. J. Will you ask my Lord President any Question, you that are for the Defendants?

Sir Rob. Sawyer. No, my Lord.

Mr. Soll. Gen. Then, my Lord, we must beg one Thing for the sake of Jury, if your Lordship can turn your self a little this Way, and deliver the Evidence you have given over again, that they may hear it.

Lord President. My Lord, I will repeat it as near as I can; I think I shall not vary the Sense. The Bishops of *St. Asaph* and *Chichester* came to my Office, I do not know just the Day when, but it was to let me know, that they came in the Names of the Archbishop, and four others of their Brethren—Is it necessary I should name them?

L. C. J. Do it, my Lord, if you can.

Lord President. They were the Bishops of *Ely*, *Bath* and *Wells*, *Bristol*, and *Peterborough*: They came to let me know, in the Name of the Archbishop, those four, and themselves, that they had a Petition to deliver to the King, if he would give them Leave, and desired to know of me which was the best way to do it. I told them I would know the King's Pleasure, and bring them Word again: They offered me their Petition to read, but I did not think it fit for me to do it, and therefore I refused, and would not read it; but I went immediately to the King, and acquainted his Majesty with it, and he commanded me to let them know they might come when they would, which I immediately did: They said they would go and speak with some of their Brethren that were not far off: In the mean time I gave Order that they should be admitted when they came, and they did in a little Time return, and went first into the Bed-Chamber, and then into the Room where the King was.

Mr.

Mr. *Soll. Gen.* And this was before they came and appeared at the Council?

Lord *President.* Yes, it was.

Mr. *Pollexfen.* Your Lordship did not read any thing of the Petition?

Lord *President.* No, Sir, I did not, I refused it.

Mr. *Pollexfen.* Nor does your Lordship know what Petition was delivered to the King?

Lord *President.* I did not know any thing of it from them then.

L. C. J. Now you may make your Observations upon this two Hours hence: Now we shall hear what Mr. *Finch* had further to offer, I suppose.

[Then my Lord *President* went away.]

Mr. *Soll. Gen.* I think now it is very plain.

L. C. J. Truly, I must needs tell you, there was a great Presumption before, but there is a greater now, and I think I shall leave it with some Effect to the Jury. I cannot see but here is enough to put the Proof upon you. They came to the Lord *President*, and asked him how they might deliver a Petition to the King: He told them he would go see what the King said to it. They would have had him read their Petition, but he refused it: He comes and tells them the King said they might come when they would: Then those two that came to my Lord *President* went and gathered up the other four (the Archbishop indeed was not there) but they six came, and my Lord *President* gave Direction they should be let in, and they did go into the Room where the King was. Now this, with the King's producing the Paper, and their owning it at the Council, is such a Proof to me, as I think will be Evidence to the Jury of the Publication.

Mr. *Pollexfen.* Then, my Lord, thus far they only can go; the Archbishop was not there, and so there is no Evidence against him.

Mr. *Soll. Gen.* As to the Writing, we have given Proof against him, for it is all his Hand.

Mr. *Pollexfen.* That still is in another County, and there is nothing proved to be done by my Lord Archbishop in *Middlesex*; and next, for the other six Lords, my Lord *President* does not say that this is the Petition that they said they had to deliver to the King; nor did he see them deliver any thing to the King; but that is still left doubtful, and under your Judgment, so that it stands upon Presumption, not upon Proof, that this is the same, and left under Consideration.

Mr. *Att. Gen.* Then we will leave it fairly to the Jury upon this Fact.

Mr. *Pollexfen.* If so, then we desire to be heard in our Defence.

Sir *Rob. Sawyer.* May it please your Lordship, and you Gentlemen of the Jury, you have heard this Charge which Mr. Attorney has been pleased to make against my Lords the Bishops, and that is this, That they did conspire to diminish the Royal Authority, and Regal Prerogative, Power, and Government of the King, and to avoid the Order of Council; and in Prosecution of this, they did falsely, maliciously and seditiously make a Libel against the King, under Pretence of a Petition, and did publish the same in the King's Presence.

This, Gentlemen, is a very heinous and heavy Charge; but you see how short their Evidence is: The Evidence they bring forth is only, that my Lords the Bishops presented the Paper to the King in the most private and humble Manner

they could: That which they have been so many Hours a proving, and which they cry up to be as strong an Evidence as ever was given, proves it to be the farthest from Sedition in the doing of it that can be; and you see what it is, it was a Petition to be relieved against an Order of Council, which they conceive they were aggrieved by. They indeed do not deal fairly with the Court nor with us, in that they do not set it forth that it was a Petition.

L. C. J. That was over-ruled before.

Sir *Rob. Sawyer.* I do not insist upon it now so much an Exception to the Information, as I do the Evidence. They set this forth to be a scandalous Matter, but it only contains their Reasons, whereby they would satisfy his Majesty why they cannot comply in a Concurrence with his Majesty's Pleasure; and therefore they humbly beseech the King, and beg and request him (as the Words of it are) that his Majesty would be pleased not to insist upon their distributing and reading of this Declaration: So the Petitioners, on Behalf of themselves and the whole Clergy of *England*, beg of the King that he would please not to insist upon it.

Gentlemen, you may observe it, that there is nothing in this Petition that contains any thing of Sedition in it; and it would be strange this Petition should be *Felo de se*, and by one Part of it destroy the other. It is laid indeed in the Information, that it was with Intent and Purpose to diminish the King's Royal Authority; but I appeal to your Lordship, the Court, and the Jury, whether there be any one Word in it, that any way touches the King's Prerogative, or any Title of Evidence that has been given to make good the Charge. It is an Excuse barely for their Non-compliance with the King's Order, and a begging of the King with all Humility and Submission, that he would be pleased not to insist upon the reading of his Majesty's Declaration upon these Grounds, because the dispensing Power upon which it was founded, had been several times in Parliament declared to be against Law, and because it was a Case of that Consequence that they could not in Prudence, Honour, or Conscience concur in it.

My Lord, Mr. Attorney has been pleased to charge in this Information, that this is a false, malicious, and seditious Libel: Both the Falsity of it, and that it was malicious and seditious, are all Matters of Fact, which, with Submission, they have offered to the Jury no Proof of, and I make no Question but easily to demonstrate the quite contrary.

For, my Lord, I think it can be no Question, but that any Subject that is commanded by the King to do a Thing which he conceives to be against Law, and against his Conscience, may humbly apply himself to the King, and tell him the Reason why he does not that thing, he is commanded to do, why he cannot concur with his Majesty in such a Command.

My Lord, that which Mr. Attorney did insist upon in the Beginning of this Day (and he pretended to cite some Cases for it) was, that in this Case, my Lords the Bishops were not sued as Bishops, nor prosecuted for their Religion. Truly, my Lord, I do not know what they are sued for else: The Information is against them as Bishops, it is for an Act they did as Bishops, and no otherwise; and for an Act they did, and do

conceive they lawfully might do with relation to their Ecclesiastical Polity, and the Government of their People as Bishops.

The next Thing that Mr. Attorney offered was, That it was not for a Non-feasance, but for a Feasance. It is true, my Lord, it is for a Feasance in making of the Petition, but it was to excuse a Non-feasance, the not reading according to the Order; and this sure was lawful for all the Bishops as Subjects to do; and I shall shew it was certainly the Duty of my Lords the Bishops, or any Peer of this Realm, to do the same in a like Case. It was likewise said, they were prosecuted here for affronting the Government, and intermeddling with Matters of State; but I beg your Lordship and the Jury to consider, whether there is one Title of this mentioned in the Petition, or any Evidence given of it. The Petition does not meddle with any thing of any Matter of State, but refers to an Ecclesiastical Matter, to be executed by the Clergy, and to a Matter that has Relation to Ecclesiastical Causes; so that they were not Busy-bodies, or such as meddled in Matters that did not relate to them, but that which was properly within their Sphere and Jurisdiction.

But after all, there is no Evidence, nor any Sort of Evidence that is given by Mr. Attorney, that will maintain the least Title of this Charge; and how he comes to leave it upon this Sort of Evidence I cannot tell; all that it amounts to is, That my Lords the Bishops being grieved in this Manner, made this Petition to the King in the most private and respectful Manner; and for him to load it with such horrid black Epithets, that it was done libellously, maliciously, and scandalously, and to oppose the King and Government, 'tis very hard; 'tis a Case of a very extraordinary Nature, and I believe my Lords the Bishops cannot but conceive a great deal of Trouble, that they should lie under so heavy a Charge, and that Mr. Attorney should draw so severe an Information against them, when he has so little Proof to make it out.

My Lord, by what we have to say to it, we hope we shall give your Lordship and the Jury Satisfaction, that we have done but our Duties, supposing here has been a sufficient Evidence of the Fact given, which we leave to your Lordship and the Jury.

My Lord, we say in short, That this Petition is no more than what any Man, if he be commanded to do any thing, might humbly do it, and not be guilty of any Crime: And, my Lord, as to the Matter of our Defence, it will consist of these Heads:

First, We shall consider the Matter of this Petition.

Secondly, The Manner of the delivering it, according as they have given Evidence here; and,

Thirdly, The Persons that have delivered this Petition. And we hope to make it appear, beyond all Question, that the Matter contained in this Petition, is neither false nor contrary to Law, but agreeable to all the Laws of the Land in all Times. We shall likewise shew you (though that appear sufficiently to you already) that the Manner of delivering it was so far from being seditious, that it was in the most secret and private Manner, and with the greatest Humility and Duty imaginable. And then as to the Persons, we will shew you that they

are not such as Mr. Attorney says, who meddle with Matters of State, that are out of their Sphere; but they are Persons concerned, and concerned in Interest in the Case, to make this humble Application to the King. And when we have proved all this Matter, you will see how strangely we are blackened with Titles and Epithets which we no ways deserve, and of which, God be thanked, there is no Proof.

For, my Lord, for the Matter of the Petition, we shall consider two Things.

The First is, The Prayer, which is this; They humbly beg and desire of the King, on Behalf of themselves and the rest of the Clergy, that he would not insist upon the Reading and Publishing of this Declaration.

Surely, my Lord, there is nothing of Falsity in this, nor any thing that is contrary to Law, or unlawful for any Man that is pressed to any thing, especially by an Order of Council; and this is nothing but a Petition against an Order of Council; and if there be an Order that commands my Lords the Bishops to do a Thing that seems grievous to them, surely they may beg of the King that he would not insist upon it.

As for this Matter, they were so well satisfied about it, and so far from thinking that it was any Part of a Libel, that they left it out of the Information, and so have made a deformed and absurd Story of it, without Head or Tail, a Petition directed to no body, and for nothing, it being without both Title and Prayer; so that this is plain, it was lawful to petition.

Then, my Lord, the next Thing is, the Reasons which my Lords the Bishops come to acquaint the King with; why, in Honour and Conscience they cannot comply with, and give Obedience to this Order; and the Reasons, my Lord, are two.

The first Reason that is assigned, is, the several Declarations that have been in Parliament (several of which are mentioned) that such a Power to dispense with the Law, is against Law, and that it could not be done but by an Act of Parliament; for that is the Meaning of the Word Illegal, that has no other Signification but unlawful; the same Word in Point of Signification with the Word *Illicite*, which they have used in their Information, a Thing that cannot be done by Law; and this they are pleased to tell the King, not as declaring their own Judgments, but what has been declared in Parliament; though if they had done the former, they being Peers of the Realm, and Bishops of the Church, are bound to understand the Laws, especially when (as I shall come to shew you) they are made Guardians of these Laws; and if any thing go amiss, and contrary to these Laws, they ought to inform the King of it.

My Lord, the next Thing is, Because it is a Thing of so great Moment, and the Consequence that will arise from their publishing of this Declaration, and that too, my Lord (for the latter I shall begin first with) there can be no Question about, or any Pretence that this is libellous or false; for certainly it is a Case of the greatest Consequence to the whole Nation that ever was, therefore it cannot be false or libellous to say so.

My Lord, I would not mention this, for I am loth to touch upon Things of this Nature, had not the Information itself made it the very Gift of the Charge; for the Information (if there be any thing in

in it) says, that it was to diminish the King's Prerogative and Regal Power in publishing that Declaration.

Now, my Lord, what the Consequence of this would be, and what my Lords the Bishops meant by saying, it was a Cause of great Moment, will appear, by considering that which is the main Clause in the Declaration, at which my Lords the Bishops scrupled, which is the main Stumbling-block to my Lords, and has been to many honest Men besides, and that is this.

“ We do likewise declare, It is our Royal Will
“ and Pleasure, that from henceforth the Execution
“ of all and all manner of Penal Laws, in Matters
“ Ecclesiastical, for not coming to Church, or not
“ receiving the Sacrament, or for any other Non-
“ conformity to the Religion established; or for
“ or by reason of the Exercise of Religion in
“ any Manner whatsoever, be immediately sus-
“ pended; and the further Execution of the said
“ Penal Laws, and every of them, is hereby sus-
“ pended.”

Here the Lord Chief Justice speaking aside, said,

L. C. J. *I must not suffer this; they intend to dispute the King's Power of suspending Laws.*

Mr. Just. Powell. *My Lord, they must necessarily fall upon that Point; for if the King hath no such Power (as clearly he hath not in my Judgment) the natural Consequence will be, that this Petition is no Diminution of the King's Regal Power, and is not seditious or libellous.*

L. C. J. *Brother, I know you are full of that Doctrine; but however, my Lords the Bishops shall have no Occasion to say, that I deny to hear their Counsel. Brother, you shall have your Will for once, I will hear them, let them talk till they are weary.*

Mr. Just. Powell. *I desire no greater Liberty to be granted them, than what in Justice the Court ought to grant, that is, to hear them in Defence of their Clients.*

admit of such a Quibble as to pretend, that the suspending the Execution of the Law, is not a suspending of the Law; for we all know the End of every Law, in its primary Intent, is Obedience to it; that of the Penalty comes in by the way of Punishment and Recompence for their Disobedience.

Now, my Lord, if this Declaration does discharge the King's Subjects from their Obedience to, and the Obligation from those Laws; then pray, my Lord, where are we? Then all the Laws of the Reformation are suspended, and the Laws of Christianity itself, by those latter Words [or for or by reason of Religion in any Manner what-

soever] so that it is not confined to the Christian Religion, but all other Religions are permitted under this Clause; and thus all our Laws for keeping the Sabbath, and which distinguish us from Heathens, will be suspended too.

My Lord, this is such an Inconvenience as, I think, I need name no more; and it is a very natural Consequence from that Clause of the Declaration; it discharges at once all Ministers and Clergymen from performing their Duty in reading the Service of the Church; it discharges their Hearers from attending upon that Service.

When a Law is suspended, the Obligation thereof is taken away; and those that before thought themselves bound to obey, now conclude they are not so obliged; and what a Mischief that will be to the Church, which is under the Care of my Lords the Bishops, your Lordship will easily apprehend.

These Things, my Lord, I only mention, to shew the great and evil Consequences that apparently follow upon such a Declaration, which made my Lords the Bishops decline obeying the Order, and put them under a Necessity of applying thus to the King, to acquaint him with the Reasons why they could not comply with his Commands to read this Declaration to the People, because the Consequences thereof were so great, it tending naturally to lead the People into so great an Error, as to believe those Laws were not in Force, when in Truth and Reality they are still in Force, and continue to oblige them.

And that being the second Reason in this Petition, I come next to consider it, to wit, that the Parliament had often declared this pretended Power to be Illegal; and for that we shall read the several Records in Parliament mentioned in their Petition, and produce several antient Records of former Parliaments that prove this point; and particularly in the Time of Richard the Second, concerning the Statute of Provisors, where there were particular Dispensations for that Statute, the King was enabled to do it by Act of Parliament, and could not do it without.

L. C. J. Pray, Sir Robert Sawyer, go to your Proofs, and reserve your Arguments till afterwards.

Sir Robert Sawyer. My Lord, I do but shortly mention these Things; so that, my Lord, as to the Matter of this Petition, we shall shew you, that it is true and agreeable to the Laws of the Land.

Then, my Lord, as to the Manner of delivering it, I need say no more, but that it is plain from their Evidence, that it was in the most private and humble Manner. And, as the Lord President said, Leave was asked of the King for them to be admitted to present it: Leave was given, and accordingly they did it.

We come then, my Lord, to the third Thing, the Persons, these noble Lords; and we shall shew they are not Busy-bodies, but in this Matter have done their Duty, and meddled with their own Affairs. That, my Lord, will, appear,

First, By the general Care that is reposed in them by the Law of the Land: They are frequently in our Books called the King's Spiritual Judges; they are entrusted with the Care of Souls, and the Superintendency over all the Clergy is their principal Care.

But,

But, besides this, my Lord, there is another special Care put upon them, by the express Words of an Act of Parliament; for, over and above the general Care of the Church, by Virtue of their Offices as Bishops, the Act of 1 Eliz. Cap. 2. makes them special Guardians of the Law of Uniformity, and of that other Law in his late Majesty's Reign; where all the Clauses of that Statute of 1 Eliz. are revived, and made applicable to the present State of the Church of England. Now in that Statute of 1 Eliz. there is this Clause.

And for the due Execution hereof, the Queen's most Excellent Majesty, the Lords Spiritual and Temporal, and all the Commons in this present Parliament assembled, do, in God's Name, earnestly require and charge all the Archbishops, and Bishops, and other Ordinaries, that they do endeavour themselves, to the Utmost of their Knowledges, that the due and true Execution hereof may be had throughout their Dioceses and Charges, as they will answer before God, for such Evils and Plagues wherewith Almighty God may justly punish his People, for neglecting this good and wholesome Law.

This is the Charge that lies upon the Bishops, to take Care of the Execution of that Law; and I shall pray by and by, that it may be read to the Jury.

Mr. Soll. Gen. That is very well, indeed! To what purpose?

Sir Rob. Sawyer. So that, my Lord, by this Law it is plain, that my Lords the Bishops, upon pain of bringing upon themselves the Imprecation of this Act of Parliament, are obliged to see it executed; and then, my Lord, when any thing comes under their Knowledge, especially if they are to be Actors in it, that hath such a Tendency to destroy the very Foundation of the Church, as the Suspension of all the Laws that related to the Church must do, it concerns them that have no other Remedy, to address the King, by Petition, about it.

For that, Mr. Attorney, my Lord, has agreed, that if a proper Remedy be pursued in a proper Court, for a Grievance complained of, though there may be many hard Words that else would be scandalous, yet being in a regular Course, they are no Scandal: And it is said in *Lake's Case*, in my Lord *Hobart*.

My Lord, we must appeal to the King, or we can appeal to no Body, to be relieved against an Order of Council with which we are aggrieved; and it is our Duty so to do, according to the Care that the Law hath placed in us.

Besides, my Lord, the Bishops were commanded by this Order to do an Act relating to their Ecclesiastical Function, to distribute it to be read by their Clergy: And how could they in Conscience do it, when they thought Part of the Declaration was not according to Law?

Pray, my Lord, What has been the Reason of his Majesty's consulting of his Judges? And if his Majesty, or any the great Officers, by his Command, are about to do any thing that is contrary to Law, was it ever yet an Offence to tell the King so? I always look'd upon it as the Duty of an Officer or Magistrate, to tell the King what is Law, and what is not Law.

In *Cavendish's Case*, in the Queen's Time, there was an Office granted of the Return of the Writs of *Superfedas* in the Court of *Common-Pleas*; and he comes to the Court, and desires to be put into the Possession of the Office: The Court told him, They could do nothing in it, but he must bring

his Affize. He applies to Queen, and she sends, under the Privy-Seal, a Command to sequester the Profits, and to take Security to answer the Profits, as the Judgment of the Law should go: But the Judges there return an Answer, That it was against Law, and they could not do it. Then there comes a second Letter, reciting the former, and commanding their Obedience: The Judges returned for Answer, They were upon their Oaths, and were sworn to keep the Laws, and would not do it.

My Lord, The like was done in the Time of my Lord *Hobart*: We have it reported in *Ander-son*, in a Case where a Prohibition had gone: There came a Message from Court, that a Consultation should be granted; and that was a Matter wherein there were various Opinions, whether it was *ex Necessitate*, or Discretionary; but there they returned, That it was against Law, for any such Message to be sent.

Now here, my Lord, is a Case full as strong: My Lords the Bishops were commanded to do an Act, which they conceived to be against Law, and they declined it, and tell the King the Reason; and they have done it in the most humble Manner that could be, by way of Petition. If they had done (as the Civil Law terms it) *Rescribere* generally, that had been lawful; but here they have done it in a more respectful Manner, by an humble Petition. If they had said the Law was otherwise, that sure had been no Fault; but they do not so much as that, but they only say, it was so declared in Parliament; and they declare it with all Humility and Dutifulness. So that, my Lord, if we consider the Persons of the Defendants, they have not acted as Busy bodies; and therefore, as this Case is, when we have given our Evidence, here will be an Answer to all the Implications of Law that are contained in this Information: For they would have this Petition work by Implication of Law, to make a Libel of it; but by what I have said, it will appear, there was nothing of Sedition, nothing of Malice, nothing of Scandal in it; nothing of the Salt, and Vinegar, and Pepper, that they have put into the Case. We shall prove the Matters that I have opened for our Defence, and then, I dare say, your Lordship and the Jury will be of Opinion, we have done nothing but our Duty.

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 we have read, and made an Order of Council for the reading the said Declarations in the Churches, and that the Archbishops and Bishops should severally send them into their Dioresses, 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, 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 Jury, and I know will be taken in-

to 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 were Room to presume that they had delivered 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 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 delivered to the King by my Lords the Bishops; but whether they have made a malicious 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 delivered 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; and one special Cause hath been by the Counsel 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 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 averie 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 his Tenderneſs; but the Declaration being founded upon a Power of Dispensing, which had 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 Com-

mand 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 all the Laws relating to his 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 the 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, 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 wished he had such a Power, which his Declaration before seemed 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 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 cancelled his Declaration, tore off the Seal, and caused

caused 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 Submission, 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 misled. 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 hath 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: Their is scarce a Day in the Term, but it is said in one Court or other; but it was never yet thought an Offence to say so: And what more is there in this Case?

My Lord, if the King was mis-informed, 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 Dioceses, 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 offered my Lord President the Matter of their Petition, that nothing might seem hard, or dis-respectful, 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 delivered 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 of all Laws, without Act of Parliament: Unless 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 apprehended 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. Therefore, my Lord, we will go on, and make out this Matter that we have opened to your Lordship, if Mr. Attorney, and Mr. Solicitor think fit to argue the Points that we have opened.

Mr. *Pollexfen*. Pray, my Lord, spare me a Word on the same Side. For the first Point, it is a Point of Law, whether the Matter contained in this Petition be a Libel. The King's Counsel pretend it is so, because it says, the Declaration is founded upon a Power the Parliament has declared to be illegal. But we say, that whatsoever the King is pleased to say in any Declaration of his, it is not the King's saying of it that makes it to be Law. Now, we say, this Declaration under the Great Seal, is not agreeable to the Laws of the Land; and that for this Reason, because it does, at one Blow, set aside all the Law we have in *England*.

My Lord, if this be denied, we must a little debate this Matter; for they are almost all penal Laws; not only those before the Reformation, but since; upon which the whole Government, both in Church and State, does in a great Measure depend.

Especially, my Lord, in Matters of Religion, they are all penal Laws: For, by the Act of Uniformity, which my Lords the Bishops are sworn to observe, and adjured by an express Clause in the Act, no Man is to preach unless he be Episcopally ordained; no Man is to preach without a Licence. If all this be set aside, I confess then, it will go very far into the whole Ecclesiastical Government. If this be denied, we are ready to argue that too.

L. C. J. They are to do so still.

Mr. *Pollexfen*. My Lord, I am sure the Consequence is otherwise, if this Declaration signify
any

any thing. And if it be the Will of the King, my Lord, the Will of the King is what the Law is. If so be the King's Will be not consonant to the Law, it is not obliging.

My Lord, The Cases that we have had of Dispensations, are all so many strong Authorities against a general, or particular Abrogation. My Lord, that is a Matter of Law, which if it fall out to be any way doubtful, it will be fit to have it debated and settled.

If they will say, that the Penal Laws in Matters Ecclesiastical can be abrogated, or nulled, or made void *pro tempore*, or for Life, without the meeting of the King and People in Parliament, I must confess, they say a great thing, as it is a Point of great Concern; but I think that will not be said: And all that has been ever said in any Case, touching Dispensations, proves quite the contrary, and asserts what I affirm. For why should any Man go about to argue, that the King may dispense with this or that particular Law, if at once he can dispense with all the Law, by an undoubted Prerogative? This is a Point of Law which we insist upon, and are ready to argue with them; but we will go on with the rest of those Things that we have offered: And first, we will read the Act of Uniformity, made 1 *Eliz.* that Clause of it, where they are so strictly charged to see the Execution of that Law.

This Act, my Lord, by the Act of Uniformity, made in the Beginning of the late King's Reign, is revived, with all the Clauses in it relating to this Matter. If then this be a Duty incumbent upon them, and their Oaths require it of them; and if they find that the Pleasure of the King, in his Declaration, is that which is not consonant to this Law, what can they do?

Can any thing be more humble, or done with a more Christian Mind, than by Way of Petition, to inform the King in the Matter? For I never thought it, nor hath it ever, sure, been thought by any body else, to be a Crime to petition the King: For the King may be mistaken in the Law, so our Books say; and we, every Day, in *Westminster-hall*, argue against the King's Grants, and say, he is deceived in his Grants. It is the great Benefit and Liberty which the King gives to his Subjects, to argue the Legality or Illegality of his Grants.

My Lord, when all this is done, to make this to be a Libel, by putting in the Words Malicious, Seditious, Scandalous, and with an Intent to raise Sedition, would be pretty hard.—My Lord, we pray that Clause of the Statute may be read.

Mr. *Soll. Gen.* What for?

Mr. *Pollexfen.* It is a general Law, and therefore the Court will take Notice of it; and we pray the Jury may hear it read.

Mr. *Soll. Gen.* I agree it to be as Mr. *Pollexfen* has opened; and I agree it to be as Sir *Robert Sawyer* has opened it.

Mr. *Serj. Pemberton.* My Lord, we shall put it upon a short Point. My Lords the Bishops are here accused of a Crime of a very heinous Nature as can be; they are here branded and stigmatized by this Information, as if they were seditious Libellers; when, my Lord, it will in Truth fall out, that they have done no more than their Duty; their Duty to God, their Duty to the King, and their Duty to the Church.

For in this Case, that which we humbly offer to your Lordship (and insist upon it, as very

plain) is this; That the Kings of *England* have no Power to suspend, or dispense with the Laws and Statutes of the Kingdom, that establish Religion: That is it which we stand upon for our Defence. And we say, That such a dispensing Power with Laws and Statutes, is a Thing that strikes at the very Foundation of all the Rights, Liberties, and Properties of the King's Subjects whatsoever. If the King may suspend the Laws of the Land which concern our Religion, I am sure there is no other Law but he may suspend: And if the King may suspend all the Laws of the Kingdom, what a Condition are all the Subjects in, for their Lives, Liberties, and Properties? All at Mercy.

My Lord, the King's legal Prerogatives are as much for the Advantage of his Subjects as of himself; and no Man goes about to speak against them: But, under Pretence of legal Prerogatives, to extend the Power of the King to support a Prerogative that tends to the Destruction of all his Subjects, their Religion and Liberties; in that, I think, they do the King no Service, who go about to do it.

But now we say, with your Lordship's Favour, that these Laws are the great Bulwark of the Reformed Religion; they are, in Truth, that which fence the Religion and Church of *England*, and we have no other human Fence besides. They were made upon a Foresight of the Mischief that had, and might come, by false Religions in this Kingdom; and they were intended to defend the Nation against them, and to keep them out; particularly, to keep out the *Romish* Religion, which is the very worst of all Religions, from prevailing among us; and that is the very Design of the Act for the Tests, which is entituled, *An Act to prevent Dangers that may happen from Popish Recusants.*

My Lord, if this Declaration should take Effect, what would be the End of it? All Religions are let in, let them be what they will; *Ranters, Quakers*, and the like; nay, even the *Roman Catholick* Religion, as they call it, which was intended, by these Acts of Parliament, and by the Act of Uniformity, and several other Acts, to be kept out of this Nation, as a Religion no Way tolerable, nor to be endured here.

If this Declaration takes Effect, that Religion will stand upon the same Terms with the Protestant Religion. Suspend those Laws, and that *Romish* Religion, that was intended to be prohibited, and so much Care was taken, and so many Statutes made to prohibit it, will come in; and all this Care, and all those Statutes go for nothing. This one Declaration sets them all out of Doors; and then that Religion stands upon equal Terms with the established Religion.

My Lord, we say this farther, that my Lords the Bishops have the Care of the Church, by their very Function and Offices; and are bound to take Care to keep out all those false Religions that are prohibited, and designed to be kept out by the Law. My Lords the Bishops finding this Declaration founded upon a meer pretended Power, that had been continually opposed and rejected in Parliament, could not comply with the King's Command to read it.

My Lord, Such a Power to dispense with, or suspend the Laws of a Nation, cannot with any Shadow of Reason be. It is not long since, that such a Power was ever pretended to by any,

but such as have the Legislative too; for it is plain, that such a Power must at least be equal to the Power that made the Laws. To dispense with a Law must argue a Power greater, or at least as great as that which made the Law.

My Lord, it has been often said in our Books, That where the King's Subjects are concerned in Interest, the King cannot suspend, or dispense with a particular Law. But, my Lord, how can the King's Subjects be more concerned in Interest, than when their Religion lies at Stake? It has been resolved, upon the Statute of *Simony*, that where the Statute has disabled the Party to take, there the King could not enable him against that Act of Parliament: And shall it be said, that by his Dispensation he shall enable one to hold an Office who is disabled by the Test-Act?

My Lord, we say, The Course of our Law allows no such Dispensation as the Declaration pretends to: And he that is but meanly read in our Law, must needs understand this, That the Kings of *England* cannot suspend our Laws; for that would be to set aside the Law of the Kingdom: And then we might be clearly without any Laws, if the King should please to suspend them.

'Tis true, we say, the last King *Charles* was prevailed upon, by Mis-information, to make a Dispensation somewhat of the Nature of this, though not so full an one; for that dispensed only with some few Ceremonies, and Things of that Nature: But the House of Commons (this taking Air) in 1662, represent this to the King by a Petition. And what is it that they do represent? That he, by his Dispensation, has undertaken to do that which nothing but an Act of Parliament can do; that is, the dispensing with Penal Laws, which is only to be done by Act of Parliament. And thereupon it was thought fit, upon the King's Account, to bring in an Act for it in some Cases.

My Lord, the King did then, in his Speech to the Parliament (which we use as a great Argument against this dispensing Power) say this, "That considering the Circumstances of the Nation, he could wish with all his Heart, that he had such a Power to dispense with some Laws, in some Particulars." And thereupon there was a Bill, in order to an Act of Parliament, brought in, giving the King a Power to dispense; but, my Lord, with a great many Qualifications: Which shews plainly, that it was taken by the Parliament, that he had no Power to dispense with the Laws of himself.

My Lord, Afterwards in 1672, the King was prevailed upon again to grant another Dispensation somewhat larger—

L. C. J. Brother *Pemberton*, I would not interrupt you, but we have heard of this over and over again already.

Mr. S. Pemberton. Then, since your Lordship is satisfied of these Things, as I presume you are, else I should have gone on. I have done, my Lord.

Mr. Serj. Levinz. But, my Lord, we shall go a little higher than that, and shew that it has been taken all along as the antient Law of *England*, that such Dispensations ought to be by the King and the Parliament, and not by the King alone.

Mr. Soll. Gen. My Lord, if you will admit every one of the Counsel to speech it before they give their Evidence, when shall we come

to an End of this Cause? We shall be here till Midnight.

L. C. J. They have no Mind to have an End of the Cause, for they have kept it three Hours longer than they need to have done.

Mr. S. Pemberton. My Lord, this Case does require a great deal of Patience.

L. C. J. It does so, Brother; and the Court has had a great deal of Patience: But we must not sit here only to hear Speeches.

Mr. Att. Gen. Now, after all their Speeches of two Hours long, let them read any thing if they have it.

Sir Rob. Sawyer. We will begin with the Record of *Richard* the Second—Call *William Fisher*.

[*William Fisher, Clerk to Mr. Ince, sworn.*]

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

Sir Rob. Sawyer. Shew him that Copy of the Record.

[*The Record was then shewn him.*]

L. C. J. Where had you those, Sir?

Mr. Fisher. Among the Records in the *Tower*.

L. C. J. Are they true Copies?

Mr. Fisher. Yes, my Lord.

L. C. J. Did you examine them by the Record?

Mr. Fisher. Yes, my Lord.

Sir Rob. Sawyer. Then hand them in; put them in.

Clerk reads. *Ex Rotulo Parliamenti de Anno Regni Regis Richardi Secundi 15. N. 1.*—My Lord, it is written in *French*, and I shall make but a bad Reading of it.

Sir Samuel Astry. Where is the Man that examined it?—Do you understand *French*?

Mr. Fisher. Yes, my Lord.

Sir Rob. Sawyer. The Record is in another Hand than this; they may easily read it.

Mr. Soll. Gen. Who copied this Paper?

Mr. Fisher. I did examine it.

Mr. Soll. Gen. What did you examine it with?

Mr. Fisher. I looked upon that Copy, and *Mr. Halstead* read the Record.

L. C. J. Young Man, read out.

Fisher reads. *Vendredi Lende maine del Almes qu'estoit le premier jour—*

Mr. Soll. Gen. Pray tell us what it is you would have read?

Mr. Serj. Levinz. I'll tell you what it is, *Mr. Solicitor*: 'Tis the Dispensation with the Statute of *Provisors*: And the Act of Parliament does give the King a Power to dispense till such a Time.

Mr. Soll. Gen. Don't you think the King's Prerogative is affirmed by many Acts of Parliament?

Mr. Serj. Levinz. If the King could dispense without an Act of Parliament, what need was there for the making of it?

Mr. Soll. Gen. *Mr. Serjeant*, We are not to argue with you about that yet.

L. C. J. Read it in *English*, for the Jury to understand it.

Mr. Fisher. My Lord, I cannot undertake to read it so readily in *English*.

Mr. Just. Powell. Why don't you produce the Records that are mentioned in the Petition, those in *King Charles* the Second's Time?

Mr. Serj. Levinz. We will produce our Records in Order of Time, as they are.

Sir Samuel Astry. There is the Clerk of the Records of the Tower, Mr. Halstead, will read it very well in French or English.

[Then Mr. Halstead was sworn to interpret the Record into English, according to the best of his Skill and Knowledge; but not reading very readily——a true Copy of the Record in English follows, out of the Rolls of Parliament, in the 15th Year of King Richard the Second, Numero Primo.]

Friday, the Morrow of All-Souls, which was the first Day of this Parliament, holden at Westminster, in the fifteenth Year of the Reign of our Lord King Richard the Second, after the Conquest, the Reverend Father in God the Archbishop of York, Primate and Chancellor of England, by the King's Commandment, being present in Parliament, pronounced and declared very nobly and wisely, the Cause of the Summons of this Parliament, and said, First, That the King would, that holy Church principally, and afterwards the Lords Spiritual and Temporal, and also the Cities and Boroughs should have and enjoy their Liberties and Franchises as well as they had them, and enjoyed them, in the Time of his noble Progenitors, Kings of England; and also in his own Time. And afterwards said, The Summons of this Parliament was principally for three Occasions. The first Occasion was, To ordain how the Peace and Quiet of the Land, which have heretofore been greatly blemished and disturbed, as well by Detraction and Maintenance, as otherwise, might be better holden and kept, and the Laws better executed, and the King's Commands better obeyed. The second Occasion was, To ordain and see how the Price of Wools, which is beyond measure lessened and impaired, might be better amended and enhanced. And also, That in case the War should begin again, at the End of the present Truce, to wit, at the Assumption of our Lady next coming, to ordain and see, how and whereby the said War may be maintained at the least Charge of the People. And the third Occasion was, touching the Statutes of Provisors, To ordain and see how our holy Father might have that which to him belongs, and the King that which belongs to him, and to his Crown; according unto that, *Render unto Cæsar the Things that are Cæsar's, and unto God the Things which are God's.*

Then the other Record of Richard the Second was read as follows, out of the Rolls of Parliament, the fifteenth Year of King Richard the Second, N. 8.

Be it remembered, touching the Statute of Provisors, That the Commons, for the great Confidence which they have in the Person of our Lord the King, and in his most excellent Knowledge, and in the great Tenderness which he hath for his Crown, and the Rights thereof; and also, in the noble and high Discretions of the Lords, have assented, in full Parliament, that our said Lord the King, by Advice and Assent of the said Lords, may make such Sufferance, touching the said Statute, as shall seem to him reasonable and profitable, until the next Parliament, so as the said Statute be not repealed in no Article thereof: And that all those who have any Benefices by Force of the said Statute, before this present Parliament; and also, That all

those to whom any Aid, Tranquillity, or Advantage is accrued, by Virtue of the said Statute of the Benefices of holy Church (of which they were heretofore in Possession) as well by Presentation, or Collation of our Lord the King, as of the Ordinaries, or Religious Persons whatsoever, or by any other Manner or Way whatsoever, may freely have and enjoy them, and peaceably continue their Possession thereof, without being ousted thereof, or any ways challenged, hindred, molested, disquieted, or grieved hereafter, by any Provisors, or others, against the Form and Effect of the Statute aforesaid, by reason of the said Sufferance in any Time to come. And moreover, That the said Commons may disagree at the next Parliament to this Sufferance, and fully resort to the said Statute, if it shall seem good to them to do it: With Protestation, That this Assent, which is a Novelty, and has not been done before this Time, be not drawn into Example or Consequence for Time to come. And they prayed our Lord the King, that the Protestation might be entred of Record, in the Roll of the Parliament: And the King granted, and commanded to do it.

Mr. Serj. Levinz. Now, my Lord, we will go on—— This was in Richard the Second's Time: And a Power is given by the Commons to the King, with the Assent of the Lords, to dispense, but only to the next Parliament, with a Power reserved to the Commons; and to disagree to it, and retract that Consent of theirs the next Parliament.

Sir George Treby. The Statute of Provisors was, and is a Penal Law, and concerning Ecclesiastical Matters too; viz. The Collating and Presenting to Archbishopricks, Bishopricks, Benefices, and Dignities of the Church: And in this Record now read, the Parliament give the King a limited Power, and for the short Time, to dispense with that Statute. But, to obviate all Pretence of such a Power's being inherent in the Crown as a Prerogative, they declare, (1.) That it was a Novelty; that is as much as to say, that the King had no such Power before. (2.) That it should not be drawn into Example; that is to say, that he should have no such Power for the future.

Mr. Serj. Levinz. Now we will go on to the Records mentioned in the Petition; those in the last King's Time, in 1662, and 1672; and that in this King's Time, in 1685.—— Where is the Journal of the House of Lords?

[Mr. Walker sworn.]

L. C. J. Is that the Book of the House of Lords?

Mr. Walker. It is the Journal of the House of Lords.

L. C. J. Is it kept by you?

Mr. Walker. Yes, my Lord.

L. C. J. Where is it kept?

Mr. Walker. In the usual Place, here in Westminster.

Mr. Soll. Gen. What is that?

Mr. Serj. Levinz. It is the Journal of the House of Lords——But, my Lord, there is one Thing that is mentioned in the last Record that was read, which is worth your Lordship's and the Jury's Observation; That it is declared a Novelty, and a Protestation, that it should not be drawn into Precedent for the future.

L. C. J. That has been observed, Brother: Let us hear your Record read.

Clerk reads—*Die Mercurii 18. die Februarii, 1662.*

“ His Majesty was present this Day, sitting in
“ the Regal Crown and Robes, the Peers being
“ likewise in their Robes: The King gave Or-
“ der to the Gentleman Usher of the Black-Rod,
“ to signify to the House of Commons his Plea-
“ sure, that they presently come up, and attend
“ his Majesty, with their Speaker; who being
“ present, his Majesty made this Speech follow-
“ ing.

“ *My Lords and Gentlemen,*

“ I AM very glad to meet you here again, ha-
“ ving thought the Time long since we parted,
“ and often wished you had been together, to
“ help me in some Occasions which have fallen
“ out: I need not repeat them unto you, you
“ have all had the Noise of them in your several
“ Countries; and, God be thanked, they were
“ but Noise, without any worse Effects.

“ To cure the Distempers, and compose the
“ differing Minds that are yet amongst us, I set
“ forth my Declaration of the 26th of *December*.
“ In which you may see, I am willing to set
“ Bounds to the Hopes of some, and to the Fears
“ of others; of which when you shall have ex-
“ amined well the Grounds, I doubt not but I
“ shall have your Concurrence therein. The Truth
“ is, I am in my Nature an Enemy to all Seve-
“ rity for Religion and Conscience, how mista-
“ ken soever it be, when it extends to capital and
“ sanguinary Punishments; which I am told, were
“ began in Popish Times. Therefore, when I say
“ this, I hope I shall not need to warn any here,
“ not to infer from thence, that I mean to favour
“ Popery. I must confess to you, there are many
“ of that Profession, who, having served my Fa-
“ ther, and myself very well, may fairly hope for
“ some Part in that Indulgence I would willing-
“ ly afford to others who dissent from us. But let
“ me explain myself, lest some mistake me here-
“ in, as I heard they did in my Declaration. I
“ am far from meaning by this a Toleration, or
“ qualifying them thereby to hold any Offices or
“ Places of Trust in the Government. Nay,
“ further, I desire some Laws may be made, to
“ hinder the Growth and Progress of their Do-
“ ctrine.

“ I hope you have all so good an Opinion of
“ my Zeal for the Protestant Religion, as I need
“ not tell you, I will not yield to any therein, not
“ to the Bishops themselves, nor in my liking the
“ Uniformity of it, as it is now established; which
“ being the Standard of our Religion, must be
“ kept pure and uncorrupted, free from all other
“ Mixtures. *And yet, if the Dissenters will de-
“ mean themselves peaceably and modestly under the
“ Government, I could heartily wish I had such a
“ Power of Indulgence to use upon Occasion—*

Sir George Treby. Pray, Sir, read that out di-
stinctly.

Clerk reads.—“ I could heartily wish I had such
“ a Power of Indulgence to use upon Occasion,
“ as might not needlessly force them out of the
“ Kingdom; or, staying here, give them Cause
“ to conspire against the Peace of it.

“ *My Lords and Gentlemen,*

“ It would look like Flattering in me, to tell
“ you in what Degree I am confident of your
“ Wisdom and Affection in all Things that relate

“ to the Greatness and Prosperity of the King-
“ dom. If you consider well what is best for us
“ all, I dare say we shall not disagree. I have no
“ more to say to you at present, but, once again,
“ to bid you heartily welcome.”

Mr. Finch. The next Thing we shall shew you
is, that after the King had made this Speech, and
wished he had such a Power of Indulgence to use
upon Occasion, there was a Bill in the House of
Lords brought in, to enable the King to dispense
with several Laws: We shall shew you the Jour-
nal, where it was read and committed; but fur-
ther than that it went not.

L. C. J. What Use do you make of this, Mr.
Finch.

Sir Rob. Sawyer. You may easily apprehend the
Use we shall make of it. (The King, in his
Speech, says, *He wished he had such a Power*) the
House of Lords thought he had not; and there-
fore they order'd a Bill to be brought in, to enable
him.—Read the Journal of the Lords of the
13th of *March*, 1662.

Clerk reads. *Die Veneris 13. die Martii, 1662.*

“ After some Debate, whether the House should
“ be put into a Grand Committee, for the further
“ Debate of the Bill concerning his Majesty's
“ Power in Ecclesiastical Affairs, it was put to
“ the Question; *viz.*

“ As many of your Lordships as would have this
“ House adjourned, and put into a Committee to
“ consider of the said Bill, say, *Content*; others,
“ *Not Content*.

“ Passed in the Affirmative.

“ And then the Lord Chamberlain of the
“ Household was directed to take the Chair, as
“ formerly; which he did accordingly.

“ And after Debate, the House was resumed,
“ after the Grand Committee had appointed a
“ Sub-Committee, touching the said Bill.

Sir Rob. Sawyer. This is all in the Journal of the
House of Lords about this Matter.—We will
now shew you the Bill itself.

Clerk reads. “ *An Act concerning his Majesty's Power
in Ecclesiastical Affairs.*

“ **W**Hereas divers of his Majesty's Subjects,
“ through Error of Judgment, and mis-
“ guided Consciences (whereunto the Licentious-
“ nesses of these late unhappy Times have much
“ contributed) do not conform themselves to the
“ Order of divine Worship and Service establish-
“ ed by Law; and though his Majesty and both
“ Houses of Parliament are fully satisfied, that
“ those Scruples of Conscience, from whence this
“ Nonconformity ariseth, are ill grounded; and
“ that the Government of the Church, with the
“ Service thereof (as now established) is the best
“ that is any where extant, and most effectual to
“ the Preservation of the Protestant Religion:
“ Yet hoping that Clemency and Indulgence
“ may, in Time, wear out those Prejudices, and
“ reduce the Dissenters to the Unity of the
“ Church; and considering that this Indulgence,
“ how necessary soever, cannot be dispensed by
“ any certain Rule, but must vary, according to
“ the Circumstances of Time, and the Temper
“ and Principles of those to whom it is to be
“ granted; and his Majesty being the best Judge
“ when, and to whom this Indulgence is to be
“ dispensed, or as may be most consistent with
“ the publick Peace, and without just Cause of
“ Offence

“ Offence to others; and to the End his Majesty
 “ may be enabled to exercise it with universal Sa-
 “ tisfaction, Be it Enacted by the King’s most ex-
 “ cellent Majesty, by Advice, and with the Con-
 “ sent of the Lords Spiritual and Temporal, and
 “ Commons, in this present Parliament assembled,
 “ and by the Authority thereof, That the King’s
 “ Majesty may, by Letters Patents under the Great
 “ Seal, or by such other Ways as to his Majesty
 “ shall seem meet, *dispense with one Act, or Law,*
 “ *made the last Session of this present Parliament* (en-
 “ titled, *An Act for the Uniformity of publick*
 “ *Prayers, and Administration of the Sacraments,*
 “ *and other Rites and Ceremonies; and for establish-*
 “ *ing the Form of making, and ordaining, and con-*
 “ *secrating Bishops, Priests and Deacons in the Church*
 “ *of England) and with any other Laws or Sta-*
 “ *tutes concerning the same; or requiring Oaths,*
 “ *or Subscriptions; or which do enjoin Confor-*
 “ *mity to the Order, Discipline, and Worship esta-*
 “ *blished in this Church, and the Penalties in the*
 “ *said Laws imposed, or any of them: And may*
 “ *grant Licences to such of his Majesty’s Subjects*
 “ *of the Protestant Religion, of whose inoffensive*
 “ *and peaceable Disposition his Majesty shall be*
 “ *persuaded, to enjoy and use the Exercise of their*
 “ *Religion and Worship, though differing from*
 “ *the publick Rule (the said Laws and Statutes, or*
 “ *any Disabilities, Incapacities, or Penalties, in*
 “ *them, or any of them contained, or any Matter*
 “ *or Thing to the contrary thereof notwithstanding).*

“ *Provided always, and be it Enacted, That no*
 “ *such Indulgence, Licence, or Dispensation here-*
 “ *by to be granted, shall extend, or be construed to*
 “ *extend to the Tolering, or Permitting the Use or*
 “ *Exercise of the Popish, or Roman Catholick Re-*
 “ *ligion in this Kingdom; nor to enable any Person*
 “ *or Persons, to hold or exercise any Place or Office*
 “ *of publick Trust within this Kingdom; who, at*
 “ *the Beginning of this present Parliament were,*
 “ *by the Laws and Statutes of this Realm, dis-*
 “ *abled thereunto; nor to exempt any Person or*
 “ *Persons from such Penalties as are by Law to be*
 “ *inflicted upon such as shall publish or preach any*
 “ *thing to the Depravation, or Derogation of the*
 “ *Book of Common-Prayer, or the Government,*
 “ *Order and Ceremonies of the Church established*
 “ *by Law.*

“ *Provided also, and be it Enacted, That no such*
 “ *Licence or Dispensation shall extend to make any*
 “ *Priest or Minister capable of any Ecclesiastical Liv-*
 “ *ing or Benefice, with Cure, who shall not, before*
 “ *the Archbishop of the Province, or Bishop of*
 “ *the Diocese where he lives, make such Subscription*
 “ *to the Articles of Religion, as is enjoined by the Sta-*
 “ *tute of the 13th of Elizabeth, made for Reforma-*
 “ *tion of Disorders in the Church; Nor shall extend,*
 “ *or be construed to extend to dispense with the Book of*
 “ *Common-Prayer: But that the said Book shall be*
 “ *constantly read in all the Cathedral and Collegiate*
 “ *Churches, and in all the Parish-Churches, and*
 “ *publick Chapels.*

Sir Rob. Sawyer. Here your Lordship sees what
 the Lords did in this Matter.—We shall now shew
 you, out of the Commons Journal, what they did
 concerning this Speech of the King—Shew the
 Journal of the 25th of February, 1662.

[Mr. Jodrell sworn.]

L. C. J. Did you examine that, Mr. Jodrell?

Mr. Jodrell. It is the Original Book.

[The Book delivered into the Court.]

Clerk reads. *Die Mercurii 25. die Februarii,*
 15 Car. II. *Resolved, That it be presented—*

Sir Rob. Sawyer. You must begin above— The
 House then took into Debate—

Clerk reads. “ The House then took into Debate
 “ the Matter touching Indulgence to Dissenters, from
 “ the Act of Uniformity.

“ The Question being put, that the present
 “ Debate be adjourned till to Morrow
 “ Morning.

“ The House was divided.

“ The Yeas went out.

Sir John Goodrick, }
 and } Tellers for the Noes;
 Sir William Lowther, } with the Noes 161.

Sir Richard Temple, }
 and } Tellers for the Yeas;
 Sir John Talbot, } with the Yeas 119.

“ And so it passed in the Negative.

“ *Resolved, &c.*

“ That it be presented to the King’s Majesty, as
 “ the humble Advice of this House, That no In-
 “ dulgence be granted to the Dissenters, from the
 “ Act of Uniformity—

Mr. Soll. Gen. Does your Lordship think it to be
 Evidence?

L. C. J. Let them read it, Mr. Solicitor, that
 we may hear what it is.

Clerk reads on.

“ *Ordered, That a Committee be appointed to*
 “ *collect and bring in the Reasons of this House for*
 “ *this Vote, upon the present Debate; to be present-*
 “ *ed to his Majesty, and that the nominating of the*
 “ *Committee be adjourned till to Morrow Morn-*
 “ *ing.*

Sir Rob. Sawyer. That’s all.

Mr. Soll. Gen. Pray, if there be any thing more,
 read on; you shall not parcel out a Record, and take
 and leave what you will.

Mr. Finch. Did not you parcel out our Petition?

Mr. Soll. Gen. Read on, if there be any thing a-
 bout this Matter.

Clerk. That is all.

Sir Rob. Sawyer. Turn to the 27th of Febr. 1662.
 Clerk reads. *Veneris 27. Februarii 15 Car. II.*

“ Sir Heneage Finch reports from the Committee
 “ appointed to collect and bring in the Reasons of
 “ the House for their Vote of Advice to the King’s
 “ Majesty; and in the Close of those Reasons to add,
 “ That the House will assist his Majesty with their
 “ Lives and Fortunes: And to pen an Address to his
 “ Majesty for that Purpose, the several Reasons and
 “ Address agreed to by the Committee in Writing,
 “ he read in his Place, and did bring up, and deliver
 “ the same in at the Clerk’s Table.

“ The first Paragraph was read, and upon the
 “ Question agreed to.

“ The second Paragraph was read, and upon the
 “ Question agreed to.

“ The third was read, and upon the Question a-
 “ greed to.

Sir Rob. Sawyer. Go over that, and go to the Ad-
 dress itself.

Clerk reads. “ *May it please your most Excellent*
 “ *Majesty,*

“ WE your Majesty’s most dutiful and loyal
 “ Subjects, the Knights, Citizens, and Burgeses
 “ of the House of Commons in Parliament as-
 “ sembled, having with all Fidelity and Obe-
 “ dience considered of the several Matters com-
 “ prised in your Majesty’s late gracious Decla-
 “ ration

“ ration of the 26th of *December* last, and your most
 “ gracious Speech at the Beginning of this present
 “ Session, do in the first Place for ourselves, and
 “ in the Names of all the Commons of *England*,
 “ render unto your Sacred Majesty the Tribute of
 “ our most hearty Thanks for that infinite Grace
 “ and Goodness wherewith your Majesty hath been
 “ pleased to publish your Royal Intention of adher-
 “ ing to your Act of Indemnity and Oblivion, by
 “ a constant and religious Observance of it; and
 “ our Hearts are further enlarged in these Returns
 “ of Thanksgiving, when we consider your Maje-
 “ sty’s most Princely and Heroick Profession of re-
 “ lying upon the Affections of your People, and
 “ the abhorring all sorts of Military and Arbitrary
 “ Rule; but above all, we can never enough re-
 “ member to the Honour of your Majesty’s Piety,
 “ and our own unspeakable Comfort, those solemn
 “ and most endearing Invitations of your Majesty’s
 “ Subjects, to prepare Laws to be presented to your
 “ Majesty against the Growth and Encrease of Po-
 “ pery; and withal, to provide more Laws against
 “ Licentiousness and Impiety, at the same Time de-
 “ claring your own Resolutions for maintaining the
 “ Act of Uniformity: And it becomes us always to
 “ acknowledge and admire your Majesty’s Wisdom
 “ in this your Declaration, whereby your Majesty
 “ is pleased to resolve not only by sumptuary
 “ Laws, but by your own Royal Example of Fru-
 “ gality, to restrain that Excess in Mens Expences,
 “ which is grown so general, and so exorbitant,
 “ and to direct our Endeavours to find out fit and
 “ proper Laws for the Advancement of Trade and
 “ Commerce.

“ After all this, we most humbly beseech your
 “ Majesty to believe, *That it is with extream Un-*
 “ *willingness and Reluctancy of Heart, that we are*
 “ *brought to differ from any thing which your Majesty*
 “ *hath thought fit to propose*; and though we do no
 “ ways doubt but that the unreasonable Distem-
 “ pers of Mens Spirits, and the many Mutinies
 “ and Conspiracies which were carried on during
 “ the late Intervals of Parliament, did reasonably
 “ incline your Majesty to endeavour by your De-
 “ claration to give some Allay to those ill Humours,
 “ till the Parliament assembled, and the Hopes of
 “ an Indulgence, if the Parliament should consent
 “ to it; especially seeing the Pretenders to this In-
 “ dulgence did seem to make some Title to it by
 “ virtue of your Majesty’s Declaration from *Bredab*:
 “ *Nevertheless, we your Majesty’s most dutiful and*
 “ *loyal Subjects*, who are now returned to serve in
 “ Parliament, from those several Parts and Places
 “ of your Kingdom for which we are chosen, *Do*
 “ *humbly offer it to your Majesty’s great Wisdom, that*
 “ *it is in no sort adviseable that there be any Indulgence*
 “ *to such Persons who presume to dissent from the Act*
 “ *of Uniformity and Religion established*, for these Rea-
 “ sons.

“ We have considered the Nature of your Ma-
 “ jesty’s Declaration from *Bredab*, and are humbly
 “ of Opinion, That your Majesty ought not to be
 “ pressed any further.

“ Because it is not a Promise in itself, but only a
 “ gracious Declaration of your Majesty’s Intenti-
 “ ons to do what in you lay, and what a Parliament
 “ should advise your Majesty to do, and no such
 “ Advice was ever given, or thought fit to be of-
 “ fered; nor could it be otherwise understood, be-
 “ cause there were Laws of Uniformity then in Be-
 “ ing, which could not be dispensed with but by
 “ Act of Parliament.

Sir *Rob. Sawyer*. This is all that we read this for;
 your Lordship and the Jury see what is here declared
 by the Parliament, That the Act of Uniformity
 could not be dispensed with, without an Act of Par-
 liament.

Next, my Lord, we shall shew you what was
 done in the Year 1672.—Read the King’s Speech
 the 5th of *February*, 1672.

[*The Journals of the Lords House were delivered*
in.]

Clerk reads. *Die Mercurij, 5. Februarij, 1672.*

My Lords and Gentlemen,

“ I AM glad to see you here this Day. I would
 “ I have called you sooner together, but that I
 “ was willing to ease you and the Country, till there
 “ were an absolute Necessity.

“ Since you were last here, I have been forced to
 “ a most important, necessary, and expensive War;
 “ and I make no doubt but you will give me suit-
 “ able and effectual Assistance to go through with
 “ it. I refer you to my Declaration for the Causes,
 “ and indeed the Necessity of this War, and shall
 “ now only tell you, That I might have digested
 “ the Indignities to my own Person, rather than
 “ have brought it to this Extremity, if the Interest,
 “ as well as the Honour of the whole Kingdom had
 “ not been at Stake; and if I had omitted this Con-
 “ juncture, perhaps I had not again ever met with
 “ the like Advantage.

“ You will find that the last Supply that you gave
 “ me, did not answer Expectation for the Lends you
 “ gave it, the Payments of my Debts; therefore I
 “ must in the next Place recommend them again to
 “ your special Care.

“ Some few Days before I declared the War, I
 “ put forth my Declaration for Indulgence to Dis-
 “ senters, and have hitherto found a good Effect of
 “ it, by securing my Peace at Home, when I had
 “ War Abroad: There is one Part in it that has
 “ been subject to Misconstructions, which is that
 “ concerning the Papists, as if more Liberty was
 “ granted to them than to other Recufants, when
 “ ’tis plain there is less; for the others have publick
 “ Places allowed them, and I never intended that
 “ they should have any, but only have the Free-
 “ dom of their Religion in their own Houses, with-
 “ out any Concourse of others; and I could not
 “ grant them less than this, when I had extended so
 “ much more Grace to others, most of them having
 “ been Loyal, and in the Service of me, and the King
 “ my Father: And in the whole Course of this Indul-
 “ gence I do not intend that it shall any way preju-
 “ dice the Church, but I will support its Rights, and
 “ it in its full Power.

“ Having said this, I shall take it very ill to re-
 “ ceive Contradiction in what I have done; and I
 “ will deal plainly with you, I am resolved to stick
 “ to my Declaration.

“ There is one Jealousy more which is malici-
 “ ously spread Abroad, and yet so weak and frivo-
 “ lous, that I once thought it not of Moment enough
 “ to mention; but it may have gotten some Ground
 “ with some well-minded People, and that is, that
 “ the Forces which I have raised in this War were
 “ designed to controul Law and Property. I wish
 “ I had had more Forces the last Summer; the
 “ Want of them then, convinces me, I must raise
 “ more against this next Spring; and I do not doubt
 “ but you will consider the Charge of them in your
 “ Supplies.

“ I will

“ I will conclude with this Assurance to you,
 “ That I will preserve the true Reformed Prote-
 “ stant Religion, and the Church, as it is now esta-
 “ blished in this Kingdom, and that no Man’s Pro-
 “ perty or Liberty shall ever be invaded. I leave
 “ the rest to the Chancellor.

Mr. Serj. *Pemberton*. Now go to the Journal of
 the Commons of the 14th of *February*, 1672.

[*The Journal put in.*]

Clerk reads. *Veneris 13. die Februarij*, 1672.

“ Mr. *Powle* reports from the Committee ap-
 “ pointed to prepare and draw up a Petition and
 “ Address to his Majesty, the said Petition and Ad-
 “ dress, which he read in his Place, and afterwards
 “ delivered the same in at the Clerk’s Table, and
 “ the same being again twice read, is as followeth ;
 “ viz.

Most Gracious Sovereign,

“ **W**E your Majesty’s most Loyal and Faithful
 “ Subjects, the Commons assembled in Par-
 “ liament, do in the first Place, as in all Duty
 “ bound, return your Majesty our most humble and
 “ hearty Thanks for the many Gracious Promises
 “ and Assurances which your Majesty has several
 “ Times, during this present Parliament, given to
 “ us, that your Majesty would secure and maintain
 “ unto us the true Reformed Protestant Religion,
 “ our Liberties and Properties; which most gra-
 “ cious Assurances your Majesty, out of your
 “ great Goodness, has been pleased to renew unto
 “ us, more particularly at the Opening of this pre-
 “ sent Session of Parliament.

“ And further, we crave Leave humbly to re-
 “ present, that we have with all Duty and Expedi-
 “ tion, taken into Consideration the several Parts
 “ of your Majesty’s last Speech to us; and withal,
 “ the Declaration therein mentioned for Indul-
 “ gence to Dissenters, dated the 15th of *March* last:
 “ And we find our selves bound in Duty to
 “ inform your Majesty, That Penal Sta-
 “ tutes, in Matters Ecclesiastical, cannot be
 “ suspended but by Act of Parliament.

“ We therefore, the Knights, Citizens, and Bur-
 “ gesses of your Majesty’s House of Commons, do
 “ most humbly beseech your Majesty, That the said
 “ Laws may have their free Course, until it shall be
 “ otherwise provided for by Act of Parliament: And
 “ that your Majesty would graciously be pleased
 “ to give such Directions herein, that no Appre-
 “ hensions or Jealousies may remain in the Hearts
 “ of your Majesty’s good and faithful Subjects.

“ *Resolved, &c.*

“ That this House doth agree with the Com-
 “ mittee in the Petition and Address by them drawn
 “ up to be presented to his Majesty.

Sir *Rob. Sawyer*. Now turn to the 24th of *Fe-*
bruary, 1672, in the same Book.

Clerk reads. *Lunæ 24. Februarij*, 1672.

“ Mr. Secretary *Coventry* reports and presents in
 “ Writing from his Majesty, his Answer to the hum-
 “ ble Petition and Address of this House, which
 “ was thrice read, and the Matter debated, and is
 “ as followeth ; viz.

CHARLES R.

“ **H**IS Majesty hath received an Address from
 “ you, and he hath seriously considered of
 “ it, and returns you this Answer, That he is ve-
 “ ry much troubled, that that Declaration which

“ he put out for Ends so necessary for the Quiet
 “ of his Kingdom, and especially in that Conjunc-
 “ ture, should have proved the Cause of Disquiet
 “ in his House of Commons, and give Occasion to
 “ the questioning of his Power in Ecclesiasticks,
 “ which he finds not done in the Reigns of any of
 “ his Ancestors. He is sure he never had Thoughts
 “ of using it otherwise than as it hath been entrust-
 “ ed in him, to the Peace and Establishment of
 “ the Church of *England*, and the Ease of all his
 “ Subjects in general: Neither does he pretend to
 “ the Right of suspending any Laws, wherein the
 “ Properties, Rights, or Liberties of any of his Sub-
 “ jects are concerned, nor to alter any thing in the
 “ Established Doctrine or Discipline of the Church of
 “ *England*. But his only Design in this, was to
 “ take off the Penalties the Statutes inflicted upon
 “ Dissenters, which he believes, when well confi-
 “ dered of, you your selves would not wish exe-
 “ cuted according to the Rigour and Letter of the
 “ Law; neither hath he done this with any
 “ Thought of avoiding or precluding the Advice
 “ of his Parliament; and if any Bill shall be offered,
 “ which shall appear more proper to attain the a-
 “ foresaid Ends, and secure the Peace of the
 “ Church and Kingdom, when tendred in due Man-
 “ ner to him, he will shew how readily he will
 “ concur in all Ways that shall appear good for
 “ the Kingdom.

Sir. *Rob. Sawyer*. Turn to the 26th of *February*,
 1672.

Clerk reads. *Die Mercurij 26. Februarij*, 1672.

“ Mr. *Powle* reports from the Committee ap-
 “ pointed to consider of an Answer to return to his
 “ Majesty’s last Message upon the Debate of the
 “ House, an Answer agreed by the Committee,
 “ and drawn up, and put into Writing, which he
 “ read in his Place, and then delivered the same in
 “ at the Clerk’s Table, where it was twice read,
 “ and is as followeth ; viz.

Most Gracious Sovereign,

“ **W**E your Majesty’s most humble and loyal
 “ Subjects, the Knights, Citizens, and Bur-
 “ gesses in this present Parliament assembled, do
 “ render to your most sacred Majesty our most
 “ dutiful Thanks, for that to our unspeakable
 “ Comfort, your Majesty has been pleased so
 “ often to reiterate unto us those gracious Pro-
 “ mises and Assurances of maintaining the Religi-
 “ on now established, and the Liberties and Pro-
 “ perties of your People; and we do not in the
 “ least Measure doubt but that your Majesty had
 “ the same gracious Intention in giving Satisfaction
 “ to your Subjects, by your Answer to our last
 “ Petition and Address: Yet, upon a serious Con-
 “ sideration thereof, We find that the said Answer
 “ is not sufficient to clear the Apprehensions that may
 “ justly remain in the Minds of your People, by your
 “ Majesty’s having claimed a Power to suspend Penal
 “ Statutes in Matters Ecclesiastical, and which your
 “ Majesty does still seem to assert, in the said Answer,
 “ to be entrusted in the Crown, and never questioned
 “ in the Reigns of any of your Ancestors: Wherein
 “ we humbly conceive your Majesty has been very
 “ much misinformed; since no such Power ever was
 “ claimed or exercised by any of your Majesty’s Pre-
 “ decessors; and if it should be admitted, might tend
 “ to the interrupting the free Course of the Laws,
 “ and altering the Legislative Power, which hath al-
 “ ways been acknowledged to reside in your two Houses
 “ of Parliament.

“ We

“ We therefore with an unanimous Consent
 “ become again most humble Suitors unto your
 “ Sacred Majesty, That you would be pleased to give
 “ us a full and satisfactory Answer to our said Petiti-
 “ on and Address, and that your Majesty would take
 “ such effectual Order, that the Proceedings in this
 “ Matter may not for the future be drawn into Con-
 “ sequence or Example.

“ The Answer to his Majesty’s Message was
 “ again read by Paragraphs, and the several Para-
 “ graphs to the last were, upon the Question,
 “ severally agreed.

“ The last Paragraph being read, and the Que-
 “ stion being put, that the Word *unanimous* should
 “ stand in the Paragraph,

The House divided.—The *Noes* go out.

Tellers.

Lord *St. John*,
 Mr. *Vaughan*, } for the *Yeas*, 180.

Sir *Richard Temple*,
 Sir *Philip Howard*, } for the *Noes*, 77.

“ And so it was resolved in the Affirmative.

“ The Question being put to agree to the Para-
 “ graph, it was resolved in the Affirmative,
 “ Resolved, &c.

“ That the whole Address be agree to, as it
 “ was brought in by the Committee.

Sir *Rob. Sawyer*. Now turn to the Lords Jour-
 nal, and there your Lordship will see, that the
 King does communicate this Address to the Lords,
 and desires their Advice.

Read the 1st of *March*, 1672.

Clerk reads. *Die Sabbati primo die Martii*, 1672.

“ His Majesty this Day made a short Speech,
 “ as follows.

My Lords,

“ You know, that at the Opening of this Ses-
 “ sion, I spoke here to your Satisfaction; it has
 “ notwithstanding begotten a greater Disquiet in
 “ the House of Commons than I could have ima-
 “ gined.

“ I received an Address from them, which I
 “ looked not for, and I made them an Answer
 “ that ought to have contented them; but on
 “ the contrary, they have made me a Reply of
 “ such a Nature, that I cannot think fit to proceed
 “ any further in this Matter without your Ad-
 “ vice.

“ I have commanded the Chancellor to ac-
 “ quaint you with all the Transactions, wherein
 “ you will find both me and your selves highly
 “ concerned. I am sensible for what relates to
 “ me, and I assure you, my Lords, I am not less
 “ so for the Privilege, and the Honour of this
 “ House.

“ Afterwards the Lord Chancellor read the
 “ several Papers and Addresses of the House of
 “ Commons, and his Majesty’s Answer there-
 “ unto, and opened his Majesty’s Proceedings up-
 “ on them.”

The Address of the House of Commons was
 read.

Sir *Rob. Sawyer*. Pass over that, you have read
 it already.

Clerk reads. The next, his Majesty’s Answer to
 the Address of the House of Commons was read as
 follows,——

Sir *Rob. Sawyer*. That hath been read too.

Clerk reads. Then was read the Reply of the
 House of Commons to his Majesty’s Answer, as
 followeth,——

Mr. *Fintb*. You have read that likewise.

Clerk reads. “ Upon this it is ordered, that the
 “ Lord Treasurer, Duke of *Buckingham*, Earl of
 “ *Bridgewater*, Earl of *Northampton*, Earl of *Bristol*,
 “ Earl of *Berks*, Earl of *Bolingbroke*, and the Earl of
 “ *Anglesey*, do forthwith withdraw and consider
 “ what humble Thanks is fit to be given to his
 “ Majesty for his great Favour in communicating
 “ this Business to this House, and report the same.
 “ And accordingly, the said Lords Committees
 “ did withdraw themselves for that Purpose.

“ The Lords being returned, the Duke of *Buck-*
 “ *ingham* reported what the Committee had pre-
 “ pared to present to his Majesty by way of Thanks,
 “ which was read as followeth.

“ We the Lords Spiritual and Temporal in Par-
 “ liament assembled, do unanimously present to
 “ your Sacred Majesty our most humble Thanks,
 “ for having been pleased to communicate to us
 “ what has passed between your Majesty and the
 “ House of Commons, whereby you have gra-
 “ ciously offered us the Means of shewing our
 “ Duty to your Majesty, and of asserting the
 “ antient just Rights and Privileges of the House
 “ of Peers.

“ The Question being put, whether to agree
 “ with the Committee,

“ It was resolved in the Affirmative.

“ Ordered, That his Majesty be desired, that his
 “ Speech, and the Papers read this Day, may be
 “ entered into the Journal-Book of this House.

“ The Lord Treasurer, the Duke of *Bucking-*
 “ *ham*, and the Lord *Chamberlain*, are appointed
 “ to attend his Majesty presently, to know his
 “ Pleasure, what Time and Place this whole House
 “ shall wait upon him, to present the humble
 “ Thanks of this House, for his great Favour
 “ shewed this Day.

“ Ordered, that upon *Monday* Morning next,
 “ this House will debate the whole Matter of his
 “ Majesty’s Speech, and these Papers; and to
 “ consider the Points of Privilege, and what else
 “ may arise thereupon.

“ The Lords that were appointed to attend his
 “ Majesty, return with this Answer.

“ That his Majesty has appointed this After-
 “ noon at five of the Clock, for this House to
 “ wait upon him in the Banqueting-House at
 “ *Whitehall*.

“ Ordered, that all the Judges now in Town,
 “ shall attend this House on *Monday* Morning
 “ next.

Sir *Rob. Sawyer*. The third of *March*, 1672, is
 the next.

Clerk reads. *Die Lunæ 3. die Martii*, 1672.

“ The Lord Chancellor reported, that the
 “ whole House on *Saturday* last waited upon his
 “ Majesty at *Whitehall*, and presented the humble
 “ Address of this House, and his Majesty was
 “ pleased to return this Answer.

My Lords,

“ I take this Address of yours very kindly; I
 “ will always be very affectionate to you, and ex-
 “ pect you should stand by me, as I will always
 “ by you.

“ Then the House took into Consideration
 “ the whole Matter of his Majesty’s Speech
 “ on *Saturday*, and the three Papers which his
 “ Majesty acquainted this House withal, and
 “ all the said Papers in their Order were read,
 “ and after a long Debate, the Question be-
 “ ing put,

“ Whe-

“ Whether this House shall in the first Place
“ enter into Consideration of giving Advice to his
“ Majesty ?

“ It was resolved in the Affirmative.

“ It is ordered, that this Business shall be taken
“ into Consideration to-morrow Morning, at nine
“ of the Clock, the first Business.

“ Ordered, That the Judges now in Town, shall
“ attend to-morrow Morning.

Sir Rob. Sawyer. The 4th of March, 1672.

Clerk reads. “ Next, The House took into
“ Consideration the Advice to be given to his
“ Majesty, concerning the Addressees made to him
“ from the House of Commons.

“ The Address of the House of Commons,
“ and his Majesty’s Answer were read, and after
“ a long Debate, the Question being put, Whe-
“ ther the King’s Answer to the House of Com-
“ mons, in referring the Points now controverted
“ to a Parliamentary Way by Bill, is good and
“ gracious, that being a proper and natural Course
“ for Satisfaction therein ?

It was resolved in the Affirmative.

Sir Rob. Sawyer. The 8th of March, 1672.

Clerk reads. *Die Sabbati 8. die Martij, 1672.*

“ His Majesty in his Royal Throne, adorned
“ with his Crown and Regal Ornaments, com-
“ manded the Gentleman Usher of the Black-
“ Rod, to give Notice to the House of Commons,
“ that they attend his Majesty presently.

“ The Commons being come with their Speak-
“ er, his Majesty made this short Speech follow-
“ ing.

My Lords and Gentlemen,

“ Yesterday you presented me an Address, as the
“ best Means for the Satisfying and Compos-
“ ing the Minds of my Subjects, to which I
“ freely and readily agreed, and I shall take Care
“ to see it performed accordingly.

“ I hope, on the other Side, you Gentlemen of
“ the House of Commons will do your Part ; for
“ I must put you in mind, it is near five Weeks
“ since I demand a Supply, and what you voted
“ unanimously upon it, did both give Life to my
“ Affairs at Home, and dishearten mine Enemies
“ Abroad ; but the seeming Delay it hath met
“ withal since, hath made them to take new Cou-
“ rage, and they are now preparing for this next
“ Summer a greater Fleet, as they say, than ever
“ they have had yet ; so that if the Supply be not
“ very speedily dispatch’d, it will be altogether in-
“ effectual, and the Safety, Honour and Interest
“ of *England* must of Necessity be exposed. Pray
“ lay this to Heart, and let not the Fears and Jeal-
“ ousies of some draw an inevitable Ruin upon
“ us all.

“ My Lords and Gentlemen,

“ If there be any Scruple remaining with you con-
“ cerning the Suspension of Penal Laws, I here faith-
“ fully promise you, that what has been done in that
“ Particular, shall not for the future be drawn ei-
“ ther into Consequence or Example. And as I daily
“ expect from you a Bill for my Supply, so I as-
“ sure you, I shall as willingly pass any other you
“ shall offer me that may tend to the giving you
“ Satisfaction in all your just Grievances.

“ Next my Lord Chancellor reported, That
“ both Houses waited upon the King Yesterday,
“ and presented him with the Address against the
“ Growth of Popery, and his Majesty hath been
“ please to return this Answer.

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“ *My Lords and Gentlemen.*

“ I do heartily agree with you in your Address,
“ and shall give speedy Order to have it put in
“ Execution. There is one Part to which I believe
“ it is not your Intention that it should extend ;
“ for I can scarce say, those are in my Pay that
“ are presently to be employed abroad ; but as for
“ all other Parts, I shall take Care it shall be done
“ as you desire.

After which the Lord Chancellor said, he had
somewhat more to impart to the House by the
King’s Command, which was,

*That his Majesty last Night, having spoken with
several Members of both Houses, found some Dis-
satisfaction remaining concerning his Answer to their
Address in the Particular of the Officers to be em-
ployed abroad, of which Number he had five or six
that were of the best Officers of France and Flan-
ders, and being his own Subjects, he had been ve-
ry solicitous to get ; but if that bred any Umbrage,
the King commanded him to let them know, that he
resolves to give both his Houses full Satisfaction to their
Desires.*

*There was another Particular that the Lord Chan-
cellor said he thought fit to acquaint them with, which,
though it was by his Majesty’s Leave, yet it was
not by his Command : However, he thought it
his Duty to acquaint the House with it (Mr. Se-
cretary Coventry intending to acquaint the House
of Commons with the same) That his Majesty had
the last Night, in Pursuance of what he then intended,
and declared this Morning, concerning the Suspension
of Penal Laws not being for the future drawn either
into Consequence or Example, caused the original De-
claration under the Great-Seal, to be cancelled in his
Presence, whereof himself and several other Lords of
the Council were Witnesses.*

Sir Rob. Sawyer. Turn to the 10th of March,
1672.

Clerk reads. *Die Lunæ decimo die Martij, 1672.*

“ Ordered, That what my Lord Chancellor
“ said on Saturday last, concerning his Majesty’s
“ causing the vacating his Indulgence under the
“ Great-Seal of *England*, shall be entred into the
“ Journal-Book of this House as on Saturday last.

Sir Rob. Sawyer. We shall now come to that
which pass’d in the Parliament in 1685 — Read
the 9th of November, 1685.

[*The Journal of the Lords, 1685, put in.*]

Clerk reads. “ His Majesty being on his Royal
“ Throne adorned with his Regal Robes and
“ Crown (the Lords being in their Robes also)
“ commanded the Gentleman-Usher to give No-
“ tice to the House of Commons that they imme-
“ diately attend his Majesty ; who being come,
“ his Majesty made the following Speech.

“ *My Lords and Gentlemen,*

“ After the Storm that seemed to be coming
“ upon us when we parted last, I am glad to
“ meet you all again in so great Peace and Quietness ;
“ God Almighty be praised, by whose Blessing
“ that Rebellion was suppressed ; but when I
“ reflect what an inconsiderable Number of Men
“ began it, and how long they carried it on with-
“ out any Opposition, I hope every body will be
“ convinced that the Militia, which hath hitherto
“ been so much depended upon, is not sufficient
“ for such Occasions, and that there is nothing but
“ a good Force of well-disciplin’d Troops in con-
“ stant Pay that can defend us from such as either
“ at Home or Abroad are disposed to disturb us.

C c c

“ And

“ And in Truth, my Concern for the Peace and
 “ Quiet of my Subjects, as well as for the Safety
 “ of the Government, make me think it necessary
 “ to increase the Number to the Proportion I
 “ have done. This I owed as well to the Honour
 “ as to the Security of the Nation, whose Re-
 “ putation was so infinitely exposed unto all our
 “ Neighbours, by having lain open to this late
 “ wretched Attempt, that it is not to be repaired
 “ without keeping such a Body of Men on Foot,
 “ that none may ever have the Thoughts again of
 “ finding us so miserably unprovided.

“ It is for the Support of this great Charge
 “ which is now more than Double to what it was,
 “ that I ask your Assistance in giving me a Supply
 “ answerable to the Expence it brings along with
 “ it: And I cannot doubt, but what I have be-
 “ gun so much for the Honour and Defence of
 “ the Government, will be continued by you with
 “ all the Cheerfulness and Readiness that is requi-
 “ site for a Work of so great Importance.

“ *Let no Man take Exceptions that there are some*
 “ *Officers in the Army not qualified according to the*
 “ *late Tests for their Employments: The Gentle-*
 “ *men, I must tell you, are most of them well*
 “ *known to me, and having formerly served with*
 “ *me on several Occasions, and always approved*
 “ *the Loyalty of their Principles by their Pra-*
 “ *ctices, I think them fit now to be employed un-*
 “ *der me; and will deal plainly with you, that*
 “ *after having had the Benefit of their Services in*
 “ *such Time of Need and Danger, I will neither*
 “ *expose them to Disgrace, nor myself to the Want of*
 “ *them, if there should be another Rebellion to make*
 “ *them necessary to me.*

“ I am afraid some Men may be so wicked to
 “ hope and expect that a Difference may happen
 “ between you and me upon this Occasion; but
 “ when you consider what Advantages have risen
 “ to us in a few Months by the good Understand-
 “ ing we have hitherto had, what wonderful Ef-
 “ fects it has already produced in the Change of
 “ the whole Scene of Affairs abroad, so much
 “ more to the Honour of the Nation, and the Fi-
 “ gure it ought to make in the World, and that
 “ nothing can hinder a further Progress in this
 “ Way, to all our Satisfaction, but Fears and
 “ Jealousies amongst ourselves; I will not appre-
 “ hend that such a Misfortune can befall us as a
 “ Division, or but a Coldness between me and
 “ you; nor that any thing can shake you in your
 “ Steadiness and Loyalty to me, who, by God’s
 “ Blessing, will ever make you all Returns of
 “ Kindness and Protection, with a Resolution to
 “ venture even my own Life in the Defence of
 “ the true Interest of this Kingdom.

Sir *Rob. Sawyer.* Turn to the Commons Jour-
 nal the 16th of November, 1685.

[*The Journal of the House of Commons put in.*]

Clerk reads. “ *Die Lunæ 16. die Novemb. 1685.*

Most gracious Sovereign,

“ **W**E your Majesty’s most loyal and faithful
 “ Subjects, the Commons in Parliament
 “ assembled, do in the first Place (as in Duty
 “ bound) return your Majesty our most humble
 “ and hearty Thanks for your great Care and Con-
 “ duct in the Suppression of the late Rebellion,
 “ which threatened the Overthrow of this Govern-
 “ ment both in Church and State, and the utter-
 “ most Extirpation of our Religion by Law esta-
 “ blished, which is most dear unto us, and which

“ your Majesty has been pleased to give us repeat-
 “ ed Assurances you will always defend and sup-
 “ port, which with all grateful Hearts we shall
 “ ever acknowledge.

“ We further crave leave to acquaint your Ma-
 “ jesty, That we have with all Duty and Readi-
 “ ness taken into our Consideration your Majesty’s
 “ gracious Speech to us; and as to that Part of it
 “ relating to the Officers in the Army not qualified
 “ for their Employment according to an Act of Par-
 “ liament made in the 25th Year of the Reign of your
 “ Majesty’s Royal Brother of blessed Memory, enti-
 “ tled, An Act for preventing Dangers that may
 “ happen by Popish Recusants, *We do, out of our*
 “ *bounden Duty, humbly represent unto your Maje-*
 “ *sty, That those Officers cannot by Law be capable*
 “ *of their Employments, and that the Incapacities*
 “ *they bring upon themselves thereby, can no ways be*
 “ *taken off but by Act of Parliament.*

“ Therefore, out of the great Deference and Du-
 “ ty we owe unto your Majesty (who has been
 “ graciously pleased to take Notice of their Ser-
 “ vices to you) we are preparing a Bill to pass both
 “ Houses for your Royal Assent, to indemnify them
 “ from the Penalties they have now incurred; and
 “ because the Continuance of them in their Em-
 “ ployments may be taken to be dispensing with that Law
 “ without Act of Parliament, the Consequence of
 “ which is of the greatest Concern to the Rights of
 “ all your Majesty’s dutiful and loyal Subjects, and to
 “ all the Laws made for the Security of their Reli-
 “ gion;

“ We therefore, the Knights, Citizens, and Bur-
 “ gesses of your Majesty’s House of Commons,
 “ do most humbly beseech your Majesty, that you
 “ would be graciously pleased to give such Directions
 “ therein, that no Apprehensions or Jealousies may re-
 “ main in the Hearts of your Majesty’s good and faith-
 “ ful Subjects.

Mr. *Pollexfen.* My Lord, we pray that these half
 Dozen Lines of the Statute 1 *Eliz.* may be read.

[*A Statute-Book was then produced by Mr. Ince.*]

L. C. J. We will have it read out of our own
 Book. [*Which was delivered into Court.*]

Clerk reads. “ This is 1 *Eliz. Cap. 2.* An Act for
 “ Uniformity of Religion, &c. Whereabout is it?

Mr. *Ince.* ’Tis the 15th Paragraph, at these
 Words———And for the due Execution, &c.

Clerk reads. “ And for due Execution hereof,
 “ the Queen’s most Excellent Majesty, the Lords
 “ Spiritual and Temporal in this Parliament as-
 “ sembled, do in God’s Name earnestly require and
 “ charge all the Archbishops and Bishops, and
 “ other Ordinaries, that they shall endeavour them-
 “ selves, to the utmost of their Knowledge, that the
 “ due and true Execution hereof may be had
 “ throughout their Dioceses and Charges, as they
 “ will answer before God for such Evils and Plagues,
 “ wherewith Almighty God may justly punish his
 “ People for neglecting this good and wholesome
 “ Law.”

Mr. Serj. *Levinz.* Now, my Lord, if your
 Lordship pleases, the Charge is a Charge for a Li-
 bel, and there are two Things to be considered.

First, Whether the Bishops did deliver this Pa-
 per to the King? But that we leave upon the Evi-
 dence that has been given; only we say, there has
 been no direct Proof of that.

In the next Place, supposing they did deliver
 this Petition to the King, Whether this be a Libel
 upon the Matter of it, the Manner of delivering
 it, or the Persons that did it?

And

And with Submission, my Lord, this cannot be a Libel, although it be true, that they did so deliver it.

First, my Lord, there is a little Disingenuity offered to my Lords the Bishops, in only setting forth Part, and not the Whole, in only reciting the Body, and not the Prayer.

But, my Lord, with your Lordship's Favour, taking the petitionary Part, and adding it to the other, it quite alters the Nature of the Thing; for it may be, a Complaint without seeking Redress might be an ill Matter; but here taking the Whole together, it appears to be a Complaint of a Grievance, and a Desire to be eased of it.

With your Lordship's Favour, the Subjects have a Right to petition the King in all their Grievances, so say all our Books of Law, and so says the Statute of the Thirteenth of the late King; they may petition, and come and deliver their Petition under the Number of ten, as heretofore they might have done, says the Statute; so that they all Times have had a Right so to do, and indeed if they had not, it were the most lamentable Thing in the World, that Men must have Grievances upon them, and yet they not to be admitted to seek Relief in an humble Way.

Now, my Lord, this is a Petition setting forth a Grievance, and praying his Majesty to give Relief. And what is this Grievance? It is that Command of his, by that Order made upon my Lords the Bishops, to distribute the Declaration, and cause it to be read in the Churches: And pray, my Lord, let us consider what the Effects and Consequences of that Distribution and Reading is: It is to tell the People, that they need not submit to the Act of Uniformity, nor to any Act of Parliament made about Ecclesiastical Matters, for they are suspended and dispensed with. This my Lords the Bishops must do, if they obey this Order; but your Lordship sees, if they do it, they lie under an *Anathema* by the Statute of 1 *Eliz.* for there they are under a Curse if they do not look to the Preservation and Observation of that Act: But this Command to distribute and read the Declaration, whereby all these Laws are dispensed with, is to let the People know, they will not do what the Act requires of them.

Now, with your Lordship's Favour, my Lords the Bishops lying under this Pressure, the Weight of which was very grievous upon them, they by Petition apply to the King to be eased of it, which they might do as Subjects: Besides, my Lord, they are Peers of the Realm, and were most of them sitting as such, in the last Parliament, where, as you have heard, it was declared, such a Dispensation could not be; and then in what a Case should they have been, if they should have distributed this Declaration, which was so contrary to their own Actings in Parliament? What could they have answered for themselves, had they thus contributed to this Declaration? when they had themselves before declared, that the King could not dispense.

And that this was no new Thing, for it had been so declared in a Parliament before, in two Sessions of it, in the late King's Reign, within a very little Time one of another; and such a Parliament that were so liberal in their Aids to the Crown, that a Man would not think they should go about to deprive the Crown of any of its Rights. It was a Parliament that did do as great Services for the Crown as ever any did, and therefore there is

no Reason to suspect, that if the King had had such a Power, they would have appeared so earnest against it.

But, my Lord, if your Lordship please, these are not the Beginnings of this Matter; for we have shewed you from the Fifteenth of *Richard* the Second, that there was a Power granted by the Parliament to the King to dispense with a particular Act of Parliament, which argues, that it could not be without an Act of Parliament: And in 1662, 'tis said expressly, that they could not be dispensed with but by an Act of Parliament. 'Tis said so again in 1672, the King was then pleased to assume to himself such a Power as is pretended to in this Declaration; yet, upon Information from his Houses of Parliament, the King declared himself satisfied that he had no such Power, cancelled his Declaration, and promised that it should not be drawn into Consequence or Example. And so the Commons, by their Protestation, said in *Richard* the Second's Time, that it was a Novelty, and should not be drawn into Consequence or Example.

Now, my Lord, if your Lordship please, if this Matter that was commanded the Bishops to do, were something which the Law did not allow of, surely then my Lords the Bishops had all the Reason in the World to apply themselves to the King, in an humble Manner to acquaint him why they could not obey his Commands; and to seek Relief against that which lay so heavy upon them.

Truly, my Lord, Mr. Attorney was very right in the opening of the Cause at first, that is, That the Government ought not to receive Affronts, no, nor the inferior Officers are not to be affronted; a Justice of the Peace, so low a Man in Office, is not. For a Man to say to a Justice of Peace, when he is executing his Office, that he does not right in it; is a great Crime, and Mr. Attorney said right in it: But suppose a Justice of Peace were making of a Warrant to a Constable, to do something that was not legal for him to do, if the Constable should petition this Justice of the Peace, and therein set forth, Sir, you are about to command me to do a Thing which, I conceive, is not legal, surely that would not be a Crime that he was to be punished for; for he does but seek Relief, and shew his Grievance in a proper Way, and the Distress he is under.

My Lord, this is the Bishops Case, with Submission; they are under a Distress, being commanded to do a Thing which they take not to be legal, and they with all Humility, by Way of Petition, acquaint the King with this Distress of theirs, and pray him, that he will please to give Relief.

My Lord, there is no Law but is either an Act of Parliament, or the Common Law; for an Act of Parliament there is none for such a Power; all that we have of it in Parliamentary Proceedings, is against it; and for the Common Law, so far as I have read it, I never did meet with any thing of such a Nature, as a Grant or Dispensation that pretended to dispense with any one whole Act of Parliament; I have not so much as heard of any such Thing mentioned by any of the King's Counsel; but here, my Lord, is a Dispensation that dispenses with a great many Laws at once, truly, I cannot take upon me to tell how many, there may be forty or above, for ought I know.

Therefore, my Lord, the Bishops lying under such a Grievance as this, and under such a Pressure, being ordered to distribute this Declaration in all their Churches, which was to tell the People they ought to be under no Law in this Case, which surely was a very great Pressure, both in Point of Law and Conscience too, they lying under such Obligations to the contrary, as they did. With Submission to your Lordship, and you Gentlemen of the Jury, If they did deliver this Petition (Publishing of it I will not talk of, for there has been no Proof of a Publication, but a delivering of a Petition to his Majesty in the most secret and decent Manner that could be imagined) my Lords the Bishops are not guilty of the Matter charged upon them in this Information. It has been expressly proved, that they did not go to disperse it abroad, but only delivered it to the King himself: And, in short, my Lord, if this should be a Libel, I know not how sad the Condition of us all would be, if we may not petition when we suffer.

Mr. *Finch*. My Lord, I challenge them to shew us any one Instance of such a Declaration, such a General Dispensation of Laws, from the Conquest till 1672. The first Umbrage of such a thing is, that of *Car. II.* 1662; but your Lordship hears the Declaration of the Parliament upon it. Before that, as there was no such thing, so your Lordship sees what the Parliament did to enable the King (not to do this Thing, but something like it) in *Richard the Second's* Time, where you see the Parliament did give the King a Power to dispense with the Statute of Provisors for a Time; but at the same Time declared that very Grant of their own to be a Novelty, and that it should not be drawn into Consequence or Example.

My Lord, we shall leave it upon this Point; To suspend Law is all one as to abrogate Laws; for so long as a Law is suspended, whether the Suspension be Temporary, or whether it be for ever; whether it be at once, or at several Times, the Law is abrogated to all Intents and Purposes: But the Abrogation of Laws is Part of the Legislature, that Legislative Power is lodged (as I said before, and I could never find it otherwise, in all our Law) in Kings, Lords, and Commons.

L. C. J. You did open that before, Mr. *Finch*.

Mr. *Finch*. With this, my Lord, that my Lords the Bishops finding this Order, made upon them to publish this Declaration, did what in Duty they were bound to do; and unless the Jury do find, that they have done that which is contrary to Law and to the Duty of their Places, and that this Petition is a Libel, and a seditious Libel, with an Intent to stir up Sedition among the People (we rely upon it) my Lords the Bishops can never be found guilty upon this Information.

L. C. J. Have you now done, Gentlemen?

Mr. *Finch*. Yes, my Lord, till they give us further Occasion: If they have any other Evidence to offer, we must answer it; if not, this is the Answer we give to what they have said.

Mr. *Soll. Gen.* We make no Bargain with you: If you have done, say so.

L. C. J. You must know, that you are not to have the last Word.

Mr. *Soll. Gen.* You have been three Hours already, if you have any more to say, pray conclude.

Mr. *Finch*. If they say they have no more Evidence, then we know what we have to do.

L. C. J. If you do say any thing more, pray let me advise you one Thing; don't say the same Thing over and over again; for after so much Time spent, it is irksome to all Company as well as to me.

Mr. *Finch*. My Lord, we have no more Evidence to offer to your Lordship at present, unless they, by offering new Evidence, give us Occasion to reply upon them.

L. C. J. Gentlemen, you shall have all the legal Favour and Advantage that can be; but, pray let us keep to an orderly decent Method of Proceeding.

Sir *Robert Sawyer*. Pray, my Lord, favour me a Word before we conclude. My Lord, I do find very few Attempts of this Nature in any King's Reign.

In the Reign of *Henry the Fourth*, there was an Act of Parliament that Foreigners should have a free Trade in the City of *London*, notwithstanding the Franchises of *London*: After the Parliament rose, the King issued out his Proclamation, forbidding the Execution of that Law, and commanding that it should be in Suspense, *usque ad proximum Parliamentum*; yet that was held to be against Law.

L. C. J. Sir *Robert Sawyer*, that which you are to look to, is the Publishing of this Paper, and whether it be a Libel or no. And as to the Business of the Parliament you mentioned, that is not to the Purpose.

Sir *Rob. Sawyer*. My Lord, I say, I would put it where the Question truly lies; if they don't dispute the Point, then we need not labour it; but I don't know whether they will or no, and therefore I beg your Lordship's Favour to mention one Case more, and that is upon the Statute of *31 Hen. VIII. Cap. 8*, which enables the King by Proclamation, in many Cases, to create the Law; which Statute was repealed by *1 Edw. VI. Cap. 12*. That very Act does recite, that the Law is not to be altered, or restrained, but by Act of Parliament; and therefore the Parliament enables the King to do so and so: But that was such a Power, that the Parliament thought not fit to continue, and it was afterwards repealed; but it shews, that at that Time the Parliament was of the same Opinion, as to this Matter, that other Parliaments have been since.

Mr. *Sommers*. My Lord, I would only mention the great Case of *Thomas and Sorrel* in the *Exchequer Chamber* upon the Validity of a 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 there 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 through the Debate of that Case. Indeed it was disputed, how far the King might 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 the King's 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 it 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 stirr'd till it was brought Home to themselves. When they made their Petition, 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 Declaration 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 considered 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 aggrieved.

Mr. *Att. Gen.* Have you done, Gentlemen?

Mr. *Finch.* We have done, Sir.

Mr. *Att. Gen.* My Lord, I shall be a great deal more merciful to your Lordship and the Jury than they have been, who have spent these four Hours in that which I think is not pertinent to the Case in question: They have let themselves into large Discourses, making great Complaints of the Hardships put upon my Lords the Bishops, by the Order of Council to read his Majesty's Declaration; and putting these Words into the Information of Seditious, Malicious, and Scandalous: But, my Lord, I admire that Sir *Robert Sawyer* should make such Reflections and Observations upon these Words, when I am sure he will scarce find any one of his own exhibiting, that has so few of those aggravating Words as this has; and therefore that might have been very well spared, especially by him.

In the next Place, my Lord, we are told what great Danger our Religion is in by this Declaration: I hope we have an equal Concern for that with them, or any Person else whatsoever. But, however, I am sure our Religion teaches us, not to preserve our Religion, or our Lives, by any illegal Courses; and the Question is, whether the Course that my Lords the Bishops have taken to

preserve, as they say, our Religion, be legal or not: If it be not legal, then I am sure our Religion will not justify the using such a Course for never so good an End.

My Lord, for the Thing itself, I do admire that they, in so long a Time and Search that they have made, should not, which I expected, produce more Precedents of such a Paper as this is. They challenge us to shew, that ever there was any such Declaration as this: I'll turn the same Challenge upon them. Shew me any one Instance, that ever so many Bishops did come, under pretence of a Petition, to reflect upon the King out of Parliament.

Sir *Rob. Sawyer.* Is that your Way of answering, Mr. Attorney?

Mr. *Att. Gen.* Pray, Sir *Robert Sawyer*, you have had your Time, don't interrupt us; sure we have as much Right to be heard as you.

L. C. J. You have been heard over and over again, Sir *Robert Sawyer*, already.

Sir *Rob. Sawyer.* My Lord, I don't intend to interrupt him.

Mr. *Soll. Gen.* We cannot make them be quiet, they will still be chopping in upon us.

Mr. *Att. Gen.* That is an Art that some People have always practised, not to permit any body to speak but themselves.

But, my Lord, I say, that those few Instances that they have produced, are nothing at all to this Matter that is now upon Trial before your Lordship and this Jury: Nay, they are Evidences against them; for they are only Matters transacted in Parliament, which are no more to be applied to this Thing that is in Controversy now, than any the most remote Matter that could be thought of; and though they have gone so high in Point of Time, as to the Reign of *Richard* the Second, yet they have nothing between that and the late King's Reign, to which they at last have descended down.

But, my Lord, I say, that all the Talk of *Richard* the Second's Time is wholly out of the Case: Truly, I do not doubt but that in *Richard* the Second's Time they might find a great many Instances of some such sort of Petitioning as this; for our Histories tell us, that at that Time they had 40,000 Men in Arms against the King; and we know the Troubles that were in that King's Reign, and how at length he was deposed: But certainly there may be found Instances more applicable to the Case, than those they produce. As for those in King *Charles* the Second's Time, do they any ways justify this Petition? For now they are upon justifying the Words of their Petition, that this Power has been declared to be illegal in 1662, 1672, and 1685.

For what was done in 1662, do they shew any thing more than some Debates in the House of Commons, and at last an Address, an Answer by the King, a Reply of the Commons, and then the Thing dies. Pray, my Lord, is a Transaction in the House of Commons, a Declaration of Parliament? Sure, I think, no one will affirm that any thing can be a Declaration of Parliament, unless he that is the Principal Part concurs, who is the King: For if you speak of the Court of Parliament in a legal Sense, you must speak of the whole Body, King, Lords, and Commons, and a Declaration in Parliament must be by all the whole Body; and that is properly an Act of Parliament.

Why

Why then they come to the Year 1672, where your Lordship observes, that the late King did insist upon his Right; for after the Dispute which was in 1662, his Majesty did issue out another Declaration, and when it comes to be debated in Parliament, he insists upon his Right in Ecclesiastical Matters; and though his Declaration was cancelled, yet there is no formal Disclaimer of the Right.

My Lord, after all, how far these Things that they have offered may work, as to the Point that they have debated, I shall not now meddle with it, nor give your Lordship any Trouble about it, because it is not at all pertinent to the Case in Question; for I do (after all this Time and Pains that they have spent) take Leave to say, that these Gentlemen have spent all this Time to no Purpose.

L. C. J. Yes, Mr. Attorney, I'll tell you what they offer, which it will lie upon you to give an Answer to; They would have you shew how this has disturbed the Government, or diminished the King's Authority.

Mr. Att. Gen. Whether a Libel be true or not, as to the Matter of Fact, was it ever yet in any Court of Justice permitted to be made a Question, whether it be a Libel or not? or whether the Party be punishable for it; and therefore I wonder to hear these Gentlemen to say, that because it is not a false one, therefore 'tis not a Libel. Suppose a Man should speak scandalous Matter of any Noble Lord here, or of any of my Lords the Bishops, and a *Scandalum Magnatum* be brought for it, though that which is spoken has been true, yet it has been the Opinion of the Courts of Law, that the Party cannot justify it, by reason it tends to the disturbing of the Peace, to publish any thing that is Matter of Scandal: The only Thing that is to be looked into, is, whether there be any thing in this Paper that is reflecting and scandalous, and not whether it be true or no; for if any Man shall *Extra-judicially*, and out of a legal Course and Way, reflect upon any of the great Officers of the Kingdom, nay, if it be but upon any inferior Magistrate, he is to be punished, and is not to make his Complaint against them, unless he do it in a proper Way. A Man may petition a Judge, but if any Man in that Petition shall come and tell the Judge, Sir, you have given an illegal Judgment against me, and I cannot in Honour, Prudence, or Conscience obey it; I do not doubt, nor will any Man, but that he that should so say, would be laid by the Heels, though the Judgment perhaps might be illegal.

If a Man shall come to petition the King, as, we all know, the Council Doors are thronged with Petitioners every Day, and Access to the King by Petition is open to every body, the most inferior Person is allowed to petition the King; but because he may do so, may he therefore suggest what he pleases in his Petition? Shall he come and tell the King to his Face, what he does is illegal? I only speak this, because they say, in this Case his Majesty gave them Leave to come to him to deliver their Petition; but the King did not understand the Nature of their Petition, I suppose, when he said, he gave them Leave to come to him.

My Lord, for this Matter we have Authority enough in our Books, particularly there is the Case of *Wrenham* in my Lord *Hobart*. The Lord Chancellor had made a Decree against him, and

he petitioned the King, that the Cause might be re-heard; and in that Petition he complains of Injustice done him by my Lord Chancellor, and he put into his Petition many reflecting Things. This, my Lord, was punished as a Libel in the *Star-Chamber*; and in that Book it was said, that though it be lawful for the Subject to petition the King against any Proceedings by the Judges, yet it must not be done with Reflections, nor with Words that turn to the Accusation or Scandal of any of the King's Magistrates or Officers, and the Justice of the Decree is not to be questioned in the Case; for there *Wrenham* in his Defence would have opened the Particulars wherein he thought the Decree was unjust, but that the Court would not meddle with, nor would allow him to justify for such Illegality in the Decree: So in this Case, you are not to draw in Question the Truth or Falshood of the Matter complained against; for you must take the Way the Law has prescribed, and prosecute your Right in a legal Course, and not by Scandal and Libelling.

My Lord, there is a great deal of Difference between not doing a Thing that is commanded, if one be of Opinion that it is unlawful, and coming to the King with a Petition highly reflecting upon the Government, and with scandalous Expressions telling him, Sir, you act illegally, you require of us that which is against Prudence, Honour, or Conscience, as my Lords the Bishops are pleased to do in this Petition of theirs. I appeal to any Lord here, that if any Man should give him such Language, either by Word of Mouth or Petition, whether he would bear it, without seeking Satisfaction and Reparation by the Law.

My Lord, there is no greater Proof of the Influence of this Matter than the Crowd of this Day, and the Harangue that hath been made: Is it not apparent that the taking this Liberty to canvass and dispute the King's Power and Authority, and to censure his Actions, possess the People with strange Opinions, and raises Discontents and Jealousies, as if the free Course of Law were restrained, and arbitrary Will and Pleasure set up instead of it?

My Lord, there is one Thing that appears upon the Face of the Information, which shews this not to be the right Course; and if my Lords the Bishops had given themselves the Opportunity of reading the Declaration seriously, they would have found in the End of the Declaration, that the King was resolved to call a Parliament in *November*. Might not my Lords the Bishops have acquiesced under their passive Obedience till the Parliament met? But nothing would serve them but this, and this must be done out of Parliament, for which there is no Precedent can be shewn, and this must be done in such a Manner, as your Lordship sees the Consequence of, by your Trouble of this Day.

There is one Thing I forgot to speak to: They tell us, that it is laid malicious and seditious, and there is no Malice or Sedition found; we know very well that that follows the Fact, those Things arise by Construction of Law out of the Fact. If the Thing be illegal, the Law says it is seditious; a Man shall not come and say, he meant no Harm in it: That was the Case of *Williams*; in his treasonable Book, says he, I only intended to warn the King of the Danger

Danger approaching, and concludes his Book with *God save the King*; but no Man will say, that a good Preface at the Beginning, or a good Prayer at the End, should excuse Treason or Sedition in the Body of a Book. If I meet another Man in the Street and kill him, though I never saw him in my Life, the Indictment is, that it was *ex Malitia preecogitata*, as it often happens, that a Person kills one he never had Acquaintance with before; and *in favorem vite*, if the Nature of the Fact be so, the Jury are permitted to find according to the Nature of the Case; but in Strictness of Law there is Malice imply'd: But, my Lord, I think these Matters are so common, and that is a Point that has been so often settled, that the Form of the Indictment and Information must follow the Nature of the Fact, that I need not insist upon it, if the Act be unlawful, the Law supplies the Malice and evil Intentions.

Mr. Sol. Gen. My Lord, and Gentlemen of the Jury, I am of Counsel in this Case for the King, and I shall take Leave to proceed in this Method: First, I shall put the Case of my Lords the Bishops, and then consider the Arguments that have been used in their Defence, and answer them as much as is material to be answered; and then leave it to your Lordship, and the Jury's Consideration, whether what has been said by these Gentlemen, weigh any thing in this Case?

First, my Lord, I take it for granted, and I think the Matter is pretty plain by this Time, by my Lord President's Evidence, and their own Confession, that it is not to be disputed, but that this Paper was presented by these Lords to the King; I think there is no great Difficulty in that Matter at all, but I just touch upon it, because I would follow them in their own Method.

Then, my Lord, let us take this Case as it is, upon the Nature of the Petition, and the Evidence that they have given, and then let us see whether that will justify the Thing that is done: For the Business of Petitioning, I would distinguish and enquire, whether my Lords the Bishops out of Parliament can present any Petition to the King. I do agree, that in Parliament the Lords and Commons may make Addresses to the King, and signify their Desires, and make known their Grievances there; and there is no doubt but that is a natural and proper Way of Application: For in the Beginning of the Parliament, there are Receivers of Petitions appointed, and upon Debates, there are Committees appointed to draw up Petitions and Addresses; but to come and deduce an Argument, that because the Lords in Parliament have done thus (there being such Methods of Proceedings usual in Parliaments) therefore my Lords the Bishops may do it out of Parliament, that is certainly a *Non sequitur*, no such Conclusion can be drawn from those Premises.

My Lord, I shall endeavour to lay the Fact before you as it really is, and then consider what is proper for the Court to take Notice of, as legal Proof or Evidence: And I take it, all those Precedents that they have produced of what the Lords did, and what the Commons did in Parliament, is no Warrant for them to shelter themselves under, against the Information here in Question.

[Here Mr. Justice Powell spake aside to the Lord Chief Justice thus.]

Mr. Just. Powell. My Lord, this is strange Doctrine; shall not the Subject have Liberty to

petition the King, but in Parliament? If that be Law, the Subject is in a miserable Case.

L. C. J. Brother, let him go on, we will hear him out, tho' I approve not of his Position.

Mr. Sol. Gen. The Lords may Address to the King in Parliament, and the Commons may do it, but therefore that the Bishops may do it out of Parliament, does not follow. I heard nothing said that could have given Colour to such a Thing, but the Curse that has been read in 1 Eliz.

But pray, my Lord, let us consider that Evidence they have given: They have begun with that Record in *Richard the Second's* Time, and what is that? That the King may dispense with the Statute of Provisors, till the Meeting of the next Parliament, and a Protestation of the Commons at the End of it, whether that be an Act of Parliament that is Declaratory of the Common Law, or Introductory of a new Law, *non constat*; and for ought appears, it might be a Declaratory Act: And if so, it is a Proof of the King's Prerogative of Dispensing. It might be an Act in Affirmance of the King's Prerogative, as there are a great many such, we very well know; and generally most of the Laws in that kind, are in Affirmance of the King's Power; so that the Law turns as an Argument for the King's Prerogative, and they have given him that which will turn upon themselves: So it stood in *Richard the Second's* Time; but whether that be an Argument one way or other conclusive, is left to your Lordship and the Jury.

Ay, but say they, there is no Execution of such a Power till very lately, and the first Instance that they produce, is that in the Year 1662. But your Lordship knows, that before the Reign of *Henry the Fourth*, there was great Jurisdiction assumed by the Lords in Original Causes: Then comes the Statute of Appeals, 1 Hen. IV. which takes Notice, that before that Time the Lords had assumed an original Jurisdiction in all Causes, and would proceed and determine them in Parliament, and out of Parliament; and it fell out to be so great a Grievance, that it was thought necessary to make a Law against it, that Appeals in Parliament should be abolished and destroyed; and then comes that Law in Favour of the Subject of *England*, and that settles the Bounds between the King and the Lords in a great Measure. Before that time the Lords were grown very powerful, and where there is a Power, there always will be Applications; and what is the Effect of that Statute, 1 Hen. IV.? For all that we endeavour is, to make Things as plain as can be, that no further Applications, no Accusations, no Proceedings in any Case whatsoever be before the Lords in Parliament, unless it be by Impeachment of the Commons: So that there is the *Salvo*; and the Use that I make use of it is this; The Commons, by that very Statute, did abolish the Power that the Lords had arrogated to themselves, and ordered, that they should not meddle with any Cause, but upon the Impeachment of the House of Commons, and establish the Impeachment of the Commons, which is as antient as the Parliament, for that was never yet spoken against, the Power of the Commons impeaching any Person under the Degree of the Prince; and that is the regular legal Way, and so the Commons asserted their antient Right, and whatsoever the Lords took Notice of, must come by Application of the Commons; then Conferences were to

pass between the Houses, and both Houses by Address apply to the King. This is the proper Way and Course of Parliament, of which my Lord Coke says, It is known to few, and practised by fewer: But it is a venerable, honourable Way; and this is the Course that should have been taken by my Lords here, and they should have stayed till the Complaint had come from the Commons in Parliament, and then it had been regular for them to Address to the King; but they were too quick, too nimble.

And whereas the Statute of *Hen. IV.* says, That no Lord whatsoever shall intermeddle with any Cause, but by the Impeachment of the Commons, they interpose and give their Advice before their Time: If there be any Irregularity in Parliament, or out of Parliament, the Commons are to make their Complaint of it, and a Man must not be his own Judge, nor his own Carver, nor must every Man create Difficulties of his own, nor set upon petitioning in this sort: But there I lay my Foundation, that in such a Matter as this, there ought to have been the Impeachment of the Commons in Parliament before these Lords could do any thing; and I know nothing can be said for the Bishops more than this, that they were under an Anathema, under the Curse that Sir Robert Sawyer speaks of; and for Fear of that, they took this irregular Course. But some would say, Better fall into the Hands of God than of Men: Some would say so (I say) I know not what they would say; but these being the Methods that these Lords should have taken, they should have pursued that Method; the Law should have carved out their Relief and Remedy for them, but they were for going by a new Fancy of their own.

My Lord, the Law continued thus, and was practised so till 3 *Hen. VII.* where the Grievance was found, that Offences in the Intervals of Parliament could not be well punished, and then comes the Statute that sets up the Court of *Star-Chamber*, and there Men were often brought to Judgment and Punishment for their Sins; and though very great Power was given them, yet they arrogated to themselves a greater; and therefore that Court is abolished by the Statute of 15 *Car. I.* and what is the Reason of abolishing that Statute? Because the *Star-Chamber* did not keep within their Bounds that the Law set them, but assumed to themselves a larger Power than the Law would allow, and grew very exorbitant and very grievous to the Subject: And another Reason was, which the Statute of 15 *Car. I.* founded itself upon, because there was nothing that was brought in Judgment before that Court, but might be relieved and remedied in the ordinary Methods of Justice in the Courts of *Westminster-Hall*: So that upon those two Considerations, because that Court was exorbitant, and because all the Sins and Misdemeanors that were punished there, might be punished in an ordinary Way of Law in another Court, and therefore there was no need of that Court, and so it was abolished, and the Subject was pretty safe. If there was a Crime committed here, a Man might come properly before your Lordship into this Court, and have it punished.

My Lord, they find fault with the Words in the Information, and they say, Why are these

Words put in, Seditious, Malicious? If the Matter be libellous and seditious, we may lawfully say, and it is no more than the Law speaks, it results out of the Matter itself; and, if it be a libellous Paper, the Law says, it is maliciously and seditiously done, and these Gentlemen need not quarrel with us, for so are all the Informations in all Times past, and 'tis no more than the *Vi & Armis*, which is common Form. It may be said, How can the publishing of a Libel be said to be done *Vi & Armis*? That is only a supposition of Law, and they may as well object to the Conclusion of the Information, that it was *contra Coronam & Dignitatem Domini Regis*. If it be an illegal Thing, or a Libel, these are necessary Consequences; it is no more than the speaking of the Law upon the Fact.

But, my Lord, let us a little consider, whether this Matter were warrantable, and whether they had any Warrant to do what was done: They pretend it was done upon this Account, That the King had set forth a Declaration, and had ordered them to read it; which to excuse themselves from, they make this Petition, or this Libel (call it what you will) and they use this as the main Argument, That they say the King has done illegally, and they tell the King plainly so, that it is illegal; for they take Notice of this Declaration, and say, it is illegal because it is contrary to the Declarations of Parliament in 1662, 1672, and 1685.

Pray, my Lord, let us consider a little whether there be any Declaration in Parliament that they have given Evidence of. Have they read any Declaration of the Parliament in 1662? What is a Declaration in Parliament, but a Bill that is passed by the King, Lords, and Commons? That we know to be the Meaning, and no other. If it pass the Commons, it is no Declaration in Parliament; nay, if it pass the Lords and Commons, it is not a Declaration in Parliament, except it also pass the King. All these Things are Nullities, and the Law takes no notice of them: We have it in our Books over and over, and no Court ought to suffer such Evidence to be given. I know these Gentlemen are very well acquainted with the Authority in *Fitzherbert, Title, Parliament*. There was such an Act that was said to be by the King and the Lords; but because the Commons did not agree to it, it is declared and adjudged to be a Nullity, and the Court would take no Notice of it; and how can any Man call that a Declaration in Parliament, which is only a Vote of the House of Commons, or of the Lords? No, sure, that is one of the Heads I go upon; 'tis not a Declaration in Parliament, unless it be by an Act of Parliament.

Indeed, my Lord, there is another sort of a Declaration in Parliament before the Lords, as they are a Court of Judicature, and that is a fair Declaration too; for if any thing comes judicially before the Lords, either by Writ of Error, or by natural Appeal from any of the other Courts, or by Adjournment, and there be any Judgment given, that is a Declaration in Parliament, and may be fairly so called. So likewise there is another judicial Declaration, which is, when any thing comes before the Lords judicially, upon an Impeachment of the Commons, and they give Judgment upon that Impeachment,

ment, that is a Declaration in Parliament: But to say that there is any other Declaration in Parliament, is to say more than these Gentlemen can make out. If they will shew me any such, I will submit to them, and not speak a Word against my Lords the Bishops; but if these learned Gentlemen cannot shew me any such, then they have not said what was true in this Petition, that it was so and so declared in Parliament.

For let us consider what there is in this Case upon this Evidence; for that in 1662, is only a Vote and Opinion of the House of Commons; and I always understood, and have been told so by some of the Gentlemen of the other Side, that such a Vote signifies nothing: But besides, it seems to be a mistaken Address; for they say in it, that the Declaration in 1662, which they address against, was the first Declaration of that Sort to suspend Laws without Act of Parliament; and yet in the same Breath, they do take Notice of the King's Declaration from *Bredab*. But here is a mighty Argument used from the King's Speech, that because he wished he had such a Power, this must be declared in Parliament that he had no such Power. Is the Speech of the Prince a Declaration in Parliament? All the Speeches that were made upon the Opening of the Parliament, will you say they are Declarations in Parliament? Then the Chancellor, or the Keeper's Speech, or the Lord Privy Seal's, must be a Declaration in Parliament. Whoever speaks the Sense of the King, if he does not speak that which is Law and Right, is questionable for it, and several have been impeached for so doing; for they look not upon it as the King's Speech, except it be according to Law. Nothing can turn upon the Prince but what is legal; if it be otherwise, it turns upon him that speaks it. I never did hear that a Speech made by the Chancellor (and I will appeal to all the Lords that hear me in it) was a Declaration in Parliament.

Then, my Lord, we come to the Business in 1672, which with that in 1662, and that in *Bredab*, shews, that this of the King's is not such a Novelty, but has been done often before. In 1672, the King was in Distress for Money, being entangled in a *Dutch War*, and wanted Supply: He capitulates with his Commons (you have heard it read) and, upon the Commons Address, he asserts it to be his Right, and makes his Complaint to the Lords how the Commons had used him; for when he gives them a fair Answer, they replied, and there are Conferences with the Lords about it; but at length it all ends in a Speech by the King, who comes and tells them of his present Necessities, and so he was minded to remit a little at the Instigation of the Commons, and he has a good Lump of Money for it. Would this amount to a Declaration in Parliament? Can my Lords the Bishops fancy or imagine that this is to be imposed upon the King, or upon the Court, for a Declaration in Parliament?

Then last of all, for that in 1685, in this King's Time, what is it? The Commons make an Address to the King, and complain to his Majesty of some of his Officers in his

Army, * that might pretend to have a Dispensation, something of that Nature, contrary to the Test-Act; and what is done upon it? They make their Application to the King, and the King answers them, and that is all: But since it is spoken of in the Court, I would take Notice, that it is very well known by the Case of *Godding* and *Hales*, the Judgment of this Court was against the Opinion of that Address.

But what Sort of Evidence is all this? Would you allow all the Addresses of the House of Commons to be Evidence? Give me Leave to say it, my Lord, If you suffer these Votes, these Copies of imperfect Bills, these Addresses, and Applications of one or both Houses to the King, to be Evidence and Declarations in Parliament, then what will become of the * Bill of Exclusion? Shall and body mention that Bill of Exclusion to be a Declaration in Parliament?

If so, then there is Declaration against Declaration; the Declaration of the Commons against the Declaration of the Lords. I know not what Judgment my Lords the Bishops may be of now, concerning those Things of Votes and Addresses being Declarations in Parliament, but I am sure they have spoken against it heretofore: Nay, I am sure some of them have preached against it.

And if my Lords the Bishops have said, these are Declarations in Parliament, and they are not Declarations in Parliament; and if they accuse the King of having done an illegal Thing, because he has done that which has been declared in Parliament to be illegal, when it was never so declared, then the Consequence is very plain, that they are mistaken sometimes; and I suppose by this Time they believe it.

I dare say it will not be denied me, that the King may, by his Prerogative Royal, issue forth his Proclamation; it is as essential a Prerogative as it is to give his Assent to an Act of Parliament to make it a Law. And it is another Principle, which I think cannot be denied, that the King may make Constitutions and Orders in Matters Ecclesiastical; and that these he may make out of Parliament, and without the Parliament. If the King may do so, and these are his Prerogatives, then suppose the King does issue forth his Royal Proclamation (and such in Effect is this Declaration under the Great Seal) in a Matter Ecclesiastical, by Virtue of his Prerogative Royal; and this Declaration is read in the Council, and published to the World, and then the Bishops come and tell the King, Sir, You have issued out an illegal Declaration, being contrary to what has been declared in Parliament, when there is no Declaration in Parliament; is not this a diminishing the King's Power and Prerogative in issuing forth his Declaration, and making Constitutions in Matters Ecclesiastical? Is not this a questioning of his Prerogative? Do not my Lords

* Here Mr. Justice Powell speaking to the Lord Chief Justice.

Mr. Just. Powell. My Lord, this is wide, Mr. Solicitor would impose upon us: let him make it out if he can, that the King has such a Power, and answer the Objections made by the Defendants Council.

L. C. J. Brother, impose upon us! He shall not impose upon me; I know not what he may upon you; for my Part, I do not believe one Word he says.

* Here there was a great Hissing.

the Bishops in this Case raise a Question between the King and the People? Do not they, as much as in them lies, stir up the People to Sedition? For who shall be Judge between the King and the Bishops? Says the King, I have such a Power and Prerogative to issue forth my Royal Proclamation, and to make Orders and Constitutions in Matters Ecclesiastical, and that without the Parliament, and out of Parliament. Say my Lords the Bishops, You have done so, but you have no Warrant for it. Says the King, Every Prince has done it, and I have done no more than what is my Prerogative to do: But this, say the Bishops, is against Law: How shall this be tried? Should not the Bishops have had the Patience to have waited till a Parliament came, when the King himself tells them, he would have a Parliament in *November* at furthest?

L. C. J. Pray, Mr. Solicitor, come close to the Business, for it is very late.

Mr. Soll. Gen. My Lord, I beg your Patience; you have had a great deal of Patience with them, pray spare me a little. I am saying, when the King himself tells them, that he would have a Parliament in *November* at furthest, yet they have no Patience to stay till *November*, but made this Application to him. Is not this raising a Question upon the King's Prerogative in issuing forth Declarations? and upon the King's Power and Right in Matters Ecclesiastical? And when I have said this, that my Lords the Bishops have so done, if they have raised a Question upon the Right of the King, and the Power of the King in Matters Ecclesiastical, then they have stirred up Sedition. That they have so done is pretty plain; and for the Consequence of it, I shall appeal to the Case in the 2 *Cro.* 2 *Jac.* I. That is a plain direct Authority for me.

Mr. Just. Powell. Nay, Mr. Solicitor, we all very well know, to deny the King's Authority in Temporals and Spirituals, as by Act of Parliament, is High Treason.

Mr. Soll. Gen. I carry it not so far, Sir. We have a gracious Prince, and my Lords the Bishops find it so by this Prosecution: But what says that Case? It is printed in three Books, in *Noy* 100, in *Moor* 375, and in *Mr. Just. Cro.* 371. Says that Case, The King may make Orders and Constitutions in Matters Ecclesiastical.

Mr. Just. Powell. But how will you apply that Case to this in Hand, Mr. Solicitor?

Mr. Soll. Gen. I will apply it by and by, Sir. I would first shew what it is: There is a Convention of the greatest Men in the Kingdom.

Mr. Just. Powell. Indeed, Mr. Solicitor, you shoot at Rovers.

Mr. Soll. Gen. There is the Lord Privy Seal, the Archbishop of *Canterbury*, and a great many others: It is the greatest Assembly we meet with in our Books, and all of them are of this Opinion, that the King may make Orders and Constitutions in Matters Ecclesiastical.

My Lord, there is another Authority, and that is, from the Statute 1 *Eliz.* which erected the High Commission Court, and that Statute was not introductory of a new Law, but Declaratory of the old Law. The King by his Proclamation declares his Sense to do such and such a Thing; the Court, and all Persons there, give their Judgment and Opinion upon that Statute, that they looked upon it as the grossest Thing,

and the foulest Affront to the Prince; for any Man to bring into Question that Power of the King in Matters Ecclesiastical: 'Tis said to be a very high Crime. Why then, my Lord, what is done in this Case?

Mr. Just. Powell. Mr. Solicitor, pray when you are applying, apply that other Part of the Case too, which says, that it was a heinous Offence to raise a Rumour that the King did intend to grant a general Toleration; and is there any Law since that has changed it, Mr. Solicitor?

Mr. Soll. Gen. In the main, Judgment goes another Way. As for that Part, it was Personal to the Prince that then was, of whom they had scandalously reported, that he intended to do such a Thing. They look'd upon it as a Scandal to King *James*, that it was a sowing Sedition, and stirring up People against the Government, and that will come up to our Case: For as some Men do it on the right Side, others do it on the left; and whoever he be that endeavours to bring a Dislike of the King in the People, that is moving Sedition against the Prince; but that is Personal to the Prince himself, and does not go to his Successors.

Now, my Lord, I come to that which is very plain from the Case of *De Libellis Famosis*: If any Person, in any Paper, have slandered the Government, you are not to examine who is in the Right, and who is in the Wrong, whether what they said to be done by the Government be legal or no; but whether the Party have done such an Act. If the King have a Power (for still I keep to that) to issue forth Proclamations to his Subjects, and to make Orders and Constitutions in Matters Ecclesiastical, if he do issue forth his Proclamation, and make an Order upon the Matters within his Power and Prerogative; and if any one would come and bring that Power in Question, I say, that is Sedition, and you are not to examine the Legality or Illegality of the Order or Proclamation; and that, I think, is very plain upon that Case, in the fifth *Report*; for it says, If a Person does a Thing that is libellous, you shall not examine the Fact, but the Consequence; whether it tended to stir up Sedition against the Publick, or to stir up Strife between Man and Man, in the Case of private Persons: As if a Man should say of a Judge, he has taken a Bribe, and I will prove it; this is not to be sent in a Letter, but they must take a regular Way to prosecute it according to Law.

If it be so in the Case of an inferior Magistrate, what must it be in the Case of a King? To come to the King's Face, and tell him, as they do here, that he has acted illegally, doth certainly sufficiently prove the Matter to be libellous. What do they say to the King? They say, and admit, that they have an Averseness for the Declaration, and they tell him from whence that Averseness doth proceed; and yet they insinuate, that they had an Inclination to gratify the King, and embrace the Dissenters, that were as averse to them as could be with due Tenderness, when it should be settled by Parliament and Convocation. Pray what hath their Convocation to do in this Matter?

L. C. J. Mr. Solicitor General, I will not interrupt you; but, pray come to the Business before us. Shew us that this is in Diminution

of the King's Prerogative, or that the King ever had such a Prerogative.

Mr. Soll. Gen. I will, my Lord, I am observing what it is they say in this Petition— They tell the King it is inconsistent with their Honour, Prudence and Conscience, to do what he would have them to do: And if these Things be not reflective upon the King and Government, I know not what is. This is not in a Way of Judicature; Possibly it might have been allowable to petition the King to put it into a Course of Justice, whereby it may be tried; but alas! there is no such thing in this Matter.

It is not their Desire to put it into any Method for Trial, and so it comes in the Case *De Libellis Famosis*; for by this Way, they make themselves Judges, which no Man by Law is permitted to do. My Lords the Bishops have gone out of the Way, and all that they have offered does not come home to justify them; and therefore I take it, under Favour, that we have made it a good Case for the King: We have proved what they have done, and whether this be warrantable or not, is the Question, Gentlemen, that you are to try. The whole Case appears upon Record; the Declaration and Petition are set forth, and the Order of the King and Council. When the Verdict is brought in, they may move any thing what they please in Arrest of Judgment. They have had a great deal of Latitude, and taken a great deal of Liberty; but truly, I apprehend, not so very pertinently. But I hope we have made a very good Case of it for the King, and that you, Gentlemen will give us a Verdict.

Mr. Just. Holloway. Mr. Solicitor, there is one thing I would fain be satisfied in: You say the Bishops have no Power to petition the King.

Mr. Soll. Gen. Not out of Parliament, Sir.

Mr. Just. Holloway. Pray give me Leave, Sir, Then the King having made such a Declaration of a general Toleration and Liberty of Conscience, and afterwards he comes and requires the Bishops to disperse this Declaration; this they say, out of a Tenderness of Conscience, they cannot do, because they apprehend it contrary to Law, and contrary to their Function: What can they do, if they may not petition?

Mr. Soll. Gen. I'll tell you what they should have done, Sir. If they were commanded to do any Thing against their Consciences, they should have acquiesced till the Meeting of the Parliament.

[At which some People in the Court hissed.]

Mr. Att. Gen. This is very fine indeed! I hope the Court and the Jury will take Notice of this Carriage.

Mr. Soll. Gen. My Lord, it is one thing for a Man to submit to his Prince, if the King lay a Command upon him that he cannot obey, and another thing to affront him. If the King will impose upon a Man what he cannot do, he must acquiesce; but shall he come and fly in the Face of his Prince? Shall he say it is illegal? and that the Prince acts against Prudence, Honour or Conscience? and throw Dirt in the King's Face? Sure that is not permitted; that is Libelling with a Witness.

L. C. J. Truly, Mr. Solicitor, I am of Opinion that the Bishops might petition the King, but this is not the right Way of bringing it in. I am not of that Mind that they cannot petition the King out of Parliament; but if they may petition, yet

they ought to have done it after another Manner: For if they may in this reflective Way petition the King, I am sure it will make the Government very precarious.

Mr. Just. Powell. Mr. Solicitor, it would have been too late to stay for a Parliament; for it was to have been distributed by such a Time.

Mr. Soll. Gen. They might have lain under it and submitted.

Mr. Just. Powell. No, they would have run into Contempt of the King's Command, without petitioning the King not to insist upon it; and if they had petitioned, and not have shewn the Reason why they could not obey; it would have been looked upon as a Piece of Sullenness, and that they would have been blamed for as much on the other Side.

Mr. Serj. Baldock. After so long a Debate, I shall not trouble you long; most Things that are to be said have been said; but I shall only say this in short: I cannot deny, nor shall not, but that the Subject has a Right to petition; but I shall affirm it also, he has a Duty to obey; and that in this Case, the Power of the King to dispense with Penal Laws in Matters Ecclesiastical, is not a Thing that is now in question, nor need we here have had these long Debates on both Sides. It may be perceived plainly, by the Proofs that have been read, that the Kings and Princes have thought themselves that they had such a Power, though it may be the Parliament thought they had not; and therefore the Declarations of the one or the other, I shall not meddle with in this Case. That Power it self which the King has, as King of this Realm, in Matters rather Ecclesiastical and Criminal, than Matters of Property, may somewhat appear by what has been read before your Lordship: But all this will be nothing in our Case, neither has his Majesty now depended so much upon this Thing: The Declaration has been read to you, and what's there said? The King there says, That for those Reasons he was ready to suspend those Laws; and be they suspended? Yet, my Lord, with this too, that he refers it to, and hopes to make it secure by a Parliament: So that there being this, it has not gone, I think, very far; and it not having been touch'd here, it is not a Point of Duty in my Lords the Bishops, as Bishops, that's here enquired into; Whether they should have meddled with this or no, in this Manner, is the Question. That the King is Supream over all of us, and has a particular Supremacy over them, as Supream Ordinary and Governor, and Moderator of the Church, is very plain; and, my Lord, it is as plain, that in such Things as concern the Church, he has a particular Power to command them. This is not unknown, but very frequent and common in Matters Ecclesiastical, and Matters of State. It is not here a Question now, whether these Declarations which they were commanded to take care of getting read, were legal or not legal; what Prudence there was, what Honour there was, what Conscience there was, for their not reading it, is not the Question neither: But the Point was, the King as Supream Ordinary of his Kingdom, to whom the Bishops are subject, does in Council order; and what is it he orders? Their sending out and distributing his Declaration. They were concerned in no more than that, and it had been a very pretty thing,

Thing, a small Thing, to send out the King's Declaration to be read by the Clergy. All the Clergy were ordered to read it, but my Lords the Bishops were only commanded to distribute it. This he might do by Virtue of his Power Ecclesiastical. And if this be not an Evil in it self, and if it be not against the Word of God, certainly Obedience was due from my Lords the Bishops: Active Obedience was due from them to do so much as this. It was no Consent of theirs, it was no Approbation of theirs of what they read, that was required. So that if they had read it, or another had read it by the King's Order, especially if that Order be legal, they are bound to do it by Virtue of their Obedience, and not to examine more.

And, my Lord, in this Petition, here they come to relieve, not only themselves that were present, (for I speak to the Preamble, as others before me have spoke to the Conclusion) but they do involve the rest of the Bishops that were absent; for it is in Behalf of themselves, and their Brethren, and all the Clergy of that Province. Now that all these should join in the Petition, is a Thing very uncertain. How does it construe here, whether they were all together, and consented to it, or how all their Minds could be so fully known, that they would be all involved in the Disobedience to this Order of the King? Then, my Lord, What is the Thing they are greatly averse to? There are two Things required in the Order: The Bishops required to distribute the Declaration to the inferior Clergy, and the inferior Clergy are required to read it. Then their Averseness must be to distribute it, and the others to read it, and so they will be involved; none of whom did ever appear to have joined in it. And then they give Reasons for their Averseness; and it is true, Reasons might have been given, and good Reasons should be given, why they should not do this in Duty to his Majesty; more gentle Reasons, and other kind of Reasons than those that they have given.

L. C. J. Pray, Brother, will you come to the Matter before us.

Mr. Serj. Baldock. I have almost done, my Lord.

Mr. Just. Powell. The Information is not for Disobedience, Brother, but for a Libel.

Mr. Serj. Baldock. No, Sir, it is not for Disobedience, but it is for giving Reasons for the Disobedience in a libellous Petition, and I am going on to that. The Declaration is said in the Petition to be illegal; which is a Charge upon the King, that he has done an illegal Act. They say, they cannot in Honour, Conscience, or Prudence, do it; which is a Reflection upon the Prudence, Justice, and Honour of the King in commanding them to do such a Thing: And this appearing to have been delivered to the King by my Lords the Bishops, Persons to whom certainly we all owe a Deference, as our Spiritual Masters, to believe what Things they say, as most likely to be true; and therefore it having an universal Influence upon all the People, I shall leave it here to your Lordship and the Jury, whether they ought not to answer for it.

Mr. Recorder. Will your Lordship please to spare me one Word?

L. C. J. I hope we shall have done by and by.

Mr. Recorder. If your Lordship don't think fit, I can sit down.

L. C. J. No, no, go on, Sir *Bartholomew Shower*, you'll say I have spoiled a good Speech.

Mr. Recorder. I have no good one to make, my Lord, I have but a very few Words to say.

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

Mr. Recorder. That which I would urge, my Lord, is only this; I think, my Lord, we have proved our Information, and that they have made no Answer to it; for the Answer they have made, is but Argumentative, and taken either from the Persons of the Defendants, as Peers, or from the Form of its being a Petition. As Peers, it is said they have a Right to petition to, and advise the King; but that is no Excuse at all; for if it contains Matter reproachful or scandalous, it is a Libel in them as well as in any other Subject; and they have no more Right to libel the King than his Majesty's other Subjects have; nor will the Privilege of their Peerage exempt them from being punished. And for the Form of this Paper, as being a Petition, there is no more Excuse in that neither: For every Man has as much Right to publish a Book, or Pamphlet, as they had to present their Petition. And as it would be punishable in that Man to write a scandalous Book, so it would be punishable in them to make a scandalous, and a libellous Petition. And the Author of *Julian the Apostate*, because he was a Clergyman, and a learned Man too, had as much Right to publish his Book, as my Lords the Bishops had to deliver this Libel to the King. And if the City of *London* were so severely punished, as to lose their Charter, for petitioning for the Sitting of a Parliament, in which there were reflecting Words, but more soft —

Mr. Just. Holloway. Pray, good Mr. Recorder, don't compare the Writing of a Book to the Making of a Petition; for it's the Birthright of the Subject to petition.

Mr. Recorder. My Lord, it was as lawful for the City of *London* to petition for the sitting of a Parliament, as it was for my Lords the Bishops to give Reasons for their Disobedience to the King's Command: And if the Matter of the City of *London's* Petition was reckoned to be libellous, in saying that what the King had done in dissolving the Parliament, was an Obstruction of Justice, what other Construction can be made of my Lords the Bishops saying that the King's Declaration is illegal? And if the Matter of this Petition be of the same Nature with that of the City of *London*, your Lordship can make no other Judgment of it, but that it ought to have the same Condemnation.

Mr. Just. Powell. Mr. Recorder, you will as soon bring the two Poles together, as make this Petition to agree with *Johnson's* Book. They are no more alike than the most different Things you can name.

Mr. Serj. Trinder. My Lord, I have but one Word.

L. C. J. How unreasonable is this now, that we must have so many Speeches at this Time of Day? But we must hear it; go on, Brother.

Mr. Serj. Trinder. My Lord, if your Lordship pleases, that which they seem most to insist upon on the other Side, and which has not been much spoken to on our Side, is, that this Power which his Majesty has exerted, in setting forth his Declaration, was illegal, and their Arguments were hypothetical. If it were illegal,

illegal, they had not offended; and they offered at some Arguments to prove it illegal: But as to that, my Lord, we need not go much further than a Case which is very well known here, which I crave leave to mention, only because the Jury, perhaps, have not heard of it, and that was the Case of Sir *Edward Hales*; where, after a long Debate, it was resolved, That the King had a Power to dispense with Penal Laws.

But, my Lord, if I should go higher into our Books of Law, that which they seem to make so strange of, might easily be made appear to have been a frequent and constant Practice.—

L. C. J. That is quite out of the Case, Brother.

Mr. Serj. Trinder. I beg your Lordship's Favour for a Word or two. If your Lordship please to consider the Power the King has, as Supream Ordinary, we say, he has a Power to dispense with these Statutes, as he is King, and to give Ease to his Subjects, as Supream Ordinary of the whole Kingdom, and as having Supream Ecclesiastical Authority throughout the Kingdom. There might be abundance of Cases cited for this, if there were Need: The Statute of *primo Eliz.* doubtless is in Force at this Time, and a great many of the Statutes that have been made since that Time, have express Savings of the King's Supremacy: So that the King's Power is unquestionable. And if they have come and questioned this Power in this Manner, by referring themselves to the Declarations in Parliament, they have done that which of late Days has been always look'd upon as an ill Thing; as if the King's Authority was under the Suffrages of a Parliament. But when they come to make out their Parliament Declarations, there was never a one, unless it be first in *Richard* the Second's Time, that can properly be called a Parliament Declaration: So that of the several Parliaments is a Matter perfectly mistaken; and if they have mistaken it, it is in the Nature of false News, which is a Crime for which the Law will punish them. More Things might be added, but I consider your Lordship has had a great deal of Patience already, and much Time has been spent, and therefore I shall conclude, begging your Lordship's Pardon for what I have said.

L. C. J. 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, unmethodical Way, that I shall not be able to do so well as I would.

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 the 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 proved by *Hills*, or his Man, that they were examined, and are the same. Then the Order of the Council was produced by Sir *John Nicholas*, and has likewise been 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. Upon 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 happened, 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 *Whitehall*, 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 they did bring the other Four, but my Lord Archbishop was not there; and immediately when they came back, they went up into the Chamber, and there a Petition was delivered 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;

Matter; only it was all done the same Day, and that was before my Lords the Bishops appeared 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 *Elizabeth's* 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 Second's Time, which they could make little of, by reason their Witness could not read it; but it was in short, a Liberty given to the King, to dispense with the Statute of Provisors. Then they shew you some Journals of Parliament; 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 the other; it is nothing but Discourses. Sometimes this Dispensing Power has been allowed, as in *Richard* the Second's Time; and 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.

Mr. Soll. Gen. My Lord, I never gave my Vote for Money, I assure you.

L. C. J. 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 a Publication? And then the next Question is a Question of Law indeed, Whether if there be a Publication proved, it be a Libel?

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 Enquiry 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 enquire 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. Just. Holloway. Look you, Gentlemen, it is not usual for any Person to say any thing after the Chief Justice has summed up the Evidence; it is not according to the Course of the Court: But this is a Case of an extraordinary Nature, and there being a Point of Law in it, it is very fit every body should deliver their own Opinion. The Question is, whether this Petition of my Lords the Bishops be a Libel, or no. Gentlemen, the End and Intention of every Action is to be considered; and likewise, in this Case, we are to consider the Nature of the Offence that these Noble Persons are charged with: It is for delivering a Petition, which, according as they have made their Defence, was with all the Humility and Decency that could be: So that if there was no ill Intent, and they were not (as it is not, nor can be pretended they were) Men of evil Lives, or the like, to deliver a Petition cannot be a Fault, it being the Right of every Subject to petition. If you are satisfied there was an ill Intention of Sedition, or the like, you ought to find them guilty: But if there be nothing in the Case that you find, but only that they did deliver a Petition to save themselves harmless, and to free themselves from Blame, by shewing the Reason of their Disobedience to the King's Command, which they apprehended to be a Grievance to them, and which they could not in Conscience give Obedience to; I cannot think it is a Libel: It is left to you, Gentlemen, but that is my Opinion.

L. C. J. Look you, by the Way, Brother, I did not ask you to sum up the Evidence (for that is not usual) but only to deliver your Opinion, whether it be a Libel or no.

Mr. Just. Powell. Truly I cannot see, for my part, any thing of Sedition, or any other Crime, fixed upon these Reverend Fathers, my Lords the Bishops.

For, Gentlemen, to make it a Libel, it must be false; it must be malicious, and it must tend to Sedition. As to the Falshood, I see nothing that is offered by the King's Council, nor any thing as to the Malice: It was presented with all the Humility and Decency that became the King's Subjects to approach their Prince with.

Now, Gentlemen, the Matter of it is before you; you are to consider of it, and it is worth your Consideration. They tell his Majesty, It is not out of Averseness to pay all due Obedience to the King, nor out of a Want of Tendernefs to their dissenting Fellow Subjects, that made them

not perform the Command imposed upon them; but they say, that because they do conceive that the Thing that was commanded them was against the Law of the Land, therefore they do desire his Majesty, that he would be pleased to forbear to insist upon it, that they should perform that Command which they take to be illegal.

Gentlemen, we must consider what they say is illegal in it. They say, they apprehend the Declaration is illegal, because it is founded upon a dispensing Power, which the King claims, to dispense with the Laws concerning Ecclesiastical Affairs.

Gentlemen, I do not remember in any Case in all our Law (and I have taken some Pains upon this Occasion to look into it) that there is any such Power in the King, and the Case must turn upon that. In short, if there be no such Dispensing Power in the King, then that can be no Libel which they presented to the King, which says, that the Declaration, being founded upon such a pretended Power, is illegal.

Now, Gentlemen, this is a Dispensation with a Witness; it amounts to an Abrogation and utter Repeal of all the Laws; for I can see no Difference, nor know of none in Law, between the King's Power to dispense with Laws Ecclesiastical, and his Power to dispense with any other Laws whatsoever. If this be once allowed of, there will need no Parliament; all the Legislature will be in the King, which is a Thing worth considering, and I leave the Issue to God and your Consciences.

Mr. Just. Albybone. The single Question that falls to my Share is, to give my Sense of this Petition, whether it shall be in Construction of Law a Libel in itself, or a Thing of great Innocence. I shall endeavour to express myself in as plain Terms as I can, and as much as I can, by way of Proposition.

And I think, in the first Place, That no Man can take upon him to write against the actual Exercise of the Government, unless he have Leave from the Government, but he makes a Libel, be what he writes true or false; for if once we come to impeach the Government by Way of Argument, 'tis the Argument that makes it the Government, or not the Government: So that I lay down that in the first Place, that the Government ought not to be impeached by Argument, nor the Exercise of the Government shaken by Argument; because I can manage a Proposition in itself doubtful, with a better Pen than another Man: This, say I, is a Libel.

Then I lay down this for my next Position, That no private Man can take upon him to write concerning the Government at all; for what has any private Man to do with the Government, if his Interest be not stirred or shaken? It is the Business of the Government to manage Matters relating to the Government; it is the Business of Subjects to mind only their own Properties and Interests. If my Interest is not shaken, what have I to do with Matters of Government? They are not within my Sphere. If the Government does come to shake my particular Interest, the Law is open for me, and I may redress myself by Law: And when I intrude myself into other Mens Business, that does not concern my particular Interest, I am a Libeller.

These I have laid down for plain Propositions; now then let us consider further, whether if I will take upon me to contradict the Government,

any specious Pretence that I shall put upon it shall dress it up in another Form, and give it a better Denomination; and truly I think 'tis the worse; because it comes in a better Dress; for by that Rule, every Man that can put on a good Vizard, may be as mischievous as he will to the Government at the Bottom: So that whether it be in the Form of a Supplication, or an Address, or a Petition, if it be what it ought not to be, let us call it by its true Name, and give it its right Denomination, it is a Libel.

Then, Gentlemen, consider what this Petition is: This is a Petition relating to something that was done and ordered by the Government. Whether the Reasons of the Petition be true or false, I will not examine that now, nor will I examine the Prerogative of the Crown, but only take Notice that this relates to the Act of the Government. The Government here has published such a Declaration as this that has been read, relating to Matters of Government; and shall, or ought any body to come and impeach that as illegal, which the Government has done? Truly, in my Opinion, I do not think he should, or ought; for by this Rule may every Act of the Government be shaken, when there is not a Parliament *de facto* sitting.

I do agree, that every Man may petition the Government, or the King, in a Matter that relates to his own private Interest; but to meddle with a Matter that relates to the Government, I do not think my Lords the Bishops had any Power to do more than any others. When the House of Lords and Commons are in Being, it is a proper Way of applying to the King: There is all the Openness in the World for those that are Members of Parliament, to make what Addresses they please to the Government, for the rectifying, altering, regulating, and making of what Law they please; but if every private Man shall come and interpose his Advice, I think there can never be an End of advising the Government. I think there was an Instance of this in King James's Time, when by a solemn Resolution it was declared to be High Misdemeanor, and next to Treason, to petition the King to put the Penal Laws in Execution.

Mr. Just. Powell. Brother, I think you do mistake a little.

Mr. Just. Albybone. Brother, I dare rely upon it that I am right: It was so declared, by all the Judges.

Mr. Soll. Gen. The Puritans presented a Petition to that Purpose, and in it they said, if it would not be granted, they would come with a great Number.

Mr. Just. Powell. Ay, there it is.

Mr. Just. Albybone. I tell you, Mr. Solicitor, the Resolution of the Judges is, That such a Petition is next Door to Treason, a very great Misdemeanor.

Mr. Just. Powell. They accompanying it with Threats of the Peoples being discontented.

Mr. Just. Albybone. As I remember, it is in the second Part of the *Folio* 35, or 37, where the Resolution of the Judges is, That to frame a Petition to the King, to put the Penal Laws in Execution, is next to Treason; for, say they, no Man ought to intermeddle with Matters of Government without Leave of the Government.

Mr. S. Pemberton. That was a Petition against the Penal Laws.

Mr. Just. Albybone. Then I am quite mistaken indeed, in case it be so.

Mr. Serj. Trinder. That is not material at all which it was.

Mr. Pollexfen. They there threatned, unless their Request were granted, several Thousands of the King's Subjects would be discontented.

Mr. Just. Powell. That is the Reason of that Judgment, I affirm it.

Mr. Just. Albyone. But then I'll tell you, Brother, again, what is said in that Case that you hinted at, and put Mr. Solicitor in mind of. For any Man to raise a Report that the King will, or will not permit a Toleration, if either of these be disagreeable to the People, whether he may, or may not, it is against Law; for we are not to measure Things from any Truth they have in themselves, but from that Aspect they have upon the Government; for there may be every Tittle of a Libel true, and yet it may be a Libel still: So that I put no great Strefs upon that Objection, that the Matter of it is not false; and, for Sedition, it is that which every Libel carries in itself; and as every Trespass implies *Vi & Armis*, so every Libel against the Government carries in it Sedition, and all the other Epithets that are in the Information. This is my Opinion as to the Law in general.

I will not debate the Prerogatives of the King, nor the Privileges of the Subject; but as this Fact is, I think these venerable Bishops did meddle with that which did not belong to them: They took upon them, in a petitionary Way, to contradict the actual Exercise of the Government, which I think no particular Persons or single Body may do.

L. C. J. Gentlemen of the Jury, Have you a Mind to drink before you go?

Jury. Yes, my Lord, if you please.

[*Wine was sent for for the Jury.*]

Juryman. My Lord, we humbly pray that your Lordship will be pleased to let us have the Papers that have been given in Evidence.

L. C. J. What is that you would have, Sir?

Mr. Soll. Gen. He desires this, my Lord, That you would be pleased to direct that the Jury may have the Use of such Writings and Statute-Books, as may be necessary for them to make use of.

L. C. J. The Statute-Book they shall have.

Mr. Soll. Gen. But they can have no Papers but what are under Seal.

Mr. Serj. Levinz. They may have them by Consent, and they may have a Copy of the Information.

L. C. J. They shall have a Copy of the Information, and the Declarations under Seal.

Mr. Pollexfen. If they have those, and the Libel, as they call it, they will not need a Copy of the Information.

Mr. Att. Gen. My Lord, we pray that your Lordship would be pleased to ascertain what it is they shall have.

L. C. J. They shall have a Copy of the Information, the Libel, and the Declarations under the Great-Seal.

Mr. Soll. Gen. But not the Votes of the House of Commons, nor the Journals, for they are not Evidence.

L. C. J. No, I don't intend they shall.

Sir Rob. Sawyer. My Lord, we pray they may have the whole Petition.

Mr. Just. Holloway. That is, with the Direction and Prayer, you mean.

Mr. Att. Gen. Yes, with all our Hearts.

[*Then the Court arose, and the Jury went together to consider of their Verdict, and stayed together all Night, without Fire or Candle.*]

On Saturday the 30th Day of June, Anno Dom. 1688, about Ten o'Clock in the Morning, the Archbishop, and the rest of the Bishops, came again into the Court, and immediately after, the Jury were brought to the Bar.

Sir Sam. Astry. Crier, Take the Appearance of the Jury. *Sir Roger Langley.*

Sir Roger Langley. Here.

Crier. Vous avez, &c.

[*And so all the rest were called, and answered.*]

[*Then Proclamation for Silence was made.*]

Sir Sam Astry. Gentlemen, are you agreed on your Verdict?

Jury. Yes.

Sir Sam. Astry. Who shall say for you?

Jury. Foreman.

Sir Sam. Astry. Do you find the Defendants, or any of them, Guilty of the Misdemeanor whereof they are impeached, or Not Guilty?

Foreman. Not Guilty.

Sir Sam. Astry. Then hearken to your Verdict, as the Court hath recorded it — You say, the Defendants, and every of them, are not Guilty of the Misdemeanor whereof they are impeached; and so you say all?

Jury. Yes.

[*At which there were several great Shouts in Court, and throughout the Hall.*]

Mr. Solicitor General taking Notice of some Persons in Court that shouted, moved very earnestly that they might be committed: Whereupon a Gentleman of Gray's-Inn was laid hold on, but was soon after discharged. And after the Shouting was over, the Lord Chief Justice reproving the Gentleman, said,

L. C. J. I am as glad as you can be, that my Lords the Bishops are acquitted; but your Manner of rejoicing here in Court is indecent, you might rejoice in your Chamber, or elsewhere, and not here.

[*Then speaking to Mr. Attorney, he said,*]

Have you any thing more to say to my Lords the Bishops, Mr. Attorney.

Mr. Att. Gen. No my Lord.

[*Then the Court arose, and the Bishops went away.*]



CXLV. *Proceedings in the House of Commons against* ROGER PALMER, *Earl of Castlemaine, for High Treason, in going Ambassador to Rome, October 26, 1689.* I W. & M.



THE Attorney General [Sir George Treby] being, on Saturday the 26th of October, 1689, inform'd, that the Earl of Castlemaine, Sir Edward Hales, and other Prisoners of the Tower, were brought by their *Habeas Corpus* to the Hall to be bail'd, desir'd to know the Pleasure of the House in that Affair; who order'd that they should presently be sent for to their Bar, which was done accordingly; only the said Earl was not there; for he remain'd still in the Tower, having, it seems, made use of no such Writ: However, the House directed the Governor to bring him up (as he did) the Monday following; and then the Speaker [Henry Powle] said to this Effect.

MY Lord, the House having understood that you went Ambassador to Rome, and also took your Place at the Board as a Privy-Councillor, without taking the Oaths (which are great Crimes, and against Law) they have sent for you to know what you have to say for yourself.

HIS LORDSHIP'S ANSWER.

IT cannot, Mr. Speaker, but put me into more than an ordinary Confusion, when I find myself in this Place as a Criminal; especially, seeing, through the whole Course of my Life, the Glory and Welfare of *England* has been my chief Aim and Endeavour. You are pleas'd, Sir, to lay so great a Charge upon me, that, without Shuffling or Impertinence, I might ask Time to consider it; yet since I well know how much you value your Time, and since Time also may make what I say suspected more of Artifice than Candor, I shall now, without further Delay, let you and this great Assembly see (where so many of Birth and Quality are met) how far I am from deserving either Censure or Reproach. But, Mr. Speaker, before I go further, I must humbly beg these few Favours of you. *First*, That you would pardon all Tautologies, or Want of Method, as beginning perchance in the Middle, and ending again where I should have begun. *Secondly*, That you would not take any Advantage at my Answers, for I shall be ingenuous to the Utmost, and hesitate at nothing you shall ask. And *Lastly*, if, through Inadvertency or Haste, I should say what might shock you, that you would not stand upon the Rigour of the Words, but upon the Sincerity and Clearness of my Explanation.

Be pleas'd then to know, Sir, I was so far from seeking this Employment, that I did not so much as dream it was design'd me; and when I knew it, I us'd my utmost Endeavour to avoid it. My Ignorance of the King's Intentions appears by this, that, in the Year I went to *Rome*, returning

out of the Country, according to my usual Custom, after *Michaelmas*, I found a Protestant, a Person of Note at my House, who told me, that before I spoke with any Man, he was to bring me to my Lord *Sunderland*, and from thence I was to go to his Majesty; nor would he scarce afford me Time to put myself in a tolerable Order to attend them. My Lord *Sunderland* soon hinted to me what the King's Intentions were; and when I recurr'd to his Friendship, I had this Answer, or Words to this Purpose: That if Subjects should refuse their King's Service in every thing that was troublesome or *Contre-Cour*, all Kings would be in an ill Condition; that my Request was beyond his Power, and that he believed I should find his Majesty very positive; and so I did, Mr. Speaker, I'll assure you. Nay, to satisfy you yet more fully of my Backwardness to this Journey; can you think, Sir, that I, that had been at *Rome* more than once; that had seen the Grandeur of so many *Roman* Embassies, and knew they exceeded in Splendor and Expence three Times those to any crown'd Head whatsoever, should not be extraordinarily concern'd at an Employment which had for its Subsistence, as the Lords of the Treasury well know, no other Establishment than to *Spain* or *France*, which (being 100 *l.* a Week) amounts only to 5200 *l.* per Annum?

Having thus, Sir, shew'd you how little fond I was of the Thing, let me now, with Submission, ask you, what could I otherwise do in my Circumstances? For first, I call all that's Good to witness, I never heard of Law against it, nor know of any to this very Day: And yet, on the other Side, I was not only commanded by the King, but knew his Royal and Legal Power of commanding the Service of his Subjects, and most particularly in Embassies, as appears by many old Examples; nay, by a fatal one in this very Century; I mean the Case of *Overbury*, to which nobody here, I'm sure, is a Stranger. In the next Place, Sir, what did I go to *Rome* for? Why only with a Letter; with a Complement from a profess'd and open Catholick King to his Holiness, as all Princes of that Communion do in the Beginning of their respective Reigns. Besides, Mr. Speaker, as I know no Law that forbid my Obedience, so I must needs say (and this without cramping, or putting any Bounds to the Legislative Power) that no such Law can be made: For, Sir, the Pope is a very considerable Temporal Prince, whose Territories border on two great Seas, the *Mediterranean* and *Adriatic*: If then our Merchants should be by Storm, or other Necessities, driven into his Ports; if *Englishmen* should be surpriz'd by any *Roman* Party as they travel in a neighbouring Country, shall our Government (not to mention a Hundred other