

trary to his Profession) took upon him to broke for him, in such a manner as was never preceded by any.

He made *Egerton* to acknowledge a Recognizance of 10000 Marks, with a Defeazance, that if my Lord Chancellor did decree it for him, 6000 Marks was to be distributed among those honourable Persons that did sollicit it for him: But if it did not go as they desired, he promis'd, *in verbo Sacerdotis*, that he would deliver up the Bonds.

This appear'd by Letters from the now Reverend Bishop, but then Practical Doctor.

Mr. *Johnson* (a moral honest Man) perceiving that Mr. *Egerton* finding no Relief, did intend to prefer a Petition against the Lord Chancellor by one *Heales's* means, took occasion to talk with Mr. *Egerton*; asking him why he would prefer such a scandalous Petition against my Lord; he would have him take the Money out of the Petition, and then his Cause by the Mediation and Conference of some other Judge with my Lord, might be brought to a good End; and for Money, if he had lent any, he might be satisfy'd again.

Afterwards upon a Petition to the King by Sir *Rowland Egerton*, there was a Reference of this Matter to the Lord Chancellor, and Mr. *Edward Egerton* enter'd into a Bond for ten thousand Marks.

He had treated with one Dr. *Sharp*, that if he would give 1100*l.* he should have his Desire.

We sent for *Sharp*, but he deny'd that he ever contracted with him.

The Desire of the Committee was, to reform that which was amiss; and they thought fit to give as much Expedition as might be, because so great a Man's Honour is soiled with it, and therefore do think meet that farther Inquisition be made this Afternoon, and when the Truth of the Matter is found, then to be sent to the Lords.

Thus I have faithfully related what hath passed, and with as much Duty and Respect, as I might, to my Lord Chancellor; I desire it to be carry'd out of the House with a favourable Construction.

Order'd,

That this Matter be further consider'd by the Committee this Afternoon.

Then the House adjourn'd.

Sabbati 17^o die Martii, 1620.

Sir *Robert Phillips* made Report from the Committee of the Abuses in the Courts of Justice, *viz.*

We met on *Thursday* in the Afternoon; the principal Thing wherein I desir'd to be satisfy'd was, whether at the Time of giving those Gifts to the Lord Chancellor there were any Suit depending before him.

In *Awbrey's* Case it appear'd plainly there was: Something accidentally fell out in this Examination, and that is, a Declaration of Sir *George Hastings*, who hath been struggling with himself betwixt Gratitude and Honesty; but publick and private Goods meeting, he prefer'd the Publick, and own'd, that he taking pity on *Awbrey's* Suit, did give in a Box of 100 *l.* to the Lord Chancellor, in these Terms or the like, *That it was to help Awbrey in his Cause.* Notwithstanding, not long after, a very prejudicial and murdering Order was

made against *Awbrey* in his Cause: whereupon Sir *George Hastings* moved my Lord Chancellor to rectify this Order. My Lord promised to do it, but did it not.

The Order was put into the Hands of one *Churchil* (one of the Registers in Chancery) by a Servant of the Lord Chancellor's.

There are Letters of *Awbrey's* to the Lord Chancellor touching this Business.

Now for Mr. *Egerton's* Case: As the Matter was of more Weight, so the Sum was of larger Extent, for there was 400 *l.* given then, and a Suit then depending in the *Star-Chamber*; about which time Sir *Rowland Egerton* did prefer a Petition to the King for a Reference unto the Lord Chancellor: Whereupon my Lord caused him to enter into a Bond for six thousand Marks to stand to his Award. An Award was afterwards made, which was refused by Mr. *Edward Egerton*; thereupon a Suit by the Lord Chancellor's Direction was commenced against him, and the Bond of six thousand Marks assign'd over to Sir *Rowland Egerton*.

About this time *Edward Egerton* became acquainted with Dr. *Field*, and related his Cause unto him; who pitying him, sent him to two worthy Gentlemen, Mr. *Dampart* and Sir *John Butler*, (who is now dead;) he makes known his Case to them, and desires them to be a means to put off his Cause from Hearing, because his Witnesse were not here.

Whereupon *Dampart* wrote to the Duke of *Buckingham* to have had his Letter to the Lord Chancellor to stop it: But the Duke said he would not write, because the Matter was already decreed, and he would not receive it.

Mr. *Egerton* was drawn into a Bond of 10000 Marks for the Payment of 6000: and Mr. *Dampart* being asked what he and Dr. *Field* should have had of this Money, he said, he did not remember what certain Sum; but he said it was more than any Cause could deserve in any Court of Justice.

In *Awbrey's* Case this is to be said,

That Sir *George Hastings* being at *Hackney*, where he dwelt, was sent for by the Lord Chancellor, and accordingly he came to him and found him in Bed, who bid him come near him, and willed the rest to depart the Room; and then said unto him, *Sir George, I am sure you love me, and I know that you are not willing that any thing done by you shall reflect any Dishonour upon me. I hear, that one Awbrey pretends to petition against me; he is a Man that you have some Interest in; you may take him off if you please.*

Sir *George Hastings* afterwards met with *Awbrey*, and asked him whether he intended any such thing, and desired to see it, to shew my Lord Chancellor; which Sir *George* accordingly did, and desir'd my Lord to do the poor Man Justice.

My Lord promised to do it, and bad him bring his Council; and they did, but could have no Remedy, so the Petition went on.

Sir *George Hastings*, some time since, had Conference with my Lord Chancellor; and he told him, *He must lay it upon his Lordship.* If you do, *George*, (said he) *I must deny it upon my Honour.*

Thus you see the Relation of what hath passed.

Now for our Proceedings in it; it is a Cause of great Weight, it concerns every Man here: For if the Fountains be muddy, what will the Streams be?

If

If the great Dispenser of the King's Conscience be corrupt, who can have any Courage to plead before him?

I will present one thing unto you, and then make a Request.

That which I move is, That we present his Business singly to the Lords, and deliver it without Exasperation; 1st. Because there is but one Precedent* for it, in the like Case, for a Chancellor in a Cause of Corruption. 2^{dly}. Because the Party accused is a Peer of the Kingdom, sitting in the higher House, whom we cannot meddle with. 3^{dly}. Because we have no Power to give an Oath.

That which I request is, that those People which have been fetter'd with much Calamity by these Courses, may by Petition to his Majesty, or otherwise, have their Cause Revived and Revised.

Sir *Edward Sackville*. This honourable Lord stands but yet suspected, and I hold not those Gentlemen that have testified against him competent Witnesses.

First, Because they speak to discharge themselves.

Secondly, Because if he be guilty, they were those that tempted him.

But yet, if notwithstanding you resolve to send it up to the Lords, let it be presented without any prejudicial Opinion, to be weighed in the Balance of their Lordships Judgments.

And if they think fit to examine these Witnesses, let them.

Sir *George Hastings*. This adds to my Grief; but this is my Resolution, I had rather perish with a just Sentence here, than escape with a guilty Conscience.

Some moved that Sir *George Hastings* and Sir *Richard Young* should be sequestred from Parliament till the Matter was ended; but there was nothing order'd therein.

Mr. *Nevill*. After some Reluctation within me, I am resolv'd to speak what my Conscience leads me unto.

I speak for the good of my Country, the honour of my King, and advancement of Justice.

Justice is the Fountain, the King the Head thereof, clear as the Waters of *Siloab*, pure as the River of *Damascus*: but there is a derivative Justice brought unto us by Channels, those are often muddy and more bitter than the Waters of *Merab*: Such Waters flow abundantly in Chancery.

I will not touch upon the Person of him that sits in Court, for he is the Dispenser of the King's Conscience; but because some Motions are made against the Testimony of those Gentlemen, I will say this, I think them fit to sit here, because they are neither Delinquents nor Accused.

My Lord means to deny it upon his Honour: But I would not have that serve his Turn, for he himself hath made the Nobility swear in Chancery.

Therefore I would have their Lordships inform'd what Privileges they have lost.

Next, I would have them note the luxuriant Authority of that Court, and how it is an inextricable Labyrinth, wherein resideth such a Monitor as gormandizeth the Liberty of all Subjects whatsoever.

Mr. *Recorder Finch*. If we shall make but a Presentation of this, we do in a sort accuse him,

may judge him: if the Gentlemen be admitted to give Testimony, before it shall condemn another it must agree with it self.

First, I heard him say, he gave it as a Present from himself: Yet afterwards he saith, he told my Lord Chancellor he had it from *Awbrey*.

Again, *Awbrey* speaks not of any Delivery of Money himself to my Lord Chancellor.

Then again it's urg'd, that a discontented Suitor writ Letters to my Lord: The Letters are reject-ed, not hearken'd unto; what doth this but free him?

In the other Case, if *Egerton*, out of a Desire to congratulate him at his coming to the Seal, made my Lord a Present for his Kindnesses and Pains in former Businesses, what Wrong hath he done if he hath received a Present? And tho' a Suit were depending, yet who keeps a Register in his Heart of all Causes? Nay, who can, amongst such a Multitude?

And for the six thousand Marks there is no Colour to say that ever he was to have any Part thereof.

For taking away the Privilege of the Nobility in requiring an Oath, he found the Court possessed of it before he came there; so that we have no sufficient Grounds to accuse so great a Lord upon that Account.

But if we shall present Articles to the Lords, what do we (as I said before) but accuse him?

Sir *Edward Coke*. It is objected, that we have but one single Witness; therefore no sufficient Proof.

I answer, That in the 37th of *Eliz.* in a Complaint against *Soldier-Sellers*, for that having Warrant to take up Soldiers for the Wars, if they press'd a rich Man's Son they would discharge him for Money, there was no more than *singularis testis* in one Matter; but tho' they were single Witnesses in several Matters, yet agreeing in one and the same third Person, it was held sufficient to prove a Work of Darknes.

For in such Works it is a marvel there are any Witnesses.

But some object, that these Men are culpable; and therefore no competent Witnesses.

I answer, They came not to accuse, but were interrogated.

If I be interrogated, I had rather speak Truth than respect any Man; and you will make *Bribery* to be unpunish'd, if he that carrieth the *Bribe* shall not be a Witness.

In this, one Witness is sufficient: He that accuseth himself, by accusing another, is more than three Witnesses: and this was wrought out of them.

Order'd,

That the Complaint of *Awbrey* and *Egerton* against the Lord Chancellor and the Bishop for *Corruption*, for the 100 *l.* and 400 *l.* and the Recognizance, should be drawn up by Sir *Robert Phillips*, Sir *Edward Coke*, Mr. *Noy*, and Sir *Dudley Diggs*; and that the same be related to the Lords without Prejudice or Opinion at a Conference; and that a Message be sent to the Lords for this Purpose on Monday next.

Adjourn'd, &c.

* This seems to be the Case of Cardinal Wolsey. See 3 Co. Inst. 148. 4 Co. Inst. 89.

Luna 19^o die Martii 1620.

A Message was sent to the Lords by Sir Robert Phillips, to desire a Conference touching the Lord Chancellor and the Bishop of Landaff, being petition'd against by *Awbrey* and *Egerton*.

Sir Robert Phillips reports that the Lords had agreed to a Conference.

Mr. Secretary *Calvert* brings a Message from the King, that this Parliament hath sat a long time, and *Easter* is near come, and thinks it is fit there should be a Cessation for a time; yet the King will appoint no time, but leaves it to your selves.

But for the beginning again, he thinketh the 10th of *April* a fit time, but will appoint none; only he would have you take care that there be no Impediment in the Subsidies.

The King also took notice of the Complaints against the Lord Chancellor, for which he was sorry, for it hath always been his Care to have placed the best; but no Man can prevent such Accidents: But his Comfort was, that the House was careful to preserve his Honour.

And his Majesty thought not fit to have the Affair hang long in suspense; therefore would not have any thing to hinder it.

But for the Furtherance thereof, he proposed a Commission of six of the higher House, and twelve of the lower House, to examine it upon Oath.

This Proposition if we liked well, he would send the like to the Lords, and this he thought might be done during this Cessation: and tho' he hoped the Chancellor was free, yet if he should be found guilty, he doubted not but you would do him Justice.

Sir *Edward Coke* said, We should take heed the Commission do not hinder the Manner of our Parliamentary Proceedings.

The Answer return'd to the King was, To render him Thanks for the first Part of his gracious Message.

And for the second, we desired that the like Message may be sent to the Lords; for there being so great a Concurrence betwixt us, we may have Conference with them about it.

And then Adjourn'd, &c.

Martis 20^o die Martii 1620.

Sir *Edward Giles* made a Motion that one *Churchil* should be called in.

Whereupon there was a Petition of one *Montacute*, *Wood*, &c. against the Lord Chancellor for taking 300 *l.* of the Lady *Wharton*, and making Orders, &c. which was read.

Churchil and *Keeling* were said to be Witnesses, and a Committee was appointed to examine them.

Sir Robert Phillips reports from the Conference, that according to the Commandment of this House he had deliver'd those Heads which were agreed on at the Conference Yesterday; excusing himself if he had failed in any Point.

That the Lords accepted it with a great deal of Affection, as sensible of the Wrongs done to the Commonwealth; and return'd Answer by the Lord Treasurer: First, By way of Question, Whether we would not reduce them into Writing. Resolv'd

No, for no Cause; this only consisting of two or three Points, clear and plain: and as for the Letters and other things which the Lords desir'd, we would acquaint the House, and doubted not but it would be yielded.

The Lords further return'd for Answer, That they would proceed in this Matter with Care, Diligence and Expedition.

A Message from the Lords to signify, that they have taken into Consideration the last Conference, and shall need the Testimony of two Members of this House; and therefore desire, that voluntarily, and without ordering, as private Persons, they make Declaration upon Oath, and the like for others if occasion were.

The Answer return'd was, That the Gentlemen would attend voluntarily as private Gentlemen, and upon private Notice be examined.

Sir Robert Phillips reports from the Committee appointed to examine *Churchil*; from which Particular a General may be extracted, conducing to the Discovery of Corruption in the Lord Chancellor.

The Lady *Wharton* having a Cause depending in Chancery, many Orders were made in it.

Amongst the rest, there was an Order made for the Dismission of the Bill, by the consent of the Council on both sides; which my Lady disliking, took *Churchil* the Register into her Coach, and carry'd him to my Lord Chancellor's, and so wrought that he was willed not to enter the last Order; so that my Lady was left at liberty to prosecute it in Chancery, brought it to a Hearing, and at length got a Decree.

Keeling being examin'd, saith, That near about the time of passing this Decree, my Lady took an hundred Pound (he saw it) and she made him set down the Words and Style which she should use in the Delivery of it.

Then she goes to *York-house*, and deliver'd it to my Lord Chancellor, as she told him.

She carry'd it in a Purse.

My Lord asked her, *What she had in her Hand?* She reply'd, *A Purse of my own making*, and presented it to him; who took it and said, *What Lord could refuse a Purse of so fair a Lady's Working.*

After this my Lord made a Decree for her, but it was not perfected; but 200 *l.* more being given (one *Gardiner* being present) her Decree had Life.

But after the giving of the 100 *l.* because she had not 200 *l.* ready in Money, one *Shute* dealt with her to convey the Land to my Lord Chancellor and his Heirs, reserving an Estate to her self for Life: But she knowing no Reason to disinherit her own Children, asked *Keeling* her Man what he thought of it; he (like an honest Servant) was against it.

Shute knowing this, sets upon *Keeling*, and brings him to be willing my Lady should do it, with Power of Revocation upon the Payment of 200 *l.* but that not being liked, they made a shift to pay 200 *l.* in a reasonable time.

Keeling lets fall some Speeches, as if he had left *York-house* for the Corruption which was there, which he himself knew in part.

Gardiner, *Keeling's* Man, confirm'd the Payment of the 300 *l.* for the Decree, viz. 100 *l.* before, and 200 *l.* after.

This purchas'd Decree being lately damn'd again by my Lord Chancellor, was the Cause of this Complaint.

Keeling

Keeling saith, Sir *John Trevor* did present my Lord Chancellor with 100 *l.* by the Hands of Sir *Richard Young*, for a final End to this Cause.

Sir *Richard Young* answer'd, That when he attended my Lord Chancellor, Sir *John Trevor's* Man brought a Cabinet and a Letter to my Lord Chancellor, and intreated me to deliver it, which I did openly; and this was openly done, and this was all I knew of it.

Sir *Edward Coke*. Strange to me that this Money should be thus openly deliver'd, and that one *Gardiner* should be present at the Payment of the 200 *l.*

Ordered,

That Sir *Robert Phillips* do deliver to the Lords this Afternoon the Bishop of *Landaff* and *Awbrey's* Letters, and all other Writings that he hath.

And then Adjourn'd, &c.

Mercurii 21^o die Martii 1620.

Sir *Robert Phillips* reports from the Committee appointed to examine *Keeling* and *Churchil*, who inform'd many Corruptions against the Lord Chancellor.

1. In the Cause betwixt *Hull* and *Holeman*, *Hull* gave or lent my Lord one thousand pound since the Suit began.

2. In the Cause between *Wroth* and *Manwaring*, there were one hundred Pieces given, of which *Hunt* had 20 *l.*

3. *Hoddy* gave a Jewel which was thought to be worth 500 *l.* but he himself said it was a Trifle of a hundred or two hundred Pound Price: It was presented to the Lord Chancellor by Sir *Thomas Peryn* and Sir *Henry Holmes*.

4. In the Cause between *Peacock* and *Reynell*, there was much Money given on both sides.

5. In the Cause of *Barker* and *Bill*, *Barker* said he was 300 *l.* out in Gifts since this Suit began.

6. In the Cause between *Smithwick* and *Welsh* *Smithwick* gave 300 *l.* yet my Lord decreed it against him; so he had his Money again by piece-meal.

In this and other Causes, my Lord would decree Part; and when he wanted more Money he would send for more, and then decree another Part.

In most Causes my Lord's Servants have undertaken one Side or another; insomuch as it was usual for Council, when their Clients came unto them, to ask what Friend they had at *Tork-houfe*.

Mr. *Mewtys*. Touching the Persons that inform, I would intreat this honourable House to consider that *Keeling* is a common Solicitor (to say no more of him) *Churchil* a guilty Register by his own Confession: I know that Fear of Punishment, and Hopes of lessening it, may make them to say much, yea more than is true.

For my own part, I must say I have been an Observer of my Lord's Proceedings; I know he hath sown the good Seed of Justice, and I hope that it will prove that the envious Man hath sown those Tares.

I humbly desire that these Generals may not be sent up to the Lords, unless these Men will testify them in particular.

Ordered,

That a Message be sent to the Lords by Sir *Robert Phillips*, to relate the Case of the Lady *Wharton*, and the Informations of *Churchil*.

Sir *Robert Phillips* reports from the Lords, that they acknowledged the great Care of this House in these important Businesses; return Thanks for the Correspondence of this House with them, and assure the like from them for ever to this House. In these and all other things they will advise, and return Answer as soon as possible.

And then Adjourn'd, &c.

PROCEEDINGS in the House of Lords.

ON Monday the 19th Day of *March* 1620. in the Afternoon the Commons had a Conference with the Lords: which Conference was reported the next Day by the *Lord Treasurer*; That it was the desire of the Commons to inform their Lordships of the great Abuses of the Courts of Justice, the Information whereof was divided into these three Parts.

First, The Persons accused.

Secondly, The Matters objected against them.

Thirdly, The Proofs.

The Persons are the Lord Chancellor of *England*, and the now Bishop of *Landaff*, being then no Bishop, but Dr. *Field*.

The incomparable good Parts of the Lord Chancellor were highly commended, the Place he holds magnified, from whence Bounty, Justice and Mercy were to be distributed to the Subjects, with which he was solely trusted; whither all great Causes were drawn, and from whence no Appeal

lay for any Injustice or Wrong done, save to the Parliament.

That the Lord Chancellor was accused of great Bribery and Corruption* committed by him in this eminent Place; whereof * 3 Co. Inst. 148. two Cases were alledged.

The one concerning *Christopher Awbrey*, and the other concerning *Edward Egerton*.

1. In the Cause depending in the Chancery between the said *Awbrey* and Sir *William Bronker*, *Awbrey* feeling some hard Measure, was advised to give the Lord Chancellor 100 *l.* the which he delivered to his Council, Sir *George Hastings*, and he to the Lord Chancellor: This Business proceeding slowly notwithstanding, *Awbrey* did write divers Letters, and delivered them to the Lord Chancellor, to which he never obtained any Answer from his Lordship; but at last delivering another Letter, his Lordship answered, *If he importuned him, he would lay him by the Heels.*

The Proofs of this Accufation are five.

First, Sir *George Hastings* relating it long ſince unto Sir *Charles Montague*.

Secondly, The Lord Chancellor fearing this would be complained of, deſired Silence of Sir *George Hastings*.

Thirdly, Sir *George Hastings*'s Teſtimony thereof, which was not voluntary, but urged.

Fourthly, The Lord Chancellor deſired Sir *George Hastings* to bring the Party *Awbrey* unto him, and promiſed Redreſs of the Wrongs done him.

Fifthly, That the Lord Chancellor ſaid unto Sir *George Hastings*, if he ſhould affirm the giving of this 100 *l.* his Lordſhip would and muſt deny it upon his Honour.

2. The Caſe of Sir *Edward Egerton* is this: There being divers Suits between *Edward Egerton* and Sir *Rowland Egerton* in the Chancery, *Edward Egerton* preſented his Lordſhip, a little after he was Lord Keeper, with a Baſon and Ewer of the Value of 50 *l.* and upwards; and afterwards he delivered unto Sir *George Hastings*, and Sir *Richard Young*, 400 *l.* in Gold.

Sir *Richard Young* preſented it to his Lordſhip, who took it, and poſſed it, and ſaid it was too much; and returned Answer, that Mr. *Egerton* had not only enriched him, but had laid a tye upon his Lordſhip to do him Favour in all his juſt Cauſes.

The Proofs for this are the Teſtimony of Sir *George Hastings*, and the Teſtimony of *Mereſſill* a Scrivener thus far, that he took up 700 *l.* for Mr. *Egerton*; Mr. *Egerton* then telling him that a great part of it was to be given to the Lord Chancellor, and that Mr. *Egerton* afterwards told him that the 400 *l.* in Gold was given to the Lord Chancellor.

At this Conference was farther declared ſomewhat relating to a Biſhop, who was touched in this Buſineſs upon the bye, whoſe Function was much honoured, but his Perſon touched herein: The Buſineſs depending between the *Egertons* being order'd againſt *Edward Egerton*, he procur'd a new Reference thereof from the King to the Lord Chancellor; his Lordſhip demanded the Parties to be bound in 6000 Marks to ſtand to his Lordſhip's Award; they having entred into that Bond, his Lordſhip awarded the matter againſt *Edward Egerton* for Sir *Rowland Egerton*; but *Edward Egerton* reſuſing to ſtand to the ſaid Award, a new Bill was exhibited in the Chancery, and thereupon his Lordſhip ordered that this Bond of 6000 Marks ſhould be aſſigned unto Sir *Rowland Egerton*, and he to put the ſame in Suit in his Lordſhip's Name.

The Biſhop of *Landaff*, as a Friend to Mr. *Edward Egerton*, adviſeth with *Randolph Dampart* and *Butler* (which *Butler* is now dead) that they would procure a ſtay of the Decree of that Award, and procure a new Hearing; upon which it was agreed, that the ſaid 6000 Marks ſhould be given for this by *Edward Egerton*, and ſhared amongſt them, and amongſt certain Noble Perſons.

A Recognizance of 10000 Marks was required from Mr. *Egerton* to the Biſhop for the Performance hereof; the Biſhop his Share of this 6000 Marks was ſo great, as no Court of Juſtice would allow.

To prove this, they produce Letters of the Biſhop, naming the Sum, and ſetting down a Courſe

how theſe 6000 Marks might be rais'd, *viz.* the Land in queſtion to be decreed for Mr. *Egerton*, and out of that the Money to be levied; and if this were not effected, then the Biſhop *in verbo Sacredotis* promiſed to deliver up this Recognizance to be cancelled; the new Recognizance is ſealed accordingly, and *Randolph Dampart* rides to Court, and moved the * Lord Admiral for his Lordſhip's Letter to the * *Duke of Buckingham*. Lord Chancellor herein; but his Lordſhip denied to meddle in a Cauſe depending in Suit.

Then the ſaid *Randolph Dampart* aſſayed to get the King's Letter, but failed therein alſo; ſo that the Good they intended to Mr. *Egerton* was not effected, and yet the Biſhop, tho' required, reſuſed to deliver up the ſaid Recognizance, until Mr. *Egerton* threatned to complain thereof unto the King.

The Lord Treasuſer ſhewed alſo that the Commons do purpoſe, that if any more of this kind happen to be complained of before them, they will preſent the ſame to your Lordſhips, wherein they ſhall follow the antient Precedents, which ſhew that great Perſons have been accuſed for the like in Parliament.

They humbly deſire, that forasmuch as this concerneth a Perſon of ſo great Eminency, it may not depend long before your Lordſhips, that the Examination of the Proofs may be expedited, and if he be found Guilty, then to be puniſhed; if not Guilty, the now Accuſers to be puniſhed.

This being reported, the Lord Admiral preſented to the Houſe a Letter written unto their Lordſhips; the Tenor whereof follows.

My very good Lords,

I Humbly pray your Lordſhips all to make a favourable and true Conſtruction of my Abſence; it is no feigning nor fainting, but ſickneſs both of my Heart, and of my Back, tho' joined with that Comfort of Mind, that perſuades me, that I am not far from Heaven, whereof I feel the firſt Fruits: and becauſe whether I live or die, I would be glad to preſerve my Honour and Fame as far as I am worthy; hearing that ſome Complaints of baſe Bribery are coming before your Lordſhips, my Requeſts unto your Lordſhips are,

First, That you will maintain me in your good Opinion without Prejudice, until my Cauſe be heard.

Secondly, That in regard I have ſequeſter'd my Mind at this time in great part from worldly Things, thinking of my Accompt and Answer in a higher Court, your Lordſhips would give me convenient Time, according to the Courſe of other Courts, to adviſe with my Council, and to make my Answer; wherein nevertheleſs my Council's part will be the leaſt, for I ſhall not by the Grace of God trick up an Innocency with Cavillations, but plainly and ingenuouſly, as your Lordſhips know my manner is, declare what I know or remember.

Thirdly, That according to the Courſe of Juſtice, I may be allowed to except to the Witneſſes brought againſt me, and to move Queſtions to your Lordſhips for their croſs Examination, and likewise to produce my own Witneſſes for diſcovery of the Truth.

And

And *Lastly*, ' That if there come any more
' Petitions of like Nature, that your Lordships
' would be pleased not to take any Prejudice or
' Apprehension of any Number or Muster of them,
' especially against a Judge, that makes two
' Thousand Orders and Decrees in a Year; not
' to speak of the Courses that have been taken for
' hunting out Complaints against me; but that I
' may answer them according to the Rules of
' Justice severally and respectively. These Re-
' quests I hope appear to your Lordships no o-
' ther than Just; and so thinking my self happy
' to have so Noble Peers, and Reverend Prelates
' to discern of my Cause, and desiring no pri-
' vilege of Greatness for subterfuge of Guiltiness,
' but meaning, as I said, to declare fairly and
' plainly with your Lordships, and to put my self
' upon your Honours and Favours, I pray God to
' bless your Councils, and your Persons; and rest

Your Lordships

March 19.
1620.

Humblest Servant,

Fra. St. Alban.

Upon which Letter, Answer was sent from the
Lords unto the said Lord Chancellor on the said
20th of *March*, viz. *That the Lords received his
Lordship's Letter delivered unto them by the Lord
Admiral: They intend to proceed in his Cause now
before their Lordships, according to the right Rules
of Justice; and they shall be glad, if his Lordship
shall clear his Honour therein; to which End they
pray his Lordship to provide for his just Defence.*

And afterwards, on *Wednesday* the 21st of
March, the Commons sent a Message unto the
Lords concerning their further Complaint against
the said Lord Chancellor; which consisted of these
four Points, viz.

1. The *First* in Chancery being between the
Lady *Wharton* Plaintiff, and *Wood* and others De-
fendants, upon Cross-Bills; the Lord Chancellor
upon hearing wholly dismissed them, but upon
entry of the Order, the Cross-Bill against the
Lady *Wharton* was only dismissed, and afterwards
for a Bribe of 300 *l.* given by the Lady *Wharton*
to the Lord Chancellor, his Lordship decreed the
Cause further; and then hearing that *Wood* and
the other Defendants complained thereof to the
House of Commons, his Lordship sent for them,
and damned that Decree as unduly gotten: and
when the Lady *Wharton* began to complain there-
of, his Lordship sent for her also, and promis'd
her Redress; saying, the Decree is not yet en-
tered.

2. *Secondly*, In a Suit between *Hall* Plaintiff
and *Holman* Defendant, *Holman* deferring his An-
swer was committed to the *Fleet*, where he lay
twenty Weeks; and petitioning to be delivered,
was answered by some about the Lord Chancellor,
the Bill shall be decreed against him (*pro confesso*)
unless he would enter into 2000 *l.* Bond to stand to
the Lord Chancellor's Order; which he refusing,
his Liberty cost him one way or other one Thou-
sand Pounds. *Holman* being freed out of the *Fleet*,
Hall petition'd to the Lord Chancellor, and *Hol-
man* finding his Cause to go liard with him on his
side, complained to the Commons; whereupon

the Lord Chancellor sent for him, and to pacify
him, told him, *He should have what Order he
would himself.*

3. *Thirdly*, In the Cause between *Smithwick* and
Wells, the matter in question being for Accompts,
it was referred to certain Merchants, who certi-
fied in the behalf of *Smithwick*; yet *Smithwick* to
obtain a Decree, was told by one Mr. *Burrough*,
one near to the Lord Chancellor, that it must
cost him 200 *l.* which he payed to Mr. *Burrough*
or Mr. *Hunt* to the use of the Lord Chancellor,
and yet the Lord Chancellor decreed but one part
of the Certificate; whereupon he treats again
with Mr. *Burrough*, who demanded another 100 *l.*
which *Smithwick* also paid to the use of the Lord
Chancellor. Then his Lordship referred the Ac-
counts again to the same Merchants, who certified
it again for *Smithwick*; yet his Lordship decreed
the second part of the Certificate against *Smith-
wick*, and the first part, which was formerly de-
creed for him, his Lordship made doubtful. *Smith-
wick* petitioned to the Lord Chancellor for his
Money again, and *Smithwick* had all his Money
again, save 20 *l.* which was kept back by *Hunt*
for a Year.

The Lord Chief Justice* also de- * Sir James
liver'd three Petitions, which his Lord- Ley.
ship receiv'd yesterday from the Com-
mons, the first by the Lady *Wharton*, the second
by *Wood* and others, and the third by *Smith-
wick*.

The *Fourth* part of the Message consists only of
Instructions delivered unto the Commons by one
Churchil a Register, concerning divers Bribes and
Abuses in the Chancery, which the Commons de-
fire may be examined.

The Lords in the mean time proceeded to the
Examination of the Complaints, and took divers
Examinations of Witnesses in the House, and ap-
pointed a select Committee of themselves, to take
Examination of Witnesses to the Briberies and
Corruptions of the Lord Chancellor; which being
ended and collected, were order'd to be transcribed
with the Proofs, and were as follow.

	l.
That in the Cause between Sir Rowland <i>Egerton</i> and <i>Edward Egerton</i> , his Lordship received on the part of Sir Rowland <i>Eger- ton</i> before he decreed for him, —————	} 300
Item, Of <i>Edward Egerton</i> in the said Cause. —————	} 400
Item, In the Cause between <i>Hodie</i> and <i>Hodie</i> , a dozen of Buttons (after the Cause ended) of the value of —————	} 50
Item, Of the Lady <i>Wharton</i> , —————	} 310
Item, Of Sir <i>Thomas Monk</i> , —————	} 100
Item, Of Sir <i>John Trevor</i> , —————	} 100
Item, Of one <i>Young</i> , —————	} 100
Item, Of one <i>Fisher</i> , —————	} 106
Item, In the Cause of <i>Kenday</i> and <i>Valore</i> , of <i>Kenday</i> a Cabinet worth —————	} 800
Of <i>Valore</i> (borrow'd at two times) ———	} 2000
Item, In the Cause between <i>Scot</i> and <i>Lentball</i> , of <i>Scot</i> —————	} 200
Item, Of <i>Lentball</i> , —————	} 100
Item, Of one <i>Wroth</i> , who had a Cause between him and one <i>Manwaring</i> , ———	} 100
Item, Of Sir <i>Ralph Hansby</i> , —————	} 500
Item, In the Lord <i>Mountaine's</i> Cause, of the Lord <i>Mountaine</i> , and more pro- mis'd at the end of the Cause, ———	} 600 or 700
Item,	

Item, Of one Mr. Dunch, ————	l. 200
Item, In a Cause between Reynell and Peacock, 200 l. in Money, and a Diamond Ring worth 5 or 600 l. ————	700 or 800
Item, Of Peacock, ————	100
Item, In a Cause of Barker, ————	700
Item, There being a Reference from his Majesty to his Lordship of a Business between the Grocers and Apothecaries, he had of the Grocers ————	200
Of the Apothecaries, (besides a rich Present of Ambergrease) ————	150
Item, Of the French Merchants, to constrain the Vintners of London to take 1500 Tuns of Wine; to accomplish which, he used very indirect means, by colour of his Office and Authority, without Bill or other Suit depending, as threatening and imprisoning the Vintners, for which he receiv'd of the Merchants ————	1000

Lastly, That he had given way to great Exactions by his Servants, in respect of private Seals, and sealing Injunctions.

On Tuesday the 24th of April, the Prince his Highness signified unto their Lordships, that the said Lord Chancellor had sent a Submission unto their Lordships, which was presently read *in hęc Verba*.

May it please your Lordships,

I Shall humbly crave at your Lordships Hands a benign Interpretation of that, which I shall now write; for Words, that come from wasted Spirits, and an oppressed Mind, are more safe in being deposited in a noble Construction, than in being circled with any reserved Caution.

This being moved, and as I hope obtained in the Nature of a Protection for all that I shall say, I shall now make into the rest of that, wherewith I shall at this time trouble your Lordships, a very strange entrance: for in the midst of a state of as great Affliction, as I think a mortal Man can endure, (Honour being above Life) I shall begin with the professing of Gladness in some things.

The first is, that hereafter the Greatness of a Judge or Magistrate shall be no Sanctuary or Protection of Guiltiness, which (in few words) is the beginning of a Golden World.

The next is, that after this Example, it is like that Judges will fly from any thing that is in the likeness of Corruption (tho' it were at a great distance) as from a Serpent; which tendeth to the purging of the Courts of Justice, and the reducing them to their true Honour and Splendor. And in these two Points, God is my Witness, that, tho' it be my Fortune to be the Avil whereupon these good Effects are beaten and wrought, I take no small Comfort.

But to pass from the Motions of my Heart, whercof God is only Judge, to the Merits of my Cause, whercof your Lordships are Judges under God, and his Lieutenant; I do understand there hath been heretofore expected from me some Justification, and therefore I have chosen one only Justification instead of all other, one of the Justifications of Job: for after the clear Submission and Confession, which I shall now make unto your Lordships, I hope I may say and

justify with Job in these words *; I have not hid my Sin, as did Adam, nor concealed my Faults in my Bosom; this is the only Justification, which I will use: it resteth therefore, that without Fig-leaves I do ingenuously confess and acknowledge, that having understood the particulars of the Charge, not formally from the House, but enough to inform my Conscience and Memory, I find matter sufficient and full both to move me to desert the Defence, and to move your Lordships to condemn and censure me.

Neither will I trouble your Lordships by singling those Particulars, which I think may easiest be answer'd, *Quid te exempta jurat spinis de pluribus una?* neither will I prompt your Lordships to observe upon the Proofs, where they come not home, or the Scruples touching the Credit of the Witnesses; neither will I represent to your Lordships how far a Defence might in divers things extenuate the Offence in respect of the time or manner of the Gift, or the like Circumstances; but only leave those things to spring out of your own noble Thoughts and Observations of the Evidence and Examinations themselves, and charitably to wind about the particulars of the Charge here and there, as God shall put you in mind, and so submit my self wholly to your Pity and Grace.

And now that I have spoken to your Lordships as Judges, I shall say a few words to you as Peers and Prelates, humbly commending my Cause to your noble Minds and magnanimous Affections.

Your Lordships are no simple Judges, but parliamentary Judges, you have a farther extent of Arbitrary Power, than other Judges; and if your Lordships be not tied by the ordinary Course of Courts or Precedents in Points of Strictness and Severity, much less are you in Points of Mercy and Mitigation.

And yet if any thing which I shall move, might be contrary to your honourable and worthy End to introduce a Reformation, I should not seek it; but herein I beseech you give me leave to tell your Lordships a Story. Titus Manlius took his Son's Life for giving Battle against the Prohibition of his General: not many Years after the like severity was pursued by Papirius Cursor the Dictator against Quintus Maximus; who, being upon the Point to be sentenc'd by the Intercession of some principal Persons of the Senate, was spared; whereupon Livy makes this grave and gracious Observation, *Neque minus firmata est Disciplina militaris periculo Quinti Maximi, quam miserabili supplicio Titi Manlii.* The Discipline of War was no less established by the questioning of Quintus Maximus, than by the punishing of Titus Manlius. And the same Reason is of the Reformation of Justice; for the questioning Men of eminent Place hath the same Terror, tho' not the same Rigour, with the Punishment.

But my Case stayeth not there; for my humble desire is, that his Majesty would take the Seal into his Hands, which is a great downfall, and may serve I hope in itself for an expiation of my Faults.

Therefore if Mercy, and Mitigation be in your Powers, and do no way cross your noble Ends, why should I not hope of your Lordships Favours

‘ Favours and Commiseration? Your Lordships
 ‘ will be pleased to behold your chief Pattern, the
 ‘ King our Sovereign, of most incomparable Cle-
 ‘ mency, and whose Heart is inscrutable for Wis-
 ‘ dom and Goodness: Your Lordships will remem-
 ‘ ber that there sat not these 200 Years before a
 ‘ Prince in your House, and never such a Prince,
 ‘ whose Presence deserves to be made memorable
 ‘ by Records and Acts mixt of Mercy and Justice.
 ‘ Your selves, either Nobles (and Compassion
 ‘ ever beats in the Veins of noble Blood) or
 ‘ reverend Prelates, who are the Servants of him
 ‘ that would not break the bruised Reed, nor
 ‘ quench the smoking Flax; you all sit upon an
 ‘ high Stage, and therefore cannot but be more
 ‘ sensible of the Changes of the World, and of
 ‘ the Fall of any of High Place.

‘ Neither will your Lordships forget, that
 ‘ there are *vitia temporis* as well as *vitia hominis*;
 ‘ and that the beginning of Reformations hath
 ‘ the contrary Power of the *Pool of Bethesda*,
 ‘ for that had strength to cure only him, that
 ‘ is first cast in, and this hath strength to hurt
 ‘ him only, that is first cast in: And for my
 ‘ part I wish it may stay there, and go no fur-
 ‘ ther.

‘ *Lastly*, I assure my self your Lordships have
 ‘ a noble feeling of me as a Member of your
 ‘ own Body; and one thing there was, that in
 ‘ this very Session had some taste of your loving
 ‘ Affections, which I hope was not a Lightning
 ‘ before Death, but rather a Spark of that
 ‘ Grace, which now in conclusion will more ap-
 ‘ pear.

‘ And therefore my humble Suit unto your
 ‘ Lordships is, that my penitent Submission may
 ‘ be my Sentence, and the Loss of the Seal
 ‘ my Punishment, and that your Lordships will
 ‘ spare my farther Sentence: But recommend
 ‘ me to his Majesty’s Grace and Pardon for
 ‘ all that is past. God’s Holy Spirit be among
 ‘ you.

Your Lordships humble Servant

April 22.
 1621.

and Suppliant,

Fran. St. Albans, *Canc.*

The Lords having consider’d of this Submission,
 and heard the Collections of Corruptions charged
 upon the said Lord Chancellor, and the Proofs
 thereof read, they sent a Copy of the same with-
 out the Proofs unto the Lord Chancellor by Mr.
 Baron *Denbam*, and Mr. * Attorney-
 General, with this Message from
 their Lordships, *viz.* That the
 Lord Chancellor’s Confession is not fully set down
 by his Lordship in the said Submission, for three
 Causes.

1. *First*, His Lordship confesseth not any par-
 ticular Bribe or Corruption.
2. Nor sheweth how his Lordship heard the
 Charge thereof.
3. The Confession, such as it is, is afterwards
 extenuated in the same Submission. And there-
 fore the Lords have sent him a particular of the
 Charge, and do expect his Answer to the same
 with all convenient Expedition.

Unto which Message the Lord Chancellor an-
 swered, that he would return the Lords an An-
 swer with speed.

And on the 25th of *April*, the Lords confi-
 dered of the Lord Chancellor’s said Answer sent
 unto their Message yesterday, and sent a second
 Message unto his Lordship to this effect by the
 said Mr. Baron *Denbam*, and Mr. Attorney Gene-
 ral, *viz.* The Lords having received a doubtful
 Answer unto the Message their Lordships sent him
 yesterday, therefore they now send to him again
 to know of his Lordship directly, and presently,
 whether his Lordship will make his Confession, or
 stand upon his Defence.

Answer returned by the said Messengers, *viz.*
 The Lord Chancellor will make no manner of De-
 fence to the Charge, but meaneth to acknowledge
 Corruption, and to make a particular Confession to
 every Point, and after that an humble Submission;
 but humbly craves Liberty, that where the Charge
 is more full than he finds the Truth of the Fact,
 he may make Declaration of the Truth in such
 Particulars, the Charge being brief, and contain-
 ing not all Circumstances.

The Lords sent the same Messengers back again
 to the Lord Chancellor, to let him know, that
 their Lordships have granted him time until Mon-
 day next the 30th of *April*, by Ten in the Morn-
 ing, to send such Confession and Submission as his
 Lordship intends to make.

On which *Monday* the Lord Chancellor sent
 the same accordingly, which follows in *h.ec Verba*,
viz.

*To the Right Honourable the Lords Spiritu-
 al and Temporal, in the High Court of
 Parliament assembled:*

*The humble Confession and Submission of me the
 Lord Chancellor.*

UPON advis’d Consideration of the Charge;
 descending into my own Conscience, and
 calling my Memory to account so far as I am
 able, I do plainly and ingenuously confess, that
 I am guilty of Corruption, and do renounce all
 Defence, and put my self upon the Grace and
 Mercy of your Lordships.

The Particulars I confess and declare to be as
 followeth:

To the *first* Article of the Charge, *viz.* In the
 Cause between Sir *Rowland Egerton* and *Edward
 Egerton*, the Lord Chancellor receiv’d 300*l.* on
 the part of Sir *Rowland Egerton*, before he had
 decreed the Cause.

I do confess and declare; that upon a Reference
 from his Majesty of all Suits and Controversies be-
 tween Sir *Rowland Egerton* and *Edward Egerton*,
 both Parties submitted themselves to my Award
 by Recognizances reciprocal in 10000 Marks
à-pièce. Thereupon, after divers Hearings, I
 made my Award, with the Advice and Consent of
 my Lord *Hobart*. The Award was perfected and
 published to the Parties, which was in *February*.
 Then some Days after, the 300 Pounds, mentioned
 in the Charge, were delivered unto me. After-
 wards Mr. *Edward Egerton* flew off from the
 Award. Then in *Midsummer* Term following a
 Suit was begun in Chancery by Sir *Rowland*, to
 have

have the Award confirmed: And upon that Suit was the Decree made, mentioned in the Article.

The *second* Article of the Charge, *viz.* In the same Cause he received from *Edward Egerton* 400 *l.*

I confess and declare, that soon after my first coming to the Seal, being a Time when I was presented by many, the 400 *l.* mentioned in the said Charge, was delivered unto me in a Purse, and as I now call to mind, from Mr. *Edward Egerton*; but, as far as I can remember, it was express'd by them that brought it, to be for Favours past, and not in respect of Favours to come.

The *third* Article of the Charge, *viz.* In the Cause between *Hody* and *Hody*, he received a dozen of Buttons of the value of 50 *l.* about a Fortnight after the Cause was ended; I confess and declare, that as it is laid in the Charge about a Fortnight after the Cause was ended, it being a Suit for a great Inheritance, there were gold Buttons, about the value of 50 *l.* as is mentioned in the Charge, presented unto me, as I remember, by Sir *Thomas Perrot*, and the Party himself.

To the *fourth* Article of the Charge, *viz.* In a Cause between the Lady *Wharton* and the Coheirs of Sir *Francis Willoughby*, he received of the Lady *Wharton* three hundred and ten Pounds:

I confess and declare, that I did receive of the Lady *Wharton*, at two several times, as I remember, in Gold 200 *l.* and 100 Pieces, and this was certainly *Pendente Lite*: But yet I have a vehement Suspicion, that there was some shuffling between Mr. *Shute* and the Register, in entering some Orders, which afterwards I did distaste.

To the *fifth* Article of the Charge, *viz.* In Sir *Thomas Monk's* Cause, he received from Sir *Thomas Monk*, by the Hands of Sir *Henry Holmes*, 110 *l.* but this was three quarters of a Year after the Suit was ended:

I confess it to be true that I received 100 Pieces, but it was long after the Suit ended, as is contained in the Charge.

To the *sixth* Article of the Charge, *viz.* In the Cause between Sir *John Trevor* and *Ascue*, he received on the part of Sir *John Trevor* 100 *l.*

I confess and declare, that I received at *New-Year's-Tide* 100 *l.* from Sir *John Trevor*; and because it came as a *New-Year's* Gift, I neglected to inquire, whether the Cause was ended, or depending: but since I find, that tho' the Cause was then dismissed to a Trial at Law, yet the Equity was reserved, so as it was in that kind *Pendente Lite*.

To the *seventh* Article of the Charge, *viz.* In the Cause between *Holman* and *Young*, he received of *Young* 100 *l.* after the Decree made for him:

I confess and declare, that as I remember, a good while after the Cause ended, I received 100 *l.* either by Mr. *Toby Mathew* or from *Young* himself: but whereas I have understood, that there was some Money given by *Holman* to my Servant *Hatcher*, to that Certainty I was never made privy.

To the *eighth* Article of the Charge, In the Cause between *Fisher* and *Wrenham*, the Lord Chancellor, after the Decree passed, received a Suit of Hangings worth one hundred and three-score Pounds and better, which *Fisher* gave him by advice of Mr. *Shute*:

I confess and declare, that some time after the Decree passed, I being at that time upon remove to *York-house*, I did receive a Suit of Hangings of the value, I think, mentioned in the Charge by Mr. *Shute*, as from Sir *Edward Fisher*, towards the furnishing of my House, as some others, that were no ways Suitors, did present me with the like about that time.

To the *ninth* Article of the Charge, In the Cause between *Kennedy* and *Vanlore*, he received a rich Cabinet from *Kennedy*, apprais'd at 800 *l.*

I confess and declare, that such a Cabinet was brought to my House, tho' nothing near half the value; and that I said to him that brought it, that I came to view it, and not to receive it, and gave commandment that it should be carried back, and was offended when I heard it was not. And about a Year and an half after, as I remember, Sir *John Kennedy* having all that time refused to take it away, as I am told by my Servants, I was petitioned by one *Pinkney*, that it might be delivered to him, for that he stood engaged for the Money that Sir *John Kennedy* paid for it; and thereupon Sir *John Kennedy* wrote a Letter to my Servant *Sherborne*, with his own Hand, desiring I would not do him that disgrace as to return that Gift back, much less to put it into a wrong hand: And so it remains yet ready to be returned to whom your Lordships shall appoint.

To the *tenth* Article of the Charge, *viz.* He borrowed of *Vanlore* 1000 *l.* upon his own Bond at one time, and the like Sum at another time upon his Lordship's own Bill, subscribed by Mr. *Hunt* his Man:

I confess and declare, that I borrowed the Money in the Article set down, and that this is a true Debt; and I remember well, that I wrote a Letter from *Kew* about a twelve-month since to a Friend about the King, wherein I desired, that whereas I owed *Peter Vanlore* 2000 *l.* his Majesty would be pleased to grant me so much out of his Fine set upon me in the Star-Chamber.

To the *eleventh* Article of the Charge, *viz.* He received of *Richard Scott* 200 *l.* after his Cause was decreed, but upon a precedent Promise; all which was transacted by Mr. *Shute*:

I confess and declare, that some Fortnight after, as I remember that the Decree passed, I received 200 *l.* as from Mr. *Scott* by Mr. *Shute*, as upon some precedent Promise or Transaction by Mr. *Shute*: Certain I am I know of none.

To the *twelfth* Article of the Charge, *viz.* He received in the same Cause on the part of Sir *John Lentall* 100 *l.*

I confess and declare, that some Month after, as I remember, that the Decree passed, I received 100 *l.* by my Servant *Sherborne*, as from Sir *John Lentall*, who was not the adverse Party to *Scott*, but a third Person relieved by the same Decree in the Suit of one *Power*.

To the *thirteenth* Article of the Charge, *viz.* He receiv'd of Mr. *Worth* 100 *l.* in respect of the Cause between him and Sir *Arthur Manwaring*:

I confess and declare, that this Cause being a Cause for Inheritance of good value, was ended by my Arbitrement and Consent of Parties, and so a Decree passed of course; and some Month after the Cause was ended, the 100 *l.* mentioned in the said Article, was deliver'd to me by my Servant *Hunt*.

To the *fourteenth* Article of the Charge, *viz.* He received of Sir *Ralph Hansbye*, having a Cause depending before him, 500 *l.*

I confess and declare, that there were two Decrees, one, as I remember, for the Inheritance, and the other for the Goods and Chattels, but all upon one Bill: and some good time after the first Decree, and before the second, the said 500 *l.* was deliver'd unto me by Mr. *Toby Mathew*; so as I cannot deny but it was upon the matter *Pendente Lite*.

To the *fifteenth* Article of the Charge, *viz.* *William Compton* being to have an Extent for a Debt of 1200 *l.* the Lord Chancellor staid it, and wrote his Letter; upon which part of the Debt was paid presently, and part at a future Day. The Lord Chancellor hereupon sends to borrow 500 *l.* and because *Compton* was to pay 400 *l.* to one *Huxley*, his Lordship requires *Huxley* to forbear six Months, and hereupon obtains the Money from *Compton*. The Money being unpaid, Suit grows between *Huxley* and *Compton* in Chancery, where his Lordship decrees *Compton* to pay *Huxley* the Debt, with Damage and Coſts, when it was in his own Hands.

I do declare, that in my Conscience the stay of the Extent was just, being an Extremity against a Nobleman, by whom *Compton* could be no loser. The Money was plainly borrowed of *Compton* upon Bond with Interest, and the Message to *Huxley* was only to intreat him to give *Compton* a longer Day, and in no sort to make me Debtor or responsible to *Huxley*; and therefore, tho' I was not ready to pay *Compton* his Money, as I would have been glad to have done, save only 100 *l.* which is paid, I could not deny Justice to *Huxley* in as ample manner as if nothing had been between *Compton* and me: But if *Compton* hath been damnified in my respect, I am to consider it to *Compton*.

To the *sixteenth* Article of the Charge, *viz.* In the Cause between Sir *William Bronker* and *Awbrey*, the Lord Chancellor receiv'd from *Awbrey* 100 *l.*

I do confess and declare, that the Money was given and received; but the manner of it I leave to the Witnesses.

To the *seventeenth* Article of the Charge, *viz.* In the Lord *Mountague's* Cause he received from the Lord *Mountague* 6 or 700 *l.* and more was to be paid at the ending of the Cause:

I confess and declare, there was Money given, and as I remember, to Mr. *Bevis Thelwall*, to the Sum mentioned in the Article, after the Cause was decreed; but I cannot say it was ended, for there have been many Orders since caused by Sir *Francis Inglesfield's* Contempts: and I do remember, that when *Thelwall* brought the Money, he said, that my Lord would be yet farther thankful if he could once get his quiet. To which Speech I gave little regard.

To the *eighteenth* Article of the Charge, *viz.* In the Cause of Mr. *Dunch*, he received from Mr. *Dunch* 200 *l.*

I confess and declare, that it was delivered by Mr. *Thelwall* to *Hatcher*, my Servant, for me, as I think some time after the Decree; but I cannot precisely inform my self of the time.

To the *nineteenth* Article of the Charge, *viz.* In the Cause between *Reynell* and *Peacocke*, he received from *Reynell* 200 *l.* and a Diamond-Ring worth 5 or 600 *l.*

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I confess and declare, that at my first coming to the Seal, when I was at *Whitehall*, my Servant *Hunt* deliver'd me 200 *l.* from Sir *George Reynell*, my near Ally, to be bestowed upon Furniture of my House; adding farther, that he had received divers former Favours from me: And this was, as I verily think, before any Suit began. The Ring was receiv'd certainly *Pendente Lite*: and tho' it were at *New-Year's-Tide*, it was too great a value for a *New-Year's Gift*, tho', as I take it, nothing near the value mentioned in the Article.

To the *twentieth* Article of the Charge, *viz.* That he took of *Peacocke* 100 *l.* without Interest, Security, or Time of Payment:

I confess and declare, that I received of Mr. *Peacocke* 100 *l.* at *Dorset-house*, at my first coming to the Seal, as a Present; at which time no Suit was begun: and at the Summer after I sent my then Servant *Lister* to Mr. *Rolfe*, my good Friend and Neighbour, at *St. Albans*, to use his means with Mr. *Peacocke* (who was accounted a mony'd Man) for the borrowing of 500 *l.* and after by my Servant *Hatcher*, for borrowing of 500 more; which Mr. *Rolfe* procured, and told me at both times it should be without Interest, Script, or Note, and that I should take my own time for payment of it.

To the *twenty-first* Article of the Charge, *viz.* in the Cause between *Smithwick* and *Welsh*, he received from *Smithwick* 200 *l.* which was repaid:

I confess and declare, that my Servant *Hunt* did, upon his Account, being my Receiver of the Fines upon original Writs, charge himself with 200 *l.* formerly received of *Smithwick*, which after that I had understood the nature of it, I ordered him to re-pay, and to defalk it out of his Accompts.

To the *twenty-second* Article of the Charge, *viz.* In the Cause of Sir *Henry Rufwell*, he received Money from *Rufwell*, but it is not certain how much:

I confess and declare, that I received Money from my Servant *Hunt*, as from Mr. *Rufwell*, in a Purſe: And whereas the Sum in the Article is indefinite, I confess it to be 3 or 400 *l.* and it was about a Month after the Cause was decreed; in which Decree I was assisted by two of the Judges.

To the *twenty-third* Article of the Charge, *viz.* In the Cause of Mr. *Barker*, the Lord Chancellor receiv'd from *Barker* 700 *l.*

I confess and declare, that the Sum mentioned in the Article was received from Mr. *Barker* some time after the Decree pass'd.

To the 24th, 25th, and 26th Articles of the Charge, *viz.* the 24th; There being a Reference from his Majesty to his Lordship of a Business between the *Grocers* and the *Apothecaries*, the Lord Chancellor receiv'd of the *Grocers* 200 *l.* The 25th Article; In the same Cause he receiv'd of the *Apothecaries*, that stood with the *Grocers*, a Taster of Gold, worth between 4 and 500 *l.* and a Present of Ambergrease. And the 26th Article; He receiv'd of a new Company of *Apothecaries*, that stood against the *Grocers*, 100 *l.*

To these I confess and declare, That the several Sums from the three Parties were received: and for that it was no judicial Business, but a Concord of Composition between the Parties, and that as

I thought all had received good, and they were all three common Purfes, I thought it the lefs matter to receive that which they voluntarily presented; for if I had taken it in the nature of a corrupt Bribe, I knew it could not be concealed, becaufe it needs must be put to account to the three feveral Companies.

To the *twenty-feventh* Article of the Charge, *viz.* He took of the *French Merchants* 1000 *l.* to constrain the *Vintners* of *London* to take from them 1500 Tuns of Wine: To accomplish which he used very indirect means, by Colour of his Office and Authority, without Bill or Suit depending, terrifying the *Vintners* by Threats and by Imprisonment of their Persons, to buy Wine, whereof they had no need nor use, at higher Rates than they were vendible:

I do confess and declare, that Sir *Thomas Smith* did deal with me in behalf of the *French Company*, informing me that the *Vintners*, by combination, would not take off their Wines at any reasonable Prices; that it would destroy their Trade, and stay their Voyage for that Year; and that it was a fair Business, and concerned the State: and he doubted not but I should receive thanks from the King, and Honour by it; and that they would gratify me with a thousand Pounds for my travail in it. Whereupon I treated between them by way of persuasion, and to prevent any compulsory Suit, propounding such a Price as the *Vintners* might be gainers 6 *l.* in a Tun, as it was then maintained unto me. And after the Merchants petitioning to the King, and his Majesty recommending this Business unto me as a Business that concerns his Customs and the Navy, I dealt more earnestly and peremptorily in it, and, as I think, restrained in the Messenger's hand for a day or two some that were the most stiff; and afterwards the Merchants presented me with 1000 *l.* out of their common Purse; and acknowledging themselves, that I had kept them from a kind of Ruin, and still maintaining to me that the *Vintners*, if they were not insatiably minded, had a very competent Gain. These are the Merits of the Cause, as it then appear'd to me.

To the *twenty-eighth* Article of the Charge, *viz.* The Lord Chancellor hath given way to great Exactions by his Servants, both in respect of private Seals, and otherwise for sealing of Injunctions:

I confess it was a great Fault of neglect in me, that I look'd no better to my Servants.

This Declaration I have made to your Lordships with a sincere Mind, humbly craving, that if there should be any Mistake, your Lordships would impute it to want of memory, and not to any desire of mine to obscure Truth, or palliate any thing; for I do now again confess, that in the Points charged upon me, tho' they should be taken as my self have declared them, there is a great deal of Corruption and Neglect, for which I am heartily sorry, and submit myself to the Judgment, Grace and Mercy of the Court.

For extenuation, I will use none concerning the Matters themselves; only it may please your Lordships, out of your Nobleness, to cast your Eyes of Compassion upon my Person and Estate: I was never noted for an avaritious Man, and the Apostle saith, *that Covetousness is the Root of all Evil.* I hope also that your Lordships do the

rather find me in the State of Grace, for that in all these Particulars there are few or none that are not almost two Years old; whereas those, that have an Habit of Corruption, do commonly wax worse. So that it hath pleased God to prepare me by precedent Degrees of Amendment to my present Penitency: And for my Estate, it is so mean and poor, as my Care is now chiefly to satisfy my Debts.

And so fearing I have troubled your Lordships too long, I shall conclude with an humble Suit unto you, That if your Lordships proceed to sentence, your Sentence may not be heavy to my ruin, but gracious and mix'd with Mercy: and not only so, but that you would be noble Intercessors for me to his Majesty likewise, for his Grace and Favour.

Your Lordship's most humble

Servant and Suppliant,

Franc. St. Albans, *Canc.*

The Lords having heard this Confession and Submission read, these Lords under-named, *viz.* the Earl of *Pembroke* Lord Chamberlain, the Earl of *Arundel*, the Earl of *Southampton*, the Bishop of *Durham*, the Bishop of *Winchester*, the Bishop of *Coventry* and *Litchfield*; the Lord *Wentworth*, the Lord *Cromwell*, the Lord *Sheffield*, the Lord *North*, the Lord *Chandos*, the Lord *Hunsdon*, were sent to him the said Lord Chancellor, and shewed him the said Confession, and told him, that the Lords do conceive it to be an ingenuous and full Confession; and demanded of him, whether it be his own Hand that is subscribed to the same, and whether he will stand to it or not. Unto which the said Lord Chancellor answer'd, *My Lords, it is my Act, my Hand, my Heart; I beseech your Lordships to be merciful to a broken Reed.* The which Answer being reported to the House, it was agreed by the House to move his Majesty to sequester the Seal: and the Lords intreated the Prince's Highness that he would be pleas'd to move the King; whereunto his Highness condescended. And the same Lords which went to take the Acknowledgment of the Lord Chancellor's Hand, were appointed to attend the Prince to the King, with some other Lords added. And his Majesty did not only sequester the Seal, but awarded a new Commission unto the Lord Chief Justice, to execute the Place of the Chancellor, or Lord-Keeper.

This was on the 1st of *May*: And on *Wednesday*, the 2d of *May*, the said Commission being read, their Lordships agreed to proceed to sentence the Lord Chancellor to-morrow Morning. Wherefore the *Gentleman-Usher*, and *Serjeant at Arms*, Attendants on the upper House, were commanded to go and summon him, the said Lord-Chancellor, to appear in Person before their Lordships to-morrow Morning by nine of the Clock. And the said *Serjeant at Arms* was commanded to take his Mace with him, and to shew it unto his Lordship at the said Summons: But they found him sick in bed; and being summoned, he answer'd, that he was sick, and protested that he feigned not this for any Excuse, for if he had been well he would willingly have come.

The

The Lords resolved to proceed notwithstanding against the said Lord Chancellor. And therefore on *Thursday*, the 3d of *May*, their Lordships sent their Message to the Commons to this purpose, *viz.* ‘ That the Lords are ready to give Judgment against the Lord Viscount *St. Albans*, Lord Chancellor, if they, with their Speaker, will come to demand it.’ And the Commons being come, the Speaker came to the Bar; and, making three low Obeisances, said:

‘ The Knights, Citizens, and Burgeses of the Commons House of Parliament, having made Complaints unto your Lordships of many exorbitant Offences of Bribery and Corruption, committed by the Lord Chancellor, understand that your Lordships are ready to give Judgment upon him for the same; Wherefore I, their Speaker, in their Name, do humbly demand, and pray Judgment against him the said Lord Chancellor, as the nature of his Offence and Demerits do require.’

The Lord Chief Justice answered:

‘ Mr. *Speaker*, Upon complaint of the Commons against the Viscount *St. Albans*, Lord Chancellor, this High Court hath thereby, and by his own Confession, found him *guilty* of the Crimes and Corruptions complained of by the Commons, and of sundry other Crimes and Corruptions of like nature.

‘ And therefore this High Court having first summoned him to attend, and having his excuse of not attending, by reason of Infirmity and Sicknes, which he protested was not feigned, or else he would most willingly have attended, doth nevertheless think fit to proceed to Judgment: And therefore this High Court doth adjudge;

“ That the Lord Viscount *St. Albans*, Lord Chancellor of *England*, shall undergo Fine and Ransom of 40000 Pounds.

“ That he shall be imprisoned in the *Tower* during the King’s pleasure.

“ That he shall for ever be incapable of any Office, Place, or Employment, in the State or Commonwealth.

“ That he shall never sit in Parliament, nor come within the Verge of the Court.”

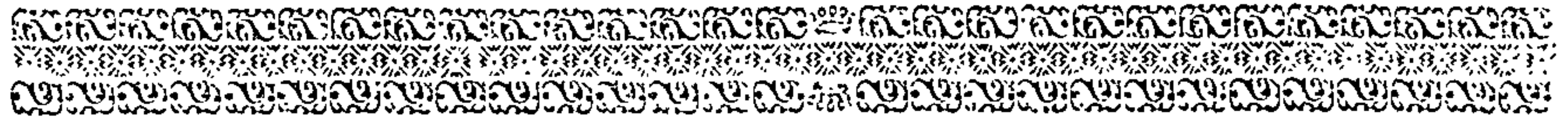
This is the Judgment and Resolution of this High Court.

Thus he lost the Privilege of his Peerage, and his Seal; and it was for some time doubtful, whether he should be allowed to retain his Titles of Honour, which was all he did, having only a poor empty Being left, which lasted not long with him, his Honour dying before him. Tho’ he was afterwards set at liberty, and had a Pension from the King, he was in great want to the very last, living obscurely in his Chambers at *Grays-Inn*, where his lonely and desolate Condition so wrought upon his melancholy Temper, that he pined away; and after all his height of Abundance was reduced to so low an Ebb, as to be denied Beer to quench his Thirst: for having a sickly Stomach, and not liking the Beer of the House, he sent now and then to Sir *Fulk Grevil* Lord *Brook*, who liv’d in the Neighbourhood, for a Bottle of his Beer; and, after some grumbling, the Butler had Orders to deny him.

He died on the 9th of *April*, 1626. being *Easter-day*, early in the Morning, in the 66th Year of his Age, at the Earl of *Arundel’s* House in *High-gate*, near *London*, to which Place he had casually repair’d about a Week before. The Distemper of which he died was a gentle Fever, accidentally accompanied with a violent Cold; whereby the Defluxion of Rheum was so great upon his Breast, that he was quite suffocated.

He was buried in *St. Michael’s* Church at *St. Albans*, being the Place directed for his Burial by his last Will, both because his Mother had been buried there before, and because it was the only Church then remaining within the Precincts of old *Verulam*; where he hath a Monument erected for him of white Marble, by Sir *Thomas Meautys*, formerly his Lordship’s *Secretary*, afterwards *Clerk* of the King’s Privy-Council, with an Inscription compos’d by the famous Sir *Henry Wotton*.





XXXI. *The Trial of MERVIN Lord Audley, Earl of Castlehaven, for a Rape and Sodomy, on the 25th of April, 1631. 7 Car. I.*

HERE were three Indictments found at *Salisbury* in *Wiltshire* against the Earl, the *Wednesday* preceding *Easter*, before the Lord Chief Justice *Hyde*, the Lord Chief Justice *Richardson*, and Baron *Denham*, Justices of Assize for that Circuit, and special Commissioners in that matter*. One Indictment was for a Rape upon his own Wife; for holding her by Force, while one of his Minions forcibly, against her Will, had carnal Knowledge of her: So that he was indicted as *Præfens*, *Auxiliarius*, and *Confortans*; and therefore a Principal. The other two Indictments were for Buggery with a Man.

The Judges, on *Friday* Morning before the Trial, being sent for, all but *Denham* being met at *Serjeants-Inn* in *Fleet-street*, these Questions were proposed them by Sir *Robert Heath*, the King's Attorney-General; a Memorial of which a learned Judge, Sir *James Whitlock*, one of the eight hereafter mentioned, set down in Writing, to the effect following.

1. Whether a Peer of the Realm might waive his Trial by Peers, and plead he will be try'd by God and the Country?

Ans. He might not: For his Trial by Peers was no Privilege, but the Law declared by *Magna Charta*; which if he would not plead to by a Trial of his Peers, it was standing mute.

2. Whether a Peer might challenge his Peers, as in the case of common Jurats?

Ans. He might not, (which I think is so, said that Judge) because they were not upon their Oath, but upon their Honour; and a Challenge is try'd whether he stands indifferent, as unworn.

3. Whether a Peer might not have Counsel any more than a Commoner?

Ans. If Matter of Law appear'd, he might; not for Matter of Fact.

Certain Examinations having been taken by the Lords without an Oath,

It was resolv'd, Those could not be used until they were repeated upon Oath. unless of the Party to be try'd; which might be read without an Oath.

4. Whether the Wife in this Case might be a Witness against her Husband for the Rape?

Ans. She might: For she was the Party wronged; otherwise she might be abused. In like manner a Villain (Vassal) might be a Witness against his Lord in such Cases.

5. Whether, if he stood mute, he could demand his Clergy?

Ans. If he stood mute in the Case of Rape or Buggery, he might have his Clergy † in either.

6. Then if he might not be put to a Trial on the other Indictment, might not he be for a later Buggery, and be deny'd the Clergy?

Ans. On that he might by 18 *Eliz.* 7.

7. Whether, in case one stood mute, Evidence might be open'd by the Court's Command concerning the Fact, tho' the Delinquent was to be press'd to Death for his Contempt?

Ans. That was a Matter which lay in the Discretion of the Court.

8. Whether in Cases wherein Clergy was allowable, the Party might pray it before he answered, and deny to answer otherwise?

Ans. This was a Confession.

9. Whether in a Rape there must be Penetration?

The Answer was in the Affirmative.

10. The Prisoner having petition'd to be bail'd, whether it might not be granted?

Ans. The King, as King, was to advise about it: The Judges acquainted the Lord Keeper he could not in Justice require it; yet he might be bail'd *ex gratia*, which was not fit in that odious Case.

At a second Meeting of the Judges in *Serjeants-Inn*, there were other Things considered of concerning this Matter.

They made a Difference between Buggery and a Rape, in point of having the Clergy if he stood mute: For it was argued he might have his Clergy if he stood mute in a Rape, but not in Buggery; because by the Statute 25 *Hen.* 8. Buggery was made Felony, which by the Common Law was not. And in the very Creation of the Offence, Clergy was taken away; whereas Clergy lay for a Rape until it was (should be) taken away by Statute.

It was concluded the Lords might eat and drink before they were agreed; but that they could not separate nor adjourn till they gave their Verdict: That this appeared out of the Lord || *Dacres* of *Greystock's* Case, who was || *Kely.* 56 try'd for Treason, and acquitted by his Peers in 26 *Hen.* 8.

It was agreed by the Justices in that Case of the Lord † *Dacres*, That Verdict could not be given by a lesser Number of Lords than Twelve; and that if twelve were for the King, and thirteen for the Prisoner,

* *Rush Col.* Vol II. p. 93—101. *Hut.* 115.

† *The Statute* of 25 *H. S. c.* 6. in Case of Buggery, and of 18 *Eliz.* c. 7. in case of a Rape, take away Clergy only from such as are convicted by Verdict, Outlawry or Confession; which don't extend to those who stand mute, 11 *Co. Rep.* 30. 6. *Poulter's* Case; but by the 7 & 4 of *Wil. & Mar.* c. 9. all who would be excluded in case of Conviction by Verdict or Confession, are excluded in case of standing mute.

soner, the Prisoner should be acquitted: That in an Appeal, if the Defendant should be mute, he should be hang'd; and it was an Attainder, it being not within the Statute of **Westminster, cap. 12. De Paine fort & Dure.* No more was Treason.

* S. P. C. Lib. 3. c. 60.

It was also agreed, That a Lord of Parliament was within the Statute of *Westminster* 1. in case of Felony, and should be press'd to Death.

Farther, That if the Lord *Audley* should have his Clergy upon his being mute, yet he might be try'd upon the other Indictments of Rape and Buggery, and should not have his Clergy, by the Statute of 18 *Eliz.* because the admitting him to his Clergy would be a Superfedas to all Indictments of Offences within Clergy, not of those without, by that Statute: For by the Common Law, he that was admitted to his Clergy was discharged from answering any other Offence; for by Indictment of that Law he was taken out of the power of the Secular Judge, and put into the hands of the Ordinary, whose Prisoner he was all his Life after.

It was resolv'd, from the Lord *Dacre's* Case, That the Lord Steward, after Verdict given, might take time to advise upon it, for any Point of Law; that his Office continued to him 'till his Judgment and Resolution; and it was but a Commission *pro hac vice* notwithstanding.

The Arraignment.

The Lord *Coventry*, Lord Keeper of the Great Seal of *England*, was appointed Lord High-Steward for that Day; who, having Orders for the said Trial from his Majesty, gave Directions for the same.

The Lords the Peers took their Places about Eight of the Clock in the Morning, and were seated on Benches on each side of a large Table, cover'd with Green Cloth; and below them were the Judges placed, and the King's learned Counsel, and the Officers of the Court. And having dispos'd of themselves in their several Places, the Lord Steward about Nine of the Clock enter'd the Hall uncover'd, with seven Maces carried before him by seven Serjeants at Arms, and was attended upon by Sir *John Burroughs*, Garter Principal King at Arms, and Mr. *James Maxwell*, Usher of the Black Rod.

After the Lord Steward had saluted all the Lords the Peers, (who saluted him again) he presently ascended the State; and being seated in the Chair, he was presented with his Majesty's Commission by one of the Masters of the *Chancery*, which bore date the 13th of *April*, 1631.

After he had received the said Commission, he commanded an *O Yes* to be made, by one of the Serjeants at Arms, for a general Silence; and then deliver'd the said Commission to Sir *Thomas Fenshaw*, Clerk of the Crown, to be openly read. Which being done, Mr. *Maxwell* kneel'd down and presented his Lordship with a White-Staff Verge of State, which he gave to one of the Serjeants at Arms, who held the same up by the Cloth of State on the Right-hand thereof. And after the Commission was read, and the Staff received as aforesaid, his Grace commanded a solemn *O Yes* to be made; and then gave leave to all the Lords the Peers, and the Judges, and to all Privy-Counsellors there present, to be cover'd; and Command was given, that none under that Degree should keep on their

Hats upon pain of Imprisonment. And then the Peers were severally called by their Names, and each of them answer'd particularly, *viz.*

1. Lord *Weston*, Lord High-Treasurer of *England*;
2. Earl of *Manchester*, Lord Privy-Seal;
3. Earl of *Arundel and Surrey*, Earl Marshal;
4. Earl of *Pembroke and Montgomery*, Lord Chamberlain;
5. Earl of *Kent*;
6. Earl of *Worcester*;
7. Earl of *Bedford*;
8. Earl of *Essex*;
9. Earl of *Dorset*;
10. Earl of *Salisbury*;
11. Earl of *Leicester*;
12. Earl of *Warwick*;
13. Earl of *Carlisle*;
14. Earl of *Holland*;
15. Earl of *Berks*;
16. Earl of *Denbigh*;
17. Viscount *Wimbleton*;
18. Viscount *Conway*;
19. Viscount *Dorchester*;
20. Viscount *Wentworth*;
21. Lord *Percy*;
22. Lord *Strange*;
23. Lord *Clifford*.
24. Lord *Petre*;
25. Lord *North*;
26. Lord *Goring*;
27. Lord *Howard*.

The Judges present.

- Sir *Nicholas Hyde*, Lord Chief Justice of the King's Bench;
- Sir *Thomas Richardson*, Lord Chief Justice of the Common-Pleas;
- Sir *Humphrey Davenport*, Lord Chief Baron of the Exchequer;
- Baron *Denham*;
- Judge *Jones*;
- Judge *Hutton*;
- Judge *Whitlocke*;
- Judge *Croke*;

The King's Counsel.

- Sir *Robert Heath*, Attorney-General;
- Sir *Richard Shelton*, Solicitor-General;
- Sir *John Finch*, Queen's Attorney-General;
- Sir *Thomas Crew*, King's Serjeant at Law.

Officers of the Court.

- Sir *Thomas Fenshaw*, Clerk of the Crown;
- Mr. *John Keeling*, his Deputy or Assistant.

This done, the Lord Steward, after a solemn Precognizance, commanded the Indictments to be certified and brought in; and then, by a Serjeant at Arms, the Lieutenant of the Tower was called to bring forth the Prisoner, (who until that time was kept in a little Room by the *Common-Pleas*) and the Lieutenant brought him to the Bar, with divers of the Guard attending on him, where he had a Place in manner of a Pew, lin'd with Green, in which he stood; and the Lieutenant had another of the same Form for him to rest in, adjoining to it. And when he had done his Obedience to the

Lord

Lord High-Steward and the Peers, (who all re-saluted him again) the Lord High-Steward spake to him in the manner following :

The Lord High Steward's Speech.

My Lord Audley,

THE King hath understood, both by Report and the Verdict of divers Gentlemen of Quality in your own Country, that you stand impeach'd of sundry Crimes of a most high and heinous nature ; and to try whether they be true or not, and that Justice may be done accordingly, his Majesty brings you this day to your Trial, doing herein like the mighty King of Kings, in the 18th of *Genesis*, ver. 20, 21. who went down to see whether their Sins were so grievous as the Cry of them : *Because the Cry of Sodom and Gomorrah is great, and their Sins be grievous, I will go down (saith the Lord) and see whether they have done altogether according to the Cry of it.* And Kings on Earth can have no better Pattern to follow than the King of Heaven ; and therefore our Sovereign Lord the King, God's Vicegerent here on Earth, hath commanded that you shall be here tried this day, and to that end, hath caus'd these Peers to be assembled : and the Desire of his Majesty is, that your Trial shall be as equal as Equity and Justice itself ; and therefore these noble Men your Peers (whose Hearts are as full of Integrity, Justice and Truth, as their Veins full of noble Blood) are this Day to try you. Wherefore, if you be innocent, speak boldly and confidently, and fear not to justify your self ; and be assur'd that those that accuse you (if you be free your self) shall not escape free. But if you be guilty of those Crimes, I advise you to give Honour to God and the King, and confess your Fault ; for it is not vain Confidence, nor Subtilty, nor standing out in Denial, that can hide the Truth ; and all Shifts and Subtilties against it are but *Corficia adversus Dominum*. Therefore, if Truth touch you at the Heart, and your Conscience, which is a thousand Witnesses, and God's Grace, which is greater than both, stand not out against it : And if you do, God will put it into the Hearts of these noble Persons to find it out, and to do that which is just.

The Lord Audley's Answer.

May it please your Grace,

I Have been close Prisoner these six Months, without Friends, without Counsel or Advice : I am ignorant of the Advantages and Disadvantages of the Law, and am but weak of Speech at the best, and therefore I desire to have the liberty of having Counsel to speak for me.

The Lord High Steward's Reply.

FOR your so long Imprisonment, it hath been to you a special Favour ; for you have had time enough to be-think your self, and more than ever any Man had that hath been committed for such an Offence, and more Favour than ever any had that came to this Bar ; and you shall demand nothing, which the Law can allow, but you shall have it. But for your Demand, I must move it

to the Lords the Judges, and they shall satisfy you in it, or any other thing you desire.

Then his Grace desired to be resolv'd of the Judges, Whether this Demand of my Lord *Audley*, to have Counsel to plead for him, might be granted or not ?

The Judges answered, That, in Criminal Cases, Counsel is not to be admitted for Matter of Fact ; but for Matter of Law they may.

Then the Lord Steward proceeded to the Charge, commanded the three Indictments to be read by Sir *Tho. Fenshaw*, Clerk of the Crown ; two for Sodomy with *Lorenzo Fitz-Patrick*, his Footman ; the third for a Rape committed on his own Wife, the Countess of *Castilhaven*.

Then being ask'd, whether he was Guilty of them, or Not Guilty ? He answer'd, Not Guilty.

Then he was ask'd, How he would betry'd ?

The Earl said, By God and my Peers.

Whereupon the Peers put off their Hats ; and thereupon the Issue was join'd.

The Lord High-Steward's Speech to the Lords.

My Lords,

THE Prisoner stands indicted for a Rape, by one Indictment, and of Sodomy * by two ; and he hath pleaded, Not Guilty to them all : It is my Duty to charge you with the Trial of it, and you are to judge of it.

The Offences wherewith he stands charged, are to be proved by Evidence ; and the Crimes that come this Day before us, may in some breed Detestation, and the Perion of his Lordship in others may breed Compassion ; I desire your Lordships to set these two aside, and let your Reason sway your Judgment, and let that rule your Affections, and your Hearts your Heads ; for neither of these ought to be put into the Ballance, for a Grain on either side may sway the Scale. You are to give attentive Hearing, and then to weigh equally, that the Scale may lean the right way. The Judges will assist you in the Points of Law, which, if you doubt of, you are to expound it to me, and I to them. And this you are to do without Corporal Oath ; for the Law conceiveth you of such Integrity, that you will do that for Justice, which others do upon their Oaths ; and therefore admits of no Challenge : and God direct you to do as you ought.

Then Sir *Tho. Crew* gave the first Charge ; and after him Mr. Attorney said as followeth.

My Lord Steward,

MAY it please your Grace, there are three Indictments against *Mervin Lord Audley* ; the first for a Rape, the other two for Sodomy.

The Person is honourable ; the Crimes of which he is indicted dishonourable ; which if it fall out to be true (which is to be left to Trial) I dare be bold to say, never Poet invented, nor Historian writ of any Deed so foul. And although *Suetonius* hath curiously set out the Vices of some of the Emperors who had absolute Power, which might make them fearless of all manner of Punishment, and besides were Heathens, and knew not God ; yet none of these came near this Lord's Crimes.

* See a Pretence of this kind drawn with great Deliberation in *Stafford's Case*. Co. Entr. 351. d.

The one is a Crime, that I may speak it to the Honour of our Nation, is of such Variety, that we seldom or never knew of the like; but they are all of such a pestilential Nature, that, if they be not punish'd, they will draw from Heaven a heavy Judgment upon this Kingdom.

Whereupon (Mr. Attorney digressing from the Matter) the Lord *Audley* would have interrupted him, and requir'd to hold him to the Points in the Indictments. But the Lord High Steward desir'd his Lordship to be patient, and assur'd him he should be heard in fit time at full. Whereupon Mr. Attorney proceeded again in his Charge as followeth:

May it please your Grace.

I can speak it with Joy and Comfort, that during all my Time of Service, both in his Majesty's Father's Time, and since he came to the Crown, I had never the like Occasion to speak in this place against a Peer of the Realm before now; and God knows I do it now with Sorrow, and I hope I shall never have the like Occasion to do so much again. But his Majesty, who is the Pattern of Virtue, not only as King, but in his Person also; in whom it is hard to judge whether he most excels in Justice or Mercy, (but I rather think in Mercy) would have my Lord *Audley* the Prisoner at the Bar, heard with as much Favour as such a Crime can admit: and when he first heard of it, he gave strict Command, that the Truth should be search'd out, that his Throne and People might be clear'd from so heavy and heinous Sins; and thereupon he was indicted in his own Country: according to the Law, and by Gentlemen of Worth and Quality. The Bill was found; and now he is personally brought to the Bar to be tried by these his honourable Peers, such of whose Wisdom and Sincerity there can be no question, but that he shall have just and honourable Trial. And first, I shall begin with the Indictment of Rape. *Bracton* tells us of King *Athelstane's* Law before the Conquest: *If the Party were of no chaste Life, but a Whore, yet there may be a Ravishment; but it is a good Plea to say she was his Concubine.*

In an Indictment of Rape, there is no Time of Prosecution necessary; for *nullum Tempus occurrit Regi*: But in Case of an Appeal of Rape, if the Woman did not prosecute in convenient Time, it will bar her.

If a Man take away a Maid by Force, and ravish her, and afterwards she give her Consent and marry him, yet it is a Rape.

For the *Crimen Sodomiticum*, our Law had no knowledge of it 'till the 25th of *Hen. VIII.* by which Statute it was made Felony: and in this there is no more Question, but only, whether it be *Crimen Sodomiticum sine Penetratione*; and the Law of 15 *Eliz.* sets it down in general Words: and where the Law doth not distinguish, neither must we. And I know you will be cautious how you will give the least Mirigation to so abominable a Sin, which brought such Plagues after it, as we may see in *Gen. 17. Levit. 18. Judg. 19. Rom. 1.* But (my Lord) it seem'd to me strange at the first, how a Nobleman of his Quality should fall to such abominable Sins; but when I found he hath given himself over to Lust, and that *Nemo repente fit pessimus*, and if once Men habit themselves in Ill, it

is no marvel if they fall into any Sins, and that he was constant to no Religion, but in the Morning he would be a Papist and go to Mass, and in the Afternoon a Protestant and go to a Sermon: When I had consider'd these Things, I easily conceiv'd, and shall be bold to give your Grace a Reason why he became so ill. He believ'd not God, he had not the Fear of God before his Eyes; he left God, and God left him to his own Wickedness: and what may not a Man run into? What Sin so foul, what Thing so odious, which he dares not adventure? But I find in him Things beyond all Imagination: for I find his ill Imagination and Intentions bent to have his Wife naught with the wickedest Man that ever I heard of before: for who would not have his Wife virtuous and good, how bad soever himself be? And I find him Bawd to his own Wife. If she loved him, she must love *Skipwith*, (whom he honour'd above all) and not any honest Love, but in a dishonest Love; and he gives his Reason by Scripture, *She was now made subject to him*; and therefore if she did ill at his Command, it was not her Fault but his, and he would answer it. His irregular Bounty toward *Skipwith* was also remarkable. He lets this *Skipwith* (whom he calls his Favourite) spend of his Purse 500 *l. per Annum*; and if his Wife or Daughter would have any thing, tho' never so necessary, they must lie with *Skipwith*, and have it from him, and not otherwise; also telling *Skipwith* and his Daughter-in-Law, he had rather have a Child by him than any other. But for these things, I had rather they should come of the Witnesses Mouths than from me: and thereupon desir'd that the Proofs might be read.

The Deposition of Walter Bigg.

Walter Bigg depos'd, That *Amptil* was a Page to Sir *H. Smith*, and had no more Means when he came to my Lord *Audley*, but the Mare he rode on. He entertain'd him as his Page eight Years, and afterwards let him keep Horses in my Lord's Grounds, by which I think he enrich'd himself 2000 *l.* but he never sat at Table with my Lord 'till he had marry'd his Daughter, and then he gave him to the Value of 7000 *l.*

That *Skipwith* was sent from *Ireland* to be my Lady's Page; and that his Father and Mother were very poor Folks there. He spent of my Lord's Purse *per Annum* 500 *l.* and he gave him at one time 1000 *l.* and hath made divers Deeds of Land unto him.

My Lord was first a Protestant; but after, by buying of *Fount-hill*, he turn'd his Religion.

That *Henry Skipwith* had no Means when he came to him, and that he had given him 1000 *l.* and that *Skipwith* lay with him when he was straiten'd in Rooms; and that he gave a Farm of 100 *l. per Annum* to *Amptil* that married his Daughter, and at other times to the value of 7000 *l.* and that there was one *Blandina* in his House fourteen Days, and bestowed an ill Disease there, and therefore he sent her away.

The Lord *Audley's* Examination taken before the Lord-Keeper, Lord-Treasurer, Lord-Marshal, and others; which being shew'd to him, subscrib'd with his own Hand, he would not acknowledge, but excus'd it, saying his Eyes were bad; but being perfectly read, he acknowledg'd it.

My Lord-Steward's Advice to my Lord *Audley*.

My Lord,

I would advise you not to deny the Things which are clearly prov'd; for then the Lords will give less Credit to the rest you say.

The Countess of Castlehaven's Examination.

That shortly after the Earl marry'd her, *viz.* the first or second Night, *Amptil* came to the Bed's side, while she and her Husband were in Bed, and the Lord *Audley* spake lasciviously to her, and told her, *That now her Body was his; and that if she lov'd him she must love Amptil; and that if she lay with any other Man with his Consent, it was not her Fault, but his; and that if it was his Will to have it so, she must obey, and do it.*

That he attempted to draw her to lie with his Servant *Skipwith*; and that *Skipwith* made him believe he did it, but did it not.

That he would make *Skipwith* come naked into his Chamber, and delighted in calling up his Servants to shew their Privities; and would make her look on, and commended those that had the largest.

That one Night, being a-bed with her at *Fountainhill*, he call'd for his Man *Brodway*, and commanded him to lie at his Bed's Feet; and about Midnight (she being asleep) called him to light a Pipe of Tobacco. *Brodway* rose in his Shirt, and my Lord pull'd him into Bed to him and her, and made him lie next to her; and *Brodway* lay with her, and knew her carnally, whilst she made Resistance, and the Lord held both her Hands, and one of her Legs the while: and that as soon as she was free, she would have kill'd herself with a Knife, but that *Brodway* forcibly took the Knife from her and broke it; and before that Act of *Brodway*, she had never done it.

That he delighted to see the Act done; and made *Skipwith* to come into Bed with them, and lie with her whilst he might see it; and she cry'd out to have sav'd herself.

Then *Lawrence Fitz-Patrick* was produc'd; but before his Examination was read, the Earl desir'd that neither he, nor any other, might be allow'd Witnesses against him, until he had taken the Oath of Allegiance. This was referr'd to the Lords the Judges.

The Judges resolve against him, that they might be Witnesses, unless they were convicted Recusants.

The Examination of Fitz-Patrick was then read, the Truth of which he then again confirm'd upon Oath.

That the Earl had committed Sodomy twice upon his Person: that *Henry Skipwith* was the special Favourite of my Lord *Audley*, and that he usually lay with him; and that *Skipwith* said, that the Lord *Audley* made him lie with his own Lady; and that he saw *Skipwith* in his sight do it, my Lord being present: and that he lay with *Blandina* in his sight, and four more of the Servants, and afterwards the Earl himself lay with her in their sights.

Then Skipwith was produc'd and sworn, and his Examination read, which he again confirm'd upon Oath, and deposeth, viz.

That the Earl often solicited him to lie with the young Lady, and persuaded her to love him; and to draw her thercunto, he urg'd that his Son lov'd her not; and that in the end he usually lay with the young Lady, and that there was Love between them both before and after; and that my Lord said, he would rather have a Boy of his begetting than any other; and that she was but twelve years of Age when he first lay with her, and that he could not enter her Body without Art; and that the Lord *Audley* fetch'd Oil to open her Body, but she cry'd out, and he could not enter; and then the Earl appointed Oil the second time; and then *Skipwith* enter'd her Body, and he knew her carnally; and that my Lord made him lie with his own Lady, but he knew her not, but told his Lord he did.

That he spent 500 *l.* per *Ann.* of the Lord's Purse, and, for the most part, he lay with the said Earl.

That the Earl gave him his House at *Salisbury*, and a Mannor of 600 *l.* per *Ann.*

That *Blandina* lay in the Earl's House half a year, and was a common Whore.

Fitz-Patrick's second Examination.

That the Lord *Audley* made him lie with him at *Fountainhill*, and at *Salisbury*, and once in the Bed, and emitted between his Thighs, but did not penetrate his Body; and that he heard he did so with others.

That *Skipwith* lay with the young Lady often, and ordinarily; and that the Earl knew it, and encourag'd him in it, and wish'd to have a Boy by him and the young Lady.

That *Blandina* liv'd half a year in my Lord's House, and was a common Whore.

Edmund Scott's Examination.

He deposeth, That *Skipwith* frequently knew the young Lady, and that the Earl knew it, and encourag'd him therein.

Fry's Examination.

That *Henry Skipwith* and the young Lady lay often together, and the Earl in Company; and that then the Earl protested, that he would fain have a Boy of his begetting.

Then was read the young Lady Audley's Examination.

That she was married to her Husband by a Romish Priest in the Morning, and at Night by a Prebend at *Kilkenny*; that she was first tempted to lie with *Skipwith* by the Earl's Allurements; and that she had no Means but what she had from *Skipwith*; but she would not lie with *Parolet*; he solicited her also to lie with one *Green*.

That the Earl himself saw her and *Skipwith* lie together divers times; and nine Servants of the House had also seen it.

When

When the Earl sollicited her first, he said, that upon his Knowledge her Husband lov'd her not; and threatned, that he would turn her out of doors, if she did not lie with *Skipwith*; and that if she did not, he would tell her Husband she did.

That she being very young, he used Oil to enter her Body first: and afterwards he usually lay with her, and it was with the Earl's Privity and Consent.

Brodway's Examination, who confesseth,

That he lay at the Earl's Bed's Feet, and one Night the Earl call'd to him for Tobacco; and as he brought it in his Shirt, he caught hold of him, and bid him come to Bed, which he refus'd; but to satisfy my Lord, at last he consented, and came into the Bed on my Lord's Side: then my Lord turn'd him upon his Wife, and bid him lie with her, which he did; and the Earl held one of her Legs and both her Hands, and at the last (notwithstanding her Resistance) lay with her.

The the Earl used his Body as the Body of a Woman, but never pierc'd it, only emitted between his Thighs.

He hath seen *Skipwith* lie with the young Lady in Bed together; and when he had got upon her, the Earl stood by and encouraged him to get her with Child: and that he hath made him the said *Brodway* kiss his own Lady, and often sollicited him to live with her, telling him, that he himself should not lie long, and that it might be his Making; and that he hath said the like to *Skipwith*.

The Earl's second Examination.

The Earl desir'd to be pardon'd of those Things whereof he must accuse himself, and said, *That Condemnation should not come out of his own Mouth.*

These Testimonies being read, Mr. Attorney press'd things very earnestly, and in excellent Method against the Earl, and said,

My Lords.

‘**Y**OU have seen the Clearness of the Proofs, and I know your Wisdoms to be such, as you well know in so dark a Business clearer Proofs cannot possibly be had; for let a Man be never so wicked, or never so impudent, he will not call Witnesses to see his Wickedness; yet you see here this Point fully prov'd.’

Then he shew'd how both the Laws of God and Man were against Sodomy, and cited *Levit.* 18. towards the end, *That by these Abominations the Land is defil'd; and therefore the Lord doth visit this Land for the Iniquity thereof.* And then concludes; That God may remove and take away from us his Plagues, let this wicked Man (saith he) be taken away from amongst us.

Then the Earl (after the Lord Steward had told him he should be heard in his own Defence, with as much Patience as was admitted in his Charge) enter'd into his own Defence. But the Lord Steward advis'd him to speak pertinently; whereupon he alledg'd, that he was a weak Man, and of ill Memory, and therefore desir'd that he might not be interrupted.

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I. Then he began his Defence with Exceptions against his Wife, urging, that she was naught and dishonest with *Brodway*, by her own Confession:

Whereupon my Lord Steward answer'd, That this made against his Lordship; therefore he ought not to alledge for his Defence that Fact, as an Imputation to his Wife, which he forc'd her unto by Compulsion and Violence.

II. Then he objected against the Incompetency of the Witnesses, as the one his Wife, the other his Servants; and they drawn to this by his Son's Practice, who sought his Life: and desir'd to know, if there were not a Statute against the Incompetency of Witnesses?

The Judges resolv'd him, that there was none touching Witnesses; but in Cases of High-Treason, there was a Statute concerning Accusers.

III. Then he desir'd to be resolv'd, whether, because *Brodway* doth not depose any Penetration, but only that he emitted upon her Belly while the Earl held her, that should be judg'd Felony as for a Rape?

The Judges resolv'd it to be a Rape, and so consequently to be Felony.

IV. Then he desir'd to be resolv'd, whether his Wife is to be allow'd a competent Witness against him, or not?

The Judges resolve, That in Civil Cases the Wife may not; but in a Criminal Cause of this nature, where the Wife is the Party griev'd, and on whom the Crime is committed, she is to be admitted a Witness against her Husband.

Then the Lord High Steward desir'd the Lords the Judges to resolve the Questions which Mr. Attorney in his Charge submitted and referred to their Judgments.

1. Whether it were to be accounted *Buggery* within the Statute, without Penetration?

The Judges resolve, that it was; and that the Use of the Body, so far as to emit thereupon, makes it so.

2. Whether, it being prov'd that the Party ravish'd were of evil Fame, and of an unchaste Life, it will amount to a Rape?

The Judges resolve it to be a Rape, tho' committed on the Body of a common Strumpet; for it is the enforcing against the Will which makes the Rape; and a common Whore may be ravish'd against her Will, and it is Felony to do it.

3. Whether it is adjudg'd a Rape, when the Woman complaineth not presently? And, whether there be a Necessity of Accusation within a convenient time, as within twenty four Hours?

The Judges resolve, That inasmuch as she was forc'd against her Will, and then shew'd her Dislike, she was not limited to any time for her Complaint; and that in an Indictment, there is no Limitation of Time, but in an Appeal there is.

4. Whether Men of no Worth shall be allow'd sufficient Proofs against a Baron, or not?

The Judges resolve, that any Man is a sufficient Witness in case of Felony.

Then the Lord Steward spake, and said; My Lord, you have been graciously dealt with in this Proceeding, for it is not an usual thing in so capital and heinous Causes as this, to bring the Party and Witnesses Face to Face before Trial: but (my Lord) you have long before this time heard their Examinations, and question'd and oppos'd them Face to Face; and are thereby the better enabled to make your Defence; and his Majesty is still graciously pleas'd to continue his Goodness towards you, and hath commanded that you should be heard at full: If therefore you have any thing else to say for your self, speak it.

Whereupon the Earl answered, (having first made a solemn Protestation of his Innocency, but nevertheless implor'd the Mercy of God and the King) That he had nothing more to say, but left himself to God and his Peers, and presented to their Consideration three *Woes*:

1. *Woe* to that Man, whose Wife should be a Witness against him!
2. *Woe* to that Man, whose Son should persecute him, and conspire his Death!
3. *Woe* to that Man, whose Servants should be allow'd Witnesses to take away his Life!

And he willed the Lords to take this into their Consideration; for it might be some of their Cases, or the Case of any Gentleman of Worth, that keeps a Footman, or other, whose Wife is weary of her Husband, or his Son arriv'd to full Age, that would draw his Servants to conspire his Father's Death.

He said further, his Wife had been naught in his Absence, and had had a Child, which he conceal'd to save her Honour.

That his Son was now become 21 Years old, and he himself old and decay'd; and the one would have his Lands, and the other a young Husband: and therefore, by the Testimony of them, and their Servants added to their own, they had plotted and conspired his Destruction and Death.

And then (being thereunto required by the Lord Steward) he withdrew himself from the Bar.

Then the Lord Steward (after solemn Proclamation of Silence) address'd himself to the Lords, and said: My Lords the Peers, your Lordships have heard the Proofs, the Prisoner's Defence, all his Doubts and Questions resolv'd by the Lords the Judges; and therefore your Lordships (if you please) may withdraw your selves, if you are satisfy'd; because the Prisoner is not to be called to the Bar again, untill your Lordships are agreed upon the Verdict.

Then the Peers withdrew themselves; and after two Hours Debate, and several Advices and Conferences with the Lord Chief Justice, whom they sent for, and consulted with four several times; having in that time also sent the Earl of *Warwick*, and Viscount of *Dorchester*, together with the Lord Chief Justice, to consult with the Lord Steward, at the last they return'd to their Places: and then the Lord Steward asked them one by one, beginning at the lowest, and so ascending;

1. Whether the said Earl of *Castlehaven* was Guilty of the *Rape* whereof he stood indicted, or not? And they all gave him guilty.

2. Whether the said Earl of *Castlehaven* was Guilty of the *Sodomy* with which he was charged, or not? And fifteen of the Lords condemned him, and the other twelve freed him.

When the Verdict was thus given, the Lieutenant of the Tower was again commanded to bring the Prisoner to the Bar, to hear his Sentence; and after he was brought in, the Lord Steward said unto him:

Forasmuch as thou *Mervin Lord Audley*, Earl of *Castlehaven*, hast been indicted for divers Felonies, by three several Indictments; one for a *Rape*, the other two for *Sodomy*; and hath pleaded Not Guilty to them all, and for thy Trial thou hast put thy self upon God and thy Peers; which Trial thou hast had, and they found thee guilty of them all: What can'st thou say for thy self, why the Sentence of Death should not be pronounced against thee?

Whereupon he answered, He could say no more, but referred himself to God and the King's Mercy.

Then the Lord Steward said, My Heart grieveth for that which my Tongue must utter; but Justice is the way to cut off Wickedness, and therefore hear thy Sentence.

Thou must go from hence to the Prison from whence thou camest, and from thence to the Place of Execution, there to be hang'd by the Neck till thou be dead, and the Lord have Mercy on thy Soul.

The Lord Steward's Exhortation.

Oh think upon your Offences! which are so heinous and so horrible, that a Christian Man ought scarce to name them, and such as the deprav'd Nature of Man (which of itself carries a Man to all Sin) abhorreth! And you have not only offended against Nature, but the Rage of a Man's Jealousy! And, altho' you die not for that, that you have abused your own Daughter! And having both Honour and Fortune to leave behind you, you would have had the impious and spurious Offspring of a Harlot to inherit! Both those are horrid Crimes. But my Lord, it grieves me to see you stand out against the Truth so apparent; and therefore I will conclude with this Admonition, That God might have taken you away when you were blinded in your Sins, and therefore hope he hath reserved you as a Subject of his Mercy: and as he sends you to see this Day of Shame, that you may return unto him, so thereby in a manner he lovingly draws you to him: therefore spend the remainder of your Time in Tears and Repentance; and this Day's Work, I hope, will be a Correction from many Crimes and Corruptions.

Whereupon, at last, the Earl descended to a low Petition to the Lords, and very humbly besought them to intercede with his Majesty, that he might not suddenly cut him off, but give him Time of Repentance. And then he desired their Lordships Pardons, in that he had been so great a Stain to Honour and Nobility.

Then a Proclamation being made by a Serjeant, declaring, That the Lord High Steward's Pleasure was, that all such as had attended this Day's Service might depart; the Lieutenant of the Tower carried the Earl away, and the Court broke up.

IN pursuance of the Sentence, a Warrant was issued for his Execution upon *Saturday* the 14th of *May* following; Notice whereof was given him, and his Coffin carried into the Tower about a Week before, that he might the better prepare himself for Death: The Dean of *Paul's*, Doctor *Winerse*, failed not daily to visit him, and to see how he stood, and to settle him in his Religion.

Being brought to the Scaffold; attended by the Dean of *Paul's* and Dr. *Wickham*, together with his Servants, he saluted the noble Personages, and whole Assembly, shewing to them all a very noble, manly and chearful Countenance, such as seemed no ways daunted with the fear of Death. After a short while shewing himself to the People, he addressed himself to Prayer, the Deans accompanying him in that Exercise, but somewhat apart; which being not long, he stood upon his Legs, and leaned upon the two Deans, conferring with them. Then he turned to the Lords, and spake to this Effect:

‘ I acknowledge with Thankfulness the great Goodness of Almighty God, that it hath pleased his Divine Majesty to bestow on me many Endowments, as Honour, Riches, and the like, which I have mis-spent; having been a vicious Liver, and justly deserv'd Death, for as much, and in that the least Sin at God's hands justly deserveth Death, and no less; but for the two heinous Crimes with which I am branded, condemned, and here to suffer for, I do here deny them upon my Death, freely forgiving those that have accused me, and have been the Occasion of my Death, even as freely as I myself do desire Forgiveness at God's hands, which I hope to obtain thro' his infinite Goodness and Mercy: and somewhat the rather, by your Christian Prayers, which I expect, and humbly beg of your Lordships and this whole Assembly. Now for as much as there hath been Speech and Rumour of my Unsettledness in my Religion, I have, for Explanation thereof, not only made Confession of my Faith to these two worthy Doctors, but for better Satisfaction to the World in that Point, express the same in Writing under my Hand signed; which as it is here set down, I desire may be publickly read.’

The Confession of his Faith then was read by a young Gentleman, with a loud Voice, wherein he professes he dies in the Faith of the Church of *England*.

After which he proceeded: ‘ I acknowledge the great Justice and Mercy of the King's Majesty; his Justice in bringing me to the Bar; and his Mercy in affording me such a noble and

gracious Trial there: and I give his Majesty humble and hearty Thanks for assigning my Death to be in this Manner, contrary to the Sentence pronounced against me at my Arraignment. But there is a greater Favour than this, for which I am to render Thanks unto his Sacred Majesty, and that is, the long time I have had to repent in; whereof (praised be Almighty God) I can speak with Comfort, I have made good Use, and am now fully prepared for Death, and much the better, by the good Help and Instruction of these two worthy Men, to whom I acknowledge my self bounden, and do here, before you all, give them hearty Thanks for their great Pains taken in coming to me, praying for me, and preaching and reading to me.

‘ And I desire your Lordships to present my humble Acknowledgment to his Majesty, for his Goodness in sending them to me, and my Thanks for the same.

‘ I do also from my Heart desire and beseech Almighty God to bless the King's Majesty, the Queen, and the young Prince, together with all such other Issue as he shall hereafter in Mercy bestow on them, and the whole State; and my Trust and Desire is, there may be ever one of their Line to sway the Scepter of these Kingdoms to the World's end.

‘ And I beseech, and do heartily pray for the Welfare and happy Prosperity of the King and Queen of *Bohemia*, with all their Princely Issue. I do again desire your Lordships to make Tender of my humble Acknowledgment of his Mercy and Goodness.

‘ And now lastly, That you will not bend your Eyes so much upon me, as your Hands and Hearts to Heaven in Prayers for me; and so I take my last Farewel of your Lordships and the World.’

Then he went again to his private Prayers; which being done, he prepar'd himself for Death, striving to shew the like Courage and Magnanimity which he had formerly done, unto the last: but Sight of the Headsman (whom yet he freely forgave, and took him by the Hand, bidding him do his Office manfully) together with the Apprehension of his near approaching End, made him somewhat to change Colour, and shew some Signs of trembling Passion; for his Hands shook a little in undoing his Band-strings; which his Man perceiving, stept to him and helpt him, as also off with his Doublet. Then taking leave again of the Lords, the Doctors, and his Man, saying a very short Prayer by himself, he pulled down his Handkerchief over his Face, and laid his Head upon the Block; which was taken off at one Blow.

XXXII. *The Trial of LAWRENCE FITZ-PATRICK and GILES BRODWAY, two Servants of the before-mentioned Lord Audley, Earl of Castlehaven, at the King's-Bench, for a Rape and Sodomy, the 27th of June, 1631. Trin. 7 Car. I.*



ON Monday the 27th of June 1631, the Marshal of the King's-Bench brought Fitz-Patrick and Brodway to the Bar, where was a Jury of sufficient and able *Wiltshire* Men, impannell'd to go upon and try them*.

The Countess of *Castlehaven* herself was in Court, to give Evidence against *Brodway*; and she came in upon the Instant, when the Lord Chief Justice † demanded of her, Whether the Evidence she had formerly given at her Lord's Arraignment was true, and the full Matter of Charge she had then to deliver against the Prisoner?

Whereunto she answer'd, It was.

My Lord said; Madam, you have sworn that *Brodway*, Prisoner at the Bar, hath lain with you by Force, which may be, and yet no Act committed: Did he enter your Body?

She said, That in her former Oath taken, when she testified he lay with her by Force, her Meaning was, that he had known her carnally, and that he did enter her Body.

Then was she wished to look on the Prisoner; unto which Motion and Commandment she made a short Reply, That altho' she could not look on him, but with a kind of Indignation, and with Shame, in regard of that which had been offer'd unto her, and she suffer'd by him, yet she had so much Charity in her, and such Respect to God and his Truth, that she had deliver'd nothing for Malice; and therefore hoped that her Oath and Evidence thereupon should be credited: and so desired to be believed and dismiss'd. Which being granted, she departed with as much Privacy as might be into her Coach.

Fitz-Patrick being asked concerning his Guiltiness or Innocency, demanded, who were his Accusers? The Lord Chief Justice answer'd, You have accused your self sufficiently. *Fitz-Patrick* replied, That he thought neither the Laws of the Kingdom required, nor was he bound to be the Destruction of himself; what Evidence he had formerly given, was for the King against the Earl, and no further.

The Lord Chief Justice replied, It was true, the Law did not oblige any Man to be his own Accuser; yet where his Testimony serv'd to take away any one's Life, and made himself guilty of the same Crime, therein it should serve to cut him off also.

Then the Jury demanded of the Court Satisfaction concerning the Words of the Statute, which

run, *To charge him alone to be, and accounted a Felon in Law, that committed a Buggery with Man or Beast.* (Of which Fact the late Earl was found guilty, and had suffered.)

The Lord Chief Justice replied, That forasmuch as every Accessary to a Felon is a Felon in Law; so he being a voluntary Prostitute, when he was not only of Understanding and Years to know the Heinousness of the Sin, but also of Strength to have withstood his Lord, he therefore was so far forth guilty.

Whereupon the Jury found the Bill, and the Sentence of Death was pass'd on them both; and they were deliver'd and committed to the Sheriff of *Middlesex*, who, after he had suffer'd them to have some Repast at Mr. *Hill's* in the *Palace-Yard*, and Conference with their Friends, carried them to *Newgate*, where they behav'd themselves civilly and religiously.

As soon as they were found Guilty, the Judges of the Court wrote this Letter to the Lord Keeper to prepare him for the King.

Right Honourable,

‘ M A Y it please your Lordship to be inform'd, That this day *Giles Brodway* and *Lawrence Fitz-Patrick* were tried before us in the *King's-Bench*, for the several Offences of *Rape* and *Buggery*, of which they were indicted, and they have received Judgment of Death: but we forbear awarding Execution, upon a Message sent from your Lordship by Sir *Thomas Fenshaw*, of his Majesty's Pleasure for the Stay of Execution, until further Direction from his Majesty: but conceiving there is great Cause to put the Malefactors to Execution, we thought it our Duty to acquaint your Lordship with the Passages of the Trial, that his Majesty by your Lordship's means being made acquainted therewith, may signify his further Pleasure.

‘ *Brodway*, who was arraigned for the *Rape*, verily impudently denied his own Confession, taken before the Lords the Peers in the Trial of my Lord *Audley*: He pretended he was amazed and knew not what he subscribed; and professed himself guiltless, with great Execrations. He would not be satisfied, unless the Lady was produced Face to Face, which she was; who by her Oath, *viva voce*, satisfy'd the Auditors, both concerning the Truth of the Fact and his own Impudence.

‘ *Fitz-*

* *Rash. Col. Vol II. p. 102.*

† *Sir Nicholas Hyde.*

‘ *Fitz-Patrick*, who was arraigned for the *Buggery*, confessed his Examination to be true; but like one very ignorant, or rather senseless, would have them true against the Lord *Audley*, and not against himself, which was impossible: He pretended he was promised Security from Danger, if he would testify against the Lord *Audley*; and so sought to raise a Suspicion, as if he had been wrought upon, to be a Witness to bring the Lord *Audley* to his End. They were both found guilty, to the full Satisfaction of all that were present; and we for our parts thought it to stand with the Honour of common Justice, that seeing their Testimony had been taken to bring a Peer of the Realm to his Death, for an Offence as much theirs as his, that they should as well suffer for it as he did, lest any Jealousy should arise about the Truth of the Fact, and the Justice of the Proceedings. But upon receipt of your Lordship’s Message, we have stopt the Execution till his Majesty’s further Pleasure be known; to which we shall humbly submit our selves, and rest

At your Lordship’s Command,

*N. Hyde, W. Jones,
J. Whitlock, G. Croke.*

The King by this means being truly informed how things stood, signified his Pleasure, that they should be executed, but to have a Week’s time for Repentance.

ON Wednesday, the 6th of July 1631, they were brought to *Tyburn*; where, when the Executioner had ty’d the Halter about *Fitz-Patrick’s* Neck, he said:

‘ Forasmuch as I am here, and, as it were, upon the Instant to suffer Death, I desire all loving Subjects and Members of the Church of *Rome* to pray for me.’ Then he proceeded to pray to our Saviour, his Mother, and the Saints; in which he was interrupted by some Gentlemen, who told him, that the Beginning of his Prayer was good, for that he offer’d it to Christ Jesus, in whom only Salvation is to be found; as for the *Virgin Mary*, and the Saints, they could do him no good. But notwithstanding he persisted, saying, ‘ O yes, the blessed *Virgin* never forsook or fail’d any that trusted in, or called upon her; and therefore he would depend upon her and the rest of the Saints; and so proceeded to an Exhortation to Mr. *Brodway*, to cleave to the same Opinion, and die in the *Romish* Faith; for which to have him do, he said, ‘ if he had it, he would give the whole World.’ Unto which Motion *Brodway* gave no Answer, or seemed not to regard it. ‘ Then he proceeded to shew how he had been examin’d by my Lord Chief Justice, touching the Corruptness of my Lord of *Castlehaven’s* Life, wherein he said he confess’d nothing to prejudice the said Earl.

‘ That being within three days after sent for before the Lords of the Council, my Lord *Dorset* had entrapp’d and ensnar’d him to his Destruction; for saying upon his Honour, and speaking it in the plural Number (as the Mouth of the whole Board) that whatsoever he deliver’d should no ways prejudice himself, he

‘ thereby got him to declare the Earl guilty of the Sin of *Buggery*; wherein himself being a Party, was the only Cause he came now to suffer Death: for which his Lordship’s Skill and Policy in sifting him, together with a Dispensation of his Promise and Oath, he freely forgave him; saying farther, the said Lord had done him no Wrong, because he therein was but an Instrument to send him out of this World into a better. Then he demanded of the Company, if the Earl deny’d the Sin at his Death; and wish’d my Lord had not (if he did) for it was too true; his Lordship had both bugged him, and he his Lordship. That it was true (for some private Discontentment) he bore a little Malice to the Earl and *Skipwith*, for which he ask’d God Forgiveness. That for *Brodway*, if he had done any thing to the Counts, he did it not out of his own ill corrupt Nature, but was provok’d and persuaded to it by the Earl.

‘ He clear’d the young Lord, as never being any Occasion or Means of his Father’s Death, in hiring, or persuading him to give Evidence, as he had done. He confess’d he had liv’d an ill Life, in that he had delighted in Drinking, Whoring, and all manner of Uncleaness; but now, as he was heartily sorry, so he doubted not of Mercy of Almighty God, to pardon and forgive him all his Sins, thro’ and for the Merits and Mediation-sake of *Christ Jesus*, the blessed *Virgin*, and the Saints in Heaven.

‘ That he had fallen or run into these Sins, (and especially that which he came to die for) by reason he had neglected, and not so duly, as he should have done, repair’d to his ghostly Father, to make Confession, and take Instructions from him. That after he did make Confession, and his Sins known to the Priest, he was not only sorry for them, but also resolv’d never to come into my Lord’s House again; but it was thro’ Frailty, and because he was not furnish’d of another Place.’

So turning again to *Brodway*, and persuading him to embrace the *Romish* Faith, wherein, as he perceiv’d, his labour was in vain, so the Sheriff and other Persons of Quality willed him to forbear, and shut up his Discourse, unless he had any thing more to say to the purpose. Whereupon, praying for the King, Queen and State, he betook himself to private Prayer, and therein for the most part continu’d to his Death.

Brodway came, (and as it was thought by the Company, a true Penitent) and after fetching a deep Sigh at the sight of the Tree, he lifted up his Eyes and Hands towards Heaven, making and saying to himself two short Prayers; so attending *Fitz-Patrick’s* Discourse, he sat in private Meditation, often making it manifest he was in Prayer most of the time, and also rejoicing at the Assembly’s well wishing of him; for which he return’d Smiles and Thanks. His Time being come to stand up, and have the Halter put about his Neck, and so declare himself, he willingly suffer’d the one, and proceeded to the other. First asking *Fitz-Patrick* if he had done, he pull’d a Sheet of Paper out of his Pocket; which being writ broadways, he could not spread it to read, therefore desir’d to have his Hands unty’d; which was done, and he read it distinctly to the Assembly; the effect whereof was, to declare himself guilty,

in the sight of Almighty God; of Death and Damnation; for that he had broke all the Commandments, in Thought, Word; and Deed, and sinn'd in pride of Life, lust of the Eye, conceit of his own Beauty, matchless Strength, and other natural Gifts, in desire of Revenge, not pitying the Poor, unlawful Riches, not repairing to Sermons, not observing the Sabbath, &c. For all which and other his Sins whatsoever, he both desir'd of, and trusted in God for Pardon, and that thro' and for the only Merits of our Saviour Christ Jesus, his bitter Death and Passion. He express'd a strong Assurance, which his very Soul had, of Forgiveness, in that, thro' the Assistance of the Holy Ghost, he had laid such hold on Christ as he had done. This Paper-writing contain'd his Confession and Prayer; also (as I remember) something of his slender Guiltiness and Desert of Death, but not so much. Then delivering that to the Sheriff, he open'd a little Book, intitled, *Learn to die*, and desired the Company to join with him; so reading over three short Prayers, the last whereof was compos'd only of Confession, and for Pardon, which Prayer he pronounced with great Comfort, at every *Amen* clapping himself on the Breast; he clos'd it up, and gave it to his ghostly Father, a Minister and Kinsman of his, who came along with him on horseback close by the Cart. Then he pull'd out a little Paper, which contain'd a Prayer of his own making; and when he had read it, and every one join'd with him in the *Amen*, he commended it also to the Sheriff; and then throwing away his Posy of Flowers, he roused himself, and said to this effect:

'Gentlemen, tho' true it is, what I formerly have deliver'd touching my Guiltiness and Desert of Death, my Meaning was, and is, only in respect of my Sins towards God, and no further for Breach of the Laws of the Kingdom, than only lying once with the Lady *Castlehaven*, thro' Persuasion of the Earl, who was then in Bed with her; and using some small Force for the purpose, I did emit, but not penetrate her Body. I came not to my Lord with a Desire or Intent any ways to serve him, but was rather inclin'd for the Sea; only Mr. *Skipwith* had drawn me thither for Society-sake: and not hearing from my Friends concerning my intended Voyage, and being more kindly respected by the Earl than I look'd for, I staid from Week to Week, and Month to Month, contrary to my Intention. Then my Lord, making me his Bed-fellow, did one Day, when *Skipwith* was with him in the Garden, (but walking somewhat apart) break out in Speeches to me to this purpose: *Brodway*, thou art young, lusty, and well-favour'd, and therefore canst not but prevail with any Woman thou attemptest; wherefore for that I am old, and cannot live long, my Wife wholly delighting in Lust, which I am neither able nor willing to satisfy, thou may'st do well to lie with her; and so pleasing her, after my Death marry her, and thereby raise thy Fortune. *Fitz-Patrick* knows my Lord had sollicit'd me again and again, hearing him use this Language when we have been in Bed together, and he lying at the Bed's Feet.' Which to clear, he charg'd *Fitz-Patrick* to speak his Knowledge; who reply'd, 'Twas true. Then he was ask'd by one of the Lords, *Whether, when my Lord sollicit'd him, my Lady desired to have him know her carnally?* To whom he said, *No, he*

would not wrong her, tho' she hated him infinitely. But, said he, I know well, if I were minded, and able to proffer, she would not say nay; for Mr. Skipwith and Amptil lay with her commonly.'

He added, 'That *Skipwith* confess'd to him, he had often known her, and gotten a Child upon her, which she, like a wicked Woman, had made away; which was the only and sole Occasion he the said *Skipwith* now hated her, and therefore had turned to the young Lady *Audley*: all which he presum'd *Skipwith* would confess upon his Oath. That the Countess was the wickedest Woman in the World, and had more to answer for than any Woman that lived, as he thought.' At which Words, that Lord which ask'd him the former Question, said, Grow not into a Passion, Mr. *Brodway*, and speak nothing for Malice. He answer'd, 'God forbid I should, I am in Charity with all living People, and do as freely forgive my Lady *Castlehaven*, as I do desire God to forgive me; but what I speak, is true, as I shall presently answer before him that redeem'd me, and the Holy Ghost who sanctify'd me: To whom be all Honour and Glory, now and for evermore. *Amen.*'

Then he proceeded farther, and said, 'That my Lord would have had him done it long before: for one Night coming to him to his Bed-side, he caught him, and bid him come to Bed to him and his Wife: that thereupon he made to him as if he would; but being got from him, departed the Chamber, never intending to do so foul a Deed; and that for the Reasons aforesaid he hated her of all Women living. Howbeit, that one time, satisfying my Lord's Desire, he came to Bed to them, where (being gratify'd) Nature provok'd him to a kind of Desire, and he emitted, but did not enter her Body, as he hoped for Salvation; that he never knew any Woman carnally whilst he lived in my Lord's House.

'That it was not his Intentions to bring to light either my Lord's or my Lady's Shame; but that when he was upon his Oath he could not but speak the Truth, his Nature being never prone to Lying; or if it were in his Youth, the good Correction of his Parents had wean'd him from it, saying, that his Mother had often told him the old Proverb, *A Lyar is worse than a Thief*; and he thought he had more Stripes for that than all Faults else whatsoever: that he had, as he hoped, spoke nothing of Moment against my Lord at his Arraignment; he could not now remember every thing; if he had, he desired pardon.' And so concluding his Speech, prepared himself for Death; pulling out a laced Handkerchief, he desired the Executioner to tie it about his Head. Then pulling off his Garters, and unbuttoning his Doublet, Mr. *Goodcoale*, the Minister, ask'd him, *if he would not have a Psalm.* He said *Yes, with all my heart.* Then he read the 143d *Psalms*; which Mr. *Brodway*, pulling up the Handkerchief, sung very chearfully, never changing Colour at all. The Minister desired him to make Confession of his Faith; so he pronounc'd aloud the *Belief*.

Mr. *Goodcoale* said, *these are the Articles of the Christian Faith according to the Church of England, into which Faith you was baptiz'd; pray signify whether in that Faith you intend to die?* He said *Yes*; for there is no other Faith (as I suppose) in and

‘ by which a Man can be saved. Then he made Request to the Sheriffs, and those of his Kindred there, that he might be bury’d in his own Country.’ It was then told him, *that it was granted, and Order taken to have it so, wherefore he should now mind his Prayers.* When his Kinsman ask’d him, *if he had never another Prayer in his Pocket?* he said, *No.* Then ask’d Mr. Goodcoale, *if he would say after him?* And he said, *Yes, with all my Heart; but first he desired the Executioner to tie*

his Hands again. Which being done, Mr. Goodcoale said a short Prayer to recommend his Soul and Body to Almighty God, in and for the Merits of Christ’s Death and Passion: To which *Brodway* and the People said *Amen.* Then lifting up his Hands to Heaven, he said, *Lord Jesus receive my Spirit,* and the Cart was drawn away.

Fitz-Patrick lifting up his Hands, and commending himself to God, was executed in like manner.



XXXIII. *Proceedings in the Star-Chamber against HENRY SHERFIELD Esq; Recorder of Salisbury, for breaking a painted Glass-Window in the Church of St. Edmonds in the said City; the 6th of February 1632. 8 Car. I.*

The Information was thus opened:

MR. Attorney hath exhibited an Information, in the Behalf of his Majesty, against *Henry Sberfield Esq;* an antient Bencher of *Lincolns-Inn;* for taking upon him, of his own Authority, to deface a Parish-Church in the City of *New-Sarum,* in the County of *Wilts,* and that in opposition to the Church Government, establish’d by the Laws amongst us*.

His Majesty’s Attorney, in the said Information, setteth forth, that his Majesty is in his Kingdom, next under Christ, the supreme Head: that all Churches are sacred, and both founded and maintained by Regal and Sovereign Power; that no Subject can meddle with them, in doing any thing for their Ornament or Structure, without Licence of the Bishops in their several Dioceses, or the Ordinary for the Time being, who derive their Authority from the Sovereign Power.

That the Party Delinquent was an Inhabitant of the Parish of *St. Edmonds,* in the City of *New Sarum.*

That in the same Church was an antient and fair Window, containing a Description of the Creation: That in *January, quinto Caroli,* the Defendant, and some factious Persons, intending to deface it, there met and agreed so to do.

The Bishop of *Sarum* commanded the contrary, and accordingly made a publick Act thereof.

But in *October* following, he the said Defendant got the Keys of the Church, upon pretence to walk there, and then lock’d the Door, and contrary to the Bishop’s Appointment, he beat down the said Window, and utterly defaced it; and when he had thus done, he did boast and glory in that he had so done, and reported that himself was a Defacer of Idolatry.

And for punishing of this great Crime is this Information exhibited, by his Majesty’s Attorney in this honourable Court.

Mr. Herne. The Defendant humbly offers to the Consideration of this honourable Court, that he is aged, and has grey Hairs upon him.

That among all the Crosses of this Life hitherto, he doth not account this the least.

That he is this Day not only suspected, but accused as an Enemy to his Majesty and his religious Government; and the Thing that he is especially accused and charged with, is, that of breaking the Glass Window, whereunto himself giveth this Answer:

That in the Time of King *Hen. III.* this Church of *St. Edmonds* in *Sarum* was built, and that there was a College of Priests there; for there was an House adjoining, called the College to this Day.

That by the Act, in the Time of *Hen. VIII.* this College came to the Crown, and there remained until King *James* granted it to *Gouge* and *Lloyd,* who afterwards granted the same to *Bartholomew Tookey,* and others, to the Use of the Parish of *St. Edmonds,* together with the Advowson and free Disposition of the Vicaridge there, which they have by Grant from his said late Majesty King *James.*

And tho’ he did conceive the said Church to be a Lay-Fee, yet he offereth this, that what he hath done, was not to usurp Authority over the Bishop of *Sarum,* nor in Opposition to his Majesty’s Government: But the Parishioners, and such as are Vestry-men of the said Parish, have Time out of mind assembled, and met upon Occasions, in a little Room called the *Vestry,* in or near to the Church of *St. Edmonds;* and there they have used, Time out of mind, to make Orders, whereby new Windows have been made, divers Seats in the Church alter’d and new made, and many other Things done for Ornament, and otherwise, in the same; and this without any Order from the Bishop of *Sarum,* or any other Ordinary, for the Time being.

For this Window that is charged to contain the History of the Creation, he answereth,

That it is no true Relation, or Story of the Creation, in that true Manner as it is set down in the Book of *Moses;* but there are made and committed by the Workmen divers Falsities and Absurdities in the painting of the same Window, as that he hath put the Form of a little old Man

in a blue and red Coat, for *God the Father*, and hath made seven such Pictures; whereas *God* is but One in Deity: And in his Order of placing the several Days Works of *God* in the Creation, he hath placed them preposterously, the fourth before the third; and that to be done on the fifth, which was done on the sixth Day; and in one Place he hath represented *God the Father* creating the Sun and Moon with a pair of Compasses in his Hand, as if he had done it according to some Geometrical Rules.

That this was not one of the greatest and fairest Windows in the said Church, it contained only four Lights; for the Cost at first in setting it up could not be more than forty Shillings: And that which is broken is very little Damage to the Window, and may be repaired for a very little Cost.

He conceiveth, for his defacing of this profane Representation of *God the Father*, it is not so heinous a Crime as deserves the Sentence of this Honourable Court, and for his defence he saith, That he hath for many Years past (*he setteth down for thirty Years past*) been settled and resolved in his Judgment, and that upon good and sound Authorities, (as he conceiveth) that it is utterly unlawful to make any such Representations of *God the Father*; and by such Authorities as were set out and declared in the Time of *Queen Elizabeth*, and otherwise, for the taking down and abolishing superstitious Images and Pictures, especially in the Churches.

He was thereupon the rather emboldened to desire, and endeavour the taking away of the said Window; and because it had been a Cause of Idolatry plainly to some ignorant People. He saith he was placed in the Church in such a Seat as that the said Window was always in his Eye, during his Abode in the Church; and not out of opposition to the King's Majesty, but by special Order and Agreement of the *Vestry*, about *January 1629*, (wherein it was ordered that *Mr. Sherfield* might, if he thought fit, take down the said Window, and set up new Glafs for the same) he thereupon did with his Staff pick out some of the Glafs in that part of the Window only which represented the Deity; but for the doing the same thro' Combination with others, and by Force, he denieth the same: And that he should do it contrary, and against the Command of the said Bishop of *Sarum*, and his said Act, and Letter supposed to be sent, this he also denieth, and saith, that he had no Notice thereof in any part.

And to all the rest of the Misdemeanours and Offences charged in the Information, he pleadeth *Not Guilty*, and submitteth himself to the Judgment of this Honourable Court.

For the King.

* *Sir Richard Shilton.* * *Sol. Gen.* For that divers Things seem to be set forth in the Defendant's Answer, which have not been opened; we that are of Counsel for the King, desire that the Answer may be read; and the rather, because he hath thereby confessed more than we have proved, or indeed could prove against him.

Whereupon the Answer was read in effect as followeth:

The Answer of Henry Sherfield of Lincolns-Inn, in the County of Middlesex, Esq; to the Information

of Sir Robert Heath Kt. his Majesty's Attorney-General.

All Advantages of exception to the Uncertainties and Insufficiencies of the said Information to this Defendant, now and at all Times saved:

This Defendant saith, That *K. H. 3.* founded in *New Sarum* the College of *St. Edmonds*, and the Church thereunto belonging.

That there belonged unto the said College and Church, a Provost and 13 Priests, which had Maintenance there allowed them. That in the Time of *K. H. 8.* by the Act of Dissolution, the said College and Church, with the Revenue thereof, came to the Crown, and so remained till *Septimo Jacobi*, who granted the same to *Gouge* and *Lloyd*, who alienated it to *Baylie*, who conveyed the whole Premises to *Bartholomew Tookey*, one of the Defendants named, who, in *13 Jacobi*, for many good Uses, conveyed the same to the Use of the Parishioners of the same Church.

That this Defendant is one of them, so that the Right of the said Church is in the said Parishioners, who are seized thereof, as of their Lay-Fee; and the said Church is exempt from the Jurisdiction of the Bishop of *Sarum*; and that they, as lawful Owners, had lawful Power without the Bishop to take down or set up any Window, and to do any other Thing in Repairing or Adorning the said Church, and for Reformation of such Things as are amiss in the same.

And that he, this Defendant, and the rest of the Parishioners being Vestry-men, have met, and have used to meet for a long while, and their Predecessors, Time out of mind, in the Vestry-house, and there have made Orders for the taking down, and setting up again, Parts of the Church. They have taken down Glafs Windows, they have removed Altars, Roodlofts have been pulled down, Seats pulled down and alter'd, the Pulpit taken down and set in another Place; and these and many other Things without any special Licence of the King's Majesty that now is, or of his Father King *James*, or of *John* Lord Bishop of *Sarum*, or of his Predecessors.

That at a Meeting of the said Vestry-men of the said Parish, this Defendant being one of them, in or about *January 1629*, it was ordered, that this Defendant might, if he pleased, take down the said Glafs Window, being in the South-side of the said Church, so as at his own Cost and Charges he would repair the same with new plain Glafs. And this Defendant being to come to *London*, desired it should be done before his Return; and that the Glazier might not mistake the Window, he pulled down with his Staff two or three of the small Quarrels of Glafs, and so left it to the Church-Wardens to be done.

That he is accused to be an Opposer of his Majesty's Government, and of the Reverend Bishops; and this by the Procurement of those that are ignorant of the Thing, which this Defendant accounteth a very great Affliction.

He saith, That this Window, and the Painting therein, was not a true Representation of the *Creation*; for that it contained divers Forms of little old Men in blue and red Coats, and naked in the Heads, Feet and Hands, for the Picture of *God the Father*; and in one Place he is set forth with a pair of Compasses in his Hands, laying them upon the Sun and Moon; and the Painter hath set him forth creating of the Birds on the third Day, and hath placed the Picture of Beasts, and
Man

Man and Woman, the Man a naked Man, and the Woman naked in some Part, as much as from the Knees upwards, rising out of the Man; and the seventh Day he therein hath represented the like Image of God, sitting down, taking his Rest: whereas this Defendant conceiveth this to be false, for there is but one God, and this representeth seven Gods; and the Sun and Moon were not made on the third Day, but on the fourth Day; nor the Trees and Herbs on the fourth Day, but on the third Day; nor the Fowls on the third Day, but on the fifth: and Man was not created on the fifth, but on the sixth Day; nor did the Lord God so create Woman, as rising out of Man, but he took a Rib of the Man, when he was in a deep Sleep, and thereof made he the Woman, in all which the Workman was mistaken: In regard of which Falsifications, this Defendant deemeth, that this was not a true Representation of the Creation, tho' it be so pretended, but rather an Abuse of the true and lively Word of God, which to pull down, as aforesaid, cannot be any Offence in him, this Defendant, as he conceiveth, at least in that Manner as in the Information it is pretended. But in as much as he is accused of Infidelity and Impiety to Almighty God, and to be disaffected to the King, therefore this Defendant humbly craveth leave to declare his Opinion in the Thing itself.

And he saith, that he believeth it altogether unlawful to make the Representation of the true God in any Church, or Wall, or Window; and this he hopeth to make appear by the Scripture, by Orthodox Writers, Councils, and Decrees of Emperors, and by a certain Book of the now Bishop of *Sarum* (Dr. *John Davenant*) written on one of *St. Paul's* Epistles, in the 97th and 98th Pages; King *James's* Book, intitled his *Premonition to all Christian Kings and Princes*; the Book of *Homilies*, set forth by Authority, and therein the Homily against Idolatry in particular: That this being so false a Representation, and so profane a setting down of the Image of God the Father seven Times, he, this Defendant, being a Parishioner, and troubled therewith in Conscience by the space of twenty Years, for that he could not come into the Church, but he must see it, sitting right opposite to it, he was much grieved thereat, and wished a long while that the same were removed, and yet in respect of himself laboured still to disaffect his Thoughts; but seeing the Dishonour done to God thereby by some ignorant Persons, (as this Defendant was informed by the Pastor of the said Parish) and fearing that others might offend in Idolatry, he (by Order of the Vestry aforesaid) did take down some little Quarrels of the Window; and it was done by him only, without any Disturbance, and he did it only in such Places of the Glass as the Representation of the Deity so falsified was: He did it not to arrogate to himself Authority, but as bound to do what he did to preserve a good Conscience; it was not done riotously, nor by Combination with any others. And he saith, That he never deserved, nor will deserve such a bitter Charge, as thro' the Malice of his Enemies, is laid upon him by the said Information. And he saith, that he, and other of the Defendants, were Justices of the Peace, and not altogether private Persons, and they were Parishioners, and entrusted, as aforesaid; and the taking down of the Window seem'd to be warranted by the Statute of *Edw. 6.* and by

the late Queen's Injunctions, set forth in Print in the first Year of her Reign, whereby it was commanded that all idolatrous and superstitious Pictures, Roodlofts, Altars, and other Relicks of Idolatry, especially in Churches, should be defaced and abolished, but the Wall preserved, and this to be done by the Church-Wardens; and these Injunctions being by Act of Parliament, they are still in force, as he conceiveth. And in the 13th of *Elizabeth*, in the Convocation held by the Archbishops, amongst other Canons, this for taking down and defacing idolatrous Pictures and Images was one, and made an Article, that the Church-Wardens shall inquire whether it be done accordingly: And the same order'd by the Convocation, in the 1st of King *James*. He saith, That he doth not countenance any Contemners of the Church, nor ever did: That the painted Window aforesaid was one of the meanest Windows in the said Church, containing but four Lights, whereof all the Glass at first was worth but 40 s. and all that was taken down by this Defendant, was not worth more than 18 d.

And this Defendant denieth that the Bishop of *Sarum* sent to him to forbid the taking of it down; and denieth that he had any Notice by way of Act, Letter, or Monition to the contrary, or that any such came to his Hands. But this Defendant saith, that he often attended the Lord Bishop, as well upon this Defendant's own Business, as on the Bishop's Occasions: and yet his Lordship never used any Speech thereof to him at all. And therefore this Charge, that it was done by this Defendant against the Bishop's Directions, is not true, as will appear by Proof. But this Defendant doth aver, what he hath done is lawfully done; and to all other the Offences, &c. he pleadeth *Not Guilty*.

Sol. Gen. Here is a Confession of the Fact, and a Justification; and therefore we made no Examinations or Interrogatories; for as I said before, so I make bold to say again, that he hath confessed more than we could prove against him.

The Question is, Whether a Parishioner may of himself undertake to pull down and set up what he conceiveth to be idolatrous, and so take upon him to be a Reformer?

In this Gentleman's Answer, you see how curious he hath been in confuting the Painter that is dead a hundred Years ago. (Nay, it hath been there these three hundred Years, *said the Archbishop of York.*) From the 5th of *January* 1629, till *October* following, he could find no Opportunity to execute the Vestry's Order; and yet he saith, shortly after the Order, he did with his Staff take down some of the Quarrels of the Window, &c. First, for the Manner of coming into the Church, we shall read a Witness or two for that.

Depositions of Witnesses on the King's Part read.

Bowen the Sexton's Wife saith, That Mr. *Sherfield* came unto her (her Husband not being at home) and said Woman, bring the Keys of the Church-door, and let me into the Church; whereupon she presently brought the Key, and opened one of the little Doors of the Church, and Mr. *Sherfield* went in, and made the Door fast unto him, and staid there alone by himself.

That when he went into the Church, he said, Now Woman go about your Business, while I walk in the Church.

That thereupon she went into her House, and after she had tarried a little in her House, her Child (that was abroad gathering of Sticks) came in, and brought her two or three Pieces of the Glafs Window, and said it was done by a Man all in black. Thereupon she went to a private Door and looked into the Church, and she saw Mr. *Sherfield* standing upon a Seat some four Foot above the Ground, and so he stood breaking the Window with a black Staff with a Pike in the End of it.

That the Window was broken in eleven several Places. And after she went by the same Window, and saw it broken; but being on the outside, she did not then see it, yet she heard one groan, which she conceived was Mr. *Sherfield* fallen from the Seat whereon he stood, to the Ground. And she the rather believeth it was Mr. *Sherfield*, because he afterwards sent for a Horse, and rode home.

That afterwards the Window was broken by another, and a Pitch-fork left in it; and divers other Windows were also broken, but by whom this Deponent knoweth not.

That therefore a Watch was set, and continued for a Fortnight, to see who should attempt to break any of the Windows of the said Church.

Elizabeth Bowen, *the Sexton's Daughter, saith*, That Mr. *Sherfield* came to this Deponent's Mother, about three or four of the Clock in the Afternoon, a little after *Michaelmas*, and commanded her Mother to open the Church Door for him, and she did open it: when he was in the Church he said, Get you about your Business; and when her little Brother brought in part of the Glafs of the Window, saying, Somebody was within breaking some of the Windows of the Church, she then run out of her Father's House and went unto the Church, and saw him beating of the Ladder, and heard him talk to himself, and thereupon said to her Mother, That she thought Mr. *Sherfield* was mad.

That thereupon Mr. *Sherfield* came out of the Church, and went into the Clerk's House; and after he had been there a little Space, he went again into the said Church, and bolted the Door after him on the inside, but she peeped in at the Door, and saw him break the Window with his black Staff, which had a Pike in the end of it.

That the Staff broke, and he fell down into the Seat, and lay there a quarter of an Hour groaning; but what Hurt he had, she knoweth not.

That he afterwards kept his House for a Month.

That the Window was broke afterwards, and one *John Palmer* seen there about four of the Clock in the Morning.

Dr. Webb of Steeple-Ashton saith, That Mr. *Sherfield* coming thither to keep a Court-Lect, he afterwards went with this Deponent into the Church of *Steeple-Ashton* to view it, and he asked this Deponent why they should bestow so much Cost in their Windows; and he declared his Dislike thereof, giving these Reasons, to wit, That it made the Windows darker; and it was an occasion of Idolatry: and he conferred with this Deponent about the Window now in question, which he said he would have taken down; but the Bishop's Chancellor opposed him, and said, He knew no Cause why he should, for that it was a Lay-Fee.

John Lymminge of the City of New Sarum saith, That he hath been thirty Years a Parishioner, and two Years ago he was Church-warden of the Parish of *St. Edmond's* in the City of *New Sarum*; that then the Order was made, when he was Church-warden.

That he was present in the Vestry at the making thereof.

That Mr. *Sherfield* moved the Matter to the rest that were present, and they all consented thereunto, saving two, who said, They desired to have the Lord Bishop's Leave for doing it. To whom Mr. *Sherfield* said, Do not you trouble your selves, I will give my Lord Bishop Satisfaction.

That the Bishop afterwards sent for this Deponent, being then Church-warden, as aforesaid; and he went to his Lordship, who told this Deponent, He had heard of such an Order or Agreement to have been made at the Vestry, and ask'd this Deponent if it were so? This Deponent answer'd, That it was so: that thereupon the Lord Bishop said, Let it not be done, and gave Directions and Commandment to this Deponent, not to give Notice of this Inhibition therein to the rest of the Vestrymen.

Francis Roberts, Servant to the Bishop's Register, saith, That an Agreement was brought to the Bishop under Mr. *Sherfield's* Hand, and the Hands of divers others, by Mr. *Sherfield*; and the Effect of the Order was (as he taketh it) for the taking down of the Window, in the South Porch of the Church of *St. Edmond's* in the City of *New Sarum*.

That the Lord Bishop caused this Deponent to take a Copy thereof, which he did; and thereupon the Church-wardens were sent for, and were forbidden by the Bishop to put the same in execution, and made a publick Act thereof, which this Deponent wrote.

It was urged by those of the King's Council, that the Answer was not in this rightly opened, and was therefore one of the Reasons why they desired the Answer itself to be read. In the Answer he justifieth the Act as well done; but the Council that opened the same, did not shew it so to be.

Mr. Herne. In opening the Answer, we declined, as but an Opinion of the Defendant, and from this a Man may recede: It was not the Point in Issue, therefore we were advised not to stand upon it; and we do acknowledge the Church to be a parochial Church, and subject to the Bishop of *Sarum*.

Whereupon Sir *John Finch* desired that *John Lymminge's* Deposition might be read again, and it was read to this Purpose,

That Mr. *Sherfield* said he would satisfy the Bishop, urging that this was after the Bishop's Inhibition; but this did not appear to the Court.

Sir *John Finch* concluded the Evidence on the King's Part: the Question is not what is fit to be in a Church; The Matter is, that he hath taken upon him to determine what is fit. He is an antient Reader, and well read in the Law; but our Law saith, (and this every one knoweth, that hath suck'd the least Sweetness from the Books of the Law) That the Church must be governed by the reverend Bishops of the Church. That it was a parochial Church he knew well, for that himself was a Parishioner: and tho' his Council decline this, yet his Defence is, that it is a Lay-Fee, and that he might well do as he did, to pull
down

down the Window. He is well acquainted with the Bishop, and yet would never desire his Leave in taking it down; but he goeth to the Vestry for Power to do it, and yet there it is his own Motion; and when some question'd their own Power to do it, he beareth them in hand he will satisfy the Bishop. When he cometh to *Steeple-Ashton* to Dr. *Webb*, there he saith it is a Lay-Fee; for he being a Justice of Peace, that seemeth to add another Wing to bear him up: But the Matter's not in question, it appertaineth to the ecclesiastical Jurisdiction. For the Bishop's Inhibition, that Mr. *Sherfield*, being a Vestry-man, should not have Notice of this, is very improbable. If it had been done in execution of the Vestry's Agreement, why then was it done so privately, and not some of the Vestry called to be with him?

But to have the Doors shut, to do it with such Privacy and so many Colours, as reading in a Book in the Church, walking and viewing of the Clerk's Houle; this could not be but that he feared something, and that this was the Inhibition.

Note, This was a great Defect in the Proof of the King's Part, that the Relator could not prove that Mr. *Sherfield* had Notice of the Bishop's Inhibition: nay, he had not the Act of the Bishop, which was so easy to be had, to shew in Court, for which the Bishop of *London* was much displeas'd, and so was the Lord-Keeper.

To remedy this (if it might be) the * Bishop of *London* desired that Dr. *Lynn* the Bishop of *Sarum's* Chancellor, who was the Relator in this Cause, might be heard what he could say to this Point. And he was permitted to speak, yet could not directly say that Mr. *Sherfield* had any Notice of the Bishop's Inhibition; yet he mention'd a Letter that was sent to him to give him Notice of the Bishop's Commands to the contrary, but it could not be proved that ever any such Letter came to his Hands.

For the Defendant.

Mr. *Nerbert*. That the Information contained seven several Charges against the Defendant; for five of which, that is to say,

1. That he being factiously disposed, and disaffected to his Majesty's Government, on his own Authority took upon him to deface the Parish Church of *St. Edmond's* in *New Sarum*.

2. That he is an Opposer of the Authority of the reverend Bishops and their Government.

3. That he is an Encourager and Maintainer of all such as are ill affected Persons to their Government, and Contemners of their Authority.

4. That the defacing of the Window in question was done by Combination and Confederacy between him and ten others, Defendants.

5. That this was done riotously and routously with Force and Arms. For all these I appeal to this honourable Court, what colour of Proof hath been made; only it hath been proved that the Defendant himself took down a little of the Glas of that Window. And there hath been some offer of Proof made, that it was done against the Lord Bishop of *Sarum's* Inhibition. And whereas the said Dr. *Lynn*, the said Bishop's Chancellor, hath endeavoured to prove some Things out of Course for this last Charge, we shall desire and beseech your Lordships to consider that he is the Prosecutor of the Cause against the Defendant. For

the Manner of the Prosecution, it hath been very violent, injurious, and favouring of Malice. He was the Man that went to these Witnesses and forty other Persons, to raise up and frame a Charge upon the Defendant. He exhibits a foul Bill, or causeth the same to be exhibited against the Defendant, and ten others. And then falleth off from all those Ten, and desireth that Two of the Defendants might be Witnesses for him; and when he had thus done, never used them. And this, my Lord, hath been the Manner of Prosecution.

For the taking away of the Glas-Window, it is true, we confess we did take down part of the Glas; but for the second Thing, it doth not appear that he had Notice of the Bishop's Inhibition.

And whereas Sir *John Finch* hath insisted upon some Probabilities for Proof hereof; we hope this Cause shall not be sentenced according to Probabilities. Now tho' the Charge of those five before-mention'd be not proved, nor any Interrogatory administered to prove them, yet we shall desire Leave to offer our Proofs to the contrary to your Lordships Considerations.

And first, as to the Charge that we are ill affected to the Church-Government, and an Encourager of those that be like-minded, and this for private Ends, and out of a private Spirit:

We answer, That Mr. *Sherfield* the Defendant hath on the contrary, in all his Actions, been conformable to the Canons and Constitutions Ecclesiastical, the Rites and Ceremonies of the Church of *England*.

That he hath been so far from encouraging such factious Persons, that he hath been very active in his Place to punish Separatists. And that he did not this (in removing this little Quantity of Glas) of his own Head or private Spirit; but it is true, he conceived it to be Idolatrous, and so was it thought by the Pastor of the Church, and by all the Men of the Vestry thought fit to be removed. What we did therefore, was no way out of a singular or private Spirit, nor our own Authority, but by Order from the Vestry; not in opposition to the Church-Government, or Governors; but as in respect to the Nature of the Thing. Besides, all the Canons, Constitutions, and Commands for taking away such superstitious and idolatrous Relicks, we shall prove, in Fact, there has been much Idolatry committed therewith. We say, that of a long Time there have been Meetings in the Vestry by some antient Men of the Parish, and this by Power from, and under the Ecclesiastical Governors; and this they have used to do, they have ordered many such Things, and they agreed this Window should be taken down by Mr. *Sherfield*, if he thought fit, and to set up new Glas. We go not about to entitle the Vestry to any Jurisdiction; we say they are respondent to the Bishop, and he may punish them if they abuse their Power: but tho' they have not legally a Jurisdiction, yet *de facto* they do meet, and do such Things, tho' it be not justifiable; yet this is the Question before your Lordships, Whether those of his Majesty's learned Council can make it a Crime, *Yea*, or *No*? The Curate and Church-wardens assented, as is required by the Statute.

The Queen's Injunctions, 1 *Eliz.* give Power to the Commissioners and others to take away Things of this Nature, especially in Churches, preserving the Walls, &c. So in the Articles set out in 13 *Eliz.* to inquire whether they were removed, *Yea* or *No*. Afterwards there was the like in the

First of King *James*; and the Canons contain one Particular of the like Power given to the Churchwardens to inquire of such Matters, &c.

Depositions of Witnesses on the Defendant's Part read.

John Joye of the City of New Sarum Gent. saith, That he hath known the Defendant above twenty Years, and hath ever since observed him to be conformable to the Church of *England*; and that the Defendant, when he is in health and at home, is present at divine Service and Sermons, and that during all the Time of this Deponent knowing of him, giving good Example by his religious and pious Carriage unto others; and that this Deponent hath known this Defendant divers Times to have received the Sacrament of the Lord's Supper kneeling.

That this Deponent is a Parishioner within the Parish of *St. Edmond's* in *Sarum*, and a Vestryman.

That the Vestrymen of the said Parish have met, and used to meet as often as they thought fit, and used to make Orders for repairing and adorning the said Parish Church, and have hitherto many times ordered the taking down of Seats in the Church, and the setting up of new, taking down of Windows, Walls, and Pieces of the same Church. And this Deponent remembereth, that about twenty Years since, a new Pew was erected in the middle of the Church for the Minister to read Prayers in; and fourteen Years since a new Pulpit was set up, and part of the Minister's Seat was again alter'd; there was also a new Loft made for ringing of the Bells, and thirty Seats were taken down and new made, and a Glass Window in the Towers was quite taken away; and all this was done without any special Order from the Bishop of *Sarum*, for the Time being, or any other Ordinary, and never any Doubt or Question was made thereof.

That upon the 16th Day of *January*, 1629. at a Meeting in the said Vestry, by the Vestrymen, it was order'd, that the Window in question should be taken down, and the Reason why, as this Deponent remembereth, was for the Darkness caused by it, and for that it was Superstitious; and that five of the said Vestrymen were Justices of the Peace within the said City of *New Sarum*.

Mr. *Herne* noted, that the Defendant's Witnesses are Justices of the Peace, and such as have been Mayors of the City, and are Aldermen there; but the others Witnesses are poor People, and silly Women led by Mr. Chancellor.

This Witness, and many others, testified the Defendant to have been conformable during all the Time of their knowing him, and observant of the Rites and Ceremonies of the Church of *England*.

Peter Thatcher, Clerk, Vicar of the Parish Church of *St. Edmond's* in *New Sarum*, saith, That he hath known the Defendant, *Henry Sherfield*, by the space of eight Years last past; that when he is well, and in good Health, he cometh to Church, and there stayeth all the Time of divine Service and Sermon, and hath received the Sacrament of the Lord's Supper kneeling.

That there was an Order made in the Vestry, where this Deponent was present, for the taking down of the Window in question by Mr. *Sherfield*.

That he hath seen the said Window since it was broken; that the Story intended thereby to be set forth, may well enough be discerned, and this, upon his certain knowledge, for he took special Notice thereof, upon *Saturday* last, before his Examination; that there are no Letters in the Window aforesaid, describing the Representation of the Creation.

That it may be amended for a very small matter.

That it is not so good Work as some other Windows of the Church.

That he hath heretofore seen an Accompt, made in the Time of *Henry VII.* of Charges in setting up certain Windows in the said Church, which are all of painted Glass; and there was set down a Particular of 94 Foot of Glass, set up at 3*d.* a Foot, and this Window in question containeth 72 Foot of Glass or thereabouts.

Note, That in the Time while this Deposition was reading, Mr. *Sherfield* caused a Map of the said Window to be presented to the Lords, representing the said Window, and all the several Breakings of the same set forth in Colours like the Window it self, which was inspected by the Lords.

The Bishop of *London* at this Time took some Exception to the Testimony of the last Deponent, *Peter Thatcher*, for that he saith he knoweth he cometh to Church, and stayeth there all the Time of divine Service; whereas he knoweth that this *Thatcher* himself hath not read all the divine Service in a whole Year together; he hath not done it heretofore, whatsoever of late he hath done for By-Respect.

Then proceeded the Deposition of the said Peter Thatcher,

That the Picture of the old Man in blue and red, is taken to be the Picture of God the Father, the Creator of Heaven and Earth; and that he is taken to be there represented creating the Birds and Beasts, the Sun and Moon, and speaking to *Adam* and *Eve*, &c.

That, as this Deponent taketh it, there are many Mistakes, Fallities and Absurdities contained in the said Window.

That he saw *Emma Browne* bowing to the Window aforesaid, on which Occasion (this Deponent coming in the mean while) he asked what was the Cause she so bowed. To which she answered, I do it to my Lord God. Why, said this Deponent, where is he? Said the said *Emma Browne*, In the Window, is he not? This Deponent thinketh he told this Defendant of the same, but doth not remember the Time when.

Michael Mackerell, of the City of *New Sarum*, Gent. saith, That he hath known Mr. *Sherfield*, the Defendant, by the space of twenty Years and more, during all which Time he hath been conformable to the Church of *England*, and duly repaireth to the Church and Sacrament, &c. That this Deponent knoweth he hath called divers in question for their Inconformity, and divers have been accused for Anabaptists and Separatists before him, and other Justices of the Peace in the same City, and some of them were imprisoned, some bound to their good Behaviour, and some otherwise punished by his Means; and the Deponent set down the Names of those who were called in question for Inconformity in particular.

James Palmer of the City of New Sarum, Senior, aged about 80 Years, saith, That in the said Parish of St. Edmund's, for fifty years past, he hath known divers of the Parishioners to have met from time to time in the Vestry of the said Church, which is part of the same Church, or adjoineth thereunto; and they have order'd many things for Reparation of the said Church, without the Bishop of Sarum, or any of his Predecessors; and divers of the said Parish are, and have been called, and have been and are Vestry-men of the said Church, and they have done divers things in the Church without the Bishop's Leave, as namely, the Place of reading the Service was altered from out of the Choir, and appointed and order'd by them to be read in the Body of the Church, without License from the Bishop; and therefore the Parishioners did not ask leave in this Case, of the Bishop, to remove the said Window.

The Bishop of London. Often Vestries take upon them that Authority which pertaineth not unto them, and usually transgress their Bounds; they were made by the Bishops heretofore, where they are granted and suffer'd, and in many Cases, by the common Law, we cannot do without them. The Truth is, that the Archdeacon in every Diocese was wont to be *magnus Oculus Episcopi*, to view and inform the Bishop of the Things fit to be reformed. But you will say, Shall not those Men repair, nor do any thing in the Church without Leave? Yes, they may, but not doubtful things; therefore for such things they should ask License of the Bishop at their Perils.

The Lord Keeper. So for mending of a Wall, or repairing things not well done in the Church, Vestry-men may do it; but when they do ill, they are to be punish'd.

February 8.

THIS Day the Defendant's Council proceeded in reading their Witnesses for their Defence.

William Antopp of the City of New Sarum, Gentleman, saith, That heretofore, about nine or ten Years since, he took Notice of one *William Trumpetter*, who came as a Stranger into the Town; and this Deponent after understood his Name was *Aldersey*.

That this Deponent hath observ'd the said *William* putting off his Hat to the said Window; and that the said *William Trumpetter's* Master, called *Beech*, did kneel down and pray before the Crucifix in one of the Windows.

This Deponent had Conference with the said *William Trumpetter*, and with his said Master, the said *Beech*; and in their Talk they much commended Pictures in Church Windows, and praised *Bellarmino's* Writings; wherefore this Deponent did conceive them both to be Romish Recusants: And this Deponent saw the said *Trumpetter* kneeling and praying towards the said Window; and the said *Beech* kneeling before the Crucifix, beating his Breast, which this Deponent did conceive was Idolatry.

Here the Defendant's Council offered to speak something to discharge the Defendant of that Point, as to the doing of the said Act contrary to the Lord Bishop of Sarum's Inhibition.

Whereunto Mr. Attorney said, That this was not worthy to be insisted on, because they had come short in Proof against him: But as for Mr.

Chancellor's enquiring into the said Offence done, we conceive it was rightly done, and proper for him to do it; for that this Fact is of a mixt Cognizance, Ecclesiastical and Temporal; and therefore, he being an Ecclesiastical Officer, it was not a Fault, but a commendable thing in him strictly to enquire of the thing as he did, and it was his Duty so to do. And for the preparing and pre-examining of the Witnesses, we say, in this Case by him it was lawfully done, and they were justly prepared.

The Defendant's Council proceeded, and read divers Statutes and Proclamations, and other Records and Authorities in justification of the Defendant's Fact, as concerning the Nature of the thing.

And first was read the particular Injunction in the Point, set out 1 *Eliz.* the 23d Article or Injunction; Church-wardens are to see the Churches kept clean, and all Loathsomness by Dust, or otherwise, removed: That they have in the Churches the holy Bible and Homilies, late set out in print against Rebellion, and other outrageous Crimes.

That there be in every Church a fair joining Table, and a convenient Pulpit, &c.

Also they shall see that all Shrines, Coverings, and Candlesticks, Pictures, Pilgrimages, Relicks of famed Miracles, Rolls of Wax, and superstitious Things be taken away and defaced, preserving nevertheless the Walls of the Stone Buildings of the Windows.

* Archbishop of York. The Church-wardens executed this by Direction of the * Neale. Queen's Visitors, not upon their own Authority.

Then was read the Article touching this Matter, set forth in the Book of Articles, in the 13th Year of the late Queen. The Title of which Book is, *Articles agreed upon by Matthew Archbishop of Canterbury, and the rest of the reverend Bishops, 3 Aprilis 1571.*

The Article itself runneth thus:

Item, Whether all Shrines, Coverings, Rolls of Wax, &c. and Pictures of false and feigned Miracles, be removed and abolished.

Bishop of London. I do not think that the Story of the Creation was a Picture of false Miracles.

The Canon of 13 *Eliz.* was, That the Church-wardens should enquire and make Presentment of such things to the Bishop or Ordinary; but it gave no Power to them, being but Lay-men, to do what they would in Reformation.

Archbishop of York. The Injunctions were in 1 *Eliz.* when the Church was very much out of Order; and this was done by special Commissioners, and not by the Church-wardens Power.

Then was read the Canon, made 13 *Eliz.* the 18th Canon, That the Church-wardens should see the Church kept clean, the holy Bible to be in the Churches, and the holy Homilies lately set forth against Rebellion, a fair joining Table for the Celebration of the Communion; and all Roodlofts, wooden Crosses, Pictures of false and feigned Miracles, and all other Relicks of Superstition destroyed and demolished; the Walls of the Churches to be new whited, and Sentences of holy Scripture to be written upon them in great Letters, and a Bason to be in the Church wherein Baptism is to be administred.

There was the like made in 1 of King James, and 2 *Jacobi* 1603. Canon 85, That the Windows of the Church be well glazed, the Pavements even and decently kept: The like Care to be had for

the Church-walls and Church-yards, that they be shut in with Pales, Walls and Rails, as hath been accustomed. And the Officers are to see that the Peace be well kept, and that the Book of Homilies be in the Church, which speaketh against Idolatry and Superstition, &c.

Mr. *Herbert*. The Matter before your Lordships in Judgment, is the Removal of some few Parcels of Glass out of a Church-Window. Now, upon Things thus opened, whether this be a Crime punishable in this Court, we humbly leave to your Lordships to judge. But if it shall be conceived to be an Ornament to the Church, and so a Fault in any to remove it without the Bishop's Leave; we say it is true, we did it, but not upon our own private Head, the Vestry agreed upon it.

And whereas it hath been objected and charged, that the Defendant did this to encroach upon the Church-Government, we hope it doth not so now appear to your Lordships; but that he is a good constant Observer of the Church of *England*. And for the taking down of this Glass, we have shewed what we did simply, and not so much what our own Opinion was, but as it was conceived Idolatrous by others.

If this be a Fault, it is then because it seemeth to derogate from the Honour and Authority of the Church, and done in opposition to the Bishop's Jurisdiction; or else it ariseth out of our Answer, in that we justify the doing thereof, as in our Lay-Fee. But we have shewed he did not this to make a Power in the Vestry against the Power of the Bishop; no, this was an Act of Duty to the Bishop, and punishable by him if it were not well done: so we do not divide the Power from the Bishop, but the Question is upon the exercise of this Power, whether the Vestry-men, when they have done well, are to be reprehended; or whensoever they do any thing about the Church, whether they must still go to the Bishop for Leave?

But tho' this be not an Offence in the nature of it, yet it is said, that to us it is an Offence, because of our Justification; which is not only *de facto*, that it is done, but that it is rightly done by the Vestry as their Act in their Lay-Fee, which is exempt from the Bishop's Jurisdiction.

To this we answer, That this was only the Opinion of the Defendant, it was not the Issue; but his Disposition is not to stand out in a thing, which afterwards appeareth unto him to be otherwise; he did conceive it was a Lay-Fee, and was their Impropriation: And tho' he said it was exempt from the Power of supreme Authority, the Archbishop or the King's Majesty, yet he did it as the Act of the Church-wardens, which is subject to the Bishop.

For the Act it self, the taking away of some little quantity of Glass, we have shewed you the Usage of the Vestry, what they have done in other Cases; and if every Alteration in a Church should be prosecuted as a Crime in this Court, I suppose the Court would be over-much filled with Prosecutions of this nature. Thus much for the Matter of the Fact; then for the Manner of doing it, It is pretended, that it was done against the Bishop's Inhibition.

The Defendant hath denied this Point upon his Oath, and sheweth Probability to the contrary: My Lord Bishop had long and often Conferences with him, but never spake to him of this thing.

Next, for that Circumstance, that by this Example of his breaking the Window, some others have done the like; but in the Books we find only that some body did break the Windows again after this, but who it was, is not set down. Two or three times a Year for Glass Windows to be broken by accident, is a common thing. We find also that after this a Pitch-fork was found hanging in the Window; we say that this was discover'd only upon Proof, and was not in the Pleading: But the Men that examined this, said that it was a mad Man indeed that came that way, and threw his Pitch-fork there, and this might have been proved. And shortly after many more Glass Windows were broken, but where, or in what Church, it doth not appear as I conceive. And, whereas it hath been said by a silly Maid, that she thought Mr. *Sherfield* was mad; and it hath been said, he went about like a mad Man: We say, that if his faithful Care and Industry in that City, for the Good thereof, if his Advice in all the Kingdom so well known be respected, he is not to be accounted a mad Man: He did not come in a mad and braving manner, but secretly, and this is proved by the Mother and Daughter; we say the more privately it was done, the less offensive it was: which we submit to your Lordships, and the whole Cause together with it. The Charge against the Defendant is, that he did dishonour to the Church; but we say, that the Act was to do Honour to God.

Bishop of *London*. Was not this done contrary to the Bishop's Inhibition? Let me ask this Question of the Defendant's Council, Why did Mr. *Sherfield* promise to satisfy the Bishop? did he give this Satisfaction before he did the Fact? This I must needs declare to your Lordships, that my Lord Bishop of *Sarum* hath written to me, and by his Letters it appeareth sufficiently how this Matter was carried, and what passed about it: if it please my Lord Keeper, it may be read.

But this being out of Course, and a thing to which the Defendant could make no Answer, was not approved of. There hath been no Fault in the Bishop of *Sarum*; but the Business on the Prosecutor's part hath been as ill follow'd as ever I saw; and on the other side, by the Defendant's Council, as well defended; so much I must say for them.

Sir *Richard Shilton*. This Offence is clearly against the Bishop's Authority; and the greater by his Defence set forth in his Answer; and by what the Defendant hath shewed, it appeareth he did this by his own Authority.

The Order or Agreement of the Vestry is no more but this, You may, if you please, do such a thing; Mr. *Sherfield* may, if he please, take down the Glass Window; that is to be understood at his peril, they would not stand to it. This, especially in a Man of his Example, is not to be passed over in these Times. I undertake there are some Spirits now, that if they had been alive in *Solomon's* Time, would have gone nigh to have done Violence to the Cherubims; God knoweth what would have become of them!

Mr. *Herne*. As to my Lord of *London's* Objection, that it seemeth it was done after the Inhibition, Mr. *Sherfield*, upon his Oath, denieth that he had Notice of it. Mr. Chancellor himself saith, he had not Notice till after the Fact: He was often with the Bishop, and he never used any Words about it to him.

Bishop

Bishop of *London*. He undertook to satisfy the Bishop (and the Bishop you are to know, is not bound to give Notice to every Man of his publick Act;) but your Proofs are, that the Vestry have done these and these things, without the Bishop; they prove matter of Fact, but what was done heretofore, maketh not much for an evil Custom.

William Noy. *Attor. Gen.* We will not talk of the Authority of the Vestry against the Bishop's Authority, they were at first made and suffer'd thro' Negligence of the Prelates themselves. The Vestry consists of the Minister and Curate, and some Lay-men, I do not say Lay-Elders; they here agree for the taking of this Window down, but the Question lieth not upon their Power, it lieth upon the Fact it self, confessed by the Defendant himself; and, I say, if he had not confessed and proved more against himself than the Relator himself hath done, he might (I think) have gone without the Censure of this Court. It is proved by the Defendant's Witness; and that he did it, is confessed; but he alledgeth in his Excuse, that for Twenty Years he observed this Window, and he took Offence at it; he sat in a Seat in the Church, and he could not choose but gaze on it; he could not rest with a good Conscience, but the Window must be taken down: but in all these twenty years he never complained to the Ordinary; but after twenty years he proposeth it to the Vestry; there were present the Churchwardens the Vestry-men, and Mr. *Thatcher* the Minister; some were so wise as to question whether the Bishop's Consent were not to be had unto it; to this the Defendant saith he will satisfy the Bishop, but never offereth to do it: Afterwards it is agreed Mr. *Sherfield* may take it down, provided he make it up again with new plain Glafs. The Bishop hearing of this, sendeth for one of the Church-wardens, and makes a publick Act to prohibit the taking of the Window down, and suspends the Power of the Vestry, if they had any; of this the Bishop is not bound to give Notice: the Defendant must do it afterwards at his Peril, and he told others that the Chancellor opposed it.

For the Manner of it, when he cometh from *London*, he went in secret Manner, it was between four and five of the Clock, when at that time of the Year it was between Day and Night, growing to Darknes: and he went by himself, he took no Glazier with him, nor any other to witness his Act, no not so much as any one of the Vestry-men, upon whose Authority he said he did it; and thus in private and secret manner he committed this Exploit. It is said by the Witness on his Part, that some did, by occasion of it, commit Idolatry, but Mr. *Sherfield* knew not of it, (for any thing that appeareth;) besides, he did not follow the Vestry's Order in doing it, for he broke it down, he did not take it down; he taketh Offence at the painted Errors, but he hath broken it, and never mended it again: but he breaketh that Part only which offended him, the Head and the Feet: if this had been done in the Execution of a publick Act, he would surely have had some Witness of it; but he had none, he bolted himself into the Church, that none might see him, he was not willing to be seen; so it was clandestinely done: if it had been done by him upon the Order, he would have consulted with the Glazier; wherefore certainly he executed his own Humour, and not the Vestry's Order.

It hath been farther said (to excuse the Defendant) that he may and must do it; but of how dangerous Consequence this *may and must be*, is, I shall endeavour briefly to shew unto your Lordships. He takes notice, first, that the Church is a Lay-Fee, and being in the Parishioners, and himself a Parishioner, that he may therefore do it: But from this they have already started, and they may and must do it; for they well know it is a Parochial Church, and endowed with a Vicaridge, which if they should have denied, we have the Record it self ready here in Court to prove it.

But yet they say, there hath been a Vestry even from the first Foundation; and they have done, and used to do divers such things; they have made Seats, pulled down Seats, remov'd the place for reading the Service, out of the Choir into the Body of the Church, taken down Walls of the Church, and the like, without the Bishop's Leave or License, and therefore may take down this Window.

My Lords, there is a great deal of Difference between Repairing and Reforming: Reformation ought to be made always by the supreme Power, not by private Men; but when private Persons, or a Vestry will take upon them Reformation, I make bold to say, it is the Highway to pull all out of order with their Reformation. Something was said, as if the Reason why the Window should be taken down, was, because the Painting darken'd the Church: But if this had been all, I should not have spoken much against it. But it was done for Reformation, his Conscience could not bear it. If it should be lawful for private Men to do thus much, what will they do next?

Nay, some hold our Church is idolatrous and unclean, because Common Prayers are said in them, and Masses have heretofore been said in them; and therefore these Reformers would at the next Bout take away our Churches also; this must be next. As to the kneeling down to the Windows by some; it may be some will do so to a Saint, or one of the Prophets of the Old Testament when they see their Pictures in a Church or Chapel, (as in *Lincoln's-Inn* Chapel) which if they do, then Mr. *Sherfield* must pull such Windows down, or somebody else to whose Conscience it is a trouble. Again, because it is a Cause of Idolatry in others, therefore must Mr. *Sherfield* pull it down; but it is such Idolatry as must be concealed from the Ordinary. Suppose another Man come, and say it is no Cause of Idolatry, and therefore it shall stand still: Thus they differ first, and then they fight for it; next they have Partakers on both sides, and so an Insurrection may come of it, which has many times taken its Beginnings from less Occasions than this: And tho' (God be thanked) in this Case it was not so, yet it might have been, and may be so (if such things should be allowed) in other Instances of like Nature hereafter. But he may and must do it, because of the late Queen's Injunctions and Articles, &c.

The Injunctions and Articles are but to authorize the Ordinary to enquire of such things, fit to be reformed in Churches by the Church-wardens, and other Officers; and they are to present it to them, and so they are to be reformed by the Power of the Ordinary in every Diocese and Jurisdiction: and the Meaning was, that all Relicks of Idolatry and Superstition should be taken away; but every

every Memorial, or Story of a Saint and Prophet is not a Relick of Idolatry or Superstition. Any Monument of Superstition, or of feigned or false Miracles, may be taken down; but Monuments, or Pictures for Memorials of Saints or Prophets, are not Idolatrous or Superstitious. If they should be so, because some Men conceive them so, and then they may pull them down of their own Heads, why then many might (and I doubt not but some fiery Spirits would) take upon them the Boldness to pull down all Cathedral Churches, because they are made in Form of a Cross, which some of the precise Sort cannot abide: And so, because Churches stand for the most part East and West, they would pull them down, because (forsooth) they hold it Superstition. But Reformation is, and always hath been a Work of publick Authority, and some Men have been punish'd in this Court, heretofore, for offending in this Kind.

In the Queen's Time, many went abroad (of their own Heads) to break down Crosses, Images and Pictures of all sorts, in the 44th *Eliz.* At *Banbury* they pulled down the Cross there. And in the 12th of King *James* some were brought here in this Court, *Ore tenus*, and sentenced for the like. And by the Sentence you shall see what Name is given to those Men, who pulled down Crosses; I shall read but these two Records, and say no more.

The Records were read by Mr. Robert Page, the Recorder's Attorney.

By the Queen, a Proclamation against pulling down of Images and Pictures: Whereas many violent Persons have of late of their own Authority gone about to deface the Walls and Glass Windows of Churches, and in their Violence have pulled down Tombs and Monuments of Noblemen, and Gentlemen deceased, to their Dishonour, and to the Breach of our Peace: Therefore a strict Commandment is given that all Men forbear to break the Pictures set upon Tombs or Graves, and not to break the Pictures or Portraitsures of the Noblemen, or others in Churches, Church-Walls, Windows, &c. nor any Images whatsoever, without the Advice of the Ordinary, or the Advice of the Queen's Majesty, or her Council, &c. Given 4.4th Eliz.

The other Record is this:

In Camera Stellata Anno Regni Jac. duodecimo.

Whereas William Dale, John Eden, Hugh Jones and Richard Jackson, and other refractory Puritans and Brownists, did deface divers Crosses in Highways, in the Night-time: For this the Judgment of this Court is upon their Confession in open Court, that the said John Dale, John Eden, Hugh Jones and Richard Jackson, shall be bound to the good Behaviour, and acknowledge their Offence at the Assizes, and every one of them pay 100 Marks Fine to the King's Use.

Your Lordships see now that the Defendant might not do it as he did, nor was he bound to do it at all; we therefore leave it now to your Lordships to censure.

The Sentence.

* *Lord Cottington.* *Chancellor of the Exchequer.* This Cause (may it please your Lordships) is of great Weight, and well deserves the Consideration of this Court: It is brought by his Majesty's Attorney-General against this Defendant, *Henry Sherfield*, and some others; but the rest are not proceeded against. His Offence (as it hath been proved by Witnesses, and confessed by

himself) is the wilful breaking of a Glass Window in a Church in *Salisbury*, which Window antiently stood there; and this he endeavours to justify. That these, and such like, are the Acts of Puritans and Brownists, it appeareth upon Record. His Answer, I conceive, to be against him, tho' he now quits that Part of his Justification, and it sheweth his Spirit. It is said he is a wise Man, and an old Man, learned in the Laws, and that grey Hairs are upon him; but it had been a better Argument of Extenuation, to have said he was a weak Man, a poor Man, or a mad Man. He took Scandal, and it was an Offence to his Conscience; but this was a tender and scandal-receiving Conscience; he must have the Window removed.

This, and such like Matters may go very far, and great Mischiefs may arise by it, as there have of late Years both here in this Kingdom and in *France*. He did not only do this, but he boasted of it when he had done, as if he had reformed Superstition: One Day's Work, in the representing the Creation, is set before another; and the Picture of the little old Man in blue, must be the Picture of God the Father. But this is as light as to affirm, that Idolatry may be committed to any Thing, which for Ornament the Painter hath made. But for the making of Pews in the Church, Pulpits, &c. this is but Reparation, from this they come to Reformation. Six of the Vestry, at least, conceive they have Power to pull down this Window, they agree it shall be taken down, and Mr. *Sherfield* may do it if he please, &c. This was in *Jan.* 1629, 5th *Caroli*; but it was not done till *October* following, and then it is not taken down, but broken down. I verily believe (tho' it appears not in Proof, and therefore as a *Non liquet* I pass it by) that he knew of the Bishop's Inhibition. But, say they, why then should not the Bishop speak to him of it? He saith it is a Lay-Fee; and said, that before the Fact Mr. Chancellor opposed him. The violent Manner of his doing it, is both proved and confessed. It is said he is a Justice of Peace, I hope your Lordships will take Order he be Justice no longer. It is proved he received the Communion kneeling; why did they not prove likewise that Mr. *Sherfield* was baptized? Who doubts that Mr. *Sherfield* was baptized? There was a strict Inquisition to prove the Fact; it was well done so to inquire, you see the ill Example of it, others followed it. They say it was a Madman who did it; this was not proved: but it was more like he was mad himself; it was indeed the Act of a Madman, and fit for none but Madmen to imitate.

For his Answer, I take it to be full of Singularity and Pride, and notwithstanding any thing contained therein, or in the Proof, I hold this his Action a great Offence, an Offence of great Scandal and Presumption as to him that knows the Law. If he or others had been minded, upon good Advice, or in good Way to have presented this or the like Thing fit to be reformed, to the proper Ordinary, or to the King's Majesty, being the Supreme Head, he and they should have done well, and have had a great many Thanks for so doing; but tho' it were fit to be removed, it was not in his or the Vestry's Power to do it. I take it, it differs not from that Case adjudged here in this Court the last Day, when a great many poor Men, who had Right to Common, but in claiming it made a Riot, were justly punish'd. So here, tho' this Window were scandalous, yet a private

private Man, nor many private Men cannot take it down: For what (as Mr. Attorney said) if one half of the Town would have it stand, and the other half would have it down, what must follow but Insurrection? So that here is in this a great deal of Disobedience, and that done in the Singularity of his Spirit in Contempt of the Church; he hath thereby touched upon the Regal Power, and encroached upon the Hierarchy of the Bishops, who have their Authority from the King. I come now to my Sentence; *I will have him to be no more Recorder of this City, that he be bound to the good Behaviour, That he make a publick Acknowledgment of his Fault in that Church where his Fact was done, and in the Cathedral Church. And that he may pay 1000 l. Fine to the King's Majesty.*

* *Lord Chief Justice of the Common-Pleas.* In this Cause, brought by Information by myself, when I was his Majesty's Attorney-General, against Mr. *Sherfield* and others; the Relator hath only proceeded against this one Defendant. Upon all that hath been said on both sides, these Things come to my Consideration, the Fact, and the Circumstances of Aggravation: For the first of these, I shall agree it to be an Offence; but I shall not agree in the manner of Punishment, set by my Lord that spake last. I dare not give Encouragement for any private Man to do any publick Thing in Church or Commonwealth of his own Authority, it is a very pernicious and dangerous Thing; but yet I shall not sentence him for some Things, which in the first place I shall make mention of.

1. That he should do it by Confederacy and Conspiracy with others, and that riotously: It is true, it is thus charged in the Bill; but this is not proved, nor any other than Mr. *Sherfield* himself prosecuted. I must confess, I was informed that the Cause was much fouler than it is, and many others were suspected to have an hand in it; and this was the Reason of the Charge in the Information.

2. It may be he took just Scandal at this superstitious Window; and had he only moved it at the Vestry, this alone had not been so great a Fault, if he had done according as the Vestry ordered.

3. That he did it contrary to the Command and Direction of the Bishop; but this I dare not say is so fully proved, as on it to ground my Sentence, tho' I verily think (as to my own private Satisfaction) he could not but know of the Bishop's Inhibition. However seeing it is not proved, (tho' if it had been carefully followed, I doubt not but it might have been made appear sufficiently; for the Bishop of *Salisbury* himself, and many others, might have been examined in it) I pass it over as a Thing not manifest.

4. That this was done out of the Spirit of Contradiction, and in opposition of the Church-Government: I condemn his Rashness and Heat of Spirit in doing it without the Bishop; but I cannot perceive that it was done to oppose the Bishop, or Ecclesiastical Government. If this had been proved, or did appear in his Actions, I should have accounted it the greatest Matter against him; as for his inward Thoughts, I dare judge no Man's Conscience.

5. That he did this in a profane Manner, and that it was a Breach of Piety towards God. I must confess I think not so, but rather that the Offence was fit to be removed; he was grieved,

and his Conscience offended at it; and I verily think, if the Bishop had been told of it in a decent Manner, he would have reformed it.

6. That it was done riotously; but it is clear there was no Riot in the Manner of doing this Thing: And so I hold this no aggravating Circumstance, he did but satisfy his ill-grounded Conscience.

7. That when he had thus done, he boasted of it; this appeareth not, no Man seeth this proved: Nay, in his answer, opened by his Council on his Oath, he saith he accounteth it a great Cross to him, and is very sorry for it.

As to his Place and Authority, his Wisdom and Gravity, and his Profession, these excuse him not, but rather increase his Fault.

As to the colourable Pretences by him used in acting this Business, I do not take these, or his secret going about it, to aggravate his Fault; I think Vestries have too great Power, and often take upon them to do Things beyond their Power; and yet I know nothing to the contrary but the Reverend Bishops may abridge that Power when they will. As to this Action of his, I find that he did it not *contra voluntatem Episcopi, sed præter*; that he was the first Mover of the Matter to the Vestry: This is not a Fault in him, I think, but well done of him; and yet when the Vestry had done this, and the Defendant executed their Order or Agreement, I do not see, but the Bishop, if they had done ill, might have punished them. Give me leave, I beseech your Lordships, to speak thus much: A Judge must not speak his own Imaginations, but according to Proof; he is bound ever to give Sentence *secundum probata, not probabilia*. That he undertook to satisfy the Bishop, this I think is proved by one single Witness; but yet this Action of the Defendant, I conceive to be an Error in the Defendant. The Vestry (he should have known) are but private Men, and have no Jurisdiction to reform, whatsoever they have done in Matters of Repair heretofore. But if this, or such like Things should be permitted in the Church-Government, to be done upon private Authority, why should not the like Men do the like in the Commonwealth? and then we should be at an evil Pass.

We read in the Book of the *Judges of Israel*, when there was no King in *Israel*, private Men did what was good in their own Eyes, and many erroneous Things and Slaughters fell out thereupon.

There was Cause (I am satisfied) that this Window should be removed. It was made for the Picture of God the Father, and so it was generally conceived to be: but tho' it was idolatrous, and their bowing to the same was conceived to be Idolatry, they should therefore have told the Bishop of it; which seeing neither Mr. *Sherfield* nor the Vestry did do, he is not in this to be excused. I shall therefore agree to sentence him for this Fault; but I shall forbear to put him from his Place of Recorder in the said City: It is not an Offence in him as Recorder, nor as Justice of Peace. I hold every Man that is sentenc'd should (as near as may be) be sentenc'd *eo modo quo offendit*, and therefore I think not fit that he be put from either of his Places, for else we should for this one Offence censure him as worthy to be cut off from his Places, and so good for nothing. And I shall forbear to bind him to the good Behaviour, for he is a Gentleman of Reputation in

the Country where he dwelleth; and I have observed, that a Gentleman is not bound to the good Behaviour, but for very foul and enormous Offences. *But I would have him to make acknowledgment of his Fault unto my Lord Bishop of Salisbury, and before such as he shall call unto him: And I would have him give some Satisfaction, and this in the very kind that he hath offended, at the Discretion of the Bishop.* For the Fine of 1000 l. set by my Lord, that spake last before me, I hold it to be too much for an Error, being there appeareth no Contempt: *I shall therefore think, and so set 500 Marks to be enough.*

* *Lord Chief Justice of the King's Bench.* My Lords, Mr. Attorney-General is Plaintiff against Henry Sherfield Esq;. We are not to take notice of any more Defendants, because they are not proceeded against; for this Cause, my Lords, I hold it comes fitly and properly before your Lordships here. This is rightly *crimen Stellionatum*. There be many Covers in it; for it is of mix'd Cognizance, and therefore fit for this Court, which I ever held to be the greatest Court, except the Parliament.

In delivering of my Mind, I shall crave Pardon, if I speak any thing which shall be mistaken. For the Fact, (as it appeareth unto me upon the Proofs) it was the breaking of a certain Window of painted Glass, not one of the greatest in the Church; it was a private Window, and it was privately done by him with his black Staff.

His Motive to do it was this, There was Offence in this Window, and he conceived that it was Idolatry, or the Cause of Idolatry. The Offence was, that God the Father should be pictured there in the Form of an old Man in blue and red. I have no Reason to think Mr. Sherfield took this to be made for God the Father; for he never was, nor never can be pictured; who knoweth him so well? *Moses* himself saw but his back parts. But give me leave, my Lords, as for Idolatry. This worshipping of Idols is the greatest Sin of all others; it is a spiritual Idolatry; it is to give God's Honour unto Creatures: For the Homilies of the Church, I think they are very excellent Things, (and so they are without doubt;) and there is an excellent Homily against Idolatry: so that Mr. Sherfield, and others, taking offence at the Pictures in this Window, (altho' I see not why it should be taken for God the Father) they might, to avoid Occasions of evil Desire, endeavour to remove the same. But then I hold he should have gone to the proper Judge that hath Power. And here I find fault with him, that in the twenty Years of his continued Offence thereat, he would never resort to the Bishop to complain thereof: This was certainly *scandalum acceptum, & non datum*. He should have gone to the Bishop; but for his Colour to do the same, by the Order of the Vestry, I think it a meer Colour. Two withstood this Motion, eight or six consented to the taking of it down. I marvel any Question at all was made of it; for I know Mr. Sherfield is as well beloved of the Citizens as any Man can be; and, I presume, he might command an Order in the Vestry: but, I say, the Vestry hath nothing to do to reform, it wholly belongeth to the Bishop. And the Power of the Church-Wardens, by the Canons and Constitutions, is but to inquire and present; but the Bishop, the supreme Ordinary in his Diocese, and

the Arch-deacon, who is *magnus Oculus Episcopi*, are the proper Agents in a Work of Reformation; what Mischiefs would else ensue? There was a special Commission in Henry VIIIth's Time. I know who were Commissioners, and have seen the Commission: They did strange Things; but I have seen again as strange Stories of Things befallen those Houses.

In 3 *Edw. VI. Cap. 10.* It was enacted, that Reformation in the Churches should be made by Archbishops and their Commissaries.

This was repealed by Queen Mary, but set on foot again *1 Jac.* and these Times must follow the Wisdom of an Act of Parliament. Again, of what dangerous Consequence is this Act of Mr. Sherfield's? If these Men should be permitted to be Reformers, they would reform some Things that need no Reformation. I have seen, in some Churches in my Circuit, some Stories of the New Testament, some in Windows, some in Needlework and Woven-work; God forbid these should be taken away.

The manner of his doing of it I like not. He did not take it down, but break it down in the Head and Feet, which offended him: This should have been the Act of publick Authority; he presumeth to do it in the Church, a sacred Place, and ever privileged: Therefore it was an Offence to use any Violence in it, tho' but to the Windows, and therefore to be punished. I think Churches too little regarded; I hold it very ill that he did it so in private. He might rather have taken a Glazier with him. Yet I hold clearly, he doth not disaffect the Government. To my knowledge, he hath done good in that City since I went that Circuit; so that there is neither Beggar nor Drunkard to be seen there. For Ecclesiastical Government, he is outwardly conformable: I have been long acquainted with him; he sitteth by me sometimes at Church; he bringeth a Bible to Church with him (I have seen it) with the Apocrypha and Common-Prayer Book in it, not of the new Cut.

That he should do it against my Lord Bishop's special Direction to the contrary, I do not think so. There is but one that proves his Undertaking to satisfy the Bishop. And for the Inhibition, he had no Notice of it, for aught is proved; nay, he expressly denieth it upon his Oath, wherefore I do not believe he had Notice.

To speak somewhat of the Offence that sticketh upon him, the breaking of the Window; I assure myself, if Mr. Sherfield had gone and acquainted the Bishop with this Order, when it was made, this Cause had been prevented; but done as it was, it was disorderly done, and without Warrant. This therefore is an Offence done by the Defendant; and it is an Offence, in arrogating to himself Power and Authority not belonging to him, and his Zeal and good Intention shall not excuse him: Zeal must not transport a Man out of his Calling, nor beyond his Bounds; if it doth, it ceaseth to be Zeal, it is Rashness and Boldness, it is (my Lords) Presumption. I proceed to my Sentence, wherein I must crave Liberty (and in all Things whenever I speak in this Place) to use my own Conscience; and I shall ever hold this Rule, to judge and inflict Punishment, *secundum quantitatem delicti*.

For this Defendant, I think him transported with a little indiscreet Zeal; and he would not seek Remedy for his Grievance of his Ordinary, that he might have had Leave to do this Deed, but rather

rather do it of his own Head, and this by colour of the Vestry's Order, nothing to the Purpose. And this, my Lords, is rather an Error, in not doing what he ought to have done, than any great Offence in doing what he ought not.

My Lords, this I remember always, that every Punishment here must be *ad reformationem, non ad ruinam*: therefore I shall not agree to discharge him of his Recordership, nor of his Place of Justice of Peace in that City. For binding him to the good Behaviour, I humbly crave pardon to dissent from that; he is a grave Benchman, and a learned Man, and a Gentleman well governed hitherto, howsoever his indiscreet Zeal transported him into this Error. This is the first Offence that ever you heard of him. *I shall agree for his Submission and Confession of his Fault to my Lord Bishop of Salisbury, to be made before his Lordship, and such as he shall call unto him*: But, my Lords, for his Fine to the King, 1000*l.* is too much, and 500 Marks is too little; I shall therefore go between both, *and set 500*l.* and Imprisonment, according to the Course of the Court.*

Secretary Windebanke. *I agree in Sentence with Mr. Chancellor of the Exchequer 1000*l.* Fine, Acknowledgment in both Churches; to be put out of his Place, and imprisoned.*

Secretary Cooke. His Majesty's Attorney-General Plaintiff, and Mr. Sberfeld, an ancient Gentleman, is Defendant. In my Sentence I shall endeavour to keep a good Rule, which is this, not to make Faults where they are not, nor to make them greater than in themselves they are.

The Information hath charged seven several Crimes upon the Defendant; but of all these, nothing but one, touching the Defacing of such Ornaments, sticketh upon him: But is this so much? This Picture was made for the Picture of God the Father: So I thought also, I confess, whosoever was mistaken; for Images in Churches, there hath been heretofore much Trouble about them. The first Trouble that I have read of, was in or about the second *Nicene* Council; and we read, that Imagery, or Image-worship, grew up after it had slyly crept in, in this manner.

First they were made for Stories, to teach that to the Eye which the Word doth to the Ear. Then they began to gain some shew of Reverence at their approach unto them; but not to the Images, the Reverence was done to God. Afterwards they came, as we read, (out of the Windows and Walls) into the Church, and at last upon the Altars, and then to be worshipped and offered unto. Howbeit, this was but a relative Worship, as they would excuse it; nay, as St. *Gregory de Valentia* saith, they did in his Time give Co-worship to the Images with God: But our Church doth not allow any Adoration to be given to any Image or Picture whatsoever, nor the Image of God the Father to be in the Church.

This is the Matter of his Accusation: So that as unto the Matter, the taking away of such a Picture is no Offence; but in the Manner of doing it, is the greatness of the Offence.

Reformation in a private Man, is Deformation, it is not to be permitted: I shall ever be as ready to punish such as any. But that he did this of his own Head, without Leave of the Church wardens, and against the Bishop's Inhibition, it doth not appear to me as it standeth before us. I conceive he had some Opinion that the Vestry, or his own

Authority, might allow him in that which he did, and warrant him in it; but he should then have done it according to the Authority.

I think he did this out of a little more Zeal than he thought to be in others; and I find that he did it without acquainting the Bishop therewith: but it is fully proved that he is conformable, and therefore it doth not appear to be in Opposition of the Reverend Bishops.

I incline to my Lord the Judge's Opinion that spoke last, that it was done out of Zeal; and he himself answereth, it was done out of Tenderness of Conscience: yet I say, that private Men are not to make Batteries against Glass Windows in Churches at their Pleasure, upon pretence of Reformation. Notwithstanding, I conceive the Danger of Example to encourage others to break down such Windows, will not be so great, as the Occasion of Triumph to ill-affected Persons would be, if this Court should too severely punish an Error in pulling that down which the Church disalloweth. *Therefore an Acknowledgment to the Bishop of Salisbury, in the Presence of such others as he shall appoint, that he hath not done well in not asking his Leave, would do well; and I hold it fit it should so be: And that he be admonished to conform himself to the Government; but I acquit him (for my Part) of his Fine, and all other Punishment.*

Sir *Thomas Jarmin*. The Cause before your Lordships, is upon Mr. Attorney General's Information against this Gentleman, Mr. *Sberfeld*; and it is for doing of a Thing, which, if it had been done with answerable Circumstances, had been no Fault in him, *sed bonum est ex integris causis*: So that the not doing of this Thing in a right Manner, maketh it an Evil; but not so great an Evil, in my Opinion, as by our Sentence to ruin him. But it is a great Error for Men to be zealous in their private Spirits, and to put themselves forward upon publick Actions belonging to the Supreme Government. I hold that the practical Solecism, by overt Actions, is the greatest Opposition against Authority. These are to be vigilantly met withal; but for this Gentleman, some things here spoken make me pity his Case: Besides his doing the Fact in such manner as he confesseth, there is not any one Thing else brought home upon him by two Witnesses.

To speak my Sentence shortly; As I shall not say any thing to encourage those hot-spirited Men, so I shall still bear and remember that excellent and just saying, mentioned by one of my Lords the Judges, that we are to judge *secundum probata*, not *probabilia*; and therefore *I agree with the same Lord in all the Sentence.*

Sir *Henry Vane*. As to the Cause, before this Court, at this time, it is (my Lords) a Crime in the Defendant; none differeth from this, that he hath done that which becometh not his Wisdom and Experience. I have learned long since, that Ignorance doth not excuse an Offence, either in Church or Commonwealth: And I hold that this Offence of Conscience is not to excuse him; for he went not to the Bishop to complain of it, all these 20 Years that he was troubled at it. I heard some commend his Manner of doing it. I am not of that mind, he could not but know, that if he had an Order he must pursue it. I must confess, I do admire that he (being a Lawyer) should be ignorant of the Proclamation to the contrary: But he is a learned Man, a Recorder, a Benchman, and a Parliament Man; I have known him give

grave and wise Counsel in that Place: All these aggravate his Offence, and make it Wilfulness in him. But for his Conformity, and yet doing a Thing contrary to his Profession of Conformity, I ground my Sentence the heavier upon him, *he shall pay* (I think fit) 1000 *l.* *he shall make acknowledgment of his Offence in the Cathedral Church of Sarum before the Bishop, Prebendaries, and Canons, but not be put out of his Recorderhip.*

Sir Thomas Edmonds. I agree with my Lord Heath for 500 Marks Fine, Acknowledgment before the Bishop of Sarum only, and such as he shall please to call unto him.

Bishop of London. If there be *defensio facti*, or *confessio facti*, or else two Witnesses, I think any one of these three will be a sufficient Proof to convict a Man of an Offence; and I have observed there are all these together, in this Cause against Mr. *Sherfield*. He confesseth that he broke the Windows, and setteth forth his Justification in his Answer to Mr. Attorney's Information; and this was done by him with his Pike Staff, as is testified by two Witnesses, such as they were; yet they were Eye-witnesses, which is the strongest Testimony. I am persuaded, as I am a private Man, that at least he heard of the Bishop's Inhibition; I do not say, but *ignorantia facti* may excuse a Man in such a Case, at least *a tanto*, tho' not *a toto* perchance; but *ignorantia juris* never doth excuse: yet, because it is not directly proved that he had Notice of the Act of Inhibition, made by my Lord Bishop, I shall forbear to give my Sentence touching this Particular, the rather because he hath cleared himself of it by his Oath; and yet I have met with as strange an Equivocation in some of late as almost hath been heard of, I have not read the like; but seeing there is not plain Proof, I must not judge him other than an honest Man.

Mr. *Herbert* hath defended this as well as ever any did a Cause to my knowledge. As for Vestries, which were made and suffered first by Negligence doubtless, yet being of continuance, we cannot so easily restrain the Power which they use. I have had Experience of what I speak herein, in a Parish Church within my Diocese, *St. Lawrence* by Name, there is a Vestry: It fell out once that they could not agree upon some Election, I interposed as Ordinary; I had no sooner done this, but I was inhibited by the Archbishop of *Canterbury*; afterwards, by his Grace's means, it was referred to me to end, which I endeavoured; but then a Prohibition at the Common Law was sent me; so that it is not an easy Matter to restrain a Custom.

But it is not in the power of a Vestry to remove or displace any thing in the Church that is doubtful; and tho' they made an Order, in this Case, for the taking down of the Window, yet it was Mr. *Sherfield's* Fault to go so disorderly to work; his violent and riotous breaking into the Church, and upon a consecrated Thing, is criminal in him.

Whereas divers Things touching his Conformity have been proved, I am confident upon good Information, had the Cause been followed as well as defended, (but it was ill followed by them that prosecuted, and unworthy their Places) many more things might have been proved against him; and that it would have appeared, he had done more Harm underhand in his Place, than Good otherwise. But for his Trouble of Conscience, which should impel to this Action; it troubled not much, for he kept it in, and nourished it 'till it

grew, as you see, to a great Head, so that at last it hath brought him hither, even to the Sentence of this Court.

My Conscience being laid at stake, I am not of Opinion, that Images and Pictures were not in the Church 'till the Time of *Gregory the Great*: Nor am I of Opinion that the first Trouble about them was at the Second Council of *Nice*. *St. Gregory*, who was 600 Years after Christ, in his 9th Book and 9th Epistle, written to faith of Images, *vetustas admittit, &c.* But 200 Years before this, we find that *Gregory*, surnamed the *Divine*, otherwise called *Gregory Nazianzen*, when the Emperor laid Siege to the City of which he was Bishop, in his Oration to the said Emperor, to move him to pity, faith, That the Citizens, above all their Losses, spoiling of the City Walls, ruining of their Houses and Temples, took to heart the pulling down their Statues; *Et hoc acerbum*, faith he. Nay, we find them in them in the Church 200 Years after Christ, they were upon the Chalice, and that is ever upon the Altar.

In *Tertullian's* Time (who was one of the ancientest Fathers) there was painted upon the Chalice the Picture of the Shepherd bringing home the lost Sheep upon his Shoulders; and this was objected against *Tertullian* himself, who in his latter Time fell into the Opinion and Error of the *Montanists*, who are against second Marriage and Repentance after Baptism, affirming that no Repentance is left to him that sinneth after Baptism; against which Error, the Church used this Symbol of the Shepherd bringing home the lost Sheep.

Again, in the Time of that ancient Father *Irenaeus*, who is held to be the Scholar of *St. John*, they had the Picture of *Jesus Christ*; and they had it from the *Gnosticks*, who had Adorations with it, and Sacrifices: and therefore the holy Father condemned that Picture, because (saith he) the *Gnosticks* did that to this Picture which the Heathens did to their Idol Gods. But it hath been a distasteful Thing to remove Pictures and Images. We read, that the Bishop of *Cyrene* broke the Pictures in the Churches, which his People took so ill, that they rose against him, and were hardly appeased.

And of late times we have had Experience of like Mischiefs in *France* and the *Low-Countries* about this Matter. And we know what Rebellions were raised in the beginning of the Reformation here in this Kingdom and in *Germany*: when *Carlostadius* and his Company went about to pull down, and deface the Images in the Churches, what a Stir was there? If *Luther* himself had not come back and appeased the Multitude by his timely Advice, that the Work of Reformation was to be left to the supreme Magistrates, (which was well done of him, and a Thing wherein he shewed his Wisdom) much more Mischiefs would have ensued. I do not say these Things to any such Purposes, as that Images should have any Part of Divine Adoration.

When these were brought into the Churches, as one Side fell to worshipping them, so the other Side fell to breaking and defacing them, which bred many Broils; and amongst the rest, one very sharp Contention by reason of the prevailing of Worshipers of Images, was stirred in the Time of *Constantine the Great*; for I read the Empress gave her Voice against her Son *Constantine* to put him off from the Empire, because of his defacing of the Images, which they had in their Churches. But

for that gross Council of *Nice*, (pardon me this gross Term, but they deserve it in my Opinion) they decree, the same Honour was to be done to the Image as to the Life, whether it were the Picture of Man, or of *God*, or of *Christ*. And then another Decree in that Council was, that a Man must rather endure Penury than do Violence to a Picture: and their absurd Distinction of *Latria* and *Doulia*, &c. Yet this I say, there is a great deal of Difference between an Image and an Idol. But then, if Men give Worship to them as to the other, it is unlawful.

As for the Injunctions in the Queen's Time; this was done by publick Authority, and done in every Place by the proper Judge.

And, touching the Matter in question, I do not think it lawful to make the Picture of God the Father: but 'tis lawful to make the Picture of Christ, and Christ is called the express Image of his Father. I don't mean to say that the Picture of Christ, as God the Son, may be made; for the Deity cannot be portrayed or pictured, tho' the Humanity may. I do not think but the Representation of God the Father (as in the Prophet *Daniel* he is called the Antient of Days) hath been allowed (tho' erroneously) to be made, like an antient old Man: And this the *Lutheran* Party hold too; but whether it be idolatrous or superstitious or no, this I hold not to be the Question. And I shall crave Liberty not to declare * mine Opinion at this time, whether it ought to be remov'd: But the Defendant, Mr. *Sherfield*, did this in Contempt, at least in Neglect of the Church's Authority, and the Authority of the King's Majesty; for the Church derive their Authority from the King, as well as the Civility. I shall therefore sentence him for breaking this Window, whether it were fit or no to be in the Church; if it had been white Glass, it would have been the same thing to me; it was a violent and raging Act, and it is now a Business of great Weight and ill Consequence, and therefore fit for the timely Censure of this Court. And I say farther, if it had been the Idol of *Jupiter*, and they had professed Divine Worship to it, it had not been lawful for Mr. *Sherfield*, or any private Man to deface it; and this I shall prove and maintain by Scripture.

The Idol of *Jupiter* was but as the golden Calf which *Aaron* made, before which the People of *Israel* committed Idolatry; yet we see Judgment was executed by the supreme Magistrate by Command from God, and the Tribe of *Levi* was command to kill the Idolaters.

Then again, there was a Brazen Serpent appointed to be set up by the Lord himself; and afterwards it became an Idol, and the People committed Idolatry with it; yet none of all *Israel* presumed to break it down, but *Hezekiah* the King did it. Also the Calves of *Jeroboam*, set up at *Dan* and *Bethel*, were plain Idols, yet they continued a long time, and were not pulled down 'till *Josiah* the King did it, and this he doth by his supreme Power; and the King did this by the Priests of the first and second Order. Both these appear in their Stories in the 4th Book of *Kings*, the 18th and 23d Chapters.

As for the Second Commandment, *Thou shalt not make any graven Image*, or Picture, to thy self:

No, take heed, worship it not howsoever it be; if thou dost make an Image, yet thou shalt not worship it. But there is no Command or Example for breaking of Images (when they are made) without publick Authority. You shall see this plainly in that Altar set up by the *Reubenites* and *Gadites* at *Jordan*; this was conceived by some of the People to be an idolatrous Thing, at least an Intention in them to set up another Manner of Worship, and *Jerusalem* was the Place of Worship only: there was an Embassage sent unto them, and *Phineas* and other Princes were employ'd in it; they did not presently fall upon them and break down the Altar, tho' they had special and strict Command to overthrow and break down all Idolatrous and Heathen Altars, Groves, Places of Idolatry and Images; but this they were not to do presently, they were to tarry 'till the Land was theirs, in their own Power, as you may see in the 7th and 12th Chapters of *Deut*. But you will say these were for the *Jews*, but not for us in the Times of the Gospel. In St. *Augustin's* Time the People committed Idolatry with their Images, and many there were that would have pulled down the Images (the Causes of this Idolatry.) St. *Augustin* adviseth, No, first preach them out of Men's Hearts, and he called upon the Ministers so to do; but you shall not pull them down (saith he) till the supreme Power doth it, or Power were given them. Thus, if it were *Jupiter's* Picture, Mr. *Sherfield* or any others are not to pull it down 'till Power be given them. And *Gerardus* the *Lutheran* is of the same Opinion.

The Homily against Idolatry (so much magnify'd) plainly shews it to belong to the supreme Magistrate, and has reference to such Pictures as are upon Walls; but Stories upon Glass Windows were not here meant. And as for my Lord Bishop of *Salisbury*, his † Book of his worthy Lectures at *Cambridge*, upon the 4th Chapter of the Epistle to the *Colossians*, upon these Words, *Walk wisely towards them that are without*, What saith he? Why the very same that St. *Austin* did before, that a private Man hath neither *vocationem* nor *potestatem* to do it; thus if he had read a little farther, he should have found Direction to have walked wisely. And indeed, those that are out of the Church must be dealt wisely withal. When you see these Things, you cannot, as the *Israelites* did not, deface them, for they belong only to the supreme Power. And you shall see St. *Paul's* Practice in the 17th Chapter of the *Acts* of the Apostles; he saw they had set up an Altar to the unknown God, yet he went not to pull it down, but to teach them that God which they knew not, even as St. *Austin* afterwards advised.

So I come to this which is the Work of the Day; this is a violent, riotous and prophane entering into the Church by him, to break this Window down with his Pike-Staff: and as the Matter standeth proved to me, it seemeth there are these Circumstances of Aggravation of his Fault.

1. The First Circumstance of Aggravation is, That when he went about the taking down of this Window, he went not unto the Bishop, but chose another way.

* But he shew'd his Opinion, when upon his Promotion to the See of *Canterbury*, he caus'd the same kind of Pictures to be set up in his Churches at *Laumbeth* and *Croydon*. *Ruth Col. Vol. 2. p. 275.*

† *Davenant on the Colossians, cap. 4, s. 2. 289*

2. He was Twenty Years offended at it; and in all this Time we think some good Spirit might have suggested unto him better Advice, if he would have followed it.

3. By his Office and Authority, his Fault is the greater and more scandalous.

4. By his Age, being grown grey, he should have learned Wisdom.

5. That when he went to do this, he went in private, which some have said to be well done, but I am not of that Opinion: true, if it had been a Work of Necessity in him to take it down, he might have done it, but then he must follow his Order, and he should then have taken a Glazier with him to have taken it down, and not break it down with his Staff.

6. His Offence is the greater by his Office of Justice of Peace; certainly herein he was not *Conservator pacis*, for besides the Force and Violence, there might have been much Discord and Blood-shed about it, as was well observed by Mr. Attorney.

7. By the doing of this Act contrary to his Conformity, there have been the like Insolences done in the same Church, for which I think there is a Cause against some of them depending in the *High Commission Court*; there was the Tomb of a dead Bishop there, his Bones taken up, his Scull made a Mazer in an Apothecary's Shop, (as I am inform'd) his Dust thrown about, and all to bury a Tanner's Wife.

8. In regard of his Tenderness of Conscience, which he alledged for himself: My Reason is, for that, if he were of a tender Conscience indeed; yet in this thing I shall sentence him, for not going to the Bishop to reveal it to him; if it were but a shew of Tenderness, then surely there was the more Wilfulness in his Offence, and this can be no Excuse.

9. His Fault is aggravated from his Profession. It is an honourable Profession; and as it is a great Offence in a Divine to infringe the Law of the Kingdom wherein he is born and bred up, so is it also a great Offence, if those of the Profession of the Law vilify the poor Laws of the Church. Thus much let me say to Mr. *Sherfield*, and such of his Profession as slight the Ecclesiastical Laws and Persons, that there was a time when Churchmen were as great in this Kingdom as you are now; and let me be bold to prophesy, there will be a Time when you will be as low as the Church is now, if you go on thus to contemn the Church.

To proceed, he went into the Church. It pleased God to give him a fall upon the Place, and if it had not been God's Mercy he had broken his Back upon the Edge of the Pew; yet all this while these Things have not wrought him to any Confession that he hath done amiss; nay he saith, he was persecuted for God's Cause (as I am informed) but I think he persecuted the poor Sexton of the Church, they put him in Prison, and there kept him, and would have kept him, if my Lord Bishop had not sent Bail; and if it had not been for the Bishop, they would have turned him out of his Place. And then, just upon the Fact committed, cometh a new Lecturer to Town, and he pitcheth upon the Text, *Psalms* cxix. ver. 121. *I have executed Judgment and Justice; leave me not to mine Oppressors.* I have been the willinger to render this Account at this Time, because some are ready to slander us, as Maintainers of

Popish Superstition, and I know not what. *As for my Sentence, I agree with my Lord Cottington.*

Lord *Wentworth*. This is an Offence (my Lords) committed by a Man of Learning and Judgment; the Persons of Men and Times may aggravate Offences. Men now in these Days make themselves wiser than their Teachers; whereas it is said, he did this out of Conscience and Zeal, and with an intent to honour God, he is out of his Element. *Uzzah* touched the Ark with a good Intention; but because he did this without warrant, he was secretly punished: It is not for a Divine to meddle with *Littleton's Tenures*, nor a Lawyer with Divinity, to govern Matters in the Church. The Vestry had no Power to reform, nor authorize Mr. *Sherfield* to do this Thing; and I hold it a very great Boldness in him, to justify his Fact under these Pretences; for things which Vestries undertake to do of themselves, if it be well done, it is well; if it be not, let them look to it. But for their frequent and ordinary transcending their Power, it is high time that the Bishops be directed by the King's Majesty, to regulate all such Things, and to reduce all these Vestrymen into Order and Obedience. I shall not forbear to punish an Offence of this dangerous Consequence upon that Ground, for fear of giving an Occasion of Triumph to some. I think his Impunity will be rather an Encouragement, to Men of other Minds, to set their Hands to the like, of which there is great Danger. I shall not therefore in my Sentence go any thing less than any of my Lords here before me have done; *That he be not any longer Recorder of that City; that he be bound to the good Behaviour; I see no Reason but a Gentleman may be bound to the good Behaviour: For his publick Acknowledgment, I think it necessary to be made in both Churches; and that he pay 1000 l. Fine to his Majesty's Use.*

Sir *Robert Naunton*, Master of the Court of Wards and Liveries, gave not his Sentence because he was not in Court the last Day, at the beginning of the Hearing.

Lord *Newburgh*, Chancellor of the Duchy of *Lancaster*, forbore to give his Sentence for the same Reason.

Viscount *Falkland* agreed in his Sentence with my Lord Cottington, for 1000 l. Fine unto the King, &c.

Viscount *Wimbleton* agreed in his Sentence with my Lord *Heath*, for acknowledgment of his Fault to the Bishop, and such as he should think fit to call to him; and to pay a Fine of 500 Marks to the King's Majesty.

Earl of *Holland*. He was not present at the Beginning of the Hearing of the Cause, and therefore did forbear to give his Sentence.

Earl of *Devonshire*. He agreed with my Lord Cottington for 1000 l. &c.

Earl of *Dorset*. I conceive, my Lords, that the Prosecutor of this Cause is much to be blamed, and did the Court legally take Notice of a Prosecutor, where the King is a Party, I should give my Vote to fine such a Man: He hath here made a great Noise of terrible Things, (seven in Number) but hath not endeavoured to prove many of them. I shall speak somewhat of the Matter in question that sticketh upon him, and not meddle with what hath not been proved. And first is to be considered what was done; a Window in a Church

Church was broken, because of the Image of God the Father which was in it, in those Places of the Head and Feet of the Representation of the Deity: this, if it had been done by the proper Judge, had been well done. If all unlawful Pictures and Images were utterly taken out of the Churches, I think it were a good Work; for at the best they are but Vanities and Teachers of Lyes. For the Antient of Days in *Daniel* (I take it) this doth not give warrant to frame a Picture of God like an old Man; but it sheweth the Eternity of God, that he was before all Times and Days. And it cannot be taken to be the Portraiture of any other; for this being made to represent the Creation, it must needs be intended for the Picture of God the Father; for what Man did help God about the Creation? This therefore is unlawful, no Man ever saw God, nor did he ever appear in any Likeness to Man. But we picture Christ, because he took upon him Man's Nature, and was Man as well as God; and the Holy Ghost appeared in the Similitude of a Dove: But I wish there were no Image of the Father, neither in the Church, nor out of the Church.

Secondly, I note the Mind wherewith it was done, and it was out of a little too much Zeal, his Conscience was tender. This, if it had been guided well, would have been worthy of Praise. I do not speak this to make as if Men may take upon them to meddle in what belongeth not unto them; yet there is difference between a Fault done of Zeal, and the same thing done out of Malice.

Next let us consider the Authority whereby he did it; and herein especially Mr. *Sherfield* had no Power. The Vestry had no Power, neither could they give any to another; it was therefore an Error in him to conceive, that because they used to meet and do Things for Repair and Ornament in the Church, that therefore they might do this, being a Piece of Reformation; I say it was his Error to do it without the Bishop of the Place. I would not be mistaken, as if I speak or did any thing against the Authority of the Reverend Prelates; for I take it, whensoever that Authority goeth down or decayeth, the Monarchy dieth with it, I think they are inseparably join'd together. But this was an Opinion of his, that it was their Lay-Fee; and if he repent him of his Opinion, recant it, and depart from his Justification, (tho' his Answer be otherwise) I shall not take upon me to destroy a Man for such an Offence.

Then in what Manner did he it? Privately and without Noise; and this I hold to be a Diminution of his Fault, for secret Evils are not so bad as when they are openly done; the same Evils done in Chambers, are not so bad as if they were done in the Market-Place.

And it cannot aggravate his Fault, that he is conformable: I say, in my Opinion it was very necessary for him to prove himself a Conformitant; and being charged in the Information to be otherwise minded, he did well and wisely to clear himself by Proof.

I come to my Sentence.

I shall not sentence him for three or four Papists, nor shall I forbear to sentence him for three or four Schismatics; the Reason why I shall not sentence him, is to avoid the Tumults of the rude ignorant People in the Countries where this Gentleman dwelleth, where he hath been a good Governour, as hath been testified,

and is well known, and no doubt hath punished Drunkenness and other Disorders; and then such Persons shall rejoice and triumph against him, and say, This you have for your severe Government: this I think would be no good Reward for his Care. The Reason why I shall sentence him, is because he hath erred in his Manner of doing this Thing, in going on his own Head without the Ordinary, to a Work of this Nature; and this I shall hold to be an Offence in this Defendant, or a Misdemeanour, but not a Crime. I would not have him to lose his Place therefore, nor to be bound to the good Behaviour; *I would notwithstanding have him make such Acknowledgment to the Bishop of Sarum, and in such Manner as he shall think fit; but I do not set any Fine upon him.*

Earl of *Pembroke* and *Montgomery*, Lord Chamberlain, he gave no Sentence at all.

Earl of *Arundel*, Lord Marshal. I find fault with this Gentleman for keeping close his Offence of Conscience, which he saith he had at this Window, by the space of twenty Years together: he should in all this Time have revealed his Mind to the Bishop, who had been able to direct him; but upon the Matter, he goeth on his own Authority to break down this Window. This being long kept in his Heart, breaketh out to deface the Image of God in a Man. Besides, he leaveth the Ordinary, who hath Power, and goeth to the Vestry who hath none; and in his fanatical Humour he proceedeth, and breaketh the Order of the Vestry. God gave him a Warning; he fell upon the Seat, and hath had Time enough to think of it since, and in all this Time he never came to acknowledge his Offence. *I agree therefore with my Lord Cottington.*

Earl of *Manchester*, Lord Privy Seal. In this Cause, my Lords, I shall propound two Things to be considered, The Fact it self, and the Circumstance of it: For the Fact, the breaking of the Window because of Idolatry, If this had been in a Man's Lay-Fee, then he had been bound to have pulled it down; but being in a parochial Church, it is to be done by the Ordinary, or by his Appointment. This therefore being done by Mr. *Sherfield*, upon some Opinion that he had in the Power of the Vestry, it was an Error in him, but pardonable. It doth not appear that this was done contrary to the Inhibition of the Bishop, *Non notum est Judici, quod non notum est judicialiter*, he had not therefore Notice of it: for my Lord of *London's* aggravating Circumstances, it is true, if the Thing were done, as it is charged in the Information, then those would be all against him; but we see there were Causes it should be taken down; it is proved some did adore it. How long soever Pictures and Images have been in the Churches, I hold it a very offensive Thing to make such a Picture, or Representation of God. I will mention but one Author, which was before all them who were named, the Prophet *Isaiab*, *What Likeness or Similitude will you make of me, saith the Lord?* Yes; but Idolatry lies in the *Worshipping* of the Image. Take a wise Man's Counsel, The painted Picture inticeth the Ignorant to Idolatry. I profess it would offend my Conscience to see it, I am of such a pure Conscience. But there are three other Things for which I shall censure him.

1. His pretending the Order of the Vestry.
2. That he would neglect Authority, which is near unto Contempt.

3. His Passion in doing it himself, and not by others.

This Cause and Sentence hath many Judges, even so many as hear it are Judges of it. All may take notice, that our Votes are to maintain Order and Government, yet not to uphold Superstition. I will be short, I will Sentence the Defendant, but not Fine him; *to make Acknowledgment to the Bishop*, not to disrecorder him: the Fact deserves not a Fine.

Archbishop of York *. May it please your Lordships, this Gentleman, Mr.

* *Dr. Neale.* *Sherfield*, is inform'd against by his Majesty's Attorney-General, for entring with Force into the Church of *St. Edmond's*, in the City of *Salisbury*, and there undertaking, without the Ordinary of the Place, to be a Reformer of Idolatry, in breaking a Glass-Window in the same Church, which he did of his own Authority. In his Answer upon the Matter, he setteth forth a Justification.

First he saith it was the Lay-Fee of the Parishioners; but this will not help him, for it is a Parochial Church.

Next he had Warrant for what he did, as he pleadeth, That he did it by Order of the Vestry: I wonder what is the Vestry, and what Power and Authority they have? It is a Place where antiently the Ornaments of the Church were kept; since those Things were gone, there were Meetings by Parishioners to agree on Matters of Repair and Assessments, and Rates for the Church and the Poor; and they did meet sometimes in the Church, and sometimes in the Vestry, no Man of the Parish was excluded. Afterwards, to avoid Tumults and Multiplicity of Voices, some Bishops had appointed, by special Instruments under their episcopal Seals, that such and such, to a set Number, should be Vestry-men, and be so call'd, and shall order Matters for the Repair of the Church, for Bread and Wine for the Communion, and such like Things, as the Charges about Bells, &c. And here I shall make bold to remember a Story to your Lordships of what pass'd between my Lord *Burleigh*, my self, and *Dr. Bancroft*, the then Bishop of *London*, when I was Vicar of *Chestbunt*. I was then a young Man, and I had an Opinion that there was somewhat in a Vestry; and had a Purpose which I acquainted my Lord and honourable Patron withal, to have some Authority deputed us in our Vestry, by the Bishop of *London* our Ordinary; I had my Lord *Burleigh's* Letter of Commendations, and special Request to the Bishop for the same. His Lordship's Answer which he gave me was thus: *If you have Occasion to repair the Church or the Bells, to make Rates for the Poor, and such like Things, this you may do; but if you think otherwise, or aim at any other Power, it shall not be allowed you, and you smell of the Presbytery; therefore, I pray you, commend me to my Lord Burleigh, and tell his Lordship I will not incur a Præmunire, for I have somewhat to lose.*

I conclude; The Vestry hath no Power to make Reformation, nor can the Defendant derive any Power from them: Therefore, as for the Matter of Offence, the Picture of God the Father, no Man ever took upon him to paint the Essence of the Deity. But the Question is, whether it be lawful to express God the Father by any Representation? I think it not unlawful in it self. The Eternity of *Alpha* and *Omega* doth appear in Christ, and Christ is the Image of his Father. As for

those divine Homilies of the Church, set forth in King *Edward's* Days, and that in special against Idolatry, we know the Times did not bear them; nor are they to be taken or understood, as not to allow any Manner of Pictures or Images (tho' it may seem so) of Christ upon the Cross; but it is like the forbearing of Food for a Time, as *St. Paul* saith he would, for fear of giving Offence or Scandal unto others, who are weak; I say that for the Crucifix, there may be a very good Use made of it. As for the Purpose, he that shall look upon a Crucifix not to adore it, or give any divine Worship thereunto, he must needs think with himself, how can I but grieve and mourn for these Sins of mine, which could not be expiated but by my Saviour's Blood upon the Cross? And then I cannot but think of the great Love of our Lord Jesus Christ to Mankind, that vouchsafed to die for my Sins. And then, it serves to increase my Confidence in him, by considering that he has given himself for me, and promised that I shall not want any thing that is good for me; and that he will not deny me my Prayers in any thing which I ask agreeable to his Will; so that this must needs work a deep Impression on my Heart. I thus think; but when it cometh to be Superstitious, or that some make it a Cause of Idolatry, I must confess, I would then rather want the Thing, and all the good Uses of it, than incur the danger of propagating Idolatry. That reverend *Jewel*, Bishop of *Salisbury*, in his Time had a Commission, and he took down all idolatrous Windows in the Churches, and set in place thereof clear Glass, but he left alone this Window; and surely, if he had thought it to be idolatrous, he would have reformed it. And we have the Creed of *Athanasius* which hath these Words, *That Christ is of one Substance with the Father*; therefore the Image of the Son is the Image of the Father, and therefore it cannot be Idolatry simply to make it. But grant that it was a Cause of Idolatry, might Mr. *Sherfield* or the Vestry take it down? He saith in his Answer, that himself and four others of the Vestry are Justices of the Peace, and not altogether private Men. I would ask him this Question, whether as Justices of the Peace, they are to meddle with Reformation in the Church? It is plain they are not; yet, as a private Man, he hath undertaken to break this Window; whereas the Agreement of the Vestry was to take it down: neither was it meant that he should do it himself, but by the Glazier, and set up new Glass in the room of it; but he hath not followed this neither. My Brother, that sitteth by me, hath very well and learnedly spoken of the Authority by which these Things ought to be done. I cannot add to what hath been said by him; I shall therefore (because much Time hath been already spent) only insist on one Thing in the Defendant's Answer, and so conclude my Sentence. He saith, the Authority which the late Queen had to reform and set forth those her Injunctions, were given to her by the Parliament. This is not well spoken. The Statute of 1 *Eliz.* is but an Act Declaratory, not to be taken as if without it the Queen had no Power to meddle with those Things of the Church; for this Authority was invested in the Crown, and is still without the Parliament. He that said *per me Reges regnant*, giveth this Authority to the King. It is good to meet with growing Evils, we know not how great a Fire may be kindled with a small Spark. I cannot therefore do otherwise, but

agree to Fine and Censure him highly, having offended with so many Circumstances of Aggravation, as have been well opened by divers of your Lordships before me; therefore my Sentence is, that *I concur with my Lord Cottington in all the Parts of his Sentence.*

Lord Coventry, Lord Keeper of the Great Seal of England. This Cause, my Lords, I doubt not will produce a good Effect; for this great Audience consisting of Gentlemen from all Parts of the Kingdom, cannot but be satisfied that we think it not fit nor lawful to represent the Deity by Picture, and consequently we condemn *Romish* Superstition; and on the other side, that we are resolutely bent to maintain the Government by the reverend Fathers of the Church, the Bishops. And all this I think fit to be carefully expressed in drawing up the Sentence. This I must premise, that when I speak my Conscience I be not mistaken, I am no Worshipper of graven Images; nor on the other side, am I of that peevish turbulent Humour with others. For the Charges in the Bill, if they had been proved, I should for my part have trebled the Fine set by any of your Lordships. There was never Cause worse prosecuted, yet we are to consider how much standeth proved against the Defendant. The Prosecutor causeth the Information to be exhibited against this Defendant and ten others; but those ten are not so much as pressed to answer. First, to speak to those Things that are not proved, but only charged upon him.

First, He is charged with Inconformity, therefore it was necessary for him to discharge himself of it by his Proof, which he hath done, and no doubt remaineth in me to the contrary; for the Prosecutor, tho' apt enough to charge him with this, yet he exhibiteth not a Witness or Interrogatory to prove it.

Secondly, That he did this in Contempt of the Ecclesiastical Power, and contrary to the Lord Bishop's Act of Inhibition; but it is not proved he had any Notice of it before the Act was done, and therefore the Oath of the Party is to be believed: nay, there was no Endeavour to prove it, so far as I see. And I like not so well Mr. Chancellor's moving the Bishop to make an Act to continue this Window, if it were for any other Cause than to preserve the Ecclesiastical Jurisdiction. Mr. Chancellor should have done well to have declared this Dislike and Scandal to the Window to my Lord Bishop of *Sarum*, and he no doubt, would have removed it. I do not say the Bishop or Ecclesiastical Judge is bound to give Notice of his judicial Acts in their ordinary Proceedings in Course of the Ecclesiastical Laws, and their own Jurisdictions: But if you will charge a Man upon a Contempt in a criminal Court, as here you must, then prove he hath Notice of the Inhibition: for else it is but *Ignorantia Juris*, which in the ordinary Way will not excuse; and yet if it were *Ignorantia Juris*, I do not see but in so high a Course of Prosecution as in this Court, it might in some Cases diminish a Fault: but this is *Ignorantia facti* in this Case.

Thirdly, That he did profanely demolish this Window, containing a Representation of the Creation. This giveth Occasion to look a little into the Nature of these Pictures; I conceive them to be unlawful and irreligious Pictures of God the Father. Two of the Witnesses say they were Idolatrous, and made to represent God the Father; that it is God the Son's Picture, there is no Proof.

I think that Opinion of making the Image of God according to that of *Daniel* (calling God the Ancient of Days) in the Form of an ancient Man, is (as my Lord of *London* hath said) erroneously grounded; and also to bring God as he appeared unto *Daniel* to be presented in the Creation, which was long before, is somewhat improper.

Fourthly, Then that Mr. *Sherfield* boasted of it, it is not proved that he did, and it is evident that he doth not boast of it.

Now for what is charged upon him, and sticketh, that under Colour of the Vestry's Order, he did the same, and without the Bishop of *Sarum*. And for an Answer what Vestries are, I read not of a Vestry in our Book of Common-Law; I read much of Church-wardens, and their Doings. If it be a Meeting of the Minister, Church-wardens, and Parishioners, it is a good Meeting, and they may well deal in Matters of Reparation, not Reformation: and this is not derogatory from the Authority of the Bishop, but subordinate to it. But it may be thro' the Neglect of the Prelates, the Vestries do incroach upon their Government; and will be more disorderly, if they be not regulated. My Lord of *London* did, in the beginning of this Cause, well declare, that the Archdeacon is *magnus Oculus Episcopi*; it were fit for these to do their Duties, and so such Things should not be left to be done unto these Men of the Parish, I mean to these Vestry-men. Now, in the Vestry they make an Order that this Window may be taken down by Mr. *Sherfield*. I do not say nor believe they have Power to Reform; yet he proveth by way of Prescription for sixty-nine Years they have made Reparations and Meetings. But howsoever he doth not pursue his Order; and this indeed was not Discretion in him. But if he had taken down white Glafs, I do not see any Reason why I should sentence him; this being not prosecuted in an Ecclesiastical ordinary Course. The Council on both sides have carried themselves in the Cause extremely well; and for their yielding it to be a parochial Church, it is well done, and no Fault is to be put on the Party for his Protestation; for I cannot think but when he made his Answer, he was of Opinion it was a Lay-Fee, he sweareth it; and being he now confesseth it to be subject to the Bishop, his Fault is a great deal the less, in as much as it now appeareth, he doth not oppose the Ecclesiastical Authority.

I am glad to hear what I have heard this Day from my Lords who have spoken, and from my Lords the Reverend Bishops. I say, it appeareth that nothing hath fallen from them or any here present, to allow the Picturing of the Deity, or the Worshipping of Images.

I am much inclined to that Opinion of Mr. Secretary *Cooke*, That he be sentenced by way of Reprehension and Admonition; I hold fit that he make his Acknowledgment before my Lord Bishop, and repair this broken Window in decent Manner. I am loth he should be put to any heavy Fine, the rather because he hath not been prosecuted in an Ecclesiastical Course; therefore I give no Fine at all.

The Votes of the said Lords and others of his Majesty's Privy-Council, were thus disposed.

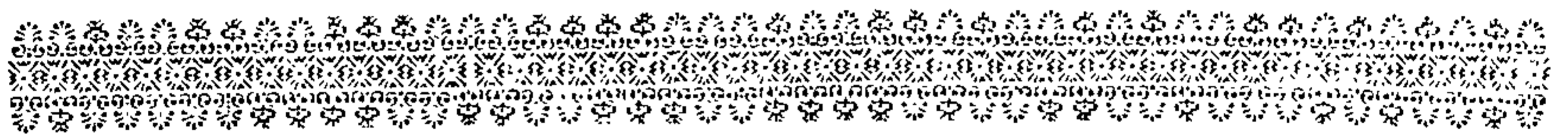
Nine agreed to set 1000 l. Fine upon Mr. *Sherfield* the Defendant, and he should be put out of his Place of Recorder, be bound to the good Behaviour, and make open Acknowledgment of his Fault in the Church of *St. Edmonds*, where the Offence was done, and likewise in the Cathedral Church of *Sarum*, before

fore the Bishop there, and the Deans and Prebends of that Church.


And Nine others (my Lord Keeper's Voice being one) agreed that he should not be disrecorded, that he should make Acknowledgment in private to the Bishop of Sarum of the said Offence, and in such Manner, and before such Persons as the said Bishop of Sarum should think fit. And for the King's Fine, these were again divided; four (whereof my Lord Keeper was one) gave no Fine at all, and five did give their Voices to set a Fine; four of them set 500 Marks, and one of them, viz. my Lord Chief Justice Richardson set 500 l. which Fine of 500 l. was taken for the King, because according to the Rules and Orders of the Court of Star-Chamber, when there is difference of Fines in an odd, the King is to have the middle Fine. Therefore the Sentence of the Court was (and is thus entred:)

' The Defendant being troubled in Conscience,
' and grieved with the sight of the Pictures which
' were in a Glass-Window in the Church of St.
' Edmond in New Sarum, one of the said Pictures,

' to his Understanding, being made to represent
' God the Father; did procure an Order to be
' made by the Vestry (whereof himself was a
' Member) that the Window should be taken
' down; so as the Defendant did, at his own
' Charge, glaze it again with white Glasse: and
' by colour of this Order, the Defendant, with-
' out acquainting the Bishop, or his Chancellor
' therewith, got himself into the Church, made
' the Doors fast to him, and then, with his Staff,
' brake divers Holes in the said painted Window,
' wherein was described the Creation of the
' World; and for this Offence committed, with
' neglect of episcopal Authority, from whom
' the Vestry derive their Authority, and by colour
' of an Order of Vestry, who have no Power
' to alter or reform any of the Ornaments of the
' Church, the Defendant was committed to the
' Fleet, fined 500 l. and ordered to repair to the
' Lord Bishop of his Diocese, and there make an
' acknowledgment of his Offence and Contempt,
' before such Persons as the Bishop would call
' unto him.'



XXXIV. Proceedings against WILLIAM PRYNN Esq;* in the Star-Chamber, for Writing and Publishing a Book intitled, *Histrionastix, or a Scourge for Stage-Players, &c.* against MICHAEL SPARKES for Printing, and against WILLIAM BUCKNER for Licensing the said Book; the 7th of February, 1633. 9 Car. I.

 HE 7th of February Mr. William Prynne, Urter-Barrister of *Lincolns-Inn*, was brought to the Star-Chamber; together with Michael Sparkes, William Buckner, and four other Defendants, upon Mr. Attorney Noy's Information; which being opened by Mr. Hudson of *Grays-Inn*, did set forth, That about 8 Car. Reg. Mr. Prynne compiled and put in Print a Libellous Volume, entituled by the Name of *Histrionastix*, against Plays, Masques, Dancings, &c. And altho' he knew well, that his Majesty's Royal Queen †, Lords of the Council, &c. were in their publick Festivals, and other Times, present Spectators of some Masques and Dances, and many Recreations that were tolerable, and in themselves sinless, and so published to be, by a Book printed in the Time of his Majesty's Royal Father; yet Mr. Prynne, in his Book, hath railed, not only against Stage-Plays, Comedies, Dancings, and all other Exercises of the People, and against all such as behold them, but farther and particular against Hunting, Publick Festivals, *Christmas*-keeping, Bonfires, and Maypoles; nay, against the dressing up of a

House with Green-Ivy. And to manifest his evil and mischievous Design in publishing of this Libel, he hath therein written divers Incitements, to stir up the People to Discontent, as if there were just Cause to lay violent Hands on their Prince; and hath expressed in many Speeches against his Majesty, and his Household, infamous Terms unfit for so sacred a Person. He hath cast an Aspersion upon her Majesty the Queen, and railing and uncharitable Censures against all Christian People. He hath commended all those that are factious Persons, that have vented any thing in any Book against the State, as the factious Book of Dr. Leighton, *Jo. Mariana* a Jesuit, to draw the People from his Majesty's Government, which is of most dangerous consequence to the Realm and State. His Book is of above 1000 Pages: and he dealt with one Michael Sparkes for the Publishing, Licensing, and Printing thereof, who is a Person that is a common Publisher of unlawful and unlicensed Books; and dealt also with Mr. Buckner, another Defendant, for the allowing of it for the Press; and with the other four Defendants to print part of it, and publish the same:

* Clar Hist. Fol Edit. Vol I. p. 73, 158. Rush. Col. Vol. II. p. 220.

† The Queen had acted a Part herself, in a Pastoral at Somerset-House: and this Book of Prynne's was show'd her as level'd at her, there being a Reference in it, Women-Actors notorious Whores; tho' in truth the Book was publish'd six Weeks before the Queen's acting. Whitlock's Mem. p. 18.

and by this means this Volume was allowed and published, to the great Scandal of the whole Realm. And to have this punished according to the Demerit of the Cause, is the end of Mr. Attorney's Information.

Mr. *Atkins* of *Lincolns-Inn* (afterwards a Judge in the Court of Common-Pleas) opened Mr. *Prynn's* Answer; That he the said Mr. *Prynn* taking into his serious Consideration the frequent Resort of sundry sorts of People to common Stage-Plays about the City of *London*; and having read divers Councils, Laws and Statutes of this and other Realms, against the frequenting of common Stage-Plays, and the Judgment and Opinion of several Divines, and other antient Authors, and divers *English* Writers allowed by publick Authority, and his own Judgment running with those; not intending to reflect, or to have relation to the King, Queen, State, or Government, or your Lordships, did about seven Years ago, compile this Book entitled *Histrionastix*; which is no more but a Collection of divers Arguments and Authorities against common Stage-Plays. That about four Years since, he did commit the same to *Michaël Sparkes*, one of the Defendants, to be commended to such Persons as then had Authority to license Books for the Press. *Sparkes* did carry it to Mr. *King*, belonging to the late Archbishop of *Canterbury*; and before he had perused this Book, Mr. *Buckner* had Authority to allow of the Books, to the Press: *Sparkes* brought this Book to Mr. *Buckner*, who kept it by him three Months, in which time he did fully peruse it. In the interim, he gave part of the Book to *Sparkes* to print, and kept the rest till he had perused it, and said, that he should have that also to the Press. In *October* following, he carried this Copy with the Licence, and caused them to be enter'd into *Stationers-Hall*, and did compound with those that had Authority for the printing of this Book. It was printed publickly, and not secretly; and because there were some of the Copies close written, he caused those to be brought again to peruse, to the intent that he might not be deceived in them; and as he saw cause, corrected them accordingly. That in *Easter-Term* was Twelve-month, the Epistle, and the whole first part of the Book was printed; and he had time to examine it between *Easter-Term* and *Trinity*, and then he did make such Alterations as he saw cause, viz. in Page 711, &c. And afterwards the Second Part, and two Sheets of the Index of the Book was likewise printed, and these were likewise brought to Mr. *Buckner*; so that the whole Book, with the Index, was bound up about *Christmas* following, which was *Christmas* was a Twelve month. Mr. *Buckner* sent for Mr. *Prynn*, and the Stationer was desirous that the Book might be published, and that he might send some Volumes to him: but Mr. *Buckner* said, he could wish the word (*Pity*) in such a Page might be left out; and I wish with Mr. *Buckner*, that *Pity* may be added to every Page of the Book. So when Mr. *Prynn* saw all this from him, that had Licence to allow printed Books, he conceived it a sufficient Warrant for his Proceedings. And for that which is alledged in the Information, of Mr. *Prynn's* commending Dr. *Leighton*, for which the Doctor receiv'd a Censure in this Court, in the Quotation whereof, viz. his Book, and of others, he adhereth to their Meaning so far as, and wherein they are agreeable to the Law: and this Book was

printed long before Dr. *Leighton* was question'd in this Court. And as for encouraging of others to be factious or seditious, he saith upon his Oath, That he was so far from Disloyalty, Schism, or Sedition, or Neglect of the King, State, or Government, that he hath with much Joy, Chearfulness, and Thankfulness to God, ever acknowledged his, and the rest of the King's Subjects Happiness, by the Peace we have under his Majesty's happy Government; and this Answer and Intention is sincere, tho' other Construction be made thereupon. He saith, he hath taken his Oath of *Supremacy* and *Allegiance* in the University and Inns of Court where he hath taken his Degrees. That it never came into his Thoughts to approve of Schism or Sedition: and if any thing in his Book, contrary to his Meaning, hath a Mis-construction towards his Majesty's Government, State, or your Lordships, he doth prostrate himself at his Majesty's Royal Feet, and crave Pardon and Grace. And he doth appeal to your Lordships Interpretations of those Parts of his Book; and doth withal desire your Lordships Favour, and to take it into your Consideration, that he hath been a year Prisoner in the *Tower*: And this is the Substance of his Answer.

Mr. *Jenkins* of *Grays-Inn* opened the Answer for four of the Defendants. First, for the poor Widow he saith, For any manner of Combination, or Knowledge of this Book, or of the Contents of it, &c. she knoweth nothing. For the rest, they all say, They being illiterate, were not able to judge whether it were fit to pass the Press, or not; that the Book was licensed to be printed, allowed after it was printed, and before it was published, and it was entred in the *Stationers-Hall*, and the Warden there allowed and subscribed it to be a Book passable. The Book hath been three Years in the Press. All this time was spent before it was printed: there were Searches made during this time, and they came unto the Press. They saw the Book there in a publick way, and not in Corners, or privately printed, as is alledged in the Information; and it was printed and published, and some of the Books sold by *Sparkes*: and *Sparkes* saith, the printing of this Book cost him almost 300*l.* and saith upon his Oath, he sold not many Books.

And for the Charge upon him, of being a common Printer of unlawful Books, he saith, He hath prospered in his Calling; and some other Stationers having an eye upon him for his Thrift, have envied him in publishing of Books: and leaveth it to my Lords the Bishops, to know what Success he hath had in the High-Commission.

Mr. *Lightfoot* of *Grays-Inn* opened Mr. *Buckner's* Answer. He saith, That he was Chaplain to the late Archbishop of *Canterbury*, and doth approve of the Church without any scruple, and of all the Ceremonies of *England*. Church-Musick he doth allow of; bowing at the Name of *Jesus*: Plays, Musick, and Dancing, he doth esteem them just and lawful. And for those Censures against Ecclesiastical Persons in this Book, he doth, and ever did abhor and detest them. He confesseth he licensed part of the Book, but never gave order to disperse the Book; but when he heard it was published, he did endeavour to suppress it: and to the rest of the Information pleadeth *Not Guilty*.

Then Mr. *Noy*, Attorney-General, spake as followeth: This Volume of Mr. *Pryn*'s is written by himself, without the help of any Man. There are Passages in it that reflect upon the King, State, and Government, &c. other things reflect upon the Church and Clergy; but for that there is no Charge in the Information, which I did conceive fitter to be left out, and withal I received a Command for the same: Therefore finding the Church so deeply wounded by Mr. *Pryn*, I do leave her to avenge herself of him, and to inflict such Punishment on him as he deserves. I shall be an humble Suitor to the Court, that they would be pleased to commend the Prosecution of those things that concern the Church to the High-Commission. There are divers Particulars wherewith he is not charged within the Information by way of Crime, and so it is not proper now to bring him into question for them. As for mentioning of Ceremonies, &c. of Dedicating *Paul's* to *Diana*; of the Discipline of the Church; the Complaint of new-erected Altars: I wonder what Altars he means, I hope the Church will examine in due time; as also who he means by his *modern Innovators* in the Church, and by Cringing and Ducking to Altars, a fit Term to bestow upon the Church; he learned it of the Canters, being used among them. The Musick in the Church, the charitable Term he giveth it, is, not to be a Noise of Men, but rather a *Bleating of brute Beasts*; *Choristors bellow the Tenor*, as it were *Oxen*; bark a *Counter-point*, as a *Kennel of Dogs*; roar out a *Treble*, like a sort of *Bulls*; grunt out a *Bass*, as it were a number of *Hogs*: His Complaint for suppressing Repetitions by way of Conventicles; all his general Censure of all the Bishops, and of all the Clergy; they scorn to feed the Poor; the *Silk and Sattin Divines*; very charitable Terms upon them of the Church! *Christmas*, as it is kept, is a *Devil's Christmas*; nay, he doth bestow a great number of Pages to make Men affect the name of *Puritan*, as tho' Christ were a *Puritan*, and so he saith in his Index. Then concerning the Images in the Church, he speaketh against them, and putteth that now in Print, which was contained in an Answer in this Court. Also for the *Sabbath-day*, whether to begin on *Saturday* Night, and end on *Sunday* at six of the Clock. These are things proper to the Examination of the Church; and whatsoever becometh of the rest of the Cause in this Court, yet I commend these things to the Consideration of the Church. I wonder what the Man means to bring these things under the Title of *Stage-Plays*; *Pluralities* under the Title of *Stage-Players*. He had an End in it, he had an End in it.

Now concerning the Book itself: This Book, said Mr. *Noy*, it is the Witness, it doth testify what was his Intention, and by the Book he is to be judged. If it had been found in the Street, and of Mr. *Pryn*'s compiling, and brought to this Court, and Consideration taken of it, the Court would proceed without a Party against Mr. *Pryn*. And here Mr. Attorney recited a Precedent of one that wrote a Book, and it was brought to the Council. It was demanded, who was the Accuser? Answer was made, The Book was the Accuser: Shall the Heretick go unpunished? This Book it is Mr. *Pryn*'s doing, he doth put his Name to it, he swears that he did write it all.

Then for the time of compiling it; seven or eight Years ago it was compiled, and it is grown

seven times bigger than at the first. Mr. *Pryn*, about eight Years since, shewed it to Dr. *Goode*, who told him so good Causes of Dislike, that might make any reasonable Man give it over. About seven Years ago he came to Dr. *Harris*, to desire his Opinion of the Book; and he told him, it was unfit and unworthy to come to the Press. In the Parliament-time, before the Year 1630, he gave some part of it to be printed; but it came not to Mr. *Buckner* till long after. *Sparkes* said, he would print any thing in Parliament-time.

Now we are to consider two things, from the first compiling and printing of this Book, to the last: First, how it grew in Volume; for after it was deliver'd to the Press, it hath grown up with divers things, which then were impossible to be known at that time, when it was deliver'd to the Press; which appeareth by this. In 1628 was the Parliament, and in 1631 *St. George* began to look abroad into the World. This Man bestows eight whole Pages upon *St. George*, for being so bold to look out. He saith, That *St. George the Arian* was a *Cappadocian*, tho' born in *Cilicia*, a Part or Province of *Cappadocia*, &c. and that *St. George's* Advocate was an *Englishman*, born in *Gloucester*; and that *St. Basil the Great* was Bishop of *Cæsarea* in *Cappadocia*, the native Country of *St. George the Arian*. Certainly he could not tell that *St. George* would then remove himself abroad, or in the Country of *Gloucester*, &c. at that time: but this Man did go on according to the Occasion in 1628. A Woman, in 1628, acted a part of a Stage-Play at *Blackfryers*; he spends many Pages about this.

We all know what time the Dearth was, three Years ago; he taketh occasion not to pass it over. He maketh a long Discourse of Plays, Masques, &c. in the late penurious Times, how they were as expenceful as the Wars were. This is to shew how by pieces it did grow bigger from time to time.

All Stage-Players he terms them Rogues: in this he doth falsify the very Act of Parliament, for unless they go abroad, they are not Rogues. The same Term he giveth unto Scholars acting. Mr. *Pryn* had a Purpose, not only in this to fall upon Stage-Plays, but upon the Body of the Commonwealth; and to infuse it into Men's Minds, that we are now running into Paganism and Gentilism. He falleth upon those things that have not relation to Stage-Plays, Musick, Musick in the Church, Dancing, New-year's Gifts, whether Witchery, or not. Witchery, Church-Ceremonies, &c. indistinctly he falleth upon them; then upon Altars, Images, Hair of Men and Women, Bishops and Bonfires. Cards and Tables do offend him, and Perukes do fall within the compass of his Theme. *St. George* never offended him; but all this is to the end to bring a Belief among the People, that we are returning back again to Paganism. His end is therefore to persuade Men to go and serve God in another Country, as many are gone already, and set up new Laws and Fancies among themselves. Consider what may come of it.

It may be fit enough and lawful to write against Plays, by Men that have a Mission; and they must do their Errand in mannerly Terms, and in the same Terms as other Men expect to bear with them.

Mr. *Prynn* had no Mission to meddle with these things, to see whether Men should not return to Gentilism; the Terms which he useth are such as he finds among the Oyster-Women at *Billingsgate*, or at the common Conduit. He hath raked up all the vile Terms that could be found.

Now to prove that this is Mr. *Prynn's* Book, read Mr. *Prynn's* Examination, Inter. 5th, (which being read, was to this effect,) That Mr. *Prynn*, without the help of any other, did write, pen and compile the whole Book, called *Histrionastix*, and the Epistle before the Book, and the Index and Table following,

Now for the publishing of this Book, it doth appear by the Deposition of Dr. *Goade*, that about eight Years since, Mr. *Prynn* did bring a Book to him in Writing, of about a Quire of Paper, concerning Stage-Plays, to have the same licensed, but he held it unfit to be allowed; and doth well remember, that as to his Argument of the Unlawfulness for a Man to put on Woman's Apparel, he put Mr. *Prynn* this Question; Suppose, Mr. *Prynn*, your self, as a Christian, were persecuted by Pagans, think you not, if you did disguise your self in your Maid's Apparel, you did well? Who answered, That he thought himself rather bound to yield to death than to do so.

Dr. *Harris* also deposed, That about seven Years ago, Mr. *Prynn* came to him to license a Treatise concerning Stage-Plays, but he would not allow of the same. So this Man did deliver this Book when it was young and tender, and would have had it then printed; but it is since grown seven times bigger, and seven times worse.

Noy. We shall now prove when it went to the Press. Read *Austin* the Stationer to Interrogatory the 28th, which being read, was to this effect; That the said Book called *Histrionastix*, was given to this Deponent, in or about the last Parliament, at which time seven Sheets thereof were printed at this Deponent's House; which this Deponent so printed, at the request of Mr. *Prynn* and Mr. *Sparkes*, upon Mr. *Prynn's* Information, that it was licensed, and that he would bring the hand of the Licentier unto it: But this Deponent did refuse to print any more of the same.

Read *Joseph II.* to prove, that *Sparkes* would set upon it unlicensed in Parliament-time, to Inter. 26. who saith, That the Defendant *Sparkes* did, in the time of the last Parliament, print, or cause to be printed, divers Books without Licence; whereof some were Mr. *Prynn's*, some were Mr. *Burton's* Works: and this Deponent hath heard *Sparkes* say, he durst print any thing in Parliament-time.

Another part of the Charge was managed by Mr. *Mason* of *Lincoln's-Inn*, reckoning up the number of *Epithets* wherewith Mr. *Prynn* had aspersed all sorts of People: and he said, that it was a Libel, not only against the State, but against every particular Person; and proved the Charge by divers Passages contained in the Book, *Fol.* 201, &c.

Afterward Mr. *Noy* proceeded in the farther making good of his Charge against Mr. *Prynn*.

May it please your Lordships,

As he hath fallen foul upon all Things, all Persons, all Sexes; upon the Magistrates, upon the Household of the King; so he hath not spared the King himself. I am sorry I shall have occasion to

speake any thing of it; but there is a great deal too much in his Book. My Lords, After he hath made all these Complaints as intolerable, he falleth upon all indistinctly, and never taketh upon him to discern, to make a Distinction, that there may be a Toleration; but falleth foul upon every thing, that we are falling into Paganism; Men and Women are naught: he spareth not the King himself, but takes upon him to teach a Remedy; the Remedy is worse than the Disease. What hateful Comparisons he bringeth with other Princes? as *Nero*: and speaketh of the consuming of the Treasure of the Realm with Masques, and of the late penurious Times; a base Word! a Declaration of Infamy upon Princes, with such-like Conclusions as these are. When all this is done, he teacheth the Remedy not by way of Precept, but by way of Example; invites Men to read *John Mariana*, and two grave Authors more, he saith Men not censured. I am very sorry I am to speake any thing wherein the King should be named, but he would not forbear it when the Pen was in his Hand; some of the Words are so nasty that I will not speake them.

After Mr. Attorney-General had spoken, he called for these Passages, amongst others, in *Histrionastix*, to be read, *viz.*

To his Much-honoured Friends, the Right Worshipful Masters of the Bench of the Honourable Flourishing Law-Society of Lincolns-Inn.

HAVING, upon my first arrival here in London, heard and seen in four several Plays (to which the pressing Importunity of some ill Acquaintance drew me, while I was yet a Novice) such Wickedness, such Lewdness as then made my penitent Heart to loath, my Conscience to abhor all Stage-Players ever since; and having then likewise observ'd some woful Experiments of the lewd, mischievous Fruits of Plays, of Play-houses, in some young Gentlemen of my Acquaintance; who tho' civil and chaste at first, became so vicious, prodigal, incontinent, debauched (yea so far past all hopes of Amendment) in half a year's space or less, by their resort to Plays, where Whores and lewd Companions had inveigled them; that after many Essays of their much desired Reformation, two of them were cast off and utterly disinherited by their loving Parents; whom I heard oft complaining, even with Tears, that Plays and Play-houses had undone their Children, to their no small Vexation, (a good Caveat for all young Students to keep themselves from Play-houses, by these two Youngsters Harms:) Hereupon I resolved, out of a desire of the publick Good, to oppugn these common Vice-fomenting Evils: for which purpose about seven years since, recollecting those Play-condemning Passages, which I had met with in the Fathers and other Authors, I digested them into one entire written Discourse; which having since that time enlarged beyond its intended Bulk, because I saw the number of Players, Play-Books, Play-Haunters, and Play-houses still increasing; there being above Forty thousand Play-Books printed within these two years (as Stationers inform me) they being now more vendible than the choicest Sermons; two
old

old Play-houfes being alfo lately re-edified, enlarged, and one new Theatre erected: the multitude of our *London* Play-Haunters being fo augmented now, that all the antient Devils Chappels (for fo the Fathers ftyle all Play-houfes) being five in number, are not fufficient to contain their Troops; whence we fee a fixth now added to them: whereas even in vicious *Nero's* Reign, there were but three ftanding Theatres in Pagan *Rome*, tho' far more fpacious than our Christian *London*, and thofe three too many. Hereupon I firft commended it, being thus augmented, to the Licenfer, and from him unto the Prefis, where it hath linger'd longer than I did expect; which being now at laft brought forth into the World, in fuch a Play-adoring Age, that is like to bid defiance to it; I here bequeath it to your worthy Patronage, to whom it was firft devoted, not caring how it fares abroad, fo it may do good and pleafe at home.'

In the next place Mr. Attorney *Noy* caufed to be read out of the Book of *Hiftorio-maftix*, fuch Paflages, as were fcandalous to the King and Government, as *Fol.* 312, &c.

Mr. *Atkins*, in defence of Mr. *Prynne*, faid, That the Eloquence of thofe Gentlemen who argued againft Mr. *Prynne*, made an Exposition which was no part of his Intention, in which point he would endeavour to clear him; and the way was by letting their Lordships know, that many Paflages in that Book are only relatively fpoken, and not pofitive, and moft of them are but the Affirmations of other Authors of feveral Kinds and Professions: as where it is faid, that *fuch incarnate Devils as frequent Plays*, &c. he speaketh by the way of common frequenting of Plays, left they prove incarnate Devils; and fo of Ladies that caft off their Nature and Modesty, that is relatively fpoken by frequenting Plays, lascivious Dancing, &c. and when he speaketh of thofe in a continual Propofition, his Argument is thus:

'That which doth ordinarily (if not always) defile the Eyes, the Ears, and Souls both of the Actors and Spectators, by ingendring, by exciting meretricious, luftful, lewd, adulterous Defires and Affections in their Hearts, or by infligating, by preparing, by inducting them to actual Uncleannels, muft needs be abominable and unlawful unto Christians; but thefe Stage-Plays, &c. therefore they muft needs be abominable.' And there is none but Whores, Panders, or foul incarnate Devils, who dare controul that minor Truth.

My Lords, He doth not condemn New-years-Gifts, but acknowledges them to be as Tokens and Testimonies of Favour and Refpect from Superiors to their Inferiors; and for Dancing (under favour) he doth not condemn it at all; he hath commended the fame as fingle, and dancing the Meafures. And for dancing in great Men and Princes, he doth proteft it was far from his thought to compare thefe Times to *Nero's*, under fo pious and religious a Prince as we have, and by whom we receive fo much Happinefs. That had been fo impious and unworthy, that he could by no means make any Apology; but as well his Perfon as his Pen fhould have been deteftable, if he had made any fuch Comparifon.

And where he doth fpeak, that Dancing and Masquing have been near as expenceful as the

Wars, in that he means in *Henry* the VIIIth's Time, and not in thefe Days; as I take it, he fpeaks there of a Hiftory, that doth exprefs the great Charge in that time.

I fhall defire, as I did begin in the opening of his Answer, that he may lay faft hold upon the Rock of the King's Favour and Mercy, and Compaflion of this Court; and what his Intentions are, they are beft known to his own Heart, his Expreflions known to your Lordships. I cannot condemn his Heart, I will not excufe his Pen.

This, if your Lordships will give me leave, I fhall fay; I have long known him in a Society of Inns of Court, where he has lived; and for his ordinary Difcourfes (except the Matters in this Book) they have not been factious or feditious. But now he is before your Lordships, truly for my part, I compare him to the Condition of an Aftronomer, who fixed his Eyes fo much upon the Stars, that he did not look to his Feet, and fo fell into a Ditch: for his Eyes were fo fixed upon this Subject, upon the common Refort to Stage-Plays, and the great Abufe that comes by them, that he forgot to look down to his Hand that guided his Pen, which now bringeth him under your Lordships Censure.

That I may not offend the Patience of this Court, (the Court is full, and the Expectation is great) I will conclude with all Humility, and wifh and crave, that he who is the fupreme Judge, may be with your Lordships in this Matter, and may be over all your good Thoughts, Judgments and Sentences this Day, in this Caufe of this poor Gentleman. And this is all I humbly offer in Defence.

The next Day of Hearing, Mr. *Holbourn*, of Counsel with Mr. *Prynne*, fpake thus:

My Lords,

I am affigned Counfellor with Mr. *Prynne*. The Information is for publishing in Print a Libel or Volume of Libels againft King, Queen, State, &c. My Lords, for Mr. *Prynne*, he doth humbly caft himfelf at your Lordships Feet. For the Book, I muft fay, he doth humbly fubmit himfelf to your Lordships; yet, my Lords, his Heart will not give him leave to fay, that he is guilty of thofe grofs Offences that are laid to his Charge. He confeffeth himfelf to be juftly brought before your Lordships for his ill Expreflions, which may prove an occafion of Scandal by Mifconftitution, and fo fome dangerous Principle may be infufed into the Subjects: And he beggeth your Lordships to confider of them, according to the Intentions of his Heart, which were fair and honeft, tho' harfh in Expreflions, that he may receive a favourable Conftitution for that he citeth his Authors, and their Words, and not his own. And for that he meddling with Matters not proper to Stage-Plays, as in mentioning the Sabbath, his Meaning was, Stage-Plays upon the Sabbath-day: his mentioning Habits and Recreations, was in relation to Men putting on Womens Habits, and unlawful Recreation at Plays, and fo he conceives them not altogether impertinent.

For the Manner of his Writing, he is heartily forry, that his Style is fo bitter, and his Imputations fo unlimited and general; yet in this he was led thereunto by Authors in the like cafe, which he offers for his Excufe: he hopes his Paflion againft thefe Abufes by Plays may a little plead his Excufe.

Now

Now for the Manner and Matter alledged against him out of his own Book, in that he hopes your Lordships Favour: He saith, that those that are Judges of the Book for Licencing, they are guilty of the Matter, and he hopeth that this Book doth differ from all the Books brought into this Court; for here are none brought but such as are unlicensed, and this is licensed: and he submitteth thus to that Point.

My Lords, as to the general End and Intention of his Book, he sweareth, that the general Resort unto Plays was the first Occasion; and his End was for the Reformation of the Abuse of it, and no otherwise: and then, my Lords, he hopeth he shall not incur your Lordships severe Censure. He did not send the Book beyond the Seas to be printed, but printed it here; and it was three Years in the Press, and licensed and publish'd.

And, my Lords, the Declaration to the Information of this Court, speaketh something to his Intentions, viz. to whom he dedicated this Book, and he dispersed it himself to Men of known Integrity; and certainly if his Heart had been guilty of those foul Crimes, he would not have presented one of these Books to Mr. Attorney Noy himself. He did not absent himself, as one guilty of such Offences would have done; he was so far from having Dilloyalty, that he doth commend the King and State, and that could not be with an Intention against King and State. And all the Charges that lie upon him for his foul Intentions, are but Inferences upon his Book, and Consequences, and such of them only that be strained, and not of necessity.

The next thing charged upon him is Perjury, for that he said, he shewed no part of this Book to any before it was shewn to Sparks; yet it was proved by Dr. Harris and Dr. Goade, that they saw it many years ago. As to this he saith, they speak only of his Book concerning Plays, containing a Quire of Paper; and that it is true, he did shew them such a Book: but that Book was not this Book; tho' they be of one Subject and Matter, yet they differ much in Form and Frame.

Then Mr. *Hern* spake on his behalf as follows:

My Lords,

We that are assign'd Counsel for Mr. *Prym*, do come with great Disadvantage, both in Number and Judgments, considering the great Ability of the King's Counsel, who have spoken against us. If the Construction they have made be theirs, then clearly we are (as they would have us) to fall deep by your Lordships Sentence.

The Weight of this Cause, and the Aggravations upon it by the King's Counsel, made me the last day (without desire of my Client) to crave farther Time, for we durst not then give any Answer. All that I can now say, is, That your Lordships would look upon the Intentions of his Heart, in that he hath explained himself as fair as any Man can do by his Oath: How is it possible to make other Proof of the clear Intentions of his Heart, than by his Oath? His Oath is admitted as Proof against him, in the Acknowledgment of his Book; and shall it not be admitted to him, to clear the Integrity of his Heart? We beseech your Lordships to look upon him, as not writing these things out of Perverseness of Spirit, but out of the abundance of his Heart transported with Zeal against the growing Evils, which have befallen many of

this Nation, and some of his own Acquaintance, by their frequenting of Stage-Plays. We that know him must say, as far as our Knowledge will give us leave, that in all Passages that have fallen from him to us, he hath expressed himself full of Devotion and Duty to his Majesty and the Queen; and shall humbly take leave to offer some Passages out of his Book, which do bear evidence, that he doth speak well of both their Majesties. and of the State; and that by Inferences and Distinctions there made: and what is it but Inferences made out of other Passages of his Book, which doth reflect upon him? Which Passages were opened by the Counsel, but not read.

Three Star-Chamber Days having been spent in the hearing of this Cause, the Lords sat the fourth Day to proceed to Sentence, which held till four of the Clock in the Afternoon; and they passed such Sentence on Mr. *Prym*, as is expressed in the ensuing Speeches, which in effect comprehend all that was said by others.

The first was of *Francis* Lord *Cottington*, Chancellor of the *Exchequer*, whose turn was to begin first to speak, as being in the lowest degree of Quality by his Place. And commonly he that beginneth, as he openeth the matter at large, so he inclineth thereby many Lords to forbear making of Speeches, and only to declare themselves to concur in Sentence with him that began first, or with some other Lord that spake before, as their Judgments lead them.

My Lords (said my Lord *Cottington*) His Majesty's Attorney-General hath brought Mr. *Prym* before your Lordships, with other Defendants, *Thomas Buckner*, *Michael Sparkes*, &c. It is for publishing a Libellous Book, or Volume of Libels, to the Scandal of his Majesty and the State. To my understanding it may be more properly said, the great and high Malice of Mr. *Prym*, published and declared in that Libellous Book; a Malice expressed in a manner against all Mankind, and the best sort of Mankind, against King, Prince, Peers, Prelates, Magistrates and Governors, and truly in a manner against all things. But that which hath been more remarkable, is, his Spleen against the Church and Government of it; therefore for that I will not sentence him, (because Mr. Attorney doth forbear to prosecute against him, for that which belongeth to the Church) yet it is an argument of his great and high Malice: and when I consider of that, which hath been so often repeated, that he writ this Book alone, surely he was assisted immediately by the Devil himself, or rather he hath assisted the Devil. He hath written a Book against the due Reverence and Honour, which all Christians owe to our Saviour Jesus, this doth convince my Judgment against him; but the Book (as Mr. Attorney saith) declares the Man, it is the Witness: And if your Lordships observe the Particulars and Style of it, you will say it is a strange thing; the very Style doth declare the Intent of the Man, and that is (as Mr. Attorney said) to work a Discontent and Dislike in the King's People against the Church and Government, and Disobedience to our gracious Sovereign the King. If Mr. *Prym* should be demanded what he would have, he liketh nothing, no State or Sex; Musick, Dancing, &c. unlawful even in Kings; no kind of Recreation, no kind of Entertainment, no, not so much as Hawking, all are damned. The very truth, Mr. *Prym* would have

have a new Government, he would have a new Church, he would have new Laws, new Entertainment, God knows what he would have; a new King he would have, and have all the People of his Mind, to be discontented with their King and Government.

Mr. *Prynne* confesseth he did write the Book, and it's true he did endeavour the printing of it, and the publishing of it, this is proved very well; yea, but Mr. *Prynne* had no other Intention but a Tenderness of Conscience, he meant no hurt to the King or State, (as his Counsel said :) but Mr. Attorney answered them, that he is not the Declarer of his Intentions, he must be judged by the Book, by his Words, more certainly by the effect; for all good Men do receive Scandal by this Book, and all of Mr. *Prynne's* Humour were glad of this Book. When I consider what kind of Libel it is, it is not like other Libels: other Libels have been by Persons discontented, some poor Rogues, scattered up and down; but here's a Libel in *Folio*, and in Print, and justifieth it self by Authors with an high hand, *That is there, and that is there.* And (my Lords) when I consider those high Passages in his Book, I protest unto you, they are things to be abhorred; they are not spoken relatively (as his Counsel would have it) but positively, That *our English Ladies, shorn and frizled Madams, have lost their Modesty; that the Devil is only honoured in Dancing; that Plays are the chief Delight of the Devil; that they that frequent Plays are damned, and so are all that do not concur with him in his Opinion, Whores, Panders, soul incarnate Devils, Judas's to their Lord and Master, &c. Princes dancing in their own Persons,* his Censure of them is infamous, &c. But the foulest of all is, *That this was the Cause of untimely Ends in Princes.*

My Lords, Shall not all that hear these things think, that it is the Mercy of the King that Mr. *Prynne* is not destroyed? Have we not seen Men lately condemned to be hang'd and quarter'd for far less Matters? One *Pinchman*, I was my self employed with others in the examining of him; he confessed, that the Writing for which he was questioned, was a Sermon, that he did intend to preach: the Words were against the Person of the King, yet he never preached it; yet because he had written it with an Intention to preach it, he was brought upon this Point and condemned to die. But this Book is in Print; it is against all Magistrates, and particularly against the King our Sovereign, and his blessed Comfort. And yet, my Lords, it pleaseth his Majesty to let Mr. *Prynne* have his Trial here. I will not trouble your Lordships with any more parts of the Book: Mr. Attorney noted unto your Lordships, that you should see how necessary it was, that Mr. *Prynne* should be clean cut off, as one that hath a long time endeavoured to move the People to Disobedience against the King, &c. So I say with Mr. Attorney, it is high time that Mr. *Prynne* may be cut off, so far as may go with the Censure of this Court. My Lords, Mr. *Prynne* is better dealt withal, than he would have Princes dealt with; he hath had very fair Trials.

For his Defence, I took notice of it likewise: I do remember that all those Gentlemen, that were employed and assigned as Counsel for his Defence, every one of them began to crave Mercy of the Court; yet they came with a Defence and Justification, so far as their Cause would bear. Mr. *Holbourn* said, That for *Players* they were

Rogues by the Statute: yet Mr. Attorney said, *They are not Rogues by the Statute, unless they wander, &c.* My Lords, he said, his Intention was against publick and common Plays; yet seek all his Book thorow, and you shall find it is against Plays in Princes Palaces. His Intention now must be understood by his Book, and by his Words; and that which he doth apply of any Author is his own. And I think his Defence did aggravate his Offence. As to his Defence against the Ladies, he saith, he speaketh it relatively and not positively; yet he saith, *Our English Ladies are so and so whorish, &c.* And for that part of his Book, wherein he condemns Murder, Mr. *Prynne* will have Murder unlawful; but Execution of Princes is not Murder, and therefore that is a lawful Act. Mr. Attorney said well, the End of this Man and *John Mariana, &c.* they are all one, *As Jesus.* they all cry Malice against Princes.

I shall humbly crave Pardon, and discharge my Conscience, and shall let your Lordships see, how I understand the Sense, and that so I am to judge; and I conceive it to be as your Lordships see, that the Malice of this Book is against King and State: and, my Lords, with this I sentence Mr. *Prynne*.

I do in the first place begin Censure with his Book; I condemn it to be burnt, in the most publick manner that can be. The manner in other Countries is, (where such Books are) to be burnt by the Hangman, tho' not used in *England*, (yet I wish it may, in respect of the Strangeness and Heinousness of the Matter contained in it) to have a strange manner of burning; therefore I shall desire it may be so burnt by the Hand of the Hangman.

If it may agree with the Court, I do adjudge Mr. *Prynne* to be put from the Bar, and to be for ever incapable of his Profession. I do adjudge him, my Lords, That the Society of *Lincolns-Inn* do put him out of the Society; and because he had his Offspring from *Oxford* (now, with a low Voicc, said the Bishop of *Canterbury*, *I am sorry that ever Oxford bred such an evil Member*) there to be degraded. And I do condemn Mr. *Prynne* to stand in the Pillory in two Places, in *Westminster* and *Cheapside*; and that he shall lose both his Ears, one in each Place; and with a Paper on his Head, declaring how foul an Offence it is, *viz. That it is for an infamous Libel against both their Majesties, State, and Government.* And lastly (nay not lastly) I do condemn him in 5000 *l.* Fine to the King. And lastly, perpetual Imprisonment.

There are other Defendants, *Thomas Buckner*, whom I conceive to be the Chaplain charg'd with the Licensing of the Book. I observe, that Mr. Attorney hath little or nothing prosecuted against him. It is said, he did combine with the Writer and Stationer for this infamous Libel. It doth appear that he did license it, or at least 64 Pages thereof; I think it be also true, that Mr. *Buckner* did see the Book after it was printed. It is said, for his Excuse, That Mr. *Buckner* was cozen'd and surpriz'd by Mr. *Prynne* and *Sparkes*; but it's plain he licensed it, or at least 64 Pages: therefore I shall judge according to the Proof, as it is the usual Custom of this Court. I must judge Mr. *Buckner* to be worthy of a very sharp Sentence, for certainly there is a very great Inconvenience fallen upon the State, for want of due Examination: To what purpose is there an Examination of Books, if there shall be a connivance and winking at the Party that doth it; I shall think Mr. *Buckner* not only

only worthy of a severe Reprehension, but I shall censure him first to have Imprisonment according to the course of the Court, and 50 *l.* Fine to the King.

Now, my Lords, the next is *Michael Sparkes*, and he is the third; and he is the Printer of the Book, and Binder, and Publisher thereof. In his Defence he hath shewed your Lordships a piece of the Book licensed by Mr. *Buckner*, and saith, it was all licensed, but that he proves not; but that it was entered in the *Stationers-Hall*, that he proves. But I do find, that he persuaded Men to buy this Book after it was prohibited; and before it was prohibited he persuaded Men to buy it, saying, *It was an excellent Book, and it would be called in*, and then fell well. I do fine *Sparkes* 500 *l.* to the King, and to stand in the Pillory, without touching of his Ears, with a Paper on his Head to declare his Offence, and it is most necessary in these Times; and for the Pillory to be in *Paul's Church-yard*. (It is a consecrated Place, saith the Archbishop of *Canterbury*.) I cry your Grace's Mercy (said my Lord *Cottington*) then let it be in *Cheapside*. For the other three, I find that Mr. Attorney doth not prosecute them; therefore, my Lords, I do not censure them.

The next in course that spoke after the Lord *Cottington*, was the Lord Chief Justice *Richardson*.

My Lords,

Since I have had the Honour to attend this Court, writing and printing of Books have been exceedingly found fault withal, and have received a sharp Censure, and it doth grow every day worse and worse; every Man taketh upon him to understand what he conceiveth, and thinks he is no body except he be in Print. We are troubled here with a Book, a Monster, (*Monstrum Horrendum, Informe, Ingens!*) It hath been a Question who is the Author of this Book; Surely I am satisfied in my Conscience he is the Author of it: but truly, give me leave, I do not think Mr. *Prynn* is the only Actor in this Book, but that there were many Heads and Hands therein besides himself. I would to God in Heaven, the Devil, and all else that had their Heads and Hands therein besides Mr. *Prynn*, were, &c. for I think they are all Ill-willers to the State, and deserve severe Punishment as well as Mr. *Prynn* doth. This Book is the Subject of this Day's Work, and it is annexed, by Mr. Attorney, to the very Information it self.

For the Book, I do hold it a most scandalous, infamous Libel to the King's Majesty, a most pious and religious King; to the Queen's Majesty, a most excellent and gracious Queen; such a one as this Kingdom never enjoyed the like, and I think the Earth never had a better. It is scandalous to all the honourable Lords, and the Kingdom it self, and to all sorts of People. I say, Eye never saw, nor Ear ever heard of such a scandalous and seditious thing as this mis-shapen Monster is. How scandalous a thing it is, hath appeared already to your Lordships, by the King and Queen's Council against Mr. *Prynn*; I will not for my part repeat.

Yet give me leave to read a word or two, where he cometh to tell your Lordships of the Reasons why he writ this Book: Because he saw the Number of the Plays, Play-Books, Play-Haunters, and Play-houses so exceedingly increased, there being above forty thousand Play-Books, being now more

vendible than the choicest Sermons. What saith he in the Epistle Dedicatory, speaking of Play-Books? *They are so big a Price, and are printed in far better Paper, than most Octavo and Quarto Bibles, which hardly find so good vent as they; and then come in such abundance, as they exceed all number, and 'tis a year's time to peruse them over, they are so multiplied: and then he putteth in the Margin, Ben Johnson, &c. printed in better Paper than most Bibles. Now if this be not a Tax upon the Kingdom, to print these Books in better Paper than the Bible it self; for my part I leave it to your Lordships.* This Monster, this huge mis-shapen Monster, I say it is nothing but Lyes, and Venom against all sorts of People. It is a strange thing what this Man taketh upon him: He is not like those Powder-Traitors, they would have blown up all at once; this throweth all down at once to Hell together, and delivereth them over to *Satan*. I beseech your Lordships to give me leave: *Stage-Plays, &c.* (saith he) *none are gainers and honoured by them but the Devil and Hell; and when they have taken their wills in Lust here, their Souls go to eternal Torment hereafter,* And this must be the end of this Monster's horrible Sentence. He saith, *So many as are in Play-houses, are so many unclean Spirits; and that Play-haunters are little better than incarnate Devils.* He doth not only condemn all Play-Writers, but all Protectors of them, and all beholding of them; and dancing at Plays, and singing at Plays, they are all damned, and that no less than to Hell. I beseech your Lordships to give me leave but in a word to read unto you what he writes of Dancing, &c. *It is the Devil's Profession; and he that entreteth into a Dance, entreteth into a devilish Profession; and so many Paces in a Dance, so many Paces to Hell:* This is that which he conceiveth of Dancing. *The Woman that singeth in the Dance, is the Prioresse of the Devil, and those that answer are Clerks, and the Beholders are the Parishioners, and the Musick are Bells, and the Fiddlers are the Minstrels of the Devil.* I said it was a seditious Libel; this point of Sedition is the only thing that troubles me, and it is that which I shall offer to your Lordships: For I do know it, the good Opinion, Heart, Will and Affections of the King's People and Subjects are the King's greatest Treasure. Now if this be so, then for any Man cunningly to undermine these things, to take away the Hearts of the Subjects from the King, and to bring the King into an ill Opinion among his People, this is a most damned Offence; and if I were in my proper place, and Mr. *Prynn* brought before me, I should go another way to work. I protest unto your Lordships, it maketh my Heart to swell, and my Blood in my Veins to boil (so cold as I am) to see this or any thing attempted which may endanger my gracious Sovereign; it is to me the greatest Comfort in this World to behold his Prosperity.

Much hath been spoken concerning these things, and something by my Lord *Cottington* before me; but good my Lords, give me leave to remember you one or two Passages, not yet spoken of. He writeth thus: *That Nero's acting and frequenting Plays, was the chiefest Cause that stirred up others to conspire his Death.* Would any Man think, that his acting and frequenting of Plays was the chiefest Occasion?

He writeth in another place worse than this. *Fol. 464. Trebellius Pollio relates, That Martian, Heraclius, and Claudius, three worthy Romans, conspired together to murder Gallienus the Emperor,*