

committed or done, in any Place exempt or not exempt, within this our Realm, according to the Tenor of the Ecclesiastical Laws in that Behalf: Granting you, or any three or more of you, as is aforesaid, whereof you the said Lord Chancellor to be one, full Power and Authority to order and award such Punishment to every such Offender, by Censures of the Church, or other Lawful Ways, as is aforesaid. And further, we do give full Power and Authority unto you, or any three or more of you, as is aforesaid, whereof you the said Lord Chancellor to be one, all and every Offender and Offenders in any of the Premises, and also all such as by you, or any three or more of you, as is aforesaid, whereof you the said Lord Chancellor to be one, shall seem to be suspected Persons in any of the Premises, and them to examine, touching every or any of the Premises which you shall object against them; and to proceed against them, and every of them, as the Nature and Quality of the Offence, or Suspicion in that Behalf shall require: And also to call all such Witnesses, or any other Person or Persons that can inform you concerning any of the Premises, as you, or any three or more of you, as is aforesaid, whereof you the said Lord Chancellor to be one, and them, and every of them, to examine upon their corporal Oaths, for the better Trial and Opening of the Truth of the Premises, or any Part thereof. And if you, or any three or more of you, as is aforesaid, whereof you the said Lord Chancellor to be one, shall find any Person or Persons whatsoever obstinate or disobedient in their Appearance before you, or any three or more of you, as is aforesaid, whereof you the said Lord Chancellor to be one, at your Calling and Commandment, or else not in obeying, or in not accomplishing your Orders, Decrees, and Commandments, or any Thing touching the Premises, or any Part thereof, or any other Branch or Clause contained in this Commission, that then you, or any three or more of you, as is aforesaid, whereof you the said Lord Chancellor to be one, shall have full Power and Authority to punish the same Person and Persons so offending, by Excommunication, Suspension, Deprivation, or other Censures Ecclesiastical; and when any Persons shall be convicted or prosecuted before you, as aforesaid, for any of the Causes above expressed, at the Instance and suit of any Person prosecuting the Offence in that Behalf, that then you, or any three or more of you, as is aforesaid, whereof you the said Lord Chancellor to be one, shall have full Power and Authority to award such Costs and Expences of the Suit, as well to and against the Party as shall prefer or prosecute the said Offence, as to and against any Party or Parties that shall be convicted, according as their Causes shall require, and to you in Justice shall be thought reasonable. And further Our Will and Pleasure is, That you assume our Well-beloved Subject William Bridgman, Esquire, one of the Clerks of our Council, or his sufficient Deputy or Deputies in that Behalf, to be your Register, whom We do by these Presents depute to that Effect, for the Registering of all your Acts, Decrees, and Proceedings, by Virtue of this Our Commission; and that in like Manner you, or any three or more of you, whereof you the said Lord Chancellor to be one, by your Discretions shall appoint one or more Messenger or Messengers, or other Officer or Officers necessary and convenient to attend upon you for any Service in this Behalf. Our Will and express Commandment also is, That there shall be two Paper Books indented and made, the one to remain with the said Register, or his sufficient Deputy or Deputies, the other with such Person, and in such Places as you the said Commissioners, or any three or more of you, whereof you the said Lord Chancellor

to be one, shall in your Discretions think most fit and meet; in both which Books shall be fairly entred all the Acts, Decrees, and Proceedings made, or to be made, by Virtue of this Our Commission. And whereas Our Universities of Oxford and Cambridge, and divers Cathedral and Collegiate Churches, Colleges, Grammar-Schools, and other Ecclesiastical Incorporations, have been erected, founded, and endowed by several of Our Progenitors, Kings and Queens of this Realm, and some other by the Charity and Bounty of some of their Subjects, as well within Our Universities as other Parts and Places, the Ordinances, Rules and Statutes whereof be either imbezzed, lost, corrupted, or altogether imperfect; we do therefore give full Power and Authority to you, or any five or more of you, of whom We will you the forenamed, the Lord Chancellor always to be one, to cause and command in Our Name, all and singular the Ordinances, Rules, and Statutes of Our said Universities, and all and every Cathedral and Collegiate Churches, Colleges, Grammar-Schools, and other Ecclesiastical Incorporations, together with their several Letters Patents, and other Writings, touching or in any wise concerning their several Erections and Foundations, to be brought and exhibited before you, or any five or more of you, as is aforesaid, whereof you the said Lord Chancellor to be one; willing, commanding, and authorising of you, or any five or more of you, as aforesaid, whereof you the said Lord Chancellor to be one, upon the exhibiting and upon diligent and deliberate View, Search, and Examination of the said Statutes, Rules and Ordinances, Letters Patents and Writings, as is aforesaid, the same to correct, amend and alter; and also where no Statutes are extant, in all or any of the aforesaid Cases, to devise and set down such good Orders and Statutes as you, or any five or more of you, whereof you the said Lord Chancellor to be one, shall think meet and convenient, to be by Us confirmed, ratified, allowed, and set forth, for the better Order and Rule of the said Universities, Cathedral and Collegiate Churches, Colleges and Grammar-Schools, Erections and Foundations, and the Possessions and Revenues of the same, and as may best tend to the Honour of Almighty God, Increase of Virtue, Learning and Unity in the said Places, and the publick Weal and Tranquillity of this Our Realm. Moreover, Our Will, Pleasure, and Commandment is, that you Our said Commissioners, and every of you, shall diligently and faithfully execute this Our Commission, and every Part and Branch thereof, in Manner and Form aforesaid, and according to the true Meaning thereof, notwithstanding any Appellation, Provocation, Privilege or Exemption in that Behalf, to be had, made, pretended, or alledged by any Person or Persons resident or dwelling in any Place or Places exempt or not exempt, within this Our Realm; any Law, Statutes, Proclamations or Grants, Privileges or Ordinances, which be, or may seem contrary to the Premises notwithstanding. And for the better Credit, and more manifest Notice of your so doing, in the Execution of this Our Commission, Our Pleasure and Commandment is, That to your Letters missive, Processes, Decrees, Orders, and Judgments, for or by you, or any three or more of you, as is aforesaid, to be awarded, sent forth, had, made, decreed, given or pronounced, at such certain publick Places as shall be appointed by you, or by any three or more of you, as is aforesaid, for the due Execution of this Our Commission, you are some three or more of you, as is aforesaid, whereof you the said Lord Chancellor to be one, shall cause to be put and fixed a Seal, engraven with a Rose and Crown, and the Letter J. and Figure 2 before and the Letter R. after the same, with a Ring or Circum-



*Circumference about the same Seal, containing as followeth, Sigillum Commissionariorum Regiæ Majestatis ad Causas Ecclesiasticas. Finally, We will and command all and singular other our Ministers and Subjects in all and every Place and Places, exempt and not exempt, within our Realm of England, and Dominion of Wales, upon any Knowledge or Request from you, or any three or more of you, as is aforesaid, to them, or any of them, given or made, to be aiding, helping, or assisting unto your Commandments, in and for the due executing your Precepts, Letters, and other Processess, requisite in and for the due executing of this Our Commission, as they and every of them tender our Pleasure, and will answer the contrary at their utmost Perils. In Witness, &c.*

### The King's Letter.

Dated Monday, June the 14<sup>th</sup>.  
Delivered at Fulham on Thursday, being the 17<sup>th</sup>  
of the same June, in the Afternoon, by Mr. Atterbury the Messenger.

JAMES R.

*Right Reverend Father in God, We greet you well. Whereas We have been inform'd, and are fully satisfied, that Dr. John Sharp, Rector of the Parish-Church of St. Giles in the Fields, in the County of Middlesex, and in your Diocese, notwithstanding Our late Letter to the most Reverend Fathers in God the Archbishops of Canterbury and York, and our Directions concerning Preachers, given at our Court at Whitehall, the 15<sup>th</sup> of March, 1685, in the second Year of Our Reign; yet he, the said Dr. John Sharp, in Contempt of the said Orders, hath in some of the Sermons he hath since preached, presumed to make unbecoming Reflections, and to utter such Expressions as were not fit or proper for him; endeavouring thereby to beget in the Minds of his Hearers an evil Opinion of Us and Our Government, by insinuating Fears and Jealousies, to dispose them to Discontent, and to lead them into Disobedience and Rebellion. These are therefore to require and command you immediately upon Receipt hereof, forthwith to suspend him from further Preaching in any Parish-Church or Chapel in your Diocese, until he has given Us Satisfaction, and Our further Pleasure be known herein: And for so doing, this shall be your Warrant: And so We bid you heartily Farewel.*

*Given at Our Court at Windsor, the 14<sup>th</sup> Day of June, 1686. in the second Year of Our Reign.*

*By his Majesty's Command.*

SUNDERLAND.

### The Bishop of London's Answer,

Sent by Dr. Sharp to the Earl of Sunderland, then at Hampton-Court, upon Friday, June 18. who could have no Answer.

To the Right Honourable the Earl of Sunderland, Lord President, &c.

MY LORD,

*I Always have, and shall count it my Duty to obey the King in whatever Commands he lays upon me, that I can perform with a safe Conscience: But in*

*this, I humbly conceive, I am obliged to proceed according to Law; and therefore it is impossible for me to comply; because though his Majesty commands me only to execute his Pleasure; yet, in the Capacity I am to do it, I must act as a Judge; and your Lordship knows no Judge condemns any Man before he has Knowledge of the Cause, and has cited the Party. However, I sent to Mr. Dean, and acquainted him with his Majesty's Displeasure, whom I find so ready to give all reasonable Satisfaction, that I have thought fit to make him the Bearer of this Answer, from him that will never be unfaithful to the King, nor otherwise than,*

*My Lord, your Lordship's  
most humble Servant,*

H. LONDON.

On Sunday after, Dr. Sharp carried a Petition to Windsor, which was not admitted to be read: Which is as follows.

To the King's most Excellent Majesty.

The humble Petition of John Sharp, Clerk,

Sheweth,

*THAT nothing is so afflictive to your Petitioner, as his Unhappiness to have incurred your Majesty's Displeasure; which he is so sensible of, that ever since your Majesty was pleased to give Notice of it, he hath forborn all publick Exercise of his Function, and still continues so to do.*

*Your Petitioner can with great Sincerity affirm, that ever since he hath been a Preacher, he hath faithfully endeavoured to do the best Service he could in his Place and Station, as well to the late King, your Royal Brother, as your Majesty, both by preaching and otherwise.*

*And so far he hath always been from venting any thing in the Pulpit tending to Schism or Faction, or any way to the Disturbance of your Majesty's Government, that he hath upon all Occasions in his Sermons, to the utmost of his Power, set himself against all Sorts of Doctrines and Principles that look that way: And this he is so well assured of, that he cannot but apprehend that his Sermons have been very much misrepresented to your Majesty.*

*But if in any Sermon of his, any Words or Expressions have unwarily slipt from him, that have been capable of such Constructions, as to give your Majesty Cause of Offence, as he solemnly professes he had no ill Intention in those Words or Expressions, so he is very sorry for them, and resolves for the future to be so careful in the Discharge of his Duty, that your Majesty shall have Reason to believe him to be your most faithful Subject.*

*And therefore he earnestly prayeth, that your Majesty out of Your Royal Grace and Clemency, would be pleased to lay aside the Displeasure You have conceived against Your humble Petitioner, and restore him to that Favour which the rest of the Clergy enjoy under your Majesty's gracious Government.*

*So shall Your Petitioner ever Pray, &c.*





In the Council-Chamber at White-Hall, &c.

Mercurii 4 die Augusti, 1686.

Present in Council, *Lord Chancellor, Lord Bishop of Durham, Lord Treasurer, Lord Bishop of Rochester, Lord President, Lord Chief Justice Herbert.*

*Upon my Lord Bishop's appearing before them, according to a Summons sent unto him, the Lord Chancellor Jeffereys began, viz.*

*Lord Chancellor.* MY Lord Bishop of London, the Lords here present have received Orders from the King to inspect all Ecclesiastical Affairs and Persons; and He hath commanded us to cite you before us; and I desire you would give a positive and direct Answer to it: What was the Reason you did not suspend Dr. Sharp, when the King commanded, and sent you express Orders so to do, and told you what it was for, viz. for preaching seditiously and against the Government?

*Lord Bishop.* I have received such an Order; and if what was done in that Affair was done amiss, and contrary to my Duty, it was my Ignorance and Inadvertency, and not a wilful Fault: I have been always ready to express my Duty to his Majesty; and if in this Particular I have not complied, it was because, as I was told, I could not. I was not so shallow as to go on my own Head, but took the best Advice I could get: I consulted those whose Business it is more perfectly to understand these Proceedings; all told me I could not legally do it, but by way of Citation and hearing him.

*Lord Chanc.* *Ignorantia Juris non excusat*; you ought to have known the Law, and it was a wonder you did not: The King is to be obey'd, and if you have any Reason to shew in this Particular, we are ready to hear you.

*Lord Bishop.* I knew not what would be laid to my Charge, and therefore was not provided to make such a Defence as I might have done; but if your Lordships will give me a Copy of your Commission, and a Copy of my Charge, and allow me some Time, I will endeavour to give your Lordships Satisfaction.

*Lord Chanc.* My Lord, I would not misinterpret your Words, but shall desire you to explain their Meaning. If by desiring a Copy of our Commission, you design to quarrel with the Jurisdiction and Legality of the Court, I have another Answer for you; but till I know your Meaning here, my Answer is, that no Copy of the Commission can be granted, and it is unreasonable to desire it; it is upon Record; all the Coffee-houses have it for a Penny a-piece, and I doubt not but your Lordship has seen it.

*Lord Bishop.* I have never seen it, nor have I desired it for such Ends, to dispute the Legality of it: But your Lordships knows it is a Thing altogether new to this Generation, and, it may be, something may be found in it, whereby I may be instructed and directed in my Answer and Behaviour in the Matter. But, my Lord, if I

may not have a Copy of it, will your Lordships please I may either read, or hear it read?

*Lord Chanc.* That is a Thing I cannot grant of my self, I must ask my Lords Commissioners Judgment; and if you will be pleased to withdraw, you shall hear it.

*The Bishop and all the Company withdrew for a Quarter of an Hour; then returning, the Lord Chancellor said,*

My Lord, all the Commissioners are of Opinion, that your Request is not to be granted, and that it is unreasonable. Might every one that appears here challenge the right of our Commission, and the reading of it, all our Time will be spent in the reading, and we have something else to do.

The Proceedings of Courts in this Kind are never by Libel and Articles; *Sapientem succinctim cre tenus*, by Word of Mouth only; and it is a short Question I ask, Why you did not obey the King?

*Lord Bishop.* It is a short Question, but requires more Words to answer it. I pray your Lordships to consider I am a Peer, a Bishop, and have a Publick Trust, though unworthy, under a Publick Character; and I would behave my self as becomes one in these Capacities.

*Lord Chanc.* We know very well your Lordship's Quality and Character, and are willing to shew all due Respect to your Lordship; but yet we must have a due Regard for the King, and Government too: His Majesty must not be neglected.

*Lord Bishop.* My Lord, I suppose there is no Appeal from the Court; and when a Man is to be condemned at one Bar, and is in Danger of being knock'd down at one Blow, you would think it unreasonable he should not have some Time to make his Defence.

*Lord Chanc.* My Lord, I suppose their Lordships will be willing to grant some Time: I pray what Time does your Lordship desire?

*Lord Bishop.* My Lord, it is the Assize-time, and most of the Counsel, upon some Occasion or other (either Business or Diversion) are in the Country: I pray you, my Lord, I may have till the beginning of the Term.

*Lord Chanc.* Hah! That's unreasonable: His Majesty's Business cannot admit of such Delays; methinks a Week should be enough: What say your Lordships, Is not a Week enough?

*The Commissioners being asked, signified by the Chancellor that a Week was enough.*

*Lord Bishop.* Since your Lordship will grant no more, I will ask no more.

*Lord Chanc.* Adjourn until Monday next, the Ninth of August, 1686.



Upon the Ninth Day his Lordship came, attended with his Nephew, the Earl of Northampton, his Brother in Law, Sir John Nicholas, and his Brother, Sir Francis Compton, &c.

There being present in Council the same as before in the same Proceedings.

*Lord Chanc.* MY Lord, we are here to hear your Reasons.

*Lord Bishop.* My Lord, I have lost no Time for preparing my Answer, but am not so ready as I might have been, because I could not light of the Commission your Lordship told me was upon Record, and in every Coffee-house, but employed a whole Week to search for it, and could not have a Sight of it until last Night: If your Lordship doubts the Truth of this, I have the Person ready to make Oath here of it.

*Lord Chanc.* My Lord, you are a Person of Honour, and we will not question the Truth of what you say, there needs no Oath: But, my Lord, I must tell you, that we will not admit of any quarrelling with our Commission, we are well assured of the Legality of it, otherwise we would not be such Fools as to sit here.

*Lord Bishop.* My Lord, I have other Reasons why I desire a Sight of your Commission; it may be, it may not reach me, being a Peer and a Bishop; and it may be, it may not reach this particular Case; and therefore I desire a Sight of it, in regard I could not see it until the last Night. I have not had time to take Advice what to answer; if your Lordship will not be satisfied, I must give such an Answer as I have prepared; but it is my Desire to have longer Time for it.

*Lord Chanc.* Is this all you have to say?

*Lord Bishop.* This is the first Thing: I do not desire to prolong the Time, the Necessity of the Case requiring it, the Counsel being out of Town in whom I think to confide.

*Lord Chanc.* If your Lordship will withdraw, we will give you an Answer.

*He withdrew for a Quarter of an Hour.*

*Lord Chanc.* My Lord, as I formerly told you, we will not endure any quarrelling at our Commission; it will be an odd Thing in us to give you Time to pick Holes in it; but we are willing to pay all due Respects to your Lordship: What Time do you require?

*Lord Bishop.* I shall submit to your Lordships; but I hope a Fortnight will not be unreasonable.

*Lord Chanc.* Agreed: You shall have it until to Morrow Fortnight in the Morning.

*To which my Lord Chancellor added,*

*Lord Chanc.* My Lord, when I told you our Commission was to be seen in every Coffee-house, I did not speak with any Design to reflect on your Lordship, as if you were a Haunter of Coffee-houses. I abhorred the Thoughts of it, and intended no more by it, but that it was common in the Town.

*Note.* When the Bishop spake concerning the Commission, Sir Thomas Clarges spake with a loud Voice, saying, *Well put, well put; my Lord speaks nothing but Truth.* There was also another Gentleman, Sir John Lowther of Lincolnshire, who as he was coming away in the Crowd, said, *There are some who have*

*represented me as a Papist, but the contrary shall appear; I will not be afraid, nor ashamed, to vindicate my Lord Bishop's Cause before the Commissioners themselves.*

TUESDAY, August 23, 1686.

There being present in Council the same as in the former Proceedings: The Lord Bishop attending, the Proceedings were as follow.

*Lord Chanc.* MY Lord, we are now ready to hear your Lordship's Answer.

*Lord Bishop.* My Lord, notwithstanding the Time hath been very short, considering the Weightiness of the Matter, and the Absence of many of the learned Counsel, I have taken what Advice I could, and have consulted those that are very learned in the Laws. I hope there will be no Misinterpretation of my Words, I do not intend any Thing which is derogatory to the King's Supremacy, that is undutiful to his Majesty, or disrespectful to your Lordships. My Counsel tells me, that your Proceedings in this Court are directly contrary to the Statute Law, and are here to plead it, if your Lordships will admit them.

*Lord Chanc.* We will neither hear your Lordship nor your Counsel in the Matter; we are sufficiently satisfied of the Legality of our Commission, as we often told you.

*Lord Bishop.* My Lord, I am a Bishop of the Church of England, and by all the Law in the Christian Church in all Ages, and by the particular Law of this Land, I am, in Case of Offence, to be tried by my Metropolitan and Suffragans: I hope you Lordship will not deny the Right and Privilege of Christian Bishops.

*Lord Chanc.* My Lord, you know our Proceedings are according to what has been done formerly, and that we have an original Jurisdiction: This is still questioning our Court.

*Lord Bishop.* It is partly.

*Lord Chanc.* Nay, it is absolutely so.

*Lord Bishop.* My Lord, I hope you will interpret every Thing in your Commission in Favour of the Person that is brought before you: I humbly conceive that your Commission doth not extend to the Crimes laid to my Charge for you are to censure Faults which shall be committed: This that I am accused of, was before the Date of your Commission.

*Lord Chanc.* I confess there is such a Clause, but there are general Clauses, that take in Things that are past, as well as those that are to come. Hath your Lordship any thing more?

*Lord Bishop.* My Lords, protesting in my own Right to the Laws of the Realm, as a Subject, and the Rights and Privileges of the Church, as a Bishop, I shall, with your Lordships leave, give you my Answer.

*Which was accepted; and the Bishop withdrew, and left Dr. Sharp's Petition, which the King had refused to accept.*

*Lord Chanc.* My Lord, we have read the Paper.

*Lord Bishop.* My Lord, it is Dr. Sharp's Petition to the King.

*Lord Chanc.* My Lord, be pleased to take it again, we are not concerned in it; will you please that your Lordship's Answer be read?

*Lord Bishop.* Yes, if your Lordship please. My Lord, I have this to say further, What I did  
in



in this Matter was *Jurisperitorum Concilio*. I consulted my Counsel, who is the Judge of my Courts, as well as others; and the Law says, That what is done by the Advice of Counsel, shall not be interpreted to be done maliciously, or obstinately. The Law, in this Case, requires, that if a Prince require a Judge to execute an Order, which is not agreeable to the Law, he shall *Rescribere & Reclamare Principi*. Now, my Lord, I conceived I acted in this according to my Duty, for I wrote back to my Lord President, in as becoming Words as I could; and acquainted him, that an Order to suspend before Citation and hearing the Person, is against Law, and expected his Majesty's further Pleasure.

In the next Place, my Lords, I did in Effect what the King commanded to be done, for I advised Dr. Sharp to forbear Preaching till his Majesty had received Satisfaction concerning him; and accordingly he hath forborn in my Diocese.

Lord Chanc. My Lord, will you have your Paper read?

Lord Bishop. Yes, if your Lordship please.

Which contained the King's Letter, and the Bishop's Answer thereto.

Lord Chanc. Hath your Lordship any more to say?

Lord Bishop. My Lord, I desire your Lordship would hear my Counsel, by whom you may have more clear and full Satisfaction concerning what I have said.

Whereupon the Bishop was desired to withdraw, and after half an Hour, he and his Counsel were called in; who were Drs. Oldish, Hodges, Price, and Newton. A brief Account of what they pleaded.

Dr. Oldish. My Lord, the Question before your Lordship is, Whether the Bishop of London hath been disobedient to the King's Command; concerning which, it must be considered,

First, What was commanded to be done.

Secondly, What he did in Obedience to it.

Thirdly, What Judgment ought to have been given by him.

It is apparent by the Letter, that the King did not take Cognizance of the Cause, for the Words are, *Being informed that Dr. Sharp, &c.* So that it could not be an absolute Suspension, for that supposeth a Proof of the Crime charged upon him: Then let us consider the Words themselves:

That you suspend him from Preaching. Now, my Lords, we have no such Thing in our Laws; so that the Meaning must be Silencing of him. Where there is an absolute Suspension, there ought to be Citation, Form of Proceeding, Judgment and Decree; to act otherwise is contrary to the Law of God, of Nature, of all Nations in all Ages, and was never known in the World.

Lord Chanc. I am loth to interrupt you; but I must tell you, this is an unnecessary Harangue; we know that it was not an absolute Suspension: But the Question is, Whether the Bishop could suspend him from Preaching?

Dr. Oldish. Then, my Lords, I have gained another Point; if it were only Silencing him, the Question is, Whether the Bishop did not execute the King's Commands? I think he did, and in such a Method as is observed in our Courts.

When any eminent Person is accused, the Judges send to him by a Letter; and if he appears and

complies with the Judges Order, the Law is satisfied.

*Judicium redditur in invitum non in volentem*: The Bishop did send for Dr. Sharp, shewed him the King's Letter, advised him not to Preach till the King had received Satisfaction; in which he promised to observe his Lordship's Command, and hath not preached to this Day; so that his Majesty's Command was, in Effect, fulfilled. My Lord, there is the like Proceedings in the Common Law; for if an Attorney takes a Man's Word for his Appearance, there lies no Action against the Attorney.

Lord Chanc. *Cujus contrarium*: There lies an Action of Escape against the Attorney —

Dr. Hodges. My Lords, the Matter of Fact hath been stated, and the Question is, Whether the Bishop hath been disobedient to the King's Command? It appears, that he has not; because upon the Receipt of his Majesty's Letter, he required the Doctor not to Preach, and he hath obeyed him in that which the King commanded. To suspend him, the Bishop could not do, the Act of Suspension is a Judicial Act: The King writes to him as to a Bishop, to suspend as a Bishop and as a Judge, which could not be done without the hearing of the Cause. If the Prince sends to a Person that is not a Judge, that is only in a ministerial Office, that Officer is to execute his Commands: But when the King commands a Judge, he commands him to act as a Judge. This is no light Matter the Doctor is accused of; it is for preaching Seditious and Rebellion, which requires a severe Censure. And if the Bishop, as a Judge, had suspended him, he had begun at the wrong End, for this had been Judgment before Process: In this Cause there ought to have been a Citation, our Books giving many Instances, which would be too tedious to your Lordships — I will give this one: The Emperor's Proceedings against the King of Sicily, upon Information which he had received; and giving him no Citation, the King appealed to the Pope, who declared the Proceedings to be void; and that it was against the Law of Nature, which is above all positive Laws, to pass Sentence before Citation. This is the Method of proceeding before all Courts, and I humbly conceive it is, and will be, the Method of this Court; for otherwise, the Bishop need not to have been cited before you. The Bishop has done what was his Duty, he was bound to return his Reason to the King, why he did not do that which he commanded, and to expect his further Answer; which was done. I affirm, that if a Prince, or a Pope, command a Thing which is not lawful, it is the Duty of a Judge *Rescribere*; which is all he can do, quoting his Author.

Dr. Price. The Question is *ut supra*: A Citation is *Jure Gentium*, and can never be taken away by any positive Command or Law whatsoever: The Bishop hath obeyed the King so far as he could, and did rescribe, expecting his Majesty's further Pleasure. If the Bishop could have suspended him, it must have been done *in Aula*; but in regard it was only silencing him, which was required, it might be done in a private Room: The Advice of a Bishop is in some Sense an Admonition, which is a Judicial Act,



dicial Act, and this was given by a Bishop, and obeyed by the Doctor.

*Dr. Newton.* My Lord, the Question is not *ut supra*, the Bishop hath not been disobedient. As in Nature no Man can be desired to do that which is impossible, so no Man can be obliged to do an unlawful Act. (*Id non fit quod non legitime fit.*) This Rule obliges all Men, at all Places, and at all Times. The Charge against *Dr. Sharp* is of a very high Nature; and he desired to be heard before he was condemned.

My Lords, the Bishops are *Custodes Canonum*, and therefore must not break them themselves. I affirm, the Bishop was so far from being Disobedient, that he was Obedient to the King: For where he did *Rescribere*, and heard not the further Pleasure of the King returned, he ought to conclude, the King was satisfied with what he had written, according to his Duty, and the King had altered his Commands. A Citation, as your Lordships have heard, is according to all Laws, in all Places, in all judicial Acts; there is something to be done according to Law, and somewhat according to the Discretion of the Judges, and for that Reason as well as these, the Offenders ought to be cited before him; that which was in the Bishop's Power to do, he hath done, and it was in Effect what the King commanded to be done.

*Lord Bishop.* If through Mistake I have erred in any Circumstance, I am ready to beg his Majesty's Pardon, and shall be ready to make any Reparation I am capable.

*The Bishop withdrew for Half an Hour, then was called in.*

*Lord Chan.* We will be here again on *Wednesday* next, and I desire your Lordship to be here again about Ten in the Forenoon.

*Lord Bishop.* My Lord, I desire that Care may be taken concerning the Minutes, which are taken by the Clerks, of what hath passed, and that I may not be misrepresented to the King by the Mistake of the Penman.

*Lord Chan.* My Lord, you need not fear it; I hope you have a better Opinion of us; there shall be no Advantage taken by them or us.

*Bishop Roch.* There shall be no Advantage taken, but all imaginable Care taken concerning it.

*Note.* When the Counsellors were Pleading, *Dr. Pinfold*, the King's Advocate, stood at the Chancellor's Elbow, and took Notes; by which it was expected that he should make a Reply, but he said nothing: and 'tis supposed that he staid with the Council, when the Bishop withdrew, and gave them Reasons for his Silence.

Die Lunæ, 6 September, 1686.

There being present in Council the same as in the former Proceedings.

*Lord Chan.* MY Lord, pray sit down. You were desired to appear this Day to hear your Sentence, which (to prevent Mistake) we have ordered to be put in Writing.

*Lord Bishop.* My Lord, may I have leave to speak before Sentence is read?

*Lord Chan.* My Lord, we have heard you and your Counsel ready.

Then the following Instrument, whereby the Bishop of *London* was suspended, was, by the Commissioners Order, read by *Mr. Bridgman*, their Lordships Register.

*By his Majesty's Commissioners for Ecclesiastical Affairs.*

WHEREAS *Henry*, Lord Bishop of *London*; hath been convened before Us, for his Disobedience, and other his Contempts, mentioned in the Proceedings of this Cause; and the said Bishop being fully heard thereupon, We have thought fit, upon mature Consideration of the Matter, to proceed to this Our definitive Sentence, declaring, decreeing, and pronouncing, that the said *Henry*, Lord Bishop of *London*, shall for his said Disobedience and Contempt, be suspended during his Majesty's Pleasure; and accordingly, We do, by these Presents, suspend him the said Lord Bishop of *London*, peremptorily admonishing and requiring him hereby, to abstain from the Function and Execution of his Episcopal Office, and from all Episcopal and other Ecclesiastical Jurisdiction, during the said Suspension, upon Pain of Deprivation and Removal from his Bishoprick.

Given under our Hand and Seal the 6th Day of *September*, 1686. Sealed with the Seal of the Court, C. 7. 2. Rose and Crown with this Inscription round it, viz. *Sigillum Commissionariorum Regiæ Majestatis ad Causas Ecclesiasticas.*

Signed by no body at all.

Some Days since, one of the Messengers attending the Court, deliver'd to the Dean of *St. Paul's* a Warrant, the Tenor whereof followeth:

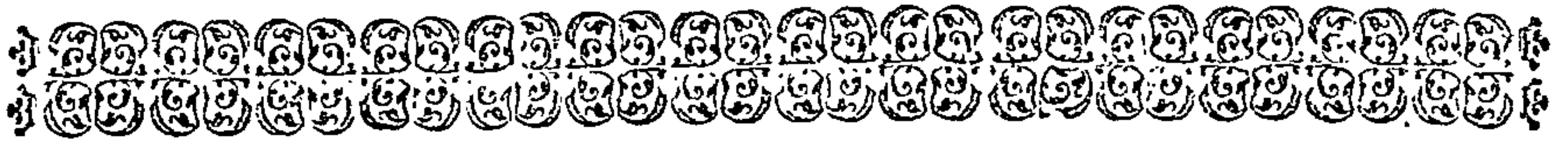
*By his Majesty's Commissioners for Ecclesiastical Affairs.*

WHEREAS We have given Sentence of Suspension against *Henry* Lord Bishop of *London*, a Copy of which Sentence, under our Seal, is hereunto affixed: We have thought fit, and do hereby enjoin and require you, to cause the said Sentence to be affix'd on the Door of that Chapter-House, and on the Place now called the South Door of the said Church; to the End that publick Notice may be taken of the said Suspension. And you are to certify Us, under your Common Seal, of the due Execution of what is hereby required.

At our Council-Chamber at *Whitehall*, on *Tuesday* the 28th of this Instant *September*, at Eleven o'Clock in the Morning. Given under our Seal this Day of *September*, 1686. Sealed with the same Seal as the Sentence, but no Persons Names. Subscribed to the Dean and Chapter of *London*.

*Dr. Sharp* was also suspended about the same Time, but he was soon after restor'd to the Exercise of his Function; and when the King receiv'd Advice of the Prince of *Orange's* intended Expedition, the Bishop's Suspension was taken off.





CXLI. *Proceedings against Dr. John Peachell, Vice-Chancellor, and the University of Cambridge\*, for not admitting Alban Francis, a Benedictine Monk, to the Degree of Master of Arts, April and May 1687, 3 Jac. II.*

ON the ninth Day of *February*, being *Asb-Wednesday*, came a Letter under his Majesty's Signet Manual, dated the seventh of the same Month; the Substance whereof was, That hearing much in Commendation of one *Alban Francis*, a Benedictine, the King was pleased to command the University, that they should admit him to the Degree of Master of Arts, without administering to him any Oath or Oaths whatsoever, any Law or Statute to the contrary in any wise notwithstanding, with which his Majesty was graciously pleas'd to dispense in the Behalf of the said *Alban Francis*. On *Monday* the 21<sup>st</sup>, the Vice-Chancellor having summon'd a Congregation, read his Majesty's Letter, purporting as before, and superscrib'd to Our trusty and well-beloved Vice Chancellor of Our University of *Cambridge*, to be communicated to the Senate there; on the reading whereof, the Senate, who made the best Advantage they could of the Vice-Chancellor's Delay, in order to get Advice, resolv'd to testify their common and almost unanimous Sense of the Thing, and in a Matter of such Consequence and novel Matter to interpose; accordingly there was a Paper, it is commonly call'd a Grace, the original Paper whereof I have seen drawn up in order to be put to the Vote of the House after the ordinary and usual Way; but the Constitution of that Body being such, that this must then of Necessity have been first propos'd to what we call the Head, which consists of six Persons, each of which has an arbitrary Voice and Power, upon dislike to stop any Proceedings finally, and hinder it being put to the House at all; This Method was laid aside as impracticable upon that Occasion; because Mr. *Basset*, a declar'd *Roman* Catholick, and one that had openly asserted Mr. *Francis*'s Cause, hapned to be one of the six who compose the Head for this Year; it was therefore presum'd, with great Appearance of Reason, that he would put a Bar to the Proceedings, so the Grace not being suffered to be offer'd to the House, the Senate's Sense could never have been fully and particularly known thereupon.

This Consideration constrain'd them to the Use of another Course, which was, without the Formality of a Suffrage, voluntarily to testify their Concurrence with the Vice-Chancellor, and advise him to forbear the admitting Mr. *Francis* till the King had been petitioned to revoke his Mandate. As soon as the Letter came to Town, the Vice-Chancellor wrote a Letter to the Duke of *Albemarle*, our Chancellor, to beg his Intercession with the King, which he returned Word was tried with none Effect, but possibly such a Body as the University concurring and signing a Petition, if that could be admitted, might prove better and more

successful. Now perhaps if every single Man present, to the Number perhaps of one hundred and fifty or two hundred, should address in Person to the Vice-Chancellor, this might look tumultuary, and it was thought the more quiet, decent, and respectful Way to send up their Sense by Messengers from each House: To this Purpose, Dr. *Smoult*, Professor of Casuistical Divinity, was made Choice of by the Non Regents, and Mr. *Norris*, Fellow of *Trinity-College*, by the Regents. The Substance of what they delivered, was, That the House thought the Admission of Mr. *Francis* without the usual Oaths, illegal and unsafe, and for that Reason advis'd the King might be petition'd, in the doing which they were ready to join and make it their Act. The Opinions were given freely to the two Messengers of each House, and the thing was so unanimously approved of, that the only Persons taking notice of it, were three Papists, and one or two besides; afterwards there was a Gentleman admitted Doctor of Physick, having first taken the Oaths; and the Esquire-Beadles and Registers were sent to let Mr. *Francis* know, that the Senate were ready to admit him also, provided that he would swear as the Law appointed; but he refused, insisting on the King's Dispensation: and this was the Business of the first Meeting about this Matter.

Immediately upon the Congregation's breaking up, Mr. *Francis* took Horse for *London*, to represent at *Whitehall* what had been done, and the same Afternoon the Heads met in the Consistory, to consult what Letters should be sent, and to whom: They agreed upon one to the Duke of *Albemarle*, and another to the Earl of *Sunderland*, being the Secretary of State, through whose Hands the Mandate pass'd: An Esquire-Beadle was dispatched presently to *London*, who after having waited on the Duke of *Albemarle*, endeavoured several times to get Access to the Lord *Sunderland*, but could not; at last having sent in his Letter, the Main whereof was a most humble Submission to his Majesty, with very solemn and unfeigned Protestations, that what was now done, proceeded from no Principle of Disobedience and Stubbornness, but a conscientious Sense of our Obligation to Laws and Oaths, and a respectful Intimation that we were ready to petition the King that it might be admitted; but not daring to approach Him without some Significations, that it would be acceptable, we applied ourselves to his Lordship, desiring him to do the University the Favour to mediate for them, &c. He was dismissed without any particular Answer: Within a few Days came a second Letter, dated *February* 24, which by reason of the Assizes and some other publick Business intervening, was not read in the Senate till *Thursday, March* the 11<sup>th</sup>: The University and the Vice-Chancellor in the mean Time received a Letter, wherein



wherein they found great Satisfaction by the Opinions of some eminent Lawyers, who concurr'd in the Approbation of what was already done, and for the future, could advise no better Course than humbly to represent the Case to his Majesty, and entreat him not to think amiss of so Loyal a Body, as always the University has shewed herself to be. The second Letter being read the Day aforesaid, which was exactly the same as the former, excepting only the Addition of a Clause, to do it at our own Peril; the Senate proceeded as before, to advise the Vice-Chancellor to some expedient Form, representing the Case fully and clearly to the King, as well with respect to the Illegality of such Admission, as the many ill Consequences that were likely to ensue from it: This the Non-Regent House did by Mr. *Billers*, Fellow of *St. John's-College* (the publick Orator) and Mr. *Newton*, Fellow of *Trinity-College* (the Mathematical Professor) the Regent House by Mr. *Henry Finch*, Son to the late Lord Chancellor, Mr. *Burton* of *St. John's-College*, and Mr. *William Bowles* of *King's-College*: All which was done without the least Hurry or Irregularity, without so much as asking an Opinion; but every Man went and gave it quietly and of his own Accord, so that no manner of Inducement was put upon any one to declare himself in the Business, but what proceeded meerly from his own Conscience, and a due Sense of Things. Another large Letter being prepared for the Duke of *Albemarle*, wherein was every thing that could be thought of to prevail with his Majesty, and one likewise shorter and less particular to the Earl of *Sunderland*; that very Afternoon Mr. *Braddock*, Fellow of *Katharine-Hall*, and Mr. *Stanhope* of *King's-College*, were desired by the Vice-Chancellor to go to *London* with these Letters, and other Instructions, to apply themselves to several Persons of Quality and Character, that they would join Forces, and think it a common Cause; for so addressing to the King, the Success would be more probable, and the Honour done to the University the greater. *Sunday*, March the 13<sup>th</sup>, the two Gentlemen waited on the Duke of *Albemarle* their Chancellor, who received them with all the Goodness in the World, with Assurance, that notwithstanding he had waited on the King before, and knew his Inclinations; nay, though he had been received with something of Displeasure, yet considering the Relation he bore us, he would make another Attempt, and thought himself obliged to omit no Endeavours for the University's Safety and Advantage. *Monday* the 14<sup>th</sup> in the Evening, the Duke of *Albemarle* waited on the King, and in the Passage towards the Bed-chamber, took the two *Cambridge* Gentlemen into the Anti-chamber, that they might be introduc'd if Occasion were: The King, on the Duke of *Albemarle's* acquainting him with the Affair, told him he had not then Leisure to talk, but he commanded the Letter which the Vice-Chancellor sent to the Duke of *Albemarle*, with which in his Hands he passed through the Rooms; and making that Evening a Visit to the *Queen Dowager*, gave the Duke no further Opportunity of knowing his Pleasure at that Time. At the Duke's return from the Inner-Room, the Gentlemen desired him to give leave that they might use his Name to procure an easy Admittance to the Earl of *Sunderland*; for they resolved to deliver their Letter to no Hands but his own, if that might be: The Duke immediately sent his Gentleman of the Horse to one

of the Lord *Sunderland's* Secretaries, making it his Desire that Mr. *Braddock* and his Companion might see the Earl, who accordingly appointed them to attend next Morning, and then conducted them to the Earl of *Sunderland's* Bed-side, who took the Letter, and after some further Application to him by Word of Mouth, he promised to acquaint his Majesty, and tell them his Pleasure. On *Thursday*, at that Time when Mr. *Braddock* and Mr. *Stanhope* came, the Account they received was only this, That the King had seen the Vice-Chancellor's Letter, and was offended at the Proceedings of the University, and would take Care very shortly to give a further Answer.

*Saturday* the 15<sup>th</sup> of *April*, Mr. *Atterbury* came down with a Summons from the Ecclesiastical Commissioners to this Effect; That whereas Complaint to them was made against the Vice-Chancellor and Senate of *Cambridge*, for having refused to comply with his Majesty's Royal Letters in Behalf of Mr. *Francis*; they were therefore commanded to appear, the Vice-Chancellor in Person, the Senate by themselves, and the Deputies before the Lords Commissioners, in the Council-Chamber, the 21<sup>st</sup> of *April*, to answer to such things as shall be objected against them in his Majesty's Behalf upon the Premises, &c. *Monday April* the 11<sup>th</sup>, a Senate was called, and Persons nominated to represent the University, together with the Vice-Chancellor; all which being unanimously approved by the Senate, they empowered them, by an Instrument under the Common-Seal, to answer in their Behalf, and be their full Actors, Attorneys and Proctors, as to what should arise from the Commission upon the late Summons. And Mr. *Atterbury* having received private Instructions to stay, and cite every Man that was chosen personally, he came accordingly into the Senate-House, and summon'd as many as were present, waiting on the rest on a convenient Time. The Persons deputed by the Senate to represent and act were these.

Dr. *John Peachell* Vice-Chancellor, Master of *Magdalen-College*.

Dr. *John Eachard*, Master of *Katharine-hall*.

Dr. *Humphrey Babington*, Fellow of *Trinity-College*.

Dr. *Thomas Smout*, Fellow of *St. John's-College*, and Professor of Casuistical Divinity.

Dr. *William Cook*, Doctor of Civil Law, and Fellow of *Jesus-College*.

Mr. *John Billers*, Fellow of *St. John's-College*, and the Publick Orator.

Mr. *Isaac Newton*, Fellow of *Trinity-College*, and Mathematical Professor.

Mr. *James Smith*, Fellow of *Queen's-College*.

Mr. *George Stanhope*, Fellow of *King's-College*.

THURSDAY, *April* the 21<sup>st</sup>, 1687.

Council-Chamber. Commissioners present.

L. Chancellor *Jefferys*. L. Bishop of *Durham*.

L. President *Sunderland*. L. Bishop of *Rochester*.

L. *Mulgrave*. L. Ch. Justice *Herbert*.

Earl of *Huntington*.

L. *Chanc.* ¶ S Mr. Vice-Chancellor here? ———  
Which is he?

He standeth over against the Lord Chancellor, bowed and shewed himself.

L. *Chanc.* Is there any one come from the Senate to attend him?

K k 2

Mr. *Stan-*



*Mr. Stanhope.* Yes, my Lord, we are eight of us here deputed by the Senate to answer what shall be objected against them, according to your Lordships Summons.

*The Noise and Crowd being great, Mr. Bridgman the Register was forced to repeat that again to the Lord Chancellor.*

*L. Chanc.* Read the Summons.

*Which was done.*

*L. Chanc.* Now, Mr. Vice-Chancellor, what have you to say why you did not obey his Majesty's Command, in Behalf of the Gentlemen mentioned there?

*Vice-Chanc.* My Lord, you enquire of me why I did not admit Mr. Francis, according to the King's Letters?

*L. Chanc.* Yes, that's the Question I ask you.

*Vice-Chanc.* Is this the only Question your Lordship is pleased to ask me?

*L. Chanc.* Nay, Mr. Vice-Chancellor, we will not capitulate in the very Beginning: Pray answer the first, and then you shall know what we have to say more.

*Vice-Chanc.* It is but a little while since we met in Town, and this is a Question of great Concern; I am not prepared to answer it on a sudden.

*L. Chanc.* Why, Mr. Vice-Chancellor, my Lords specified it in their Summons what would be question'd, on Purpose you should not come unprepared; but it may be Mr. Vice-Chancellor did not attend sufficiently to that Part of the Summons, therefore let it be read to him once more.

*Which was done.*

*L. Chanc.* Now, Sir, you hear it is for refusing to comply with the King's Commands.

*Vice-Chanc.* My Lords, I beg Time to answer you. My Lords, I am a plain Man, not used to appear before such an honourable Assembly, and if I should answer hastily, it may be I might speak something indecent or unsafe, which I should be afterwards sorry for; therefore I beg Leave, my Lords, to have Time allowed us for giving in such Answer, as may be both for our Safety, and your Lordships Honour.

*Lord Chanc.* [Smiling.] Why, Mr. Vice-Chancellor, as for your own Safety, my Lords are willing you should take all the Care you can; but for what concerns our Honour, do you not trouble your self; we are able to consult that, without any Interposition of your's.

*Vice-Chanc.* My Lords, I beg your Pardon if I have said any thing unbecoming; I mean only the Honour that is due to your Lordship's Quality, my Lord; and therefore being to answer before Persons of Quality, I beg leave to do it with Counsel, and in Writing.

*Lord Chanc.* Well, withdraw a little, and my Lords will consider of your Request.

Then all the Company withdrew, and about three Quarters of an Hour after the Vice-Chancellor was sent for into the Anti-Chamber, where Mr. Bridgman told him, the Lords Commissioners had given him Time till *Wednesday* next, till Four in the Afternoon, and Leave to put his Answer in Writing, and with Counsel, and by what Counsel he would.

When the Counsel had heard the Commissioners had granted it, they were something surprized, and loth to move in the Thing without a Rule of Court; therefore on *Friday* Morning Dr. *Eachard* and Mr. *Stanhope* went to Mr. *Bridgman's* Office, to desire such an Order, or at least a Co-

py of what had been said to the Vice-Chancellor; but he told them he had no Power to give either; only he repeated the Words over again for the Satisfaction of them and the Counsel, which was the same the Vice-Chancellor had related from his Mouth before.

WEDNESDAY, April 27, 1687.

In the Council-Chamber. Commissioners present as before.

ABOUT a Quarter of an Hour before the Lords met, Mr. *Bridgman* came to the Vice-Chancellor, and desired to know of him, whether he gave his Answer in Writing only, or whether any Counsel would appear to argue it; to which the Vice-Chancellor answered, That his Answer was drawing out in Writing, and that he did not expect any Counsel there that Day. Mr. *Bridgman* replied, The Lords had commanded him to ask these Questions, and would expect to know so much before they began to proceed. When the Delegates were called in, the Lord Chancellor said,

*L. Chanc.* Mr. Vice-Chancellor, the last Time you were here you desired Time to put in your Answer in Writing: My Lords have indulged you so far, now where is your Answer?

*Vice-Chanc.* My Lord, here it is—

*And gave it to Mr. Bridgman, who, after a Whisper, put it round the Table.*

*L. Chanc.* Read it.—

[To Mr. Bridgman.]

*The Answer of the University and Senate of Cambridge, to the Question, Why they did not admit Alban Francis to the Degree of Master of Arts in the same University, according to his Majesty's Mandatory Letters under his Signet Manual? The Vice-Chancellor and Senate of Cambridge, for, and in Behalf of themselves, and the said University, say,*

‘ THAT by the Statute made *primo Eliz.* and  
 ‘ entituled, *An Act to restore to the Crown*  
 ‘ *the antient Jurisdictions over the State Ecclesiasti-*  
 ‘ *cal and Spiritual, and abolishing Foreign Power re-*  
 ‘ *pugnant to the same*; it is enacted, amongst other  
 ‘ Things, That every Person that shall be promo-  
 ‘ ted to any Degree of Learning in any Uni-  
 ‘ versity within this Kingdom, before he shall  
 ‘ receive or take any such Degree, shall, before  
 ‘ the Chancellor or Vice-Chancellor of the Uni-  
 ‘ versity, take the Oath in the Statute menti-  
 ‘ on'd and appointed; purporting, that he doth  
 ‘ thereby testify and declare in his Conscience,  
 ‘ that his Majesty is the only supream Governor  
 ‘ of this Realm, as well in all Spiritual and Eccle-  
 ‘ siastical Things and Causes, as Temporal: that  
 ‘ no Foreign State or Potentate hath, or ought to  
 ‘ have, any Jurisdiction, Superiority, or Authority,  
 ‘ Ecclesiastical or Spiritual, within this Realm;  
 ‘ and that therefore he doth renounce and for-  
 ‘ sake all Foreign Jurisdiction and Authority, and  
 ‘ promise to bear Faith and true Allegiance to the  
 ‘ King, his Heirs and Successors, and to his  
 ‘ Power assist and defend all Jurisdictions and Au-  
 ‘ thorities granted, united or annexed to his Ma-  
 ‘ jesty's Imperial Crown of *England*. That by  
 ‘ the Statute made *quinto Eliz.* entituled, *An*  
 ‘ *Act for the Assurance of the Queen's Royal Pre-*  
 ‘ *rogative over all Estates and Subjects within her*  
 ‘ *Dominions*, it is likewise enacted, That every  
 ‘ Person



Person that shall be admitted to any Degree of Learning in any of the Universities, before he shall be allowed or suffered to take upon him such Degree, shall take the aforementioned Oath before such Person or Persons as shall have Authority, by common Use, to admit him to such Degrees.

That by the Statute made by his Majesty's Royal Grandfather, King James the First, in the third Year of his Reign, entitled, *An Act for the better Discovering and Repressing of Popish Recusants*, another Oath is commonly prescribed, the Oath of Obedience; by which Oath, is the Person that takes it, among other things, enjoined to swear, that his Majesty is lawful and rightful King of this Realm, and all other his Dominions and Countries; and that the Pope neither of himself, or by any other Means, hath Power or Authority to depose his Majesty, or dispose of him, his Kingdoms or Dominions; or to authorize any Foreign Prince to invade him or them, or to discharge his Subjects from their Obedience or Allegiance to his Majesty, or to give Leave to bear Arms against him; and that he, with true Faith and Allegiance to his Majesty, will defend him to the utmost of his Power. And afterwards, in the Statute made in the ninth Year of his Majesty's said Royal Grandfather, entitled, *An Act for administering the Oath of Allegiance*, in it is enacted, That the said last mentioned Oath shall be taken by the Vice-Chancellor and Principals of Houses in the University, in the Convocation before the Senior Masters, and by every other Person that shall be permitted or promoted to any Degree in Schools, before the Vice-Chancellor for the Time being, in the Congregation-House.

That the Vice-Chancellor, and every Member of the Senate, have taken the said Oath, and the Vice-Chancellor and Senate are entrusted to put them in Execution in the said University.

That the Vice-Chancellor, by his Oath of Office, has also sworn duly to execute his Office, according to the Laws, and cannot admit to any Degree without the Senate.

That the said Statutes were made for the Preservation of Doctrine and Religion, professed by the Church of *England*, and established by the Laws of this Realm, and of the Prerogative and rightful Power of his Majesty; that upon the Receipt of his Majesty's Royal Letters Mandatory, the same were by the Vice-Chancellor communicated to the Senate; and in order to the admitting the said *Alban Francis* to the Degree of Master of Arts, the said Oaths were offered to be administered to the said *Alban Francis*, if he would take the same, but he refused.

That the admitting him without the said Oaths had been contrary to the said Statutes, and a Breach of the Trust in the Vice-Chancellor and Senate reposed, and a Violation of their Oaths; and therefore they could not admit him to the said Degree of Master of Arts: And by humble Application to his sacred Majesty, did, and now again do, humbly desire your Lordships to represent this their Case to his Majesty, that they may not lie under his Majesty's Displeasure upon any Misapprehension thereof. But whether your Lordships will, as a Court, take Cognizance of this Matter, they humbly pray your Lordship's Consideration, since that the taking a Degree of Master of Arts in the University, or the ad-

mitting and refusing to such a Degree, is not any Cause or Matter Ecclesiastical or Spiritual, but of Lay and Temporal Cognizance.

And they further offer to your Lordships, that in the Statute made in the sixteenth of the Reign of his Majesty's most Royal Father King Charles the First, entitled, *An Act for repealing of the Branch of a Statute, Primo Eliz. concerning Commissioners for Causes Ecclesiastical*; and whereby the said Branch is repealed, it is enacted, "That no new Court shall be erected, ordained, or appointed within this Realm, which shall or may have like Power, Jurisdiction, or Authority, as the High Commission Court then had, or pretended to have; but that all and every such Commissions and Grants, and all Powers and Authority granted, or pretended to be granted thereby, shall be void and of none Effect, as in and by the said Statutes more fully appears."

Which being read, my Lord Chancellor said, Is it sign'd?

Mr. *Bridgman*. Yes, my Lord.

Lord *Chanc.* Read their Names. ———

*Which was done.*

L. *Chanc.* Well, have you any more to say?

Mr. *Vice-Chanc.* No, my Lord, not at this Time.

L. *Chanc.* Then withdraw.

All the Company withdrew, and about an Hour and a half after the Court rose; and afterwards Mr. *Bridgman* desired to speak with the Vice-Chancellor and Delegates in the Council-Chamber, to whom he said, That their Lordships had commanded him to tell them, they put off all further Consideration of this Matter till *Saturday* come Sevensnight, and then they expected their Attendance again. Mr. Vice-Chancellor asked him, If Counsel would be expected to plead on their Answer? He replied, Their Lordships had given him no Commission to say any thing to that. So they all withdrew.

SATURDAY, May 27, 1687.

THIS Day it was publickly discoursed thro' the Town, that the Lords had received a new Commission; and immediately Lawyers were consulted, whether it were proper to urge that at this Appearance. What could be gathered thereupon, was to this Effect: That it were a good Plea, if it could be well proved, for in receiving a new Commission in the Midst of Process, especially if there be any Alteration in it as to the Extent of their Power, would at least be a good Pretence to begin the whole Cause again, and gain Time; but that it was by no Means safe to alledge the Thing, for a flying Report is no Evidence; and if that Report were false, it might be a great Prejudice to them and their Cause.

Council-Chamber. Commissioners present as before.

Lord *Chanc.* Mr. Vice-Chancellor, the last Time you were here, you gave in a Paper to my Lords, signed by yourself, and several others coming from the University, which consists of several Parts; but there is one thing I must crave Leave of my Lords to discourse you on, which concerns your self. The Lords took Notice, that you alledge an Oath: That Oath it seems hindred you from obeying the King's Mandate. ——— Pray what was the Oath?

*Vice-*



*Vice-Chanc.* My Lord, this is a new Question which you were pleased not to put before, and I beg Leave and Time to answer it.

*L. Chanc.* Why, Mr. Vice-Chancellor, this requires no Time. My Lords, I tell you, took Notice of an Oath you pleaded for your self, and now they desire to know what the Oath is.

*Vice-Chanc.* I beg I may not answer hastily, but that your Lordships would let me know what Questions you would ask me, and let me answer them in Writing, and by Counsel.

*Lord Chanc.* Why did you not consult Counsel when you took your Oath? I am really concerned for the University of *Cambridge*, whereof I my self was once a Member, that the Vice-Chancellor, who is the Head, and the Representative of so learned a Body, should come here before the King's Commissioners, and not be able to give an Account of the Oath by which he acted all this time, but desires Counsel and Time to tell what the Oath is.

*Dr. Cook.* My Lord, if your Lordship pleases, I think I remember the Words of the Oath.

*L. Chanc.* Nay, good Doctor, how came you, who never were Vice-Chancellor, and so never took this Oath, to know it better than one that is Vice-Chancellor, and hath taken it?

*Vice-Chanc.* I cannot call to Mind the very Words of the Oath, but the Substance of it is this, *That I should well and faithfully, prestare, or administrare munus, or Officium Procancellarii.*

*L. Chanc.* Ay, *Munus, or Officium*: Well, what then?

*Vice-Chanc.* And, my Lord, this Office I take to be stated by the Statutes of the University, and the Laws of the Land.

*Lord Chanc.* Well, and how long has this been the Vice-Chancellor's Oath?

*Vice-Chanc.* Indeed, my Lord, I am not able to tell you exactly.

*Lord Chanc.* How long do you think? I will not tie you to any Time.

*Vice-Chanc.* Ever since I knew what belonged to it; ever since I was Head of a College.

*Lord Chanc.* How long have you been Head of a College?

*Vice-Chanc.* Six or seven Years, my Lord.

*Lord Chanc.* Have not other Vice-Chancellors admitted to Degrees without Oaths, who have taken the Obligatory Oath as you have done?

*Vice-Chanc.* Indeed, my Lord, I cannot tell; I cannot remember every particular Thing that has been done.

*Lord Chanc.* Well, because we will keep close to the Question, don't you remember any Master of Arts made without Oaths?

*Dr. Cook.* Not under the Quality of an University Nobleman, my Lord.

*Lord Chanc.* Nay, good Doctor, you never were Vice-Chancellor yet: When you are, we may consider you.

*Vice-Chanc.* The Answer to your Question will depend upon our University Book and Records; and if you'll allow us Time to consult them, we can give your Lordship an Account.

*L. Chanc.* Nay, look you, Mr. Vice-Chancellor, you have given in an Answer in Writing already, and because there is something in that my Lords would be further satisfied in, they have left it to me to ask you some Questions. I ask you, therefore, if you remember any Master of Arts

who hath been admitted heretofore without these Oaths?

*Vice-Chanc.* I cannot say, I remember any, my Lord.

*Lord Chanc.* Did you never hear of one Dr. *Lightfoot*?

*Vice-Chanc.* I think, my Lord, I have heard of such a one.

*Dr. Cook.* My Lord, I beg leave to speak a few Words.

*Lord Chanc.* Well, Doctor, what is it you have to say?

*Dr. Cook.* My Lord, Dr. *Lightfoot* did subscribe.

*Lord Chanc.* What Subscription do you mean?

*Dr. Cook.* To the XXXIX Articles; and the First of them is the King's Supremacy.

*L. Chanc.* Is Subscribing Swearing, Doctor? But Mr. Vice-Chancellor, how many have you admitted by Mandate?

*Vice-Chanc.* Never but one, my Lord, and he took the Oaths.

*Lord Chanc.* Do you never admit without Oaths them who have such particular Letters Patent from the King?

*Mr. Stanhope.* Never, my Lord.

And as for Dr. *Lightfoot*, they were aware before of this particular Person's being objected, and therefore had provided an Answer to it.

*Mr. Stanhope* undertook it, because the Books and University Papers had been committed to his Inspection and Care. In answer, had he been permitted to speak, he had this to offer, *That the Register of Subscribers was then in Court, and had a Paper ready in his Hands to be produced, where Dr. Lightfoot subscribed with his own Hands to the XXXIX Articles, the first whereof is the King's Supremacy; and that he could not refuse the Oath upon a Principle, because the same must have hindered his Subscription.* And as a farther Proof, he did offer, they were ready to swear this, *That two Gentlemen, Roman Catholicks, Servants to the Queen Dowager, did by Virtue of the same Letters from the King, at the Time of his coming to Cambridge, desire their Master of Arts Degree.* Their Names were *Pe-rara* and *Stephens*. These Gentlemen were proposed and granted, but upon Refusal to swear, were not admitted. Of this they could have produced, *First*, A Testimony upon Oath of a Gentleman then in Court; and besides that, the University Papers and Graces, which shew these Gentlemen's Names, among the Persons passed in the House, but wanting in the List of Subscribers and Commencers. After which they would have referred it to the Court, whether it was probable that the University should admit one of the Queen's Servants without Oaths, and yet refuse two more who had the same Title every way, because they would not take the Oaths; but the Lord Chancellor would not hear him.

*Lord Chanc.* Nay, look you now, that young Gentleman expects to be Vice-Chancellor too; when you are, Sir, you may speak, but till then it will become you to forbear. Mr. Vice-Chancellor, When was it pray, that you received the King's Letters? the first I mean.

*Vice-Chanc.* I do not perfectly remember, my Lord; I can't call to Mind the Day of the Month.

*Lord Chanc.* When were they dated, do you know?

*To Mr. Bridgman, my Lord pausing.*

*Vice-*



*Vice-Chanc.* My Lord, I remember it was *Asb-Wednesday*.

*Lord Chanc.* And when was it these Letters were published in the Senate?

*Vice-Chanc.* It was the Seven-night after, my Lord.

*Lord Chanc.* What's the Meaning of the Delay, Mr. Vice-Chancellor? The King's Business used to have a quicker Dispatch.

*Vice-Chanc.* It was a novel thing, and I was willing to give myself and others Time to consider on it.

*Lord Chanc.* But when you had read the Letters, why was not the Gentleman admitted?

*Vice-Chanc.* My Lord, the Senate sent to me, to desire me, that I would forbear admitting Mr. Francis, till I had petitioned the King to revoke the Mandate.

*Lord Chanc.* Why, does the King's Mandate use to be disputed? Did you ever see a Mandate voted in the House, whether it should be obeyed or not?

*Vice-Chanc.* No, my Lord, usually they are not; but the House sent to me to forbear, for they have not had any of this Nature before.

*Lord Chanc.* Did you ever know any Mandates of the King's refused by the University before?

*Vice-Chanc.* After some Pause ——— Yes, my Lord, several.

*Lord Chanc.* Pray give us one Instance.

*Vice-Chanc.* My Lord, one *Tatnell*.

*Lord Chanc.* When, pray? How long was that ago?

*Vice-Chanc.* I cannot recollect just the Time, but it was in his late Majesty's Reign; I believe, about fourteen or sixteen Years ago.

*Lord Chanc.* How was that?

*Vice-Chanc.* My Lord, the Mandate was given to one *Tatnell*, a Non-conformist Minister, and he refused to subscribe and take the Oaths; whereupon, my Lord, the University petitioned the King, and represented the Matter to him, and the King was pleased to recal his Mandate.

*Lord Chanc.* Mr. Vice-Chancellor, had not you a Mandate for another Gentleman at the same Time with this, which you refused?

*Vice-Chanc.* Yes, my Lord, it was to make a Gentleman Doctor of Physick.

*Lord Chanc.* And he was admitted upon it, was he not?

*Vice-Chanc.* Yes, my Lord.

*Lord Chanc.* Did the Senate vote his Mandate?

*Vice-Chanc.* No, my Lord, they did not.

*Lord Chanc.* Why should they interpose in the one, and not in the other?

*Vice-Chanc.* That had no Dispensation, my Lord, for the Oath in it.

*Lord Chanc.* But however, if they did not vote it, nor do any others of the King's Letters, how do you know their Consent?

*Vice-Chanc.* My Lord, it is presumed upon their being silent, and offering nothing to the contrary.

*Lord Chanc.* Ay, we have a Proverb, Mr. Vice-Chancellor, *Silence gives Consent*, but it seems he was admitted immediately, was he not, before you could know whether they consented to it or no?

*Vice-Chanc.* No, my Lord, he was not admitted till the House desired me to forbear in Mr. Francis's Case.

*Lord Chanc.* But, as to this Business of the Senate desiring you (my Lords) I hope you will indulge me to speak a little of that; for having been

formerly a Member of that University my self, I think I have some small Remembrance of the Manner of the Proceedings there: Pray, Mr. Vice-Chancellor, how was it that you knew their Minds in this Business?

*Vice-Chanc.* My Lord, the House sent up their Opinions.

*Lord Chanc.* How, pray? by whom?

*Vice-Chanc.* The Non-Regents by Dr. *Smoult* the first Day; and Mr. *Billers* the Orator, and Mr. *Newton* the Mathematical Professor, my Lord, the second Day.

*Lord Chanc.* By whom do you say the first Day?

*Vice-Chanc.* By Dr. *Smoult*, my Lord, from the Non-Regent House, and Mr. *Norris* from the Regent House.

*Lord Chanc.* Well: What said these two to you?

*Vice-Chanc.* My Lord, I don't know the very Words, but it was to this Effect, That I should forbear admitting Mr. Francis till the King was petitioned.

*Lord Chanc.* Is that Dr. *Smoult* in Court?

*Vice-Chanc.* Yes, my Lord, he is here ———

*Then he shewed himself.*

*Lord Chanc.* Come, Sir, What was it, I pray you, that you told the Vice-Chancellor?

*Dr. Smoult.* I have forgot, my Lord, the Words, but it was to the same Purpose the Vice-Chancellor told you just now, that the House desired me to acquaint him they were petitioning, that the Mandate might be recalled.

*Lord Chanc.* And pray, Sir, who are you, that you should be thought fit to represent a whole House? Why should they choose you rather than any Body else?

*Dr. Smoult.* My Lord, I suppose because I was one of the Seniors.

*Lord Chanc.* One of the Seniors! If you come to that, why was not the very Senior chosen?

*Dr. Smoult.* I cannot tell, my Lord, they came to me.

*Vice-Chanc.* My Lord, he is one of our Professors.

*Lord Chanc.* Nay, when I ask you Questions, they prompt you, and now you prompt them; but I must tell you, Mr. Vice-Chancellor, you ought to take an Account of what is done in the House your self, and not from others.

*Vice-Chanc.* My Place is at a great Distance from the Non-Regent House, and I could not see what was done there.

*Lord Chanc.* But should you take the Sense of a whole House from one Man?

*Vice-Chanc.* He came and told me, my Lord, the House was of that Opinion, and I thought I had no reason to question what he said.

*Lord Chanc.* How loud did he speak when he told you this?

*Vice-Chanc.* Pretty loud, my Lord.

*Lord Chanc.* Was it so loud, that all the House might hear it?

*Vice-Chanc.* No, my Lord.

*Lord Chanc.* Did you send afterwards to enquire whether he had told you their Opinions true or not?

*Vice-Chanc.* No, my Lord, I confess I did not.

*Lord Chanc.* But how came this new Way of giving Opinions; are not the Professors usually the



the Men that bring the Sense of the House to the Vice-Chancellor?

*Vice-Chanc.* Not the Non-Regent, my Lord, they are not admitted into that House, nor have at all to do there.

*Lord Chanc.* Have you any thing else to offer to my Lords?

*Dr. Cook.* My Lord, if the Answer that we gave in the last Day be not satisfactory, we desire to have Time allowed us to make a farther Defence, and to do it with Counsel.

*Lord Chanc.* Have you nothing to say besides?

*Dr. Cook.* No, my Lord.

*Lord Chanc.* Nor you Gentlemen? — then withdraw.

*After the Vice Chancellor, and three or four of the Delegates were gone off, and the Crowd was retiring, Mr. Billers, being a Person engaged in carrying up the Sense of the House, would have informed the Court (who seemed under a Mistake) more particularly of the Senate's Proceedings; and how it came to pass that the usual Way of Suffrages was impracticable at that Time.*

*Mr. Billers.* My Lords, I beg Leave to speak one Word.

*Lord Chanc.* Who are you?

*Mr. Billers.* My Name is *Billers*, my Lord.

*Mr. Bridgman.* My Lord, he is one of the Gentlemen that signed the Paper in which was the Answer.

*Mr. Billers.* I am one of the Persons, my Lord, that signed the Paper in which was the Answer.

*Lord Chanc.* Nay, hold *Mr. Billers*, give me leave to compare your Memory with *Mr. Vice-Chancellor's* a little; *Mr. Vice-Chancellor* tells me, *Mr. Billers* and *Dr. Smoult* went up both of a Day; then comes *Mr. Billers*, and says, that *Dr. Smoult* and he went up two several Days.

*Mr. Billers.* My Lord, I could not possibly go up from the House; I do not belong to the Regent-House.

*Lord Chanc.* Indeed he said so, Sir; indeed he did, my Lords — Did he not? [*To Mr. Bridgman.*]

*Mr. Bridgman.* Yes, my Lord.

*Mr. Stanhope, behind the Bishop of Rochester.* My Lord, under Favour, my Lord Chancellor is mistaken; the Person *Mr. Vice-Chancellor* told your Lordship went up from the Regent-House the same Day with *Dr. Smoult*, was *Mr. Norris*.

*Bishop of Rochester.* My Lord, I think your Lordship forgets; it was *Mr. Norris* that went up from the House the same Day with *Dr. Smoult*.

*Lord Chanc.* Well, Sir, was this that you would say?

*Mr. Billers.* I was only just acquainting your Lordship what was done, and that there was no other Way —

*The Thing Mr. Billers intended to urge, was, That the usual Way of Suffrage could not be practised at that Time; so the other was taken.*

*Earl of Sunderland.* We heard that before.

*Lord Chanc.* Ay, Sir, we took both what was done, and what was not done; therefore withdraw.

*Then all the Company retired, and after an Hour and a Half's Attendance, they were called in again, and the Lord Chancellor pronounced the Sentence upon Mr. Vice-Chancellor in the following Manner.*

*Lord Chanc.* *Mr. Vice-Chancellor*, the Lords have commanded me to tell you, that they have taken some Time to consider your Answer, and are at last come to a Resolution upon it: My Business is to tell you what the Resolution is, *Mr. Vice-Chancellor*. My Lords consider you have been guilty of an Act of great Disobedience to the King's Commands, and other Crimes and Contempts, and such, that now you appear before us, you have little to say in Excuse of it; therefore as a Mark of his Majesty's and their Lordships Displeasure, they have thought fit to appoint, that you be henceforth deprived of the Office of Vice-Chancellor of *Cambridge*. They likewise order, that you don't presume, at any Time hereafter, to meddle with any of the publick Business of the University. Likewise, *Mr. Vice-Chancellor*, their Lordships consider you have a Headship of a College; and because the Example of so ill a Man may be a pernicious Consequence to all under your Government, they have likewise thought fit that you be deprived of it, during his Majesty's Pleasure: But because they have a Tenderness for the College, for which all along you have shewed little Regard, my Lords are pleased to appoint, that the Revenues of your Headship shall go to the Benefit of the Society. This is their Lordships Pleasure, and to this they require your Obedience. There are likewise some other Gentlemen that have signed a Paper here, but my Lords expect their Attendance when they sit next, which will be on *Thursday* next; then we shall take them into Consideration.

On *Monday*, *Dr. Peachell* wrote by an Esquire-Beadle, who attended him, to desire a Copy of the Sentence; but Answer was returned, The Sentence as yet was not committed to Writing, but verbal only, and so he could not have a Copy; but he repeated the Heads only with this Alteration, That he was suspended his Mastership, and not deprived; which was an Error in the Lord Chancellor's delivering it.

The Beginning of the next Week was employed in making Enquiries after the new Commission; the Hannaper Six Clerks, and the riding Six Clerks Office knew nothing of it, nor any Court of Record could be directed to. *Mr. Bridgman* did own there was such a Thing, but did not instruct them how to come to the Sight of it. Those that spoke best of the Commissioners, urged the Removal of the Lord Chief Justice of the King's Bench to the Common Pleas, as a Thing that made a new Commission necessary for rectifying his Title: But a Gentlemen, who pretended to have read it, gave them private Intimations that there were very large Additions, and very considerable Alterations in it at my Lord Chancellor's own House. The Servants brought Word, that my Lord would speak with the Person himself that desired to see it, and appointed him a Time; the Solicitor went at the Hour, but did not gain Access to my Lord, and so they could not see it at all, for it was *Wednesday* Night, or *Thursday* Morning.

THURSDAY, *May* the 12th, 1688.

Council-Chamber. Commissioners present as before, the Delegates appear with *Dr. Peachell*.

*Lord Chanc.* THE last Time you appeared here before us, my Lords thought fit to set a Mark of their just Displeasure upon the



the Vice-Chancellor. Gentlemen, you cannot but be sensible, and so must all the World, how pernicious and obstinate the University has shewn themselves in refusing the King's Commands, and such Commands, I must tell you, that ought to be obey'd.

There was a Time, you may remember Instances, if you do not, I'll turn you to one in the Year 1667, when the Letters were so far from being disputed, that they passed for a Law among you, and do this Day stand recorded among the solemn Acts, and publick Statutes of the University, Gentlemen, my Lords consider there is a Difference between the Vice-Chancellor's Case and yours, and therefore did not conclude you, who represent the Senate, with him, but have required your Attendance at this Time: They impute the Miscarriage of the Body to the Head Disease chiefly; though neither are you without Fault, for being so much as uneasy under the King's Commands. Gentlemen, I must tell you, my Lords understand very well the sly Insinuations in your Paper, and have commanded me to tell you, That they know upon what Grounds they go, though they do not think fit to descend to Particulars: They know too how far that Authority extends, not only to you of the University, but to the Societies within this Kingdom. Gentlemen, your best Course will be by a ready Obedience to his Majesty's Command for the future, and by giving a good Example to others, to make Amends for the ill Example that has been given you. Therefore I shall say to you what the Scripture says, and rather because most of you are Divines; *Go your way, and sin no more, lest a worse thing come unto you.*

The late King's Letters, mentioned by my Lord Chancellor, Anno 1667, concern the regulating some of the Publick Exercises in the University; the Meaning whereof is this: The King is their Visitor, and whenever there is any thing belonging to the local Statutes and Customs which they think ought to be altered, or any Abuse which should be rectified and redress'd, their way is to beg the King's Royal Injunction in the Case, which they keep upon Record, and obey as a Statute. How good an Argument is this against them, for not obeying a private Mandate, contrary to four known Laws of the Land; and how parallel the Case, is easy discern'd.

*As they were drawing off, he call'd them again, and said,*

*Lord Chanc.* Hold, Gentlemen, I know something more to say to you. My Lords require, as a Testimony of your Obedience, that you, who represent the Senate, should take Care they have the University Statutes brought to lie before them here.

*Dr. Cook.* My Lord, we do no longer represent the Senate; our Delegation is determined with the Vice-Chancellor's Deprivation, my Lord.

*Lord Chanc.* Well, if your Commission be expired, we will give you a new one; we are able to give you a Commission: We suppose you had sufficient Authority for appearing here.

*Dr. Cook.* Does your Lordship expect that we should attend with the Statutes our selves?

*Lord Chanc.* No, no, send them up by a proper Officer: You are only to carry a Message from us to the Senate, and tell them what we expect.

*Dr. Eachard.* In what Time does your Lordship expect them?

*Lord Chanc.* In a convenient Time; we will not tie you up; but if you be tardy, my Lords will take care to quicken you by an Intimation; I

mean only a Copy, not original Statutes. You are now discharged from any farther Attendance here.

The Delegates, upon the Vice-Chancellor's Deprivation, being no longer capable of acting as Publick Persons, and consequently of deriving any ill Consequence upon the Body they have represented, thought they might venture their own Persons more boldly: Therefore, in order to satisfy the World, they were mighty desirous to bring about a second Hearing of the same Points, which, before the Vice-Chancellor's Sentence, they were not suffered to speak to, and which, when the Vice-Chancellor was asking, they had not an Opportunity of answering so very particular as they could have wish'd, confining themselves to such Questions, all the while, as did not concern the Vice-Chancellor solely and personally, but affected the whole Senate jointly with him: Which Order they had likewise observed in interposing at the Trial. This Answer they had ready to offer in Writing, if that could be admitted; but if not, resolved to argue it by Word of Mouth: The Substance of it may be reduced to two Heads:

*First,* The Business of admitting others, and particularly Dr. Lightfoot, without Oaths. As to Lightfoot's Case, what they intended to have urged in Court, you have seen already; but as to others,

I. *That Peers are by the very Act of Parliament 5 Eliz. exempted from the Oath.*

II. *That all such as the University calls Noblemen, have Time out of Mind enjoyed the Privilege of Peers.*

III. *That under that Quality they never admit any without Oaths.*

IV. *That if at any Time, upon the entertaining of a Prince, or any such Solemnity, any one has slipped out in the Crowd, which they are not conscious of, this is to be imputed to Hurry and Inadvertency, and cannot be parallel to this Case, where the Senate acted with Leisure and Deliberation.*

V. *That even these Degrees, given to Noblemen and Strangers, are Honorary and Complemental, and so different from what the Statute calls Degrees of Learning, and Men use, exercise and make a Gain of their Profession.*

VI. *That supposing never so many to be admitted without Oaths, this they acknowledged to be irregular, and the Breach of a Law in one can be no Precedent for another to follow.*

VII. *That however, they are very sully and particularly assured, no Man was ever admitted, who positively refused the Oaths, which this Mr. Francis did,*

I. *That every Man who is a Member of that, or any other Senate, hath such a Right to propose, debate, and advise, as Occasion shall require, and protest against any irregular Proceedings in it.*

II. *That in a Matter contrary to the Laws, and so highly concerning their University and Religion, as the opening such a Gap for the Men of any Perswasion to become Members of their Body and Senate (which every Resident Master of Art is) it had been the greatest Infidelity and Negligence to have sat still.*

III. *That their Suffrage not being asked by the common Way, ought not to have been a Bar, because every Man in his Matriculation Oath, obligeth himself to be assisting to the Chancellor and Vice-Chancellor, and to defend the State, Honour, and Dignity of the University, according to his Power and Capacity; and this to do Suffragio & Concilio, rogatus & non rogatus.*



IV. That representing the whole Houses Opinions by a few, is a Practice common to all numerous Congregations, and usual in this, for any single Man, voluntarily to go and address the Vice-Chancellor in Behalf of his whole College, or otherwise.

V. That the late King commanded, by his Royal Letters, that all Address to the Vice-Chancellor should be made in the most quiet, decent, and respectful Manner: And this way was thought more conformable to that Command, than the Hurry of every Man applying himself Personally.

VI. To give the better Reputation to the Thing, and make it unexceptionable, the Persons sent from the Senate to the Vice-Chancellor, were all Men either of Publick Character in the Body, or the Seniors of their Houses, or some way eminently known in the University; but they being admitted, as you have seen, on Thursday, there was no Opportunity at all of offering a Dispute.

*Animadversions on WEDNESDAY, April 27.*

THIS Day the Plea was given in, and the only Thing needful to be remark'd, is, the usual way of demurring to the Court's Jurisdiction, which is commonly either the only, or first Plea, in such Cases: But the Delegates look'd upon themselves as obliged not only to defend their Cause, but to satisfy the World; therefore they were desirous that all People should be satisfied upon what Reasons they acted; and to this Purpose they first insisted upon them, which they did not at all doubt but it would be patiently heard; whereas, if the Court's Jurisdiction had come first, that would, in all Probability, have occasioned the whole Plea to be stifled and over-ruled.

SATURDAY, May 14. 1687.

MR. Atterbury came to Cambridge, with two Orders under the Commissioners Seal; one to the Proctors to proceed in the Choice of a new Vice-Chancellor, and the other to Magdalen-College Fellows: To each of which was annexed a Copy of the Sentence to be fixed upon the School-Doors,

and Magdalen College Gates: And on Thursday, May the 17th, Dr. Baiderfon, Master of Emanuel College, succeeded in the Office of Vice-Chancellor.

*A Copy of Dr. Peachell's Sentence, as it was fix'd on the Publick School-Doors, and Magdalen College-Gates.*

By his Majesty's Commissioners for Ecclesiastical Causes, and the Visitation of the University, and of every Collegiate and Cathedral Churches, Colleges, Grammar-Schools, Hospitals, and other the like Incorporations, or Foundations, or Societies.

WHEREAS John Peachell, Doctor of Divinity, Vice-Chancellor of Cambridge, Master of Magdalen College, in the said University, has been conven'd before us, for his Disobedience to his Majesty's Royal Letters Mandatory, and other his Contempts; and the said Dr. John Peachell having been fully heard thereupon, we have thought fit, after mature Consideration of the Matter, to Declare, Decree and Pronounce, That the said Dr. John Peachell, shall, for the said Disobedience and Contempts, be deprived from being Vice Chancellor of the said University, and from all Power of acting in the same: And also, that he be Suspended ab Officio & Beneficio of his Mastership of the said College, during his Majesty's Pleasure; and accordingly we do by these Presents deprive him the said Dr. John Peachell, from being Vice-Chancellor of the said University, and from all Power of acting in the same. And we also Suspend him ab Officio & Beneficio of his Mastership of the said College, peremptorily admonishing and requiring him hereby, to abstain from the Function of Master of the said College, during the said Suspension, under Pain of Deprivation from his Mastership. And we also farther Order and Decree, that the Profits and Perquisites belonging to his said Mastership, shall, during the same Suspension, be applied to the Use and Benefit of the said College.

Given under Our Seal, the 7th of May, 1687.



## CXLII. Proceedings against St. Mary-Magdalen College in Oxon. for not Electing ANTHONY FARMER President of the said College, June, &c. 1687, 3 Jac. II. \*.

*A Narrative of the Election of Dr. Hough, President to St. Mary-Magdalen College, Oxon, 1687.*

THE Presidentship of St. Mary-Magdalen College, in the University of Oxon. being void by the Death of Dr. Henry Clark, late President of the same, the Vice-President, Dr. Aldworth, gave notice to all the Fellows present in the Chapel,

on Thursday the 31st of March, 1687; where it was unanimously agreed to proceed to the Election of a President on Wednesday the 13th of April following, at Nine o'Clock in the Morning, in the Chapel: And in order thereto, the Vice-President caused a Citation to be fix'd on the Chapel Door of the said College, signifying the Vacancy, Time and Place of the Election; according to the Direction of the Statutes. But before the Day of Election, being credibly informed that his Majesty

\* Burn. Hist. Own Times, Vol. I. p. 699.



Majesty had been pleased to grant his Letters Mandatory in Behalf of Mr. *Anthony Farmer*, they most humbly represented to his Sacred Majesty, in their Petition bearing Date *April* the 9th, That the said Mr. *Farmer* was uncapable, by their Statutes, of being President; and therefore did most humbly pray his Majesty to leave them to a free Election, or recommend such a Person to them, as was capable by their Statutes. *Monday April* the 11th, his Majesty's Letters Mandatory were delivered by the Hands of Mr. *Robert Charnock* \*, Master of Arts, and Fellow of the said College, directed to the Vice-President and Fellows of *Magdalen-College* in *Oxon.* requiring them forthwith to Elect the said Mr. *Farmer*, and admit him President: Which Letter the Vice-President read in the Chapel of the said College, between the Hours of four and five o'Clock in the same Day, after Evening-Service, before the Fellows of the College, there present, and asked them, Whether they in Obedience to his Majesty's Letters, would forthwith elect and admit Mr. *Farmer* President? Who all agreed, in Consideration to Mr. *Farmer's* not being qualified, and the Danger of Expulsion to any of the Fellows that should be absent from the Election, and that the Time of Election, according to the Citation, was so near, to defer their Answer till *Wednesday* following: Whereupon the Vice-President required all the Fellows to be present in the Chapel the said *Wednesday* Morning at nine o'Clock. All the Fellows being then met, the Vice-President read the Statute *De Electione Presidentis*; and the Statute 5 *Eliz.* against corrupt Elections was read also: After which the Vice-President read the King's Letter in Behalf of Mr. *Farmer*, and the second Time demanded an Answer of the Fellows thereto. Their Answer was to this Effect: That having a Petition now lying before his Majesty, they ought not to proceed to Election, till they had received his Majesty's Answer to the same: And thereupon they all agreed (except Mr. *Charnock*) that the Election should be deferred; which was accordingly done, until the next Morning nine o'Clock.

*Thursday April* the 14th, at nine o'Clock in the Morning, all the Fellows being met, the Vice-President told them, That the Election of a President had been deferred upon account of their Petition to his Majesty; in answer to which, they had not then received his Majesty's Pleasure; that the next Day was the utmost Time they could defer the Election by the Statutes, and therefore it was necessary they should come to some Resolution. He told them farther, That the King had commanded them to elect Mr. *Farmer*, and asked their Sense therein: Which was unanimous (except Mr. *Charnock*) that the Election should be deferred till the next Morning eight o'Clock; and in order thereunto, the Sacrament to be administered first; and accordingly it was adjourned.

*Friday, April* the 15th, at nine o'Clock in the Morning, the Vice-President and Fellows being met, Dr. *Thomas Smith* and Captain *Bagshaw*, two of the Fellows, acquainted the rest, from my Lord-President of the Council, That in Answer to their Petition, his Majesty had sent his Letter to the College, *that he expected to be obeyed.* After which, the Vice-President read again the King's Letter to them, and ask'd, whether, in Obedience thereunto, they would elect and admit Mr. *Farmer*

President? They answered, That they desired they might proceed to an Election. Then the Vice-President having proposed, whether having received his Majesty's Pleasure in Answer to their Petition, they would make any further Address? The Vice-President, Dr. *Fairfax* †, Dr. *Pudsey*, and Dr. *Thomas Smith*, were for a second Address; but all the rest declared immediately for proceeding to the Election.

Then the Vice-President proposed, whether they would go to an Election *Viva voce*, or by Scrutiny? The Vice-President, Mr. *Thompson*, and Mr. *Charnock*, were for proceeding to an Election *Viva voce*; all the rest were for going to an Election by Scrutiny, except Dr. *Thomas Smith*, who was not for going to Election, until the King should again be petitioned.

This therefore being the Sense of the Majority, That they ought to proceed to the Election of a President, according to the Statutes, and this the last Day limited for Election. In order thereunto, the Holy Sacrament was solemnly taken by all except Mr. *Charnock*. Then the Statute *De Electione Presidentis*, and 5 *Eliz.* against corrupt Elections, was read by the Vice-President. Every one took the Oath prescribed in the Statutes to be taken, in order to the Nomination of a President (except Mr. *Thompson* and Mr. *Charnock*, who refused it) And the two Senior Fellows were sworn Scrutators in the Scrutiny of the whole Society. For the Nomination of a President, Mr. *Hough* § and Mr. *Maynard* had each of them the major Part of all the Voices; and were accordingly pronounced by the Senior Scrutator, *Nominati in Ordine ad Electionem Presidentis.* Then the thirteen Senior Fellows being met to elect one of these two President; and every one of them sworn according to the Statute; eleven of them elected Mr. *Hough*, who was accordingly pronounc'd President of *St. Mary-Magdalen* College in *Oxon.* by the Senior Scrutator, in the Presence of all the Fellows: And Mr. *Maynard* was appointed by the thirteen Senior Fellows to present the said President Elect to the Visitor, in order to his Admission. After this, Mr. *Thompson* and Mr. *Charnock* declared *Viva voce* for Mr. *Farmer*, according to his Majesty's Letter.

*Saturday April* the 16th, Mr. *Hough*, President elect, was presented to the Visitor || by Mr. *Maynard*, who at the same Time delivered to his Lordship an Instrument under the College-Seal, containing the Proceedings of the Election: After a Sight whereof, Mr. *Hough* was sworn and admitted President by his Lordship, according to the Statutes.

*Sunday, April* the 17th, Mr. *Hough*, at his return to the College, took the same Oath again before the Society, and afterwards as President took his Seat in the Chapel, at four o'Clock Prayers in the Afternoon.

*A Copy of the King's Mandate to the Fellows of Magdalen-College.*

JAMES R.

Trusty and Well-beloved, We greet you well. Whereas we are well satisfied of the Piety, Loyalty, and Learning, of our Trusty and Well-beloved *Anthony Farmer*, Master of Arts, of that your College

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\* He was afterwards executed for being concerned in the Assassination-Plot against King William. Norwich.

§ Afterwards Bishop of Litchfield and Coventry, now Bishop of Worcester.

† Afterwards Dean of The Bishop of Winchester.



College of *St. Mary-Magdalen*, We have thought fit hereby effectually to recommend him to you for the Place of President of our said College, now void by the Death of *Dr. Clark*, late President thereof; willing and requiring you forthwith, upon Receipt hereof, to elect and admit him the said *Anthony Farmer*, into the said Place of President, with all and singular the Rights and Privileges, Emoluments, and Advantages thereunto belonging, any Statute, Custom, or Constitution, to the contrary notwithstanding, wherewith We are graciously pleased to dispense with in this Behalf. And so, not doubting of your Compliance herein, We bid you Farewel.

*Given at our Court at Whitehall, the fifth Day of April, 1687, in the third Year of our Reign.*

*A Copy of Magdalen-College's Petition.*

To the King's most Excellent Majesty,  
*The Humble Petition of the Vice-President and Fellows of St. Mary-Magdalen-College in Oxon.*

*Most humbly sheweth,*

WE have been credibly informed, That *Mr. Anthony Farmer*, who was not of our Foundation, has obtained your most excellent Majesty's Recommendation to be President of your Majesty's College, in the room of *Dr. Henry Clark* deceased.

We therefore, with all Submission, as becomes your most dutiful and loyal Subjects, most humbly represent to your Sacred Majesty, That the said *Mr. Farmer* is a Person in several Respects uncapable of that Character, according to our Founder's Statutes: And do most earnestly beseech your Majesty, as your Majesty shall judge fittest in your most Princely Wisdom, either to leave us to the Discharge of our Duty and Consciences, according to your Majesty's late most gracious Toleration, and our Founder's Statutes, or to recommend such a Person who may be more servicable to your Majesty, and to this your Majesty's College:

*A Copy of the Lord Sunderland's Letter to the Fellows.*

*Gentlemen,*

THE King being given to understand, That notwithstanding his late *Mandate* sent to you, for electing *Mr. Farmer* to be President of your College, you have made Choice of another Person; his Majesty commands me to tell you, He is much surprized at these Proceedings, and expects you should send me an Account of what passed on that Occasion, and whether you did receive his Majesty's said *Letters Mandate*, before you chose *Dr. Hough*. I am,

*Gentlemen,*  
*Your Affectionate and Humble Servant.*

S U N D E R L A N D.

*The Case of the Vice-President and Fellows of St. Mary-Magdalen-College in Oxon. in their late Election of a President.*

UPON Notice of the Death of *Dr. Henry Clark*, late President of *St. Mary-Magdalen-College* in *Oxon*. the Vice-President called a

Meeting of the Fellows, in order to appoint a Day for the Election of a new President. The 13th of *April* was the Day prefix'd with Power to prorogue the Election to the 15th, as they should see Cause, beyond which time it was not in their Power to defer the same. This being agreed, a Citation or Premonition was fix'd upon the Chapel-Door of the College, signifying the same; and summoning all the absent Fellows to repair home to the ensuing Election, as the Statute in that Case directs. After this, upon the 11th of *April*, they receiv'd his Majesty's Letter in Behalf of *Mr. Farmer*, requiring them to elect and admit him President: But he having never been Fellow of that College, nor *New-College*, in which are the only Persons capable of being chosen by the Statutes; and wanting likewise such personal Qualifications as are required in the Character of a President, they did not imagine it was, or could be his Majesty's Pleasure, that they should act so directly contrary to the express Words of their Statutes, to which they are strictly and positively sworn: But did humbly conceive they were bound in Duty to believe, that his Majesty had been misinformed in the Character and Capacity of *Mr. Farmer*. And therefore on the 15th of *April*, the last of those Days within which they were confin'd to finish the Election, they proceeded to a Choice; and having first received the blessed Eucharist, and taken an Oath, as the Founder enjoins, to choose a Person so qualified, as is there specified, they did elect the Reverend *Mr. John Hough*, Batchelor in Divinity, who is a Person every way qualified by the Statutes of the said College: And if it shall be objected that his Majesty did in his Letter for *Mr. Farmer* graciously dispense with all the Statutes that rendered him uncapable of being elected; and that therefore they might have obeyed without Breach of their Oaths: They humbly beg leave to represent, that there is an express Clause in that Oath, which every Man takes when he is admitted Fellow of the College; wherein he swears, not to procure, accept, or make use of, any Dispensation from his Oath, or any Part thereof, by whomsoever procured, or by what Authority soever granted. As to their former Practice, when they have elected in Obedience to the King's Letter heretofore, it has been always in such Cases where the Persons recommended have been every way qualified for the Office by their Statutes: In which Cases they always have been, and ever will be, ready to comply with his Majesty's Pleasure; it not being without unspeakable Regret, that they disobey the least of his Commands. They know how entirely their Welfare depends upon the Countenance of their Prince; nor doth any thing more deeply affect and grieve their Souls, than when they find themselves reduc'd to this unfortunate Necessity, of either disobeying his Will, or violating their Consciences by notorious Perjuries.

*A Copy of a Letter to the Duke of Ormond,*  
*April the 18th, 1687.*

*May it please your Grace,*

WE the President, and Fellows of *Magdalen-College* in *Oxon*. sensible of the Benefits and Honour we enjoy under your Grace's Patronage, and how much it imports us to have your Advice in all the Difficulties wherewith we are press'd; having, as we fear, displeas'd



his Majesty in our Election of a President; do humbly beg Leave to represent to your Grace, a true State of our Case, and hope you will please to inform the King how incapable we were to perform his Commands.

His Majesty was pleased, on the Death of Dr. *Henry Clark*, President of *St. Mary-Magdalen College*, to command us, by his Letter, to elect and admit Mr. *Anthony Farmer* in that Office, a Person utterly incapable of it by our Statutes, as we are ready to make appear in many Particulars; and since we have taken a positive Oath of Obedience to them, and that exclusive to all Dispensations whatsoever; we humbly conceive we could not obey that Command in Favour of Mr. *Farmer*, unless he had brought those Qualifications with him, which our Founder requires in the Person of the President; and being confined as to the Time of Election, we have been forced to proceed to the Choice of one, who has approved his Loyalty in the whole Course of his Life, and whom we think suitably qualified for the Place. —

May it therefore please your Grace to interpose with his most Sacred Majesty for us, that we may not lie under the Weight of his Displeasure, for not being in a Capacity for obeying his Commands. We know him to be a Prince of eminent Justice and Integrity, and cannot think he will value any Instance of Duty to himself, which manifestly breaks in upon the Obligation of our Consciences. And your Grace's extraordinary unblemished Loyalty to the Crown; and that Regard which, we assure ourselves, our most honoured Lord and Chancellor has to the Peace and Welfare of this Place, induceth us to presume your Grace will omit no Endeavours to set before his Majesty the true Reason and Necessity of our Proceedings. That God Almighty protect your Grace, shall be the daily Prayers of,

*May it please your Grace, &c.*

*The Bishop of Winton's Letter to the Lord President of the Council.*

*My Honoured Lord,*

THE Obligation I have upon me as Visitor of *St. Mary-Magdalen College* in *Oxon*, occasions this Address: For I am inform'd that great Endeavours are used with his Majesty to recommend one Mr. *Farmer*, who is not at present, nor ever was Fellow of the College, to be President of it; which is directly contrary to the Statutes of the Founder. (as I am confident some, who promote Mr. *Farmer's* Interest, cannot be ignorant of) And were there not many Persons now actually Fellows; and several who have been (in particular the Bishop of *Man*, and Dr. *Jessop*) very eminent for Learning and Loyalty, and every way qualified according to the Statutes, I should not press your Lordship to lay the Concern of the College (which hath upon all Occasions express'd its Zeal and Forwardness in Defence of the Crown, and, as I particularly know, in the great Affairs of the Succession) before his Majesty; who, I hope, will leave them to their Rules, as the Statutes, which have hitherto (excepting in the Times of Rebellion) been conscientiously observ'd, and which will be the highest Satisfaction to the truly Loyal University, and promote his Majesty's Service; which has always been the Endeavour of,

*Your Lordship's most Humble Servant.*

*A Copy of the Citation to the Vice-President and Fellows, for to appear at Whitehall, June the 6th, 1687.*

By his Majesty's Commissioners for Ecclesiastical Causes, and for the Visitation of the Universities, and of all and every Cathedral and Collegiate Churches, Colleges, &c.

Complaint having been made unto Us, that the Vice-President and Fellows of *St. Mary-Magdalen College* in *Oxon*. have refused to comply with his Majesty's Letters Mandatory, for electing and admitting Mr. *Anthony Farmer* President of the same College, in the room of Dr. *Clark* deceased, and that, notwithstanding his Majesty's Letters, they have elected Mr. *John Hough* President of the said College: You, and either of you, are hereby required to cite and summon the said Vice-President and Fellows, requiring them, or such of the said Fellows as they shall depute in their Behalf, to appear before Us in the Council-Chamber at *White-Hall*, upon *Monday* the 6th of the next Month of *June*, at Four in the Afternoon, to answer to such Matters as shall be objected against them, concerning the Premises; and of the due Execution thereof, you are to certify Us then and there.

*Given under Our Seal the 28th of May, 1687.*

To THOMAS ATTERBUY,  
and  
ROBERT ELDOWS;

*Or to either of them.*

*The Answer of the Vice-President, and other Fellows, of Magdalen College in Oxon. who were deputed by the said College, to the Question propounded by the Right Honourable and Right Reverend the Lords Commissioners for Ecclesiastical Affairs, viz.*

Why they did not obey his Majesty's Letter, requiring them to elect and admit Mr. *Anthony Farmer* President of the said College?

THE said Vice-President, and other deputed Fellows, answered and said, That the said College of *St. Mary-Magdalen* in *Oxon*. is a Body Corporate, governed by local Statutes, granted and confirmed to them by his Majesty's Royal Predecessor, King *Henry VI.* for him and his Heirs and Successors, under the Great Seal of *England*; which are also since confirmed by several other Patents of others of his Majesty's Royal Predecessors, under the Great Seal of *England*. That by the said Statutes of the College (to the Observation of which each Fellow is sworn) it is ordered, that the Person elected President thereof, shall be a Man of good Life and Reputation, of approved Understanding and good Temper, discreet, provident, and circumspect, both in Spiritual and Temporal Affairs. And at the Time of Election of a President, the said Fellows are bound by the said Statutes to take an Oath, that they shall nominate none to that Office, but such as are, or have been Fellows of the said College, or of *New-College* in *Oxon*. or if they are not actually Fellows at that Time of Election, that they be such as have left their Fellowships in their respective Colleges upon credible



credible Accounts. And when two qualified Persons shall be nominated at the Time of Election, by the greater Number of all the Fellows, to the said Office of President, the thirteen Seniors also swear that they will elect one of them, whom in their Consciences they think most proper and sufficient, most discreet, most useful, and best qualified for the Place; without any Regard to Love, Hatred, Favour, or Fear. And every Fellow, when he is first admitted into his Fellowship in the said College, swears that he will inviolably keep and observe all the Statutes and Ordinances of the College, and every thing therein contained, so far as does or may concern him, according to the plain, literal, and grammatical Sense and Meaning thereof, and, as much as in him lies, will cause the same to be kept and observed by others; and that he will not procure any Dispensation contrary to his aforesaid Oath, or any Part thereof, nor contrary to the Statutes and Ordinances to which it relates, or any of them; nor will he endeavour that such Dispensation shall be procured by any other, or others, publickly or privately, directly or indirectly. And if it shall happen that any Dispensation of this sort, of whatsoever Authority it shall be, whether in general or particular, or under what Form of Words soever it be granted, that he will neither make use of it, nor in any sort consent thereunto. That upon Notice of the Death of Dr. Clark, late President of the said College, the Vice-President called a Meeting of the said Fellows, in order to the appointing a Day for the Election of a new President, and the 13th of April was the Time prefixed, with Power to prorogue the same as they should see Cause, till the 15th, beyond which Time they could not statutablely defer their Election; and in Pursuance thereof a Citation or Premonition was fixed upon the Chapel-door of the said College, signifying the same; and by which the absent Fellows were summoned to repair Home, as the Statute in the Case requires. And the said Vice-President and other deputed Fellows farther say, that on the 11th of April aforesaid, they received his Majesty's Letters Mandatory, to elect and admit the said Mr. Anthony Farmer President of the said College: But forasmuch as the said Vice-President and Fellows apprehended the Right of Election to be in them, and believed his Majesty never intended to dispossess them of their Rights: And forasmuch as the said Mr. Farmer had never been Fellow either of *Magdalen* or *New College* in *Oxon.* and had not those Qualifications, which in and by the said Statutes of the College are required in the Character of a President, as they in their Consciences did, or do verily believe; and in regard that they could not comply with his Majesty's Letter, without the Violation of their Oaths, and Hazard of their legal Interest and Property, wherewith they are by their Statutes possessed, and which by their Oaths they are bound to maintain, they represented the same by their humble Petition to his Majesty. And having deferred their Election of a President to the last Day limited by their Statutes, then they proceeded to Election, and having first received the Eucharist, and taken the said Oaths, as the Statutes enjoin, to choose a Person so qualified as before expressed, they did elect the Reverend Mr. John Hough, B. D. and one of the Fellows of their College, a Person every way qualified to be President, who has been since confirmed

by the Bishop of *Winton.* their Visitor, as the Statutes of the said College direct.

And that they might not lie under his Majesty's Displeasure by their Proceedings, they did, on the 18th of April, make an humble Representation thereof to his Majesty, by his Grace the Duke of *Ormond*, Chancellor of the University of *Oxon.* setting forth their indispensable Obligations to observe their Founder's Statutes.

All which Matters the Vice-President, and other deputed Fellows, do humbly offer to your Lordships, and pray to be dismissed with your Lordships Favour.

This Answer was signed but by five of the deputed Fellows, Dr. *Fairfax* not consenting to it, who desired their Lordships to hear him apart, and take his Reasons, why he could not subscribe. After the reading of the Answer, the Lord Chancellor *Jeffereys* being in Hopes he would submit, gave him Leave to speak, saying, *Ay, this looks like a Man of Sense, and a good Subject; let's hear what he will say.* But finding his Mistake, and that Dr. *Fairfax* chiefly insisted, "That in Ecclesiastical Courts there should be a Libel given to the Party appealed, that he might know what he is accused of; that he desir'd that Libel, and did not know what he was called there for; and that the Matter did not lie in that Court, but in *Westminster-Hall.*" The Chancellor endeavoured to baffle his Plea, by telling him, *He was Doctor of Divinity, but not of Law.* To this the Doctor replied, *That he desired to know by what Commission and Authority they set:* Which put *Jeffereys* into such an excessive Passion, as made him cry out, *Pray what Commission have you to be so impudent in Court? This Man ought to be kept in a dark Room. Why do you suffer him without a Guardian? Why did not you bring him to me to beg him? Pray let the Officers seize him.*

*Then the Fellows were ordered to withdraw, and after an whole Hour's Debate, the Vice-President was called in alone, and ordered to attend the Court, with the rest of the deputed Fellows, on Wednesday the 23d of the same Month. On the appointed Day the Fellows attended, and gave in the following Reasons against Mr. Farmer.*

Whereas the Vice-President, and other deputed Fellows of *St. Mary-Magdalen College* in *Oxon.* have, in their Answer to your Lordships, set forth, that by the Statutes of the said College it is ordered, That the Person to be elected President thereof, should be a Man of good Life and Reputation, and of good Manners and Temper; and likewise, that Mr. *Anthony Farmer* hath not those Qualifications, which in and by the said Statutes are required in the Character of a President, as they in their Consciences did and do verily believe. They humbly crave Leave to represent to your Lordships some of those Reasons which induced them to such Belief; viz.

That Mr. *Farmer* did misbehave himself in *Trinity College* in *Cambridge:* That he received Admonition from the Master of the College, in order to his Expulsion; which remains in the Register of the said College, under his own Hand.

That having left *Cambridge,* he taught School at *Chippenham* in *Wiltshire,* under a Nonconformist Minister, without Licence.

That in *September,* 1683, the said Mr. *Farmer* was entred into *St. Mary-Magdalen Hall* in *Oxon.* where



where such frequent Complaints were brought against him to the Principal, for his troublesome Humour and unquiet Temper, that, to preserve the Peace of the Society, he was desired to leave the said Hall.

That after his leaving *Magdalen Hall*, he was admitted into *Magdalen College*; where discoursing about Religion, he declared, That there was no Protestant but would cut the King's Throat. Notwithstanding which, at other Times, he declared to some of the Fellows of the said College, That whatsoever he pretended, he was really a Member of the Church of *England*; and that he made an Interest with some Roman Catholics, only to get Preferment by their Means, and for that Reason was willing to be thought of their Religion.

That at the very Time when his Majesty's Letter came to the College in his Behalf, the said Mr. *Farmer* was at *Abington* in very ill Company, where he continued drinking to Excess two or three Days and Nights together; and amongst other Disorders, was one of those that then in the Night Time threw the Town-Stocks into the River: And that in general, the said Mr. *Farmer* hath had the Unhappiness to lie under an ill Fame, as to his Life and Conversation, as by several Letters and Certificates, ready to be produced, will more largely appear.

Copies of Letters and Certificates delivered to the Lords Commissioners for Ecclesiastical Affairs, June 27, 1687.

I. *Anthony Farmer*, Batchelor of Arts, and Scholar of this College, do confess, That I have behaved my self very unlike a Member of this College, and even a Christian, at the Dancing-School: For which I humbly ask Pardon, and do acknowledge before the Seniority, that I have deservedly received of the Master my first Admonition in order to Expulsion.

Trinity Col. Camb.  
June 11, 1678.

ANTHONY FARMER.

This is a true Copy of *Anthony Farmer's* Admonition, attested by us whose Names are hereunto under-written.

*Humph. Babington,*  
*John Hawkins,*  
*Benj. Pulleyn,*  
*John Laughton,* } Vice Magist. Deput.

II. THESE are to certify, that Mr. *Anthony Farmer* was Usher to Mr. *Benj. Flower*, a Non-conformist Preacher in the Town of *Chippenham* in the County of *Wilts*, for the Space of Half a Year or upwards, the said Mr. *Flower* keeping School without Licence from the Bishop, and the said Mr. *Farmer* continuing his Usher for the Time mentioned, without any Licence also. Witness our Hands,

*Will. Lake,*  
*Will. Loude,*  
*Will. Gale,* } Vicar.

III. MR. *Anthony Farmer* was entred of St. *Mary-Magdalen Hall* in *Oxford*, September, 1683. Where, after he had been some Time, frequent Complaints were brought to me by some of the Masters, that he raised Quarrels

and Differences among them; that he often occasioned Disturbances, and was of a troublesome and unpeaceable Humour. Whereupon, that Love and Friendship might be preserved and continued in the Society, as it is used to be, I advised the said Mr. *Farmer* to make Trial if he could live more easily and quietly in some other House. Accordingly he did voluntarily leave the Hall, July the 13th, 1685, and got himself admitted into *Magdalen College*.

WILLIAM LEVET, Principal.

IV. I Do certify, That Mr. *William Bambrigg*, Gentleman Commoner of *Magdalen Hall, Oxon.* did say, that Mr. *Anthony Farmer*, Master of Arts, did entice him from his Studies in the Univerfity to go to *London*, where he the said Mr. *Farmer* did attempt to draw the said Mr. *Bambrigg* into several Debaucheries, both at Taverns and Bawdy-houses. Witness my Hand,  
*John Ryland*, Master of Arts of *Magd. Hall*.

V. I Do certify, That Mr. *William Bambrigg*, Gentleman Commoner of *Magdalen Hall*, did say, That Mr. *Anthony Farmer*, Master of Arts of the said Hall, did receive Money of him and other Gentlemen, publickly to expose unto him a naked Woman; which he accordingly did. Witness my Hand,  
*Richard Clerk*, Master of Arts of *Magd. Hall*.

June 9, 1687.

VI. I Am very willing to justify any thing I have formerly said, relating to so serious a Matter as this is you enquire after.

Mr. *Farmer*, one Night in the Cloister, asked me why I did not get a Commission: I told him truly, I had not Friends to do it for me. He then asked me, what I would do for one? I told him, I would fight for my King, and whatsoever he should command me. He then asked me, if I would fight for the King's Religion? I told him, there would be no Occasion for that, nor would it ever be required of me. He asked me of what Religion I was: I told him a Protestant. And then he said, there was no Protestant but would cut the King's Throat; and that he should lose three thousand Pounds for being of that Religion he intended to be of; which he said was a Papist. This, to the best of my Remembrance, is the full of what he said. If I have omitted any thing, it is my Care not to write more than I would honestly and justly swear to. I am,

S I R,

Your most obliged, and most humble Servant,  
JOHN BRABOURN.

VII. I N or about *January* last, 1687, Mr. *Anthony Farmer* declared before us, That the Report of his being a Papist was false; but that he was willing to be thought so, because it might do him a Kindness: That the Reason of his Acquaintance with Mr. *Brent* and Mr. *Walker*, was to get Preferment by their Interest: That he had not forsaken the Protestant Religion; adding, we should call him a Rogue, if ever he did: That he would not make any publick Declaration of this, but would declare it amongst Friends, when and where he pleased.

HENRY DOBSON,  
JA. FAYRER,  
THO. GOODWIN.



VIII. I Do hereby certify, That *Robert Gardiner*, Porter of *St. Mary-Magdalen College*, did tell me, that *Mr. Farmer* did very often come into the College late at Night, so much in Drink, that he could scarce go or speak. Witness my Hand, this 9th Day of *June*, 1687.

GEORGE FULHAM.

IX. UPON *Monday*, *April* the third, *Mr. Farmer* came to the *Lobster* in *Abington* with *Mr. Clerk*, *Mr. Gravener*, and *Mr. Jemmyfar*, about eight in the Morning, and staid some time in the House, and went from thence to the Tavern; returned again about eleven at Night, and sat up till one in the Morning: The next Day they went to the *Bush Tavern* and sent for a Quarter of Lamb for their Supper, and there *Mr. Farmer*, *Mr. Clerk*, *Mr. Gravener*, and two Troopers and others, continued till past eleven at Night, and so returned to the aforesaid Place, and sat up till past three in the Morning. This I do assert, was the Company that the said *Mr. Anthony Farmer* kept, and these were the unseasonable Hours. In witness whereof, I am ready to swear, whenever a *Subpana* shall be sent to me.

GEORGE MORTIMER.

X. MRS. *Mortimer* is ready to assert, That when *Mr. Anthony Farmer* returned to the *Lobster* about eleven at Night, he came much concerned in Drink, and was for kissing the said *Mrs. Mortimer*, which, he being a Stranger, she permitted him to do; but in doing of it, he the said *Mr. Anthony Farmer* put his Tongue in her Mouth, which was such a Rudeness, that she immediately went out of his Company and would not come nigh him any more.

MARTHA MORTIMER.

XI. BEING in Company with *William Hopkins* of *Abington*, the 12th of *June* last 1687, I heard him declare, That himself, with one *Mr. Farmer* of the University of *Oxon*. and some others, did in a Frolick, at an unseasonable Time of Night, take away the Town Stocks from the Place where they constantly stood, and carried them in a Cart a considerable Way, and threw them into a Pool, commonly called *Mad Hall's Pool*. Witness my Hand, the Day and Year above written.

CHARLES PEACOCK.

*Some Clauses of particular Statutes to which the Case relates.*

IN their Statutes concerning their Election of a President, his Character is thus described; That he must be a Man of good Reputation, and good Life, and circumspect both in spiritual and temporal Affairs.

In the same Statutes the Oath which every Fellow is obliged to take, before he can give his Vote in the Nomination of a President, is this; *viz.*

That he will name one or two of *St. Mary-Magdalen-College*, or of those who have been Fellows there, or have left their Places upon a legal and credible Account: Or that he will name one or two of the Fellows of *St. Mary-Winchester College*, commonly called *New College*

in *Oxon*. or of those who have been formerly Fellows there, and have left their Places upon a credible Account. After this, the thirteen Senior Fellows swear, That out of the two thus nominated, they will, with all Speed, elect one to exercise the Office of a President, whom in their Consciences they think most proper and sufficient, most discreet, most useful, and best qualified for it, either without any regard to Love, Hatred, Favour, Fear, &c. as in the fore-mentioned Statute is more largely expressed. —

*Part of the OATH which every Fellow takes when admitted.*

Item. I Do swear, that I will not procure any Dispensation contrary to my aforesaid Oath, or to any Part thereof, nor contrary to the Statutes and Ordinances to which they relate, or any one of them; nor will I endeavour that such Dispensations be procured by any other or others, publickly or privately, directly or indirectly: And if it shall happen that any Dispensation of this Sort shall be procured, or freely granted or obtained, of what Authority soever it be, whether in general or particular, under what Form of Words soever it be granted, I will neither make use of it, nor in any Sort consent thereto.

*So help me GOD.*

*A Copy of Dr. Hough's Deprivation, by his Majesty's Commissioners for Ecclesiastical Affairs, &c.*

WHEREAS it appears to us, that *Mr. John Hough*, B. D. hath been unduly elected President of *Saint Mary-Magdalen College*, in the University of *Oxon*. We have thought fit, upon mature Consideration thereof, that the said Election be declared void, and the said *Mr. John Hough* be removed from the said Presidentship; and accordingly we do hereby declare and decree, that the said Election is void; and do remove the said *Mr. John Hough* from the Place of President of the said College.

*Given under Our Seal this 22d Day of June, 1687.*

*A Copy of Dr. Aldworth's and Dr. Fairfax's Suspension.*

WHEREAS *Charles Aldworth*, Doctor of Laws, Vice-President of *St. Mary-Magdalen College*, *Oxon*. and the Deputies, Fellows of the same House, have been conven'd before us, for their Contempt in not obliging his Majesty's Letters Mandatory, for Electing and Admitting *Mr. Anthony Farmer* President of the said College; and the said *Dr. Aldworth* and Deputies having been heard thereupon, We have thought fit to declare, pronounce, and decree, That the said *Dr. Aldworth* shall for the said Contempt be suspended from being Vice-President of the said College: And that *Henry Fairfax*, Doctor of Divinity, one of the Fellows of the said College, shall for the said Contempt be suspended from his Fellowship; and accordingly We do hereby suspend *Dr. Charles Aldworth* from being Vice-President of the said College, and the said *Dr. Henry Fairfax* from his Fellowship in the said College.

*Given under our Seal the 22d Day of June, 1687.*

*A Copy*



*A Copy of the King's Inhibition to Magdalen-College.*

JAMES R.

**T**RUSTY and Well-beloved, We Greet you well: Whereas We are informed, That a Sentence or Decree lately made by Our Commissioners for Ecclesiastical Affairs, touching an Election in that our College, hath not been obeyed, Our Will and Pleasure is, no Election or Admission be made of any Person or Persons whatsoever, into any Fellowship, Demyship, or other Place or Office in Our said College, till We shall signify Our further Pleasure, any Statute, Custom, or Constitution to the contrary notwithstanding. And so, expecting Obedience herein, We bid you farewell.

*Given at Our Court at Windsor, the Eighteenth of July, 1687, in the Third Year of our Reign. By his Majesty's Command.*

SUNDERLAND.

*A Copy of his Majesty's Mandate for the Bishop of Oxon. to be President.*

JAMES R.

**T**RUSTY and Well-beloved, We Greet you well. Whereas the Place of President of Our College of St. Mary-Magdalen, is now void, Our Will and Pleasure is, and We do hereby authorize and require you forthwith, upon Receipt hereof, to admit the Right Reverend Father in God, Samuel Lord Bishop of Oxon. into the said Place of President, to hold and enjoy the same, with all the Rights, Privileges and Profits, Emoluments and Advantages thereunto belonging, any Statute or Statutes, Custom or Constitution, to the contrary, in any wise, notwithstanding, wherewith We are graciously pleased, and do accordingly hereby dispense in his Behalf: And so expecting your ready Obedience herein, We bid you Farewel.

*Given at our Court at Windsor, August 14th, 1687, in the Third Year of our Reign.*

By his Majesty's Command,

SUNDERLAND.

*A Copy of the Lord Sunderland's Letter to the Senior Fellow, Dr. Pudsey, of St. Mary-Magdalen College in the University of Oxon. or in his Absence, to the Senior Fellow residing there.*

**T**HE King having been pleased by his Letters Mandatory, to require the Fellows of St. Mary-Magdalen College, to admit the Lord Bishop of Oxon. President of that College; his Majesty commands me to let you know, That immediately upon the Receipt hereof, he would have you assemble the Fellows, and communicate to them his Majesty's said Letters: And I am further commanded to tell you, That his Majesty expects a ready Obedience to be paid to his Pleasure herein. I desire you would send me an Account of your Proceedings, as soon as you can, that I may acquaint his Majesty therewith. I am,

*Yours,*

SUNDERLAND.

*A Copy of the Bishop of Oxon's Letter to the Senior Fellow of St. Mary-Magdalen College in Oxon. or, in his Absence, to the Senior Fellow residing there.*

S I R,

**Y**OU will receive herewith his Majesty's Mandate to admit me President of your College of St. Mary-Magdalen in Oxon. together with a Letter of my Lord Sunderland's, pursuant to his Majesty's Commands. I am indisposed, as I have been for some Time, and not in a Condition as yet to travel; and therefore my Request to you is, That upon Receipt of the King's Pleasure, you would do me the Favour to admit me by Proxy (*i. e.*) either the next Senior Fellow under your self, Resident, or either of my Chaplains, Mr. William Wickens or Mr. Thomas Collins, whom I depute in my stead, which is as valid in Law, as if I were present my self; and is the most usual and customary Practice. And by so doing, you will oblige.

*Your very loving Friend, and Brother,*

SAMUEL OXON.

O X O N, September 4th, 1687.

The Lord Sunderland sent an Order to the Fellows of St. Mary-Magdalen College, to attend the King at Christ-Church, at Three in the Afternoon. They attended accordingly.

King. **W**HAT's your Name? Are you Dr. Pudsey?

Dr. Pudf. Yes, may it please your Majesty.

King. Did you receive my Letter?

Dr. Pudf. Yes, Sir, we did.

King. Then you have not dealt with me like Gentlemen; you have done very uncivilly by me, and undutifully.

*Here they all kneeled, and Dr. Pudsey offered a Petition, which his Majesty refused to receive; and said,*

King. Ye have been a stubborn turbulent College; I have known you to be so these six and twenty Years. You have affronted me in this. Is this your Church of England Loyalty? One would wonder to find so many Church of England Men in such a Business! Go Home, and shew your selves good Members of the Church of England. Get you gone; know I am your King, I will be obey'd, and I command you to be gone. Go and amit the Bishop of Oxon. Head, Principal, what d'ye call it, of the College — [One who stood by, said President] I mean President of the College. Let them that refuse it look to it; they shall feel the Weight of their Sovereign's Displeasure.

*The Fellows going out of the Lodgings, were called back.*

King. I hear you have admitted a Fellow of the College, since you received my Inhibition. Is this true? Have you not admitted Mr. Holden Fellow?

Dr. Pudf. I think he was admitted Fellow. But we conceive —

Mr. Cra. May it please your Majesty, there was no new Election, or Admission, since your Majesty's Inhibition, but only the Consummation of a former Election. They always elect to one Year's Probation, then the Person elected is received or rejected for ever.

M m

King.



*King.* The Consummation of a former Election! 'twas downright Disobedience; and 'tis a fresh Aggravation. Get you gone Home, I say again; go, get you gone, and immediately repair to your Chapel, and elect the Bishop of Oxon. or else you must expect to feel the Weight of my Hand——

*The Fellows offered again their Petition on their Knees.*

*King.* Get you gone, I will receive nothing from you till you have obey'd me, and admitted the Bishop of Oxon.

*Upon which they went immediately to their Chapel, Dr. Pudsey proposing, Whether they would obey the King, and elect the Bishop of Oxon? They answered in their Turns, They were as ready to obey his Majesty in all Things that lay in their Power, as any of the rest of his Subjects. But the electing the Bishop of Oxon. being directly contrary to their Statutes, and the positive Oaths they had taken, they could not apprehend it in their Power to obey him in this Matter.*

*A Copy of the Petition offered at Oxford, September 4th, 1687.*

*To the King's most Excellent Majesty, &c.*

*Humbly sheweth,*

**T**HAT upon the 27th of *August* we received your Majesty's Letters Mandatory, dated *August* 14th, requiring us to admit the Right Reverend Father in God *Samuel* Lord Bishop of *Oxon.* to be our President; and dispensing with all Statutes and Constitutions to the contrary. It is an unexpressible Affliction to us, to find our selves reduced to such an Extremity, that either we must disobey your Majesty's Royal Command, contrary to our own Inclinations, and that constant Course of Loyalty which we have shew'd in all Instances hitherto upon all Occasions whatsoever, or else break our Founder's Statutes, and deliberately perjure our selves.

For our Founder hath obliged us under Oath, when we came in Fellows, inviolably to observe his Statutes, and one Clause therein enjoins us never to admit or make use of a Dispensation granted by any Authority whatsoever, whereby we may be absolved from the same. In this Statute for the Election of a President, he commands us upon Oath to elect such a Person into the Place of President within fifteen Days after the Vacancy, who either is, or has been Fellow of our own, or *New College*: Which we represented to your Majesty in our humble Petition, signed *April* 9th, wherein we offered our selves ready to elect any Person capable of the same, who your Majesty should be pleased to recommend; and having waited the utmost Time limited by our Statutes, and receiv'd no Answer to that Effect, we did then, according to the Exigence of our Statutes (having first taken the Holy *Eucharist*, and our several Oaths to that Purpose) nominate and elect such a Person as we in our Consciences did believe to be every way qualified for the Place. By which Act of ours we have conveyed all that Right to him which our Founder hath entrusted us with, and it does not lie in our Power to admit any other. Our Founder in another Statute obligeth us, under the Pain of Perjury, a dreadful Anathema, and eternal Damnation, not to suffer any of his Statutes to be

altered, infringed, or dispensed with, and commands us under the same sacred Obligations, not to execute any Orders or Decree whatsoever, contrary or repugnant to the said Statutes; by which said Statutes and Oaths, we are utterly incapacitated to admit the said Reverend Father in God to be our President.

May it please your sacred Majesty, to give us Leave to lay this our Case, and our selves, with all Submission, at your Royal Feet, most earnestly beseeching your sacred Majesty, to extend to us your humble Petitioners, that Grace and Tenderness which your Majesty hath vouchsafed to all your other Subjects, and not to believe us guilty of any Obstinacy or Undutifulness, Crimes which our Souls abhor; but to receive us into your Majesty's Grace and Favour, the greatest Temporal Blessing which our Hearts can wish.

*And your humble Petitioners shall always (as in Duty bound) pray to Almighty God, to bless your Majesty with a long and happy Reign over us, and afterwards to receive you to an immortal Crown of Glory.*

*A Copy of the Address which the Fellows of St. Mary-Magdalen College gave to the Lord President of the Council, Sept. 6, 1687; and which was delivered his Majesty at Bath.*

**W**E your Majesty's most humble, and most dutiful Subjects, the Fellows of *St. Mary-Magdalen College* in *Oxon.* being deeply afflicted with the late Sense of your Majesty's heavy Displeasure, grounded, as we in all Reason humbly presume, upon a most unkind Misrepresentation of our Actions, in relation to an Election of a President into your Majesty's said College; do humbly beg Leave to prostrate our selves at your Royal Feet, offering all real Testimonies of Duty and Loyalty. And as we have never fail'd to evidence both our Principles and Practices to be truly loyal, in Obedience to the Commands of your Royal Brother, and your sacred Self, in Matters of the like Nature; so whatsoever way your Majesty shall be pleased to try our Readiness to obey your Royal Pleasure in any Instance that does not interfere with and violate our Consciences, which your Majesty is studious to preserve, we shall most gladly and effectually comply therewith. A stubborn and a groundless Resistance of your Royal Will and Pleasure, in the present, and all other Cases, being that which our Souls eternally abhor, as becomes,

*Your Majesty's most Loyal and most Obedient Subjects, &c.*

*A Copy of a Letter directed to Dr. Bayly, Fellow of Magdalen College, Oxon. supposed to be writ by Mr. William Penn.*

*S I R,*

**U**PON an Inquiry made of your present Fellows of *Magdalen College*, I am informed that you are a Person eminent in that learned Body, for your Temper, Prudence, and good Conduct in Affairs; and therefore very fit to be addressed to by me, who do not send you this to trapan you and your Brethren, but out of a passionate Concern for your Interest, to perswade you either to a Compliance with his Majesty's Letters Mandatory, or to think among your selves of some Expedient to prevent the Ruin of your College, and your selves:



And to offer it to his Majesty's Royal Consideration, that the Order for the *Quo Warranto* against the College may be recall'd, before it be too late; for you cannot be sensible how highly his Majesty is incens'd against you, neither can you give one Instance whether ever that Sort of Proceeding was judged against the Crown. Your Cause most think it very hard; but you are not in Prudence to rely on the Goodness of your Cause; but to do what the present Instant of Affairs will permit, and in Patience to expect a Season that will be more auspicious to Persons of your Character. Every Mechanick knows the Temper of his present Majesty, who never will receive a Baffle in any thing that he heartily espouseth; and that he doth this, yourselves have had too late and manifest an Instance, to doubt of his Zeal in the Affair.

Where there are so many Statutes to be observed, 'tis impossible but some must be broken at one time or another; and I am informed by the Learned of the Law, that a Failure in any one Point, forfeits your Grant, and lays your College open to the Royal Disposal.

I could give many other prudent Arguments that that might possibly incline you to a speedy Endeavour of putting an end to your Troubles, almost at any rate; but I shall suggest this one thing to you, that your fatal Overthrow would be a fair Beginning of so much aimed at Reformation, first of the University, then of the Church, and administer such an Opportunity to the Enemy, as may not perhaps occur in his Majesty's Reign.

Your affectionate Servant, &c.

The Answer to the afore-mentioned written Letter, dated October 3, 1687.

THE enclosed Paper is a Copy of a Letter, which, by the charitable Purpose of it, seems to be writ by you, who have been already so kind as to appear on our Behalf, and are reported by all that know you to employ much of your Time in doing good to Mankind, and using your Credit with his Majesty, to undeceive him in any wrong Impressions given him of his conscientious Subjects, and where his Justice and Goodness have been thereby abused, to reconcile the Persons injured to his Majesty's Favour, and secure them by it from Oppression and Prejudice. In this Confidence, I presume to make this Application to you, desiring your Excuse for not subscribing it: For if you did write the Letter, you know to whom it was directed; and if you did not, I hope your Charity will induce you to make such use of your Light you have by it, into the Affairs of our College, as to mediate for us with his Majesty, to be restored to his good Opinion, as the only thing which is desired by us, who are zealous, above all earthly Things, for his Felicity and Glory.

We are not conscious of ever giving his Majesty any just Offence, as it will appear with you, when you shall have perused the enclosed Papers; and have therefore no reason to fear the issuing out of a *Quo Warranto* against us. And though you are pleased to apprehend it, no Instance can be given of a Judgment against the Crown, upon the Process of that Writ: The Learned in the Law tell me, there is nothing more common, and whereof many Cases are reported by *Kellaway*, from Page 128, to Page 152, of his Book of Reports: And I think I have heard of a Case in *Coke's* ninth Re-

port of the Abbess of *Prata Marcella*, which evinces the same; wherein also there is a Recital of Judgment given against *Roger Mortimer* for the King, upon a *Quo Warranto* in Court of *Eyre*, revers'd for Error in the *King's-Bench*. We hope, though we have many Statutes, it will be found that we have not wilfully transgress'd any of them; for all our present Troubles are derived to us from our Adherence to them, and our Fear to offend God, and blemish our Consciences, by departing from them.

His Majesty is intentionally righteous and just in all his Proceedings; he will never knowingly invade any Man's Property, as he was solemnly pleased to declare in his excellent Speech made in Council, on the 6th of *February*, 1684, at his Accession to the Government; which is again repeated in his gracious Declaration for Liberty of Conscience, of the 4th of *April* last past. It is upon his sacred, inviolable, and Royal Word and Promise, we must depend; not doubting but when his Majesty shall be rightly inform'd of our Case, in reference to both his Mandatory Letters to our College, his Anger towards us will be totally extinguished. Our Compliance to the first (which was *Mr. Farmer's* Election) would have involved us in the Guilt of manifest Perjury, and the wilful Violation of our Statutes: And we are confident his Majesty would never have granted the second on the Behalf of my Lord Bishop of *Oxon*. if he had known we were then possess'd of a President duly elected according to our Statutes, and confirmed by the Bishop of *Winton*. our Visitor (as the Statutes require) and if he is thereby invested with a Lay-Freehold under the Protection of his Majesty's Laws, which we cannot undo, or attempt to invade, without subjecting ourselves to Suits at Law, and doing an apparent Injury to the President, who doth not conceive himself to be affected with the Sentence of the Lords Commissioners (to which he was no Party) whereby his Place is declared void, without any Citations, Summons, or hearing of him.

I believe no Instance can be given of a *Quo Warranto* brought against a College or Hall in the Universities, from the first Foundation of them to this Day, or any other Ecclesiastical Corporation: For the Abuses of some Constitutions or Franchises in them, and the Misdemeanors of particular Persons, will not destroy a College: And if the Corporation of a College should be dissolv'd, the Revenues thereof will return to the Founder's Heirs, and not devolve to the Crown. And if our College must be the first Example of that kind, we shall be better justified by the strict Observation of our Statutes (at least to God and our own Consciences) than we could have been by a voluntary and deliberate Breach of them.

It was Loyalty and Conscience, that, in the Reign of King *Charles I.* made thirty-four of our forty Fellows, and most of the Scholars of our Foundation, rather quit their Places, and embrace Misery and Ruin, than to submit to the Government of the Usurpers of the Crown. And in *Monmouth's* Rebellion, the same Inducements prevailed on us to raise a Company at our own Charges, under the Command of one of our Fellows, to engage against him. And we hope that these, and many other the like Instances, which may be given of the Loyalty and Zeal of our Society to the Royal Family, will be received as Evidences thereof, and that our good and gracious Sovereign will



not exclude us from that Liberty of Conscience which he was pleas'd to extend to all his Subjects.

*S I R, I am your most affectionate Servant.*

Some *QUERIES* sent to the Fellows of Magdalen College from Windsor, September 15, 1687.

*First,* **W**Hether, waving your Election of the Bishop of Oxon. you cannot, without Violence to your Conscience, signify to his Majesty, or the above Reverend Bishop, your Willingness to admit the Lord Bishop President of your College?

*Secondly,* Whether it be not more Interest to the Protestant Religion, to have a suspected Popish President, than to have all the Places of the College refilled, by the King's sole Authority, with Popish Novices and Priests?

*Thirdly,* Whether you are not under a Mistake, in thinking you should render yourselves more acceptable to the Protestant Nobility and Gentry, by your being turned out of your Fellowships by Injustice and Violence, as you conceive; or rather will not they be very cautious how they receive you into their Families, for fear of giving Offence?

*Fourthly,* Whether his Majesty, as supream Visitor of the University, cannot place or displace there *ad libitum*; or whether you have a right Notion of the Proceedings which have been practis'd against you? Whether you suppose that the Lords Commissioners proceeded against you as Lords Commissioners, or Visitors? Which Notion, I am sure, will overthrow some body's Plea and Exception against their Authority.

*Fifthly,* Whether you acted like Men skilled in Business, when you refused Mr. Penn's Mediation, who you may be sure had good Authority for what he did? You could not but know that Man, and therefore must needs be fore-armed against any Wiles that could be offered to you. Whether an unanimous Subscription for an Expedient (which indeed I think you ought not to refuse in good Manners, since the King was pleas'd to propose it) presented to his Majesty by Mr. Penn, or another Favourite, would prevent the Destruction of the best Foundation in Europe?

*Lastly,* Whether you be not drawn beyond your Knowledge by some hot-headed Advisers, which never consider the present State of his Majesty's Court of Justice?

*An Answer to several QUERIES to the Vice-President and Fellows of Magdalen College in Oxon. sent from Windsor, dated the 25th of September, 1687.*

*To the First.* **W**E cannot, without Violence to our Consciences, and deliberate Perjury, admit any Person to be President of our College, that is not elected thereunto, and qualified according to our Statutes; whereby the Bishop of Oxon. is in no Sort capable; nor is there any Memorial in all our Register of any Admission of a President without Election, but of one Dr. Nicholas Bond, whose Case was as followeth; viz. Upon the Death of Dr. Lawrence Humphreys, about the 30th or 32d of Queen Elizabeth's Reign, the Queen recommended Dr. Bond (being a Fellow of our College) to be elected President. Many of the

Fellows inclin'd in their Judgment to elect one Smith (another of the Fellows) and at their meeting for Election, the Contention was so great, that they rose without Electing, and the Obstinacy continued till the Place became laps'd: And there being no Provision in our Statutes to direct us what to do in such a Case, the Queen, by her Letters Patents, constituted the said Dr. Bond to be President; and therein declared, That her Majesty being inform'd that the Fellows had neglected to make Election of a President in due time (as their Statutes required) and those Statutes having made no Provision for such an Omission, she, out of her Princely Care for the Place, and Indulgence for those Persons who had been guilty of that Neglect, did, by Advice of the Bishop of Winton. their Visitor, constitute Dr. Bond their President; with Protestation nevertheless, that she did not thereby pretend to supersede their Statutes, or invade their Right of Election, which was thereby invested in them, but took this Course as the only means left to supply their Defect of Election.

*To the Second.* We must not make ourselves guilty of deliberate Perjury, for any Considerations whatsoever, both in respect to our Consciences, and that we may not, by such a Breach upon our Statutes, expose our Constitution to a Forfeiture, nor do Evil that Good may come on it.

*To the Third.* We conceive we shall be more acceptable to all good Men, for acting honestly according to our Consciences, than for voluntarily and unjustly departing from our Right.

*To the Fourth.* We pretend not to make it a Question, whether his Majesty, by his Authority Royal, as supream Visitor, can grant a Commission for Visitation of any College that has a local Visitor by their Statutes, and are not Royal Foundations: But we are advised, that no Commission can be granted under the Great-Seal to Visitors, to place and displace Members of Colleges (whose Places are Freeholds) *ad libitum*, or *discretum*; but they must proceed according to legal Discretion, that is, by the Laws and Statutes of the Land, and the local Statutes of the College: And Places concern'd for the Headships and Fellowships of Colleges, are temporal Possessions, and cannot be impeach'd by summary Proceedings. One Dr. Thomas Lovency, President of our College, was deprived in Queen Elizabeth's Time, by the Bishop of Winton. the legal Visitor thereof, established by Royal Authority, and he appeal'd to the Queen: But by the Advice of all the Judges, it was held, that the Queen, by her Authority, as supream Visitor, could not meddle in it, but he must bring

*Westminster-hall*, because Deprivation was a Cause meerly Temporal. The King has a great Authority Spiritual as well as Temporal; but no Commissioners can be authorized by the Crown to proceed in any Commission under the Great Seal or otherwise, but according to Law; in Spiritual Causes by the Canon Law, in Temporal, by the other Laws and Statutes of the Land. And wherein the Proceedings in some Commissions are directed to be *summariè & de plano, &c.*

those Words are to be applied to shorten the Forms of Process, and not for Matter of Judgment: For *Magna Charta* provides for our Spiritual Liberties, as well as our Temporal.



*An Account of the Visitation of St. Mary-Magdalen College in Oxon.*

ON October 19, Mr. Atterbury, the King's Messenger, fixed a Citation on the College and Chapel-Doors, requiring the pretended President and Fellows, and other Members of the College, to appear before the Lords Commissioners, Bishop of Chester, Lord Chief Justice Wright, and Mr. Baron Jenner, in the Chapel, at Nine of the Clock on Friday Morning, November 21.

On Thursday the Lords Commissioners came to Oxon, attended with three Troops of Horse, which quarter there.

On Friday Morning at Nine they went into the Chapel: The President and Fellows thinking they had designed to sit in the Choir, made no Preparation of Seats in the outward Chapel: Upon which their Lordships adjourned to the Hall, where their Commission was then read, which in general, was the same with the former: These three being added to the other Lords Commissioners, and particularly impowered to visit *Magdalen College* only.

This done, the Names of the President and Fellows were called over, Dr. Hough being first called. All in Town appeared (except Dr. Fairfax) and Excuses were made for the absent.

Then a Speech was made by the Bishop of Chester, and in it his Lordship was severe against Disloyalty and Disobedience. He urg'd, that the Church of *England* taught an unconditionate and unlimited Obedience: He spake of the King's gracious Promises to Archbishops and Bishops, &c. which had deserved Thanks on bended Knees, notwithstanding the *Oxon*. Reasons to the contrary, which they knew best who was the Author thereof. He told them, that it could not be expected, but that the King would give all Encouragement to those of his own Religion, which could be done without Severity and Cruelty, which his Majesty abhorred, and without injuring the Church of *England*, which was at present established by Law: He told them, that this Corporation, as well as others, were the Creatures of the Crown; and that it was Insolence in their local Statutes to spurn against their Maker.

That their Distempers had brought this Visitation upon them, the Consequences of which might be ill to the Church and Universities: That however they might escape in this World, these Sins were to be accounted for above their other Sins in the next. He exhorted them by the Bowels of Christ to consider these Things: He told them, that the Eyes of the World were upon them, and they ought to take Care that their Practices might not influence their deluded Admirers. In short, the whole Design of the Speech seemed to be Promises and Threats, to aim at the inducing them to a Compliance.

*The Court was then adjourned till Two in the Afternoon.*

*In the Afternoon were called over the Names of the Demies, Chaplains, Clerks, Choristers, and College Servants. The President then interposed, desiring Leave to speak before they proceeded any further; which being granted, he told their Lordships, That,*

*President.* THE Time betwixt your Citation and Appearance was so short, that the Society had not Time to advise with Coun-

sel how to behave themselves on this Occasion; therefore desired of your Lordships a Copy of the Commission, and Time to consider of it.

*Bish. Chester.* 'Tis upon Record; you may have it above.

*Pres.* Is it the same the other Lords Commissioners had?

*Bish. Ch.* Yes, for the most Part it is.

*Pres.* Then, my Lord, I do assure you (and will make Oath, if you please) that I have often endeavoured to get a Copy of it, and could not procure it.

*L. C. J.* Have you not heard it read, or will you hear it again?

*Pres.* I am not capable of making a Judgment of it my self; but it is possible there may be Errors and Defects in it, such as the Society may make use of to their own Advantage; and I am confident, it is neither his Majesty's Intention, nor your Lordship's, we should be debarred from it.

*A Copy was then denied.*

*Bish. Ch.* Dr. Hough, will you submit to this Visitation?

*Pres.* My Lords, I do declare here in the Name of myself, and the greater Part of the Fellows, that we submit to the Visitation, as far as it is consistent with the Laws of the Land, and the Statutes of the College, and no further. I desire your Lordships that it may be recorded.

*This was twice repeated.*

*L. C. J.* You cannot imagine that we act contrary to the Laws of the Land; and as to the Statutes, the King has dispensed with them: Do you think we come here to act against Laws?

*Pres.* It does not become me, my Lords, to say so; but I will be plain with your Lordships, I find that your Commission gives you Authority to change and alter the Statutes, and make new ones as you think fit: Now, my Lords, we have an Oath, not only to observe these Statutes [*laying his Hand on the Book*] but to admit of no new ones, or Alterations in these: This must be my Behaviour here; I must admit of no Alteration from it, and by the Grace of God never will.

*Bish. Ch.* Do you observe all these Statutes?

*Pres.* Yes, my Lord, I hope we do.

*Bish. Ch.* You have a Statute there for Mass, why don't you read Mass?

*Pres.* My Lord, the Matter of this Oath is unlawful; and in such a Case no Man is obliged to observe an Oath: Besides, the Statute is taken away by the Laws of the Land.

*Bish. Ch.* By what Law?

*Dr. Stafford.* By that which obliges to say Common-Prayer.

*Bish. Ch.* What, the Act of Uniformity? I have often considered it, and don't remember one Word of Mass in it.

*Dr. Staff.* But that obliges us to use the Liturgy of the Church of *England* in all Collegiate Churches and Chapels. And, I hope, my Lords, you do not imagine that we can say Common-Prayer and Mass together.

*Bish. Ch.* Do you allow that Act of Parliament can free you from the Obligation of a Statute?

*Pres.* I do not say but that his Majesty may alter our Statutes, nor do I know but a Parliament may do the same; I dispute not their Power; only this, My Lord, I say, that I, who already have



have taken an Oath to observe these Statutes as they now stand, and am sworn not to admit of any Change or Alteration by any Authority whatsoever [*And then turning to the Oath, where they were to observe those Statutes and no other, according to the Literal and Grammatical Sense, &c. and reading it to their Lordships*] can obey none: But then those who come after such Limitations and Restrictions are made, are not obliged to observe them; and that, my Lords, is our Case, as to the Statutes of the Mass.

Then the Decree of the 22d of June was read, declaring the President's Election null and void.

*Bish. Ch.* Did you know of this Commission, &c.?

*Pref.* Yes, my Lord, I have heard of it.

*Bish. Ch.* Why then did you not obey it?

*Pref.* I was never cited before their Lordships, nor was either heard by them in Person or Proxy; and I think I am the only Instance that is extant, of any Man that was ever deprived of a Freehold, wherein he was legally invested, and of which he was quietly possessed, without being summoned or heard.

Here Mention was made of Dr. *Fairfax's* Suspension.

*Pref.* My Lord, he is absent, and if your Lordships give me leave, I have somewhat to say on his Account; your Lordships may please to observe in that Decree, that the Reason given why Dr. *Fairfax* was suspended from his Fellowship, was, because he had not obeyed his Majesty's Command, in not electing Mr. *Anthony Farmer* President of the College: Now the Charge of Immorality given in against Mr. *Farmer* by the College-Delegates was made out, and their Lordships fully satisfied in it, on the 29th of July; notwithstanding which, this Decree for Suspension of Dr. *Fairfax* was fixed on the College-Gates, August 2d.

*Bish. Ch.* The King hath for the most part recommended to the Presidentship of this College.

*Pref.* I am the twentieth President, and only four of that Number have been recommended by the Kings and Queens of *England*, whereof three were every way qualified for that Office.

*Bish. Ch.* Who were those?

*Pref.* My Lord, there was one in the Time of *Edward VI*, one in *Queen Elizabeth's*, and two in the late King's Reign.

*Bish. Ch.* Was there never a one in King *Charles the First's* Reign?

*Pref.* Not that we know of.

*Bish. Ch.* What think you of Dr. *Oliver*?

*Pref.* It doth not appear to us, my Lord, that he ever had a Mandate.

*Bish. Ch.* But it appears to us, and that I will bring you one to swear, that he had a Mandate.

*Pref.* The Truth is, we have lost the Register of Dr. *Oliver's* Election and Admission; the Register betwixt the Year 1640, or thereabouts, and sixty, being taken away by those who were turned out of the College at that Time; but I believe, my Lord, we are able to prove that he was elected and admitted according to the Statute.

*Bish. Ch.* Was Dr. *Clark* a Statutable Person?

*Pref.* Yes, my Lord.

*Bish. Ch.* Do not the Statutes require that he should be in Orders? Was he in Orders?

*Pref.* My Lord, the Statutes only require that he should be Doctor of Divinity, Physick, Law,

or Master of Arts. There is indeed one Statute, which says, The President or Senior-Fellow should read Prayers upon such certain Days; from whence we conclude, that the Founder supposed we might have a President that might not be in Orders; and in such a Case he takes Care that the Senior-Fellow should do his Duty.

*Mr. Char.* My Lord, will you be pleased to ask Dr. *Hough*, whether Dr. *Clark* was married, or not?

*Pref.* No, Sir, he was a Widower.

Then a Petition was read from the Society to his Majesty, signed the 9th of April, and presented the 10th to the Earl of *Sunderland*, by the Hands of Dr. *Thomas Smith*, and Captain *Bagshaw*, wherein 'twas set forth, that having heard that his Majesty would recommend Mr. *Farmer* to them, a Person incapable, they did humbly beseech him, either to leave them to a free Election, or to recommend a qualified Person.

*Bish. Ch.* Was this the Petition?

*Answer.* Yes.

*Bish. Ch.* Why then did you not stay for his Majesty's Answer?

*Pref.* My Lord, We did till the very last Day wherein we are limited to finish the Election; and my Lord *Sunderland* returned in the King's Name this Answer, That his Majesty expected to be obeyed. Now, my Lord, we did no longer defer the Election, because our Statutes enjoin us within such a Time, and we staid to the utmost: Nor could we choose the Person his Majesty did recommend, knowing him to be so unfit, as we afterwards made him appear to be. The Society was therefore to proceed to the Election of another Person, and did agree on such as you see.

*Bish. Ch.* A Mandate always implies an Inhibition.

*Pref.* My Lord, I cannot conceive that.

*Bish. Ch.* But I can; and if you question it, here's the King's Counsel ready to argue it.

*Pref.* My Lord, whilst the Person his Majesty recommends appears duly qualified for the Place, it seems indeed to imply that we should not proceed to the Election of another; but when he is known to be utterly incapable, it seems to be the same as if there were no Letter at all.

Some other Things and Questions less material were put, and then the Court was adjourned to Saturday the 22d, at Nine in the Morning, to the Common Room, the Hall being, as they said, too publick and incommodious.

SATURDAY, October 22, 1687.

As soon as their Lordships met in the Common Room, and the Society before them, the first Word was, *Withdraw*; and after a little Time, the President was called in alone.

*Bish. Ch.* DO you submit to the Decree of the Commissioners, whereby the Election is declared Null?

*Pref.* As to that Decree of the Lords above, it is a Nullity in it self from the Beginning to the End, as it relates to me, I never having been cited, nor having ever appeared before them, either in Person or Proxy. Besides, my Cause itself was never before them; their Lordships never enquiring or asking one Question concerning the Legality or



or Statuteness of my Election; for which Reasons (as I am informed) that Decree was of no Validity against me, according to Methods in the Civil Law: But if it were, I am possessed of a Freehold, according to the Laws of *England*, and the Statutes of the Society, having been elected as unanimously, and with as much Formality as any one of my Predecessors, Presidents of this College, and afterwards admitted by the Lord Bishop of *Winton*. our Visitor, as the Statutes of the College require; and therefore I cannot submit to that Sentence, because I think I cannot be deprived of my Freehold, but by Course of Law in *Westminster-Hall*, or by being some ways incapacitated by the Founder's Statutes.

*Bish. Ch.* Will you deliver up the Keys of the President's Office, and Lodgings, to the Use of that Person whom the King has appointed your President, as the Statutes require?

*Pres.* I will immediately do it, if that appears.

*Bish. Ch.* Turn to that Part of the President's Oath, where he promiseth to submit quietly if he shall be expelled, either for his own Fault, *vel ob aliam Causam*.

*Pres.* My Lord, that Statute only concerns me, if I am expelled for any Fault committed by me.

*Bish. Ch.* *Vel ob aliam Causam?*

*Pres.* Then, my Lord, to be short, here is no Cause at all.

*Bish. Ch.* I ask you again, Will you deliver up the Keys to the President whom his Majesty hath appointed?

*Pres.* There neither is, nor can be a President so long as I live, and obey the Statutes of the College; and therefore I do not think fit to give up my Right, the Keys and Lodgings.

*Bish. Ch.* We may demand them of you as Visitors.

*Pres.* My Lords, we never deliver up the Keys to the Bishop of *Winton*. and we own no greater Visitorial Power than his; he hath the King's Authority. 'Tis by Virtue of a Royal Charter that we live together, and enjoy the Benefit of this Place, that empowered our Founder to give us a Rule, and obliged us by Oath to act suitable unto it: And the Bishop of *Winton*. is hereby constituted to be our Visitor; and all this we own from the King's Authority. The Bishop of *Winton*. is our ordinary Visitor; the King (I presume) our extraordinary. But your Lordships know it hath been controverted, Whether the King can visit a private College or not? The Authority of the President is made by delivering up the Statute-Book, and Keys; and therefore I look upon them as an essential Badge of my Office.

But I humbly beg that I may ask your Lordship one Question.

Your Lordship is pleased to demand of me to give up these Things: Does your Lordship own my Right? For if not, What is it your Lordships would have me give up?

*Bish. Ch.* No, we look upon you as an Intruder.

*Pres.* If I am an Intruder, the Bishop of *Winton*. made me one; and I thank God for it. My Lords, the Time we have been allowed for this Appearance, has been very short; but one Day betwixt it and the Citation. We are Men ignorant in the Laws, and I must confess it of my self in particular, that I have endeavoured to give your Lordships a plain satisfactory Reply to such Questions as your Lordships have been pleased to put

to me. It is very probable, that through Ignorance and Inadvertency, I may express my self unwarily. If so, I beseech your Lordship let no Advantage be taken of it; my Intention has been always to express myself with all imaginable Duty to the King, and Respects to your Lordships. If I have done otherwise, I beseech your Lordships Candour in a favourable Interpretation of what I said, that nothing may be taken amiss, where all was dutifully intended. And now, my Lords, thus far have I appeared before you as Judges; I now address to you as Men of Honour, and Gentlemen; I beseech you to represent me as dutiful to his Majesty to the last Degree, as I always will be, so far as my Conscience permits me, to the last Moment of my Life; and when I am dispossessed here, I hope your Lordships will intercede that I may no longer lie under his Majesty's Displeasure, or be frown'd upon by my Prince, which is the greatest Affliction can befall me.

*Upon this the President was ordered to withdraw, and after a little Time, he and the Fellows were called in again. Then the Bishop repeated this Question.*

*Bish. Ch.* Dr. *Hough*, Will you deliver up the Keys, and quiet Possession of the Lodgings, to the Person whom his Majesty has appointed President? [*To which no Answer was returned.*] The Bishop repeated a second Time,

*Pres.* My Lords, I have neither seen nor heard any thing to induce me to it.

*Bish. Ch.* Dr. *Hough*, Will you deliver up the Keys, and quiet Possession of the Lodgings, to the Person whom his Majesty has appointed President?

*Whereupon the King's Proctor stood up and accused Dr. Hough of Contumacy. Then the Bishop of Chester admonish'd him in these Words, three Times.*

*Bish. Ch.* Dr. *Hough*, I admonish you to depart peaceably out of the Lodgings, and to act no longer as President, or pretended President of this College.

*Which being so done, they struck his Name out of the Book, and admonished the Fellows, and others of the Society, that they should no longer submit to his Authority.*

SATURDAY, October 22, 1687.  
O X O N.

Dr. *Fairfax's* Case before the Commissioners.

**A**T the first Sessions Dr. *Fairfax* purposely absented himself; but Mr. *Atterbury* making Affidavit he was in Town, and that he advised him to appear, the Doctor accordingly did so the next Day. The Doctor being called in alone, and the Doors immediately shut, he begged of their Lordships some Company might be let in, because, as all had observed, the Bishop in his Speech, at the opening their Commission, promised to transact every thing in the Face of the World. The Bishop complained of the Crowd. The Doctor then desired to fetch in but two or three, at length but one, and him at the Door, *viz.* the College-Steward, a Publick Notary.

*Bar. Jen.* You must not think to prescribe to the Court.

*Bish.*



*Bish. Ch.* What's the Cause of your Contempt, in not appearing at either Sessions Yesterday?

*Dr. Fairf.* No Contempt, my Lord, but for these ensuing Reasons. First, I thought my Suspension above had eased me of that Trouble. [*The Doctor tending a Copy of it, which was read by the Commissioners.*] The Doctor insisted very much on the Reasons their Lordships at *White-Hall* gave for this Suspension; *viz.* for not obeying his Majesty in electing Mr. *Farmer*, he tending a Copy of Articles made good against him; and yet their Lordships ordered his Suspension to be fix'd on the College-Gates five Days after that famous Hearing. Second Reason for his Non-appearance, That upon the first Day of the ensuing Term, he intended to meet the Lord Chief-Justice, at his Court of *King's-Bench*, for Relief against the Sentence, his Fellowship being a Freehold; witness *Coveny's Case*.

*Bish. Ch.* You will find but little Favour there.

*Dr. Fairf.* My Lord, in Courts of Judicature, I only expect Justice [*and turning to the Lord Chief Justice*] I have my self, said he, been above four Years in all the Courts of *Westminster-Hall*, and found excellent Justice, and I will see how it is now.

*L. C. J.* You shall have Justice.

*Dr. Fairf.* But your Lordship may save me the Labour of two Journies and my Charges, by improving your Lordship's deserved Interest with my Lords Commissioners there, and get them now to take off my Suspension: It is ill travelling at this time of Year; and besides I am not rich.

*Bar. Jen.* To sue in *Westminster-Hall* requires a Purse.

*Dr. Fairf.* My Lord, I did not say I was poor.

*L. C. J.* You must make your Supplication and Submission to the King.

*Dr. Fairf.* My Lord, they tell me, that this Business lies in your Lordship's Court, and only there (besides the Trouble I am otherwise to give your Lordship) what a Noise will the Cause make that *Dr. Fairfax* is suspended for this very Reason? *viz.* not obeying the King, in electing *Anthony Farmer*, such a Virtuoso and under Correction, your Lordships are obliged to take off my Suspension, to take off the Shame from that Body, whose Number, by a common Adjunct you your selves have lately increased.

*Bar. Jen.* We must not endure these Reflections on the Court.

*Bish. Ch.* But will you submit to this Visitation?

Then *Dr. Fairfax* read a Paper, subscribed by him, dated October the 22d, in these Words: "My Lords, I have been summoned, and appeared in this Cause before the Lords Ecclesiastical at *White-Hall*, with whom your Lordships are now joined in Commission; and then gave in my Answer: I have nothing to add to it, and find no Reason to retract it."

HENRY FAIRFAX.

*Bish. Ch.* Will you admit of the Bishop of *Oxford*?

*Dr. Fairf.* I am suspended.

*Bish. Ch.* Have you done no Collegiate Act since your Suspension?

*Dr. Fairf.* My Lord, I have gone into the Hall, and laid in my Chamber: I did not think their Lordships, when they suspended me, ever intended that I should not eat, drink, or sleep.

*Bish. Ch.* If your Suspension was off, would you submit to the Bishop of *Oxford*?

*Dr. Fairf.* Truly, my Lord, I cannot do it.

Then all the Fellows were called into Court.

The President being withdrawn, the Bishop put the Question to all the Fellows; *viz.* Whether they would assist at the Admission of the Bishop of *Oxford* to be installed President, by Virtue of the King's Mandate? To which was answered by all the Fellows, to this Effect (except *Dr. Pudsey*, and *Dr. Thomas Smith*, who answered doubtfully, and *Charnock*, that he would assist) That they were under Oaths to the contrary, and therefore could not do it.

Then all were ordered to withdraw; and *Dr. Pudsey* being called in alone, they asked him concerning the Manner and Form of Installing a President; which he instructed them in.

The Court adjourn'd till two in the Afternoon.

AS soon as they met, a Letter from the Earl of *Sunderland* to *Dr. Pudsey*, was read, dated the 2d of *August*, signifying, that the Society in Answer to his Majesty's Letter, commanding them to admit the Bishop of *Oxford*, agreed unanimously in this Answer, That the Place was full. Their Lordships were pleased to ask the Fellows singly, whether that was their Answer? And as many as were there, owned that it was.

During this Examination, the President came into Court, and having waited until it was ended, and their Lordships, at a Pause, he made his Application to them: 'My Lords, if your Lordships please to give me leave, I would gladly speak a few Words.' They were all pleased to put off their Hats, and say he might. Whereupon he said, 'My Lords, you were pleased this Morning, in Pursuance to a Decree of the Lords Commissioners at *London*, to deprive me of my Place of President of this College, and to strike my Name out of the *Buttery-book*: I do hereby protest against all your Proceedings, and against all that you have done, or hereafter shall do, in Prejudice of me and my Right, as illegal, unjust, and null; and therefore I appeal to my Sovereign Lord the King in his Courts of Justice.' Upon which, the Strangers and young Scholars in the Room gave a Hum; which so much incensed their Lordships, that notwithstanding all the Protections the President and Fellows could make, the President in particular offering to purge himself by Oath, that he was no way accessory to, or abetting of it, and declared that he was heartily ashamed and troubled at it; yet the Lord Chief Justice was not to be pacified, but charging it upon the President, bound him in a Bond of 1000*l.* and Security to the like Value, to make his Appearance, at the *King's-bench* Bar, the 12th of *November*. At the same time *Baron Jenner* took Occasion to pun on the President (*Hough's*) Name, saying to him, *Sir, you must not think to buff us.*

After this, was read the Answer the Fellows returned to his Majesty upon his Command to them, upon the 4th of *September*, to elect the Bishop of *Oxford*: The Answer was under the Hand of a Publick Notary, subscribed by all the Fellows then present, except Mr. *Charnock*. The Bishop of *Chester* was pleased to charge the Fel-

lows



lows of Unmannerliness, for sending such an Answer to their Prince after such a Manner.

*So they adjourn'd till Tuesday the 25th, at Eight in the Morning.*

TUESDAY, *October the 25th, 1687.*

WHEN the Court met, Dr. *Stafford* offered a Paper in Answer to what was objected on *Friday*, that a Mandate implied an Inhibition; which their Lordships having perused, would not suffer to be read publickly, but asked the Fellows whether they would sign it, bidding them to do it at their Peril.

Then the Fellows had Leave to withdraw into the Hall, and not being satisfied that it was necessary to sign a Plea, which their Lordships refused to have argued, they returned the Paper into the Court, subscribed only by Dr. *Fairfax* and Dr. *Stafford*. The latter, after some Debate, desired to withdraw, but Dr. *Fairfax* stood to it.

*A Copy of Dr. Stafford's and Dr. Fairfax's Plea.*

*To the Right Reverend and Right Honourable his Majesty's Commissioners for the visiting St. Mary-Magdalen-College in Oxon.*

*May it please your Lordships,*

ON *Friday* last in the Afternoon you seem'd to insist very much on this; *viz.* That his Majesty in commanding the Fellows of the said College to elect Mr. *Farmer* President, did thereby inhibit them to elect any other Person whatsoever; which has not yet been made appear to be Law, either out of the Books of Civil, Canon or Common Law: Neither is it agreeable to Reason, that a Command to elect a Person incapable, should include in it an Obligation not to elect a Person capable, that being a kind of Contradiction *in terminis*. Yet this being granted, it cannot in the least affect the said Fellows, or invalidate their Election of Dr. *Hough*, notwithstanding his Majesty's Mandate in Behalf of Mr. *Farmer*, who being incapable of the Place, the Fellows cannot be said to be guilty of any Disobedience or Disloyalty, in proceeding to the Election of another Person who was qualified according to the Statute, being forced to make an Election. For they are obliged by the Statutes of their College (when call'd together) to elect a President, or any Officer, under Pain of perpetual Expulsion from the College, to meet and make an Election; which Punishment they incur *ipso facto*, who either refuse to meet when so call'd, or being met, to nominate or elect a Person into the Office void, as appears by the Statutes of the said College: *Titulo de numero Scholarium & electione Presidentis*. Now according to the Founder's Direction in the said Statute, on the 15th of *April* last, the Fellows were called together by the Vice-President to elect a President in the Place of Dr. *Clark* deceased, and the Oath desired to be taken before the Election was administred by the Vice-President to them, whereby they are oblig'd to nominate and elect a Person that either is, or has been Fellow of *Magdalen-College*, or *New-College* in *Oxon*. Which Oath, when the Fellows had taken, it was not in their Power to elect Mr. *Farmer*; and yet they were then oblig'd to make an Election, under Pain of per-

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petual Amotion from the College; as appears by the forecited Statute. And it cannot be imagined, that his most sacred Majesty did expect that the Fellows should be either perjurd, or forfeit their Right to their Fellowships, rather than disobey his Command; his Majesty having most graciously declared, that Conscience ought not to be forced, and that none of his Subjects should be molested in the Enjoyment of their Rights and Privileges, &c. Now, that our Proceedings at the Election cannot lay any Imputation of our Disobedience or Disloyalty upon us, will thus be made appear. Either we had the Power to elect a President, or we had not: If we had not, to what End or Purpose did his Majesty command us to elect one? If we had, our Power was either restrain'd to Persons so and so qualified, or we were at Liberty to choose whom we pleas'd: But we could not do the latter, as appears by our Statutes; and therefore we could not elect Mr. *Farmer*, being not invested with any Power to elect a Person unqualified. And if we had so done, our Election would have been null and void in itself, and the Person elected liable to be turn'd out by our Visitor.

As for the Decree of his Majesty's Commissioners (in Pursuance of which your Lordships have admonish'd Dr. *Hough* to recede from the Place of President, and quietly to resign the Keys of his Office, and have his Name struck out of the College-Book) we humbly conceive it to be null and void in itself, to all Intents and Purposes, Dr. *Hough* being thereby depriv'd of Freehold for Life (of which he was duly and legally possess'd) without ever being called to defend his Right, or any Misdemeanor objected against him. Wherefore we humbly beg leave of your Lordships, that Dr. *Hough* may be permitted to defend his Right and Title to the Presidentship at Common-Law, before any other Person is put in Possession of the Place.

THOMAS STAFFORD,  
HEN. FAIRFAX.

After this, Mr. *Wiggins*, Chaplain to the Bishop of *Oxford*, was called in, who delivered a Paper, empowering him, as Proxy, to be installed President for his Lord; which being read, together with the King's Mandate for the Bishop of *Oxon*, the Question was put to two or three of the Seniors, Whether they would assist at this Installation? Which they refusing, the Court adjourned to the Chapel, where the Bishop of *Chester* put Mr. *Wiggins* into the President's Stall, where he took the Oath which the Statutes enjoin the President at his Admission, and the Oaths of Allegiance and Supremacy; the latter of which he was ordered to take upon his Knees, which he accordingly did. Then their Lordships conducted him to the Door of the President's Lodgings, where knocking three times, and the Door not being opened, they returned to the common Room, and commission'd *Atterbury*, and a Tipstaff, to fetch a Smith to force it open; which was done, their Lordships being present all this while: None of the Fellows, except Mr. *Charnock*, assisting, or being so much as present at either of these Performances. Then the Commissioners being returned to the common Room, Dr. *Fairfax* desired Leave, at their Leisures, to speak; which was granted.



Dr. *Fairf.* My Lords, your Lordships have been doing of what I can by no Means consent to.

*Bish. Ch.* You are big to be delivered of your own Destruction. Will you submit to the Bishop of Oxon, as now installed President, by Virtue of the King's Mandate?

Dr. *Fairf.* I will not; I cannot; because we have a statutable and legal President already.

Then the same Question was put to the Society, which being a Business of Moment, they desired Time till the Afternoon to consider it.

Then the Court adjourned till Three o'Clock; at which Time the Answer was given in by the Society (except Dr. *Fairfax*, who had given his in the Morning) *That whereas his Majesty hath been pleased, by his Royal Authority, to cause the Right Reverend Father in God Samuel Bishop of Oxon, to be installed President; we whose Names are hereunto subscribed, do submit, as far as is lawful and agreeable to the Statutes of the College, and no way prejudicial to the Right and Title of Dr. Hough.*

This Answer was accepted, except the last Clause, which the Lord Chief Justice, and Baron *Jenner* declared, as Judges, to be insignificant, since nothing they could do, could any way invalidate Dr. *Hough's* Title; but left them still at Liberty to be Witnesses for him, or any other way be serviceable to him in the Recovery of his Right. Upon this Assurance, the Society was prevailed with to leave out the last Clause.

Then all were commanded to withdraw: And Dr. *Fairfax* being called in, the Bishop asked him what he meant by his Paper above-mentioned, dated *October* the 22d, and whether he did submit to the Authority of the Court?

Dr. *Fairf.* As I have denied it above, so I do here.

Then the Court was opened, and the Doctor complained before them all, that he was twice closeted; and being asked, Whether he would obey the Court, and Bishop of Oxon? he plainly denied both. Upon which the Buttery-Book was called for, and the Bishop of *Chester* commanded his Name to be struck out, and this Sentence passed; *viz.*

*Forasmuch as you have denied the Authority of the Court, and refused to obey the Bishop of Oxon, whom the King hath made your President, and taken Commons after your Suspension; We declare your Place void, and command you quietly to depart the College within fourteen Days.*

Dr. *Fairf.* My Lords, all the huge Calamities that have befallen me, are on the sole Account of a religious and conscientious Observation of our pious Founder's Statutes, whose Bread I have eaten almost these thirty Years.

*L. C. J.* No Speeches: Besides, if you have any Papers, instead of reading them, leave them in the Court.

Then, with much ado, the Doctor prevailed with them to let him read his Protestation, which he left in the Court.

*I* Henry Fairfax, Fellow of St. Mary-Magdalen-College, do under my former Answer heretofore made, and to the Intent it may appear that I have not consented, nor agreed to any thing done against me, and to my Prejudice, I protest that your Sentence given

here against me, is *Lex nulla*, and so far as it shall appear to be *aliqua*; I do say it is *iniqua & injusta*; and that therefore I do from it, as *iniqua & injusta*, appeal to our Sovereign Lord the King, in his Courts of Justice, as the Laws, Statutes and Ordinances of the Land will permit in that Behalf.

Subscribed,

October 25th,  
1687.

HENRY FAIRFAX,

This Protestation was over-ruled, and a Copy of the Sentence denied, though most earnestly desired at the Instance of Dr. *Hedges*, and Mr. Vice-Chancellor, two Days after.

At the Close of the Sessions, their Lordships declared, that they were very well satisfied with the Answer the Society had given them; and though before they had laid a Libel to their Charge, yet that Night they declared, they had met with nothing from them but Civility, and that they should receive the same from them; that they had shewn themselves Men of excellent Tempers this Day and before; and that they would represent it faithfully Above to their Advantage, and that if it any way lay in their Power to serve them, they should be very ready to do it.

Then they adjourned till *Wednesday* Morning, ordering them to bring in their Answer to the following Questions.

I. *What Gifts and Provisions have you for Entertainment of Strangers?*

II. *What is the Value of it?*

III. *How is it applied?*

IV. *And where is the Place of Entertainment?*

WEDNESDAY, *October 26th*, 1687.

**I**N the Morning they made it appear to their Lordships very satisfactorily, that they were obliged to give in Charity-Money, 2 *l.* 3 *s.* 4 *d.* and that besides that, they gave, *communibus annis*, almost 100 *l.* as appeared by a Paper they then delivered in. Upon this their Lordships were pleased to expatiate upon their generous Bounty and Liberality, saying the Complaint of this Account was groundless, and that it would induce the King to a better Belief of them in all other Matters.

Then a Petition of Dr. *Rogers*, late Organist, was given in, desiring to be restored, which was read; but several Misdemeanors being proved against him, it was thrown out, and he advised to rest satisfied with 30 *l.* per *Ann.* which the College had bestowed on him, when they turn'd him out of his Place.

THURSDAY, *October 27th*, 1687.

**T**HIS Morning they received a List of Leases, &c. which had been renew'd two Years last past. Mr. *Charnock*, the new Convert, asked their Lordships, whether those Leases stood good, which had been sealed since Dr. *Hough's* Election? The Lord Chief Justice answered, Yes; for Corporations always stick by their Seals. Then their Lordships perused the College-Registers, and finding nothing in them to object against, they were returned, and the Court adjourned till the Afternoon. At which Time their Lordships told them, That having received no Express from Above, as they



they expected, they would adjourn till *Friday* at Eight in the Morning.

FRIDAY, *October 28th*, 1687.

THE Commissioners being seated, all were commanded to withdraw: Then only the Fellows were called in, and the Bishop of *Chester* said, they had represented them fairly to the King, but his Majesty expected some farther Submission, which they advised them to make, by acknowledging their Contempt to his sacred Majesty in Person, and to his Letters; and that they should promise to behave themselves Loyal for the future; and that they should some Ways own the Proceeding and Legality of the Court, and implore his Majesty's Pardon, and lay themselves at his Feet.

The Fellows making a little Pause, the Bishop of *Chester* told them, they might Word it themselves; or, if they thought fit, Mr. *Tucker* should assist them in a Form. Then all the Fellows withdrew into the Hall, and drew up the following Answer.

May it please your Lordships,

WE have endeavoured in all our Actions, to express our Duty in all Humility to his Majesty; and being conscious to our selves, that in the whole Conduct in the Business before your Lordships, we have done nothing but what our Oaths and Statutes indispensably oblige us to, we cannot make any Declaration, whereby we acknowledge that we have done any thing amiss, having acted according to the Principles of Loyalty and Obedience, so far as we could, without doing Violence to our Consciences, or Prejudice to our Rights (one of which we humbly conceive the Electing a President to be) from which we are sworn upon no Account whatsoever to depart. We therefore humbly beg your Lordship to represent this favourably, with our utmost Duty to his Majesty, whom God grant long and happily to reign.

Upon their Lordships perusing of the Answer, they expressed their Dislike of it, saying, It did not come up to the Address sent to his Majesty at *Bath*, which was read. To this it was replied, That they hoped their Behaviour since had been every way answerable to what they had therein promised. Then their Lordships said, That it did not come up to what they delivered in on *Tuesday*.

Dr. *Bayly*. My Lords, we have acted conformable to ourselves; and truly, my Lords, I cannot possibly confess any Crime.

Bish. *Cb.* We do not expect of you to confess any capital Crime, only to make some acknowledgment.

Mr. *Fulham*. My Lord, we were ordered to address ourselves, as having acted in Contempt of his Majesty's Authority, which, my Lord, I look upon as so great a Crime, that on no Account I would be guilty of it. My Lord, we have endeavoured to obey his Majesty to the utmost of our Power, and seeing your Lordships were pleased to accept our Answer on *Tuesday*, I humbly conceive your Lordship's Honour is engaged, that nothing further be required of us.

Bish. *Cb.* You are a very forward Speaker, and abound in your own Sense.

Mr. *Fulb.* My Lord, I hope your Lordship will give me leave to speak, when our Fortunes are so considerably at Stake.

Then Dr. *Bayly* desired of their Lordships to give him Leave to explain what he meant by the Word *submit*, in his Answer on *Tuesday*; because (saith he) I hear your Lordships understood more than was meant, and least your Lordships should go away under a Mistake, by the Word *submit*, in the former Answer, I did not intend any future Obedience to the Bishop of *Oxford*; but meant it in Reference to the King's Authority, inasmuch as I did not oppose or resist the Bishop of *Oxford's* Instalment.

Upon this, a fresh Question was put to the Fellows, Whether they would obey the Bishop of *Oxford*, as their President, *in licitis & honestis*? To which all, except one or two, answered, They could not obey the Bishop of *Oxford* as their President.

Then Mr. *Fulham* was particularly asked the Question.

Mr. *Fulb.* Dr. *Hough* being duly elected and admitted President, doth thereby obtain a Right, which I am not satisfied he hath any Way forfeited, and therefore can obey no other Person as President.

Bish. *Cb.* Will you obey the Bishop of *Oxford* as in Possession?

Mr. *Fulb.* I cannot, because the Bishop hath not lawful Possession.

Then he was asked, wherein?

Mr. *Fulb.* He had not Possession in due Form of Law, nor by proper Officers. I am informed that the proper Officers to give Possession of a Freehold, is the Sheriff with a *Posse Comitatus*.

L. C. J. Pray, who's the best Lawyer, you or I? Your *Oxford* Law is no better than your *Oxford* Divinity. If you have a Mind to a *Posse Comitatus*, you may have one soon enough.

Mr. *Fulb.* My Lords, I intend nothing but Respect to your Lordships, and have endeavoured to speak and behave my self with due Reverence; and I hope your Lordships will put a favourable Construction on what I said.

Then all were commanded to withdraw, and the Buttery-Book was called for, and after that, Mr. *Fulham* was sent for in; and by the Bishop of *Chester* suspended as followeth.

Bish. *Ch.* Mr. George Fulham, We have thought fit to suspend you from the Profits of your Fellowship during his Majesty's Pleasure, for your Contempt and opprobrious Language.

Then they adjourned till *Wednesday* the 16th of *November*, ordering the absent Fellows to be sent for Home against that Time. So they immediately went for *London*.

WEDNESDAY, *November 16th*, 1687. at Nine in the Morning.

THE Lords Commissioners being sat, the first Thing they did, sent for the Buttery-Book; then called for Mr. *Joyner* and Mr. *Allibone*, and entred them actual Fellows: The former in the Room of Dr. *Fairfax*, whom they had expelled; the latter in Place of Mr. *Ludford*, lately deceased: All Oaths being dispensed with, besides that of a Fellow. That done, the Fellows being called, and the Reasons given in for those that were absent, the Bishop of *Chester* spoke a Speech to this effect.



GENTLEMEN,

**Y**OUR many Contempts and wilful Disobedience have occasioned this Visitation, which will end at last in your Ruin. This Society of yours has been long exercised in the Methods of Quarrelling; has always been troubled with factious Spirits, and testy Mutineers, ever since the Restoration of the late King: You have encourag'd Quarrels among yourselves; Quarrels between yourselves and President; Quarrels, at length, between yourselves and Visitor. For I have often heard your late Visitor complain, that this Society was ever stocked with an unquiet and turbulent Generation. By these Steps, from quarrelling with the President and Visitor, you have at last advanced to the highest Pitch of Insolence, to quarrel with your Prince, and affront his Sacred Majesty. I endeavour'd before, at the Opening our Commission, to make you sensible of the Scandal that your Disobedience will bring upon your Religion; how much you Stain and Dishonour your liberal and ingenuous Education in this Society.

You cannot but know his Majesty is your supream Ordinary. You cannot but have read in Bracton, who was twenty Years Lord Chief Justice under King Henry III. *Nemo presumat de factis ejus disquirere, ne dum contra factum ejus venire: All Disobedience implies Pride: For no Man can disobey his Governor, but he who thinks himself wiser. The Reputation and Honour of a Prince at home, and his Respect abroad, are chief Standards of a Government. But these Pillars, as much as in you lies, you have endeavour'd to shake. And unless his Majesty's Honour and Right be vindicated by us, He can neither be feared at home nor observed abroad. Your Punishment must be as publick as your Crime. It cannot be conceived but his Majesty, in Justice, in Honour, in Clemency, and in his Royal Tendernefs, could have proceeded otherways than he has done. On the first of April it was published that Dr. Clark was dead: On the Eleventh a Mandamus was directed to you, for choosing Mr. Farmer. On the Ninth you presented a Petition to the Lord President; wherein you laid yourselves prostrate at his Majesty's Feet, representing to him the Incapacity of Mr. Farmer, desiring the Benefits of his gracious Declaration for preserving your Rights and Properties, and beseeching him to nominate another Person qualified according to your Statutes, in the Election of whom you would shew your ready Obedience. So said and so done, Gentlemen, had been very well.*

But immediatly after the Delivery of the Petition, you, not waiting his Majesty's Answer, proceeded on April the 15th to an Election of Dr. Hough: So that by this Act, which was plainly contrary to his Majesty's Authority, whose Mandate did certainly imply an Inhibition, you directly confronted your former Promises of ready Obedience, and were resolved to give the King nothing but good Words: When you had done this, as Men of ill Designs are always in haste, for a Confirmation of it, you immediately went and surprized your Visitor, and by that means persuaded him to confirm Dr. Hough, that very Day he received an Order from the Lord President to the contrary.

Upon this News the King was much amazed, and required an Account of your Proceedings; therefore the Lords Commissioners issued out a Citation; and after hearing the Plea, upon mature Consultation with the Learned of both Laws, judged the pretended Election of Dr. Hough to be void and null, and him to be removed, by an Instrument dated the

which was affixed on the Gate. After this a Mandate was sent on the \_\_\_\_\_ to you to elect the Bishop of Oxon. Upon which Terms his Majesty was graciously pleased to dispense with your Disobedience hitherto. But this being disobeyed, his Majesty in Person, on the 4th of September, sent for you to Christ-Church, and required you immediately to elect the Bishop of Oxon, President. You went strait to the Chapel, a Place one would think should have inspired more Devotion and Awe of his Sacred Majesty in you; and there contemptuously subscribed and signed a Paper, directly thwarting his Majesty's Command. The Ground of your Disobedience you pretend that you could not elect him, whereas you could not but know by a written Mandate, that lay by you, that Admissiō would have satisfied his Majesty. Conscience, the stale Topick of Rebellion, was here brought to vindicate your petulant and contumacious Behaviour. You pretended that you were obliged by Oaths, and I am sorry that at the same Time you forgot that of Allegiance. And indeed there is not a greater Sign of Hypocrisy, than partial Obedience. Had you any Respect to the Father of your Country, and your Mother th. Church, you would have sacrificed your pretended Scruples, as a Peace-Offring to the King. The best of us, I am sure, have Reason to beg God and the King's Pardon. But you, as if his Majesty reigned by Courtesy, would have a King under you, but none over you. You urged the Observance of your Statutes, of which, as it hath appeared, you have not been so constant Observers; when your own Humour prompts you to a Dispensation, then you can readily embrace it; witness but that of being served per Masculos, by which great Scandals have come to this Society by reason of Bastards.

But when the King interposed, in whose Power alone it is to dispense with them, then you presently act according to such Methods as these. None of these Pretences will ease you with wise and sober Men.

This was the only Opposition his Majesty in his Progress receiv'd: Wherever his Sacred Majesty came, he worked a miraculous Conversion, except in Oxford; and so far satisfied every one with the Equity of his Proceedings, that none went away discontented from his Presence, unless it was for this Reason, that they could not enjoy it any longer.

October the 20th, We came down, and upon opening our Commission, I took care to represent to you the Heinousness of your Offence, and to persuade you to a serious Repentance; but all in vain.

For on Saturday Morning we required you to admit and instal the Bishop of Oxford; which all, except three, refused: In the Afternoon Dr. Hough having been deprived, and by us commanded to depart the College, came unto us without any leave, but not without great Attendance; Circumstances, I think, much unbecoming a Man pronounc'd expelled; and there entered a Protestation against all that we had done, or hereafter should do, as illegal, unjust and null; which he delivered not in Writing, but by Word of Mouth; a Thing repugnant to the Nature of all Appeals: And which was worse, without the usual Salvo to his Majesty's supream Power. When he had spoken it, there followed such a tumultuous, seditious and insolent HUM, which if you yourselves had not applauded, or at least consented to, it was impossible but that you would have discovered some of those Mutineers. However, since his Carriage and Language gave occasion to it, 'twas thought fit that he only should be obnoxious; and accordingly he was bound over.



On Tuesday we our selves caused the Bishop of Oxon to be installed by his Proxy; after which we proposed to you, whether being now installed, you would submit to him in licitis & honestis? To which you gave an Answer under your Hands in the Affirmative. You then also desired of us to represent your Case favourably to his Majesty, giving all Assurance of your Loyalty and Obedience. But this Assurance of Submission lasted not long; for on Thursday, being required of us to subscribe such a Submission to his Majesty as we thought agreeable to our Duty, you required Time to consult of it; and after Deliberation, signed such a Paper, which seemed rather to be a Protestation against your former Submission, than an Acknowledgement of your Crime. Upon this we might justly then have proceeded to an Expulsion: But we thought fit, in Compassion to you, to take a Journey to London, and acquaint his Majesty with your Disobedience and ungrateful Behaviour. His Majesty was extremely amazed that his Clemency should be despised; but yet, to your Comforts be it spoken, his Patience and Goodness extends as far as your Provocations can: But if you still persist in your Obstinacy, those that are too tall to stand, and too stubborn to bend, deserve to be broken. And now, I think, I have said enough to let you know, that the Fig-leaves you have so artificially stitched together, are not sufficient to cover your Nakedness. I wish to God you had the same Tenderness for your Concern, as his Majesty's Commissioners have for you. But if you still persist to oppose the Royal Power of the King, We, who are come to vindicate the Right and Honour of his Majesty, resolve to discharge our Consciences and Duties to God and the King, without any Respect of Popularity; that's but the Paradise of Fools, and Scorn of wise Men: And therefore, as for us, we have no more regard to Peoples Dislike, than what they dream. By reason therefore of your late hypocritical Submission, the Commissioners have thought fit, upon mature Consideration, to draw up an Instrument, which shall be read to you, to which, if you shall immediately subscribe, before you leave the Room, we shall leave you to his Majesty's Pardon. And this we expect from you all, except Dr. Tho. Smith, and Mr. Charnock, with whose Behaviour the King is so well satisfied, that he expects no more from them.

Then all the Fellows being called in, their Lordships tendered a Form of Submission to them to be signed. Which take as followeth:

To the King's most Excellent Majesty.

The humble Petition and Submission of the Fellows of St. Mary-Magdalen-College in the University of Oxon, whose Names are subscribed.

*WE* Your Majesty's most humble Petitioners, have a deep Sense of being justly fallen under your Majesty's Displeasure, for our Disobedience and Contempt to your Majesty, and to the Authority of your Majesty's Commissioners and Visitors: We do in all Humility prostrate our selves at your Majesty's Feet, humbly begging Your Pardon for our said Offences, and promising that we will for the future behave ourselves more dutifully; and, as a Testimony thereof, we do acknowledge the Authority of your Majesty's said Visitors, and the Justice of their Proceedings; and we do declare our entire Submission to the Lord Bishop of Oxon, as our President.

To which Paper all (except Dr. Thomas Smith and Mr. Charnock) refused to subscribe.

Dr. Aldworth, as Vice-President, was first called in to sign the Paper which had been read to all the Fellows.

*Vice-Pref.* My Lords, we desire Time to consider of it, and to give our Answer in Writing.

*Bish. Ch.* No, you must every one sign, or refuse, as you are called.

*Bar. Fenn.* There is no Answer to be given, but ay or no.

*They all moved again for Time, but it was refused.*

*Vice-Pref.* My Lords, this is the first Time of my Appearance before your Lordships, since your sitting here; and therefore I pray to be heard.

My Lords, I am as ready to comply with the King's Pleasure as any Man living; neither do I know, that we have ever in this Place been disobedient to the King, where it was in our Power to obey his Commands. Our Founder in the first Clause of the Oath we take at this Election, has provided, that no one shall be President of his College, but who was bred in it, or in the College where he himself was bred. Now for us who have elected Dr. Hough, a Person qualified according to our Statutes, who has been installed, sworn, confirmed, and approved of in all the Ways and Manner prescribed in the Statutes for us; my Lords, to accept and admit of a Stranger, and a Foreigner in his Place, is, to the best of my Understanding, a giving up the Rights of the College to other Uses than the Founder designed it.

*Here he was interrupted.*

*Bish. Ch.* Your Statutes are over-ruled by the King's Authority.

*Vice-Pref.* My Lords, your Lordships sit here as the Visitors; which implies, there are certain Laws and Statutes we are bid to observe, and by which we are to be governed; and if it shall appear to your Lordships, that we have acted conformably to these Statutes, I hope we shall neither incur the King's Displeasure nor your Lordships. The whole Tenour of our Statutes run, That we should inviolably maintain our Rights, and observe the Rules of our Founder; he has laid his Curse upon us if we vary from them. [Here he repeated the Words of the Founder, *Ordinamus sub pena Anathematis, & indignationis Omnipotentis Dei, &c. Item, sub interminatione Divini Judicis interdici-mus.*]

*Bish. Ch.* Are you not to obey the King as well as the Founder's Statutes?

*Vice-Pref.* My Lord, I ever did obey the King, and ever will: Our Statutes, which we are sworn to observe, are confirmed by several Kings and Queens before and since the Reformation, and as we keep them, are agreeable to the King's Laws both Ecclesiastical and Civil; and so long as we live up to them, we obey the King.

*Bish. Ch.* Your Statutes were never confirmed by his present Majesty.

*Dr. John Smith.* My Lord, neither have they been repealed by his Majesty; and what is not repealed is confirmed.

Then their Lordships pressing to sign or refuse, the *Vice-President* said:

*Vice-Pref.* My Lords, I'll then deal plainly, in regard to my Oath and the Statutes, to the Right of all our Successors and of Dr. Hough, whom I believe to have been as fairly elected, and as legally possessed as ever any since the Foundation of the College: I cannot submit to the Bishop of Oxon as President.

*So he was ordered to withdraw.*

Then the same Question was put to all the other Fellows singly, who all refused to sign the Submission, except Dr. Tho. Smith and Mr.



*Charnock*, who were not pres'd, for the Reason above.

Mr. Thompson being called in to sign the Paper, said :

Mr. Thompson. My Lords, I have been always obedient to his Majesty's Commands; I was not concerned in the Election of Dr. *Hough*; I voted for Mr. *Farmer*, and am ready to submit to the Bishop of *Oxon*.

Bish. *Ch.* Did you not put your Hand to this Petition? Is not this your Hand?—Read the Petition—[*It was read*]—In which the Fellows desired his Majesty, to nominate any qualified Person, and to retract his Mandate granted for Mr. *Farmer*.

Mr. Thompson. My Lord, I conceive the Petition not to be disobedient. We had not yet received the Mandate; as soon as it came, I humbled my self.

Bar. *Jen.* Then why can't you humble your self again; is there any Hurt in it?

Mr. Thompson. This Paper requires me to own my Disobedience to his Majesty: I am not conscious of any, and therefore I cannot subscribe.

After a short Time, all who refused to sign the Submission were called in, and by Sentence of their Lordships, expelled the College for Contempt, &c. (except as before.) After Sentence, all that were expelled spoke to this Effect: 'My Lords, we profess all Duty to the King, and Respect to your Lordships, but must beg leave to declare; That we think our selves injured in your Lordships Proceedings, and therefore protest against them, and shall use all just and legal Ways of being relieved.'

After a short Time, an Instrument was fixed on the College-Gates, in these Words:

*By his Majesty's Commissioners for Ecclesiastical Causes, &c. particularly authorized and impowered to visit St. Mary-Magdalen-College in the University of Oxon.*

Whereas, in our Visitation of the said College, it appeareth unto us, That Doctor *Charles Aldworth*, Dr. *Alexander Pudsey*, Dr. *John Smith*, Dr. *Thomas Bailey*, Dr. *Thomas Stafford*, Mr. *Robert Almond*, Mr. *Manwaring Hamond*, Mr. *John Rogers*, Mr. *Richard Strickland*, Mr. *Henry Dobson*, Mr. *James Bailey*, Mr. *John Davies*, Mr. *Francis Bagshaw*, Mr. *James Fayrer*, Mr. *Joseph Harwar*, Mr. *Thomas Bateman*, Mr. *George Hunt*, Mr. *William Cradock*, Mr. *John Gillman*, Mr. *George Fulham*, Mr. *Charles Pennyston*, Mr. *Robert Hyde*, Mr. *John Yerbury*, Mr. *Robert Holden*, and Mr. *Stephen Wilks*, Fellows of the same College, have been severally guilty of Disobedience to his Majesty's Commands, and obstinately contemned his Royal Authority, and do still persist in the same: We have thought fit, upon mature Consideration thereof, to Declare, Pronounce, and Decree, That the said Dr. *Charles Aldworth*, &c. and every of them, be deprived and expelled from their respective Fellowships. And we do by this our Sentence and Decree, Deprive and Expel them of and from their said several and respective Fellowships.

Given under our Seal, this 16th Day of November, 1687.

WHITE-HALL, December 10, 1687.

HIS Majesty's Commissioners for Ecclesiastical Causes, and for visiting all Cathedral and Collegiate Churches and Colleges, &c. met this Day; and taking into their Consideration all that had passed in the Business of St. *Mary-Magdalen-College* in *Oxford*, and the contemptuous and disobedient Behaviour of Dr. *John Hough*, and several of the Fellows of that College throughout the whole Proceeding, their Lordships declared, decreed, and pronounced, That Dr. *Hough*, Dr. *Charles Aldworth*, Dr. *Henry Fairfax*, Dr. *Alexander Pudsey*, Dr. *John Smith*, Dr. *Thomas Bailey*, Dr. *Thomas Stafford*, Mr. *Robert Almond*, Mr. *Manwaring Hamond*, Mr. *John Rogers*, Mr. *Richard Strickland*, Mr. *Henry Dobson*, Mr. *James Bailey*, Mr. *John Davies*, Mr. *Francis Bagshaw*, Mr. *James Fayrer*, Mr. *Joseph Harwar*, Mr. *Thomas Bateman*, Mr. *George Hunt*, Mr. *William Cradock*, Mr. *John Gillman*, Mr. *George Fulham*, Mr. *Charles Pennyston*, Mr. *Robert Hyde*, Mr. *Edward Yerbury*, Mr. *Henry Holden*, and Mr. *Stephen Wilks*, should be incapable of receiving, or being admitted to any Ecclesiastical Dignity, Benefice, or Promotion: And such of them who are not yet in Holy Orders, were adjudged incapable of receiving or being admitted into the same. All Archbishops, Bishops, and other Ecclesiastical Officers and Ministers within the Kingdom of *England*, being required to take Notice of the said Sentence and Decree, and to yield Obedience thereunto.

THE 17th of *January*, 1687, being the Day that the thirty Demies of *Magdalen-College* were, by Summons from the Bishop of *Oxon*, the now President commanded to appear before him; and none appearing, Mr. *Charnock* the new Vice-President, called for the Buttery-book, and struck out the Names of Mr. *Holt*, Mr. *Adams* Senior, Mr. *Vesey*, and Mr. *Brabourn* Masters of Art; Mr. *Hyde*, Mr. *Woodward*, Mr. *Fulham*, Mr. *Watkins*, Mr. *Stacy*, Mr. *Sherwin*, and Mr. *Kenton*, Batchelors of Art; Mr. *Cross*, Mr. *Busb*, and Mr. *Wells*, Under-Graduates, Which Fourteen were then resident in the University, and three more, who escaped Expulsion at that time.

Afterwards, when the King had certain Intelligence of the Prince of *Orange's* Design, viz. *October* 12, 1688, he ordered the Bishop of *Winchester*, Visitor of *Magdalen-College*, to settle that Society regularly and statutably; accordingly, *October* 16, the Bishop of *Winchester* caused a Citation to be fixed on the Gate of the College, to recal Dr. *Hough*, and the former Fellows of this Society, by the Second of *November* following; but an Account coming that Post of the Prince of *Orange's* Fleet being disabled by a Storm, the Bishop was recalled to *London*, and the Restoration of the College put off: But when it appeared that the Fleet was ready to sail again, then the Business of the College was resumed, and effected *November* 24.





CXLIII. Trial of Philip Standsfield, Son to Sir James Standsfield of New-Milns in Scotland, for the Murder of his Father, and other Crimes, Feb. 6, 1687. 4 Jac. II.

CURIA Justiciaria S. D. N. Regis, tenta in prætorio Burgi de Edinburgb, Sexto die Mensis Februarii 1687, per Nobilem & Potentem Comitem Georgium Comitem de Linlithgow, Dominum Livingstoun, &c. Justiciarium Generalem totius Regni Scotiæ, & honorabiles viros Dominos Johannem Lockhart de Castle-Hill, Davidem Balfour, de Forret, Rogerrum Hodge de Harcase, & Johannem Muray de Drumcairn, Commissionarios Justiciaræ dicti S. D. N. Regis. Curia legitime affirmata.

INTRAN.

Philip Standsfield, eldest lawful Son to Umquhile Sir James Standsfield of New-Milns, Prisoner within the Tolbooth of Edinburgb, Indited and Accused at the Instance of Sir John Dalrymple Younger of Stair, his Majesty's Advocate for his Highness's Interest: That where notwithstanding by the Law of God, the Common Law, Law of Nations, Laws and Acts of Parliament of this Kingdom, and constant Practice thereof, the expressing of malicious and seditious Words to the Disdain of his Sacred Majesty's Person, and Contempt of his Royal Government, such as drinking or wishing Confusion to his Majesty, is High-Treason, particularly by the 2d Act. 2d Sess. Par. 1st King Charles II. of ever glorious Memory: The Plotting, Contriving or Intending Death or Destruction to the King's Majesty, or any bodily Harm, tending to Death or Destruction, or who shall by Writing, Printing, or other malicious Plotting, and advised Speaking, express and declare such their treasonable Intentions, after such Persons being legally convicted thereof, they shall be deemed, declared and adjudg'd Traitors: And the Cursing, Beating, Invading, or Assassinating of a Parent by a Child, above the Age of sixteen Years, who is not mad and furious, is punishable by Death, and Confiscation of Moveables: And of all other Murders, Parricide is the most atrocious and unnatural; and Murder under Trust, is punishable as Treason with Forfeiture of Life, Land and Goods, and particularly by the 20 Act. 1st Sess. 2d Par. King Charles II. The King's Majesty and Estates of Parliament, considering how great and atrocious a Crime it is for Children to beat or curse their Parents, and how the Law of God hath pronounced just Sentence of Death against such as shall either of these Ways injure either of their Parents; therefore the King and Estates of Parliament did Statute and Ordain, That whosoever, Son or Daughter, above the Age of sixteen Years, not being distracted, shall beat or curse either their Father or their Mother, shall be put to Death without Mercy. And sikelike by the 51 Act. 11 Par. King James VI. It is Statuted and Ordained, That the Murder or Slaughter of whatsoever of the Leidges, where the Party slain under the Trust, Credit, Assurance, and Power of the Slayer, all such

Murder or Slaughter to be committed in time coming, the same being lawfully tried, and the Person dilated found guilty by an Assise thereof, shall be Treason, and the Person found culpable shall forfeit Life and Goods; as in the said Laws and Acts of Parliament at more length is contained. Nevertheless it is of Verity, that the said Philip Standsfield shaking off all Fear of God, the Bonds and Ties of Nature and Christianity, Regard and Obedience to the said Laws and Acts of Parliament, did dare and presume to commit the said horrid and detestable Crimes, in swa far as, upon the first, second, third, or one or other of the Days of the Months of June, July, August, or September last, by past, one or other of them, he did, within the House and Kitchen of New-Milns, call for Ale to drink some Healths, and in the Presence of John Robison, then his Father's Servant, Agnes Bruce, likewise his Father's Servitrix, and several others, he did as a most villanous and avowed Traitor, presume and dare to begin a Health to the Confusion of his Sacred Majesty, his native Sovereign, and did drink off the same, and caused others in his Company to do the like. And sikelike Sir James Standsfield of New-Milns his Father, having caused Educate and bring him up Decentlie, and in Plenty conform to his Rank and Quality, and having leit no means unessayed for his Literature, Education and Subsistence; yet he being a profligate and debauched Person, did commit, and was accessory to several notorious Villanies, for which, both at home and broad, he was apprehended and detained Prisoner, as in the Marshalsea-Prison in Southwark, in the publick Prisons of Antwerp and Orleans, and several other Places: And though his Father, out of his natural Compassion to him, did cause release him out of these Prisons, in which he was so justly confined, he no sooner had his Liberty, than he of new invented and went about his villanous Practice and Debauches: And his Father at last perceiving that nothing could reclaim him from these and the like Proceedings, having signified his Inclinations to disherish him, and in order thereto, having disposed his Estate in Favours of John Standsfield his second Son; the said Philip did thereupon conceive, harbour and entertain ane hellish Malice and Prejudice against the said Sir James Standsfield his Father, and most barbarously did declare, threaten and vow at several Times, that he would cut his Throat: And particularly upon the first, second or third, or remanent Days of the Months of the Year 1680, within the House of James Smith in Nungate or Haddingtoun; and upon the first, second, or third, or one or other of the Days of the Months of January, February, March, and remanent Months of the Year 1687, within the House of James Baikbie Fermorer in New-Milns; and within his Father's own House of New-Milns; and in the House of William Scot there; and upon the first, second, third,



third, or one or other of the Days of the Months of *January, February, March*, and remanent Months of the Year of God 1683, 1684, and 1685 Years, when he was both in *Brussels* and *Breda*, and several other Places, both in *Holland* and *Flanders*, and in Prisons, within which he was detained in the City of *London* and *Southwark*, or upon one or other of the Days, of one or other of the Months of the said Years, or either of them most wickedly, unnaturally, and bitterly rail upon, abuse and curse the said Sir *James Standsfield*, his natural and kindly Parent. And being transported with Rage and Malice, he did, contrary to the Light and Tyes of Nature, nor once, but often, and frequently curse his Father, by bidding, and praying the Devil to take him, and the Devil rive him. God damm him, and swear, if he had a Sword, he would run it through him, and if ever he came to *Scotland*, he would be avenged upon him. And particularly upon the Day of *November* last, which was the last Time his Father went to *Edinburgh*, he did most impiously, and unnaturally imprecate God let him never return, and God let him never see his Face. And frequently when he saw his Father's Diet taken to him, he used to say, God grant he may choak upon it; and at other Occasions, when his Father refused to eat, he was in use to say, God let never more be in his Stomach than was in it then. And upon the first, second, or third, or one, or other of the Days of the Months of *September, October, or November*, last by past, or one or other of them, his Mother being recovered out of a Swond, and having said to him, *Philip*, ye will shortly want your Mother, which will be a gentle Visitation to Sir *James* your Father. To which he did answer: By my Soul, my Father shall be dead before you, Mother; and about eight Days after, he upon the like Occasion did renew the same Words: As also he was in use to declare, that though at present he had neither Cloaths nor Money, yet shortly (and no body did think how soon) he would be Laird of all, and then would use other Persons as they did him now: And at other times declared, that before *Christmas* he would be Laird of all; which Curses and Imprecations, he the said *Philip Standsfield*, by a continual Habit, used, and repeated these several Years by past; and lately, some few Months or Weeks before his Father's Murder. And not satisfied therewith, the said *Philip* did proceed to that Degree of unnatural Cruelty, and malicious Spite and Enmity against his Father, that upon the first, second, third, or one or other of the Days of the Months of *January, February, March*, and remanent Months of the Years of God, 1680, 1681, 1682, 1683, and 1684 Years, or one or other of the Days, of one or other of the Months, of one or other of the saids Years, he did attempt to assassinate, and offered Violence to his Father's Person, and did chase and pursue him upon the King's Highway at *Lothian-burn*, and did fire Pistols upon his Father: And likeways upon one or other of the Days of one or other of the Months, of one or other of the Years of God above specified, he did attempt to assassinat his Father for his Life, at *Culterallors*; and did fire Pistols upon him: And his Father being afraid of his Life, and under the Apprehension of Violence, from the cruel and bloody Hands of the said *Philip*, his unnatural Son, he did, to several Persons both of Quality and entire Reputation, declare, that the

said *Philip* his Son, had both attempted to assassinate, and offered violence to his Person, and that he was devising and contriving his Death. And the said Sir *James Standsfield* his Father, having upon the Day of *November* last, gone from the City of *Edinburgh*, to his own House of *New-Milns*, and about ten o'Clock at Night, or thereby having gone to his own Chamber, in order to his Rest, and being alone in the Room, under the Credit, Trust, and Assurance of the said *Philip* his Son, and his own Servants within his own Family; the said *Philip* did consult, and advise, and correspond with some other Persones, within and about the House for the Time, to assassinat and cruelly murder his said Father, and particularly with *George Thomson* in *New-Milns*, and *Helen Dickson* his Spouse, and *Janet Jonstoun* Spouse to *John Nicols*, there, in the House of the said *George Thomson* many Times, particularly the *Saturday's* Night immediately preceeding the Murder, where he cursed his Father, and said he should shortly make an end of him, and be Master of all: And accordingly he and they did murder and strangle him in his Bed-Chamber, and in the dead Time of the Night, did carry and transport him from the said Room, to the Water, near by the House, and laid his Body down upon the Water-side, and tied a Stone about his Neck, to make him sink in the Water; and before he was throwen therein, he went back with his Accomplices to a little Kiln near by, and consulted and advised, whether it was more fit to throw him in the Water with the Stone about his Neck, to make him sink, or to take away the Stone, least when he should be found, it might thereby appear that the Stone had been tied by some other Hand than his own; and at last resolved to take away the Stone, and throw his Body in the Water, which they returning, did accordingly: And some Persons being accidentally lying in the House at the Time, they did hear a Noise of many Tongues and Voices, to their great Terror and Amazement; and the next Morning very early, some of the Servants in the House having come to the Room where his said Father did lie, and having missed him out of the Room, gave notice thereof to some others of the Servants. He declared that he had been seeking him about the Water-Pools; and a Noise and a Cry having arisen, Search and Enquiry was made for his said Father (and by him seemingly amongst the rest) And after some Time his Body was found in the Water hard by his own House, and being dead, and his Neck broken before he was thrown in the Water, his Body did neither sink to the Ground, nor receive Water (as all drowned Bodies are in use to do) and he knowing where his Father's Body had been put, went on the Sabbath-Morning directly to the Place where his Body was in the Water, and stood a considerable Space on the Water-side, directly opposite to the Body, with his Eyes fixed on the same, before his Body was found or knowen to any others than the Murtherers; and when *John Topping* (a Stranger) passing that way, and ignorant of the whole Matter, or that Sir *James* was amissing, called to him, and asked, who that was in the Water? He made no Answer, but went away from that Place strait to *New-Milns*, and gave no Intimation to him, or any other Person what he had seen in the Water, but appeared surprised when his Body was found there by other Persons; and his Father's Body being taken out of the Water, the same was, by his Order, carried



to a dark Out-house; and though he was desired by the Friends and Servants present, to suffer his Father's dead Body to be carried to his own House, and kept therein, and not to be buried till his Friends in *Edinburgh*, and elsewhere, and Physicians in *Haddington*, or near by, might see the same. Yet he refused so to do, and caused bury the dead Body of his Father privately, and in haste. And the Noise having spread abroad, that his Father had been barbarously murdered by him, and his Accomplices, Order was given by these in Authority, to cause open the Grave, that Physicians and expert Chirurgions might inspect his Body, and make Report anent the Truth of the Matter: And accordingly, by the Report of the saids Chirurgions who inspected the Body, it did appear, that his said Father was cruelly strangled and murdered, and not drowned, and that he had been cast in the Water of Purpose to conceal the same. And when his Father's dead Body was sighted and inspected by Chirurgions, and the clear and evident Signs of the Murder had appeared, the Body was sewed up, and most carefully cleaned, and his nearest Relations and Friends were desired to lift up his Body to the Coffin: And accordingly *James Row*, Merchand (who was in *Edinburgh* in the Time of the Murder) having lifted the Left-side of *Sir James* his Head and Shoulder, and the said *Philip* the Right-side, his Father's Body though carefully cleared, as said is, so as the least Blood was not on it, (did according to God's usual Method of discovering Murders) blood afresh upon him, and defiled all his Hands, which struck him with such a Terror, that he immediately let his Father's Head and Body fall with Violence, and fled from the Body, and in Consternation and Confusion, cried, *Lord, have Mercy upon me!* and bowed himself down over a Seat in the Church (where the Corps were inspected) wiping his Father's innocent Blood off his own murdering Hands upon his Cloaths. By all which it is manifest, that he did most traiterously express his Hatred and Malice to his Majesties sacred Person, by wishing and drinking to his Confusion, and causing others to do the same. And likewise, that he did not only unnaturally curse, invade, attempt to assassinate or beat his said Father, but under Trust and Assurance, barbarously and treasonably did strangle, kill and murder him in manner forsaid, and is Actor, Art and Part of the forsaids Crimes, or one or other of them, which being found by an Assyse, he ought to be punished for the treasonable Crimes above specified, with forfeiture of Life, Land and Goods, and for the other Crimes above-mentioned, Capitally, and with the Pains of Death and Confiscation of Moveables, to the Terror and Example of others to commit the like hereafter.

## P U R S U E R S.

*Sir John Dalrymple*, younger, of *Stair*, his Majesties Advocat.

*Sir George Mackenzie*, Advocat.

## P R O C U R A T O R S in Defence.

*Sir David Thoirs*,

*Sir Patrick Hume*,

*Mr. William Moniepenney*.

*Mr. William Dundas*.

The Pannal's Procurators produced two Warrants of Privy Council, commanding them to compeir and plead the Pannal's Defence.

**S**IR *Patrick Hume* for the Pannal (always denying the Indytement, and whole Members and Qualifications thereof) alleadges, That as to the first Part of the Indytement, in relation to the drinking an Health to the Confusion of his sacred Majesty, as it is most calumnious, so it is not to be supposed, that any Man in his right Wits would have been guilty of such a Thing: And it is positively offered to be proven, that at, or about the Time libel'd, and several Times before and after, the Defender did most heartily and chearfully in several Companies drink the King's Health, and upon all Occasions he was ready to testify his Loyalty to the King, and particularly the Time of the Invasion by the late Duke of *Monmouth* in *England*, where he did enter himself voluntarily a Souldier in the Earl of *Dumbarton's* Regiment, and continued in the King's Army till the Rebels were defeat, and the Voluntiers dismissed.

As to the second Part of the Libel, in relation to the Pannal, his alleadged committing, and being guilty of, and accessory to many notour Crimes abroad, and being detained Prisoner in *London*, *Antwerp*, *Orleance*, &c. and that he vented and entertained Malice against his Father, and that he declared many times that he would cut his Throat, and that he did rail against, and curse his Father, by many Imprecations.

It is answered, *primo*, That it is absolutely deny'd, that the Pannal was guilty of, or accessory to any notorious Crime abroad, or put in Prison upon that Account, nor is there so much as any Crime condescended upon.

2. The Defender could not conceive any Prejudice against his Father, upon the Account of disposing his Estate to his second Son; for he knew nothing thereof till after his Father's Decease, that one *Alexander Ainslie* told him that his Father had made such a Disposition.

3. As to the pretended Expressions, that the Defender should have had of Railing, Cursing, and using Imprecations against his Father, in so far as the saymen are libel'd to have been done Abroad, in *England*, *Holland*, or other Places, he cannot be lyable to the Punishment inflicted by the Law of this Kingdom, because when a Party commits a Crime in another Nation, he is only to be punished according to the Law of the Place where the Crime was committed, and not according to the Law of the Nation where he is a Subject, or has his Dwelling: As is clear by the Common Law, Authentick Cod. *Ubi de criminibus agi oportet. Qua in provincia quis delinquit, aut in qua pecuniarum aut criminum reus sit, sive de terra, sive de terminis, sive de possessione, sive de proprietate, sive de hypotheca, aut de alia qualibet occasione, vel de qualibet re fuerit reus, illic jure subiaceat, quod jus est perpetuum.* In that Nation where any Person commits a Crime, or is liable to answer upon any account whatsoever, he is to be judged by the Law of that Place, which is established as a perpetual Law; and *Mattheus de Criminibus*, in his Title, *De Pœnis*, is express of the same Opinion.

4. As to all those pretended Expressions of railing, cursing, and threatenng, libel'd, that were before *March*, 1685, the Defender is secured by the Act of Indemnity, by which all Crimes are indemnified, preceeding that time, against the Government and Laws.

5. As to any pretended Expressions of railing and cursing since that Time, they being



but Injuries alledged done to the Father, he might and did remit the same, in so far he did not challenge and pursue the same in his own Time; and this is clear from the Common Law, *Carpzov. Part. 2. Quest. 65. Actio autem injuriarum nec activè nec passivè in Hæredes transit, etiamsi mortuus illatas injurias ignoraverit. Institut. lib. 4. tit. 12. par. 1. de perpetuis temporalibus action. Leg. 10. par. 2. ff. si quis cautionibus in judicio sisten. And leg. 13. ff. de injuriis, injuriarum actio neque hæredi neque in hæredem datur*: As also it is a Principle in Law, that *diffimulatione tollitur injuria*; and if it could be made appear, that the Pannal had any such Expressions, the Father did dissimulat and pass from the same, in so far as by a Letter, dated in *June* last, written by the Father to the Pannal, he orders him to take in his Chamberlain Accompts of the Rents of his Lands, and of any Money he had received from the Tenements, or for the Corns sold, and that he expects he will do the same exactly, and recommends to him, to be careful of all his Affairs, and subscribes himself to be his loving Father. By which it is evident, that all former Differences (if any were) betwixt them, were then taken away.

As to the third Part of the Indytment, in relation to the several Acts and Qualifications insisted upon; to infer, that the Defender had Accession to his Father's Death: It is answered, (*primo*) That the Indytment, in so far as it is founded upon the *51. Act. Par. K. Ja. VI.* in relation to the Murder under Trust, which is declared to be punishable as Treason, is not relevant: Because the Father cannot in Law be said to be under Trust and Assurance of the Son, and that Act of Parliament takes only Place in Cases where a Man is invited to his Neighbour's House, or of an Traveller being in an Inn, and that he be murdered under that Trust; and the same Act of Parliament being founded on in the Case of *Swinton*, who killed his Wife, in the Year 1666, the Indytment was restricted to simple Slaughter. And in the Case of *Master James Oliphant*, in the Year 1665, the Lords of the Session found, that a Son's killing his Mother, was not Murder under Trust, and so he was not punishable by that Act of Parliament, as guilty of the Crime of Treason.

2. The Acts and Qualifications condescended on to infer the Defender's Accession to his Father's Death, are but very remote and uncertain; for as to that Expression, That the Defender is alledged to have threatned his Father's Death, it is the Opinion of all Lawyers, who have written upon the Subject, that that is but a very remote Presumption. And as *Carpzovius* expresses it, *Part. 3. Quest. 121. Numb. 51. Quod est indicium admodum periculosum, quippe cum homines sæpe nil minus faciant quam quod minas exequantur & iracundia agitata minas de crimine perpetrando sæpe jactet, ipso tamen animo sermore paulo post discusso, cobibeat manus, & abjineat a facinore illo quod forsitan ab alio postea committitur.* And *Paris de puteo* gives an Instance in his *Treat. de Syndicatu* upon the Word *Tortura*; and *Boverius*, That a Woman seeing a Person going by her Window, against whom she had a Prejudice, and that another having a Hatred against her, and hearing that she had threatned to cut off that Person's Legs, the Party that did hear the Woman use the Threatning, did the Thing; upon which the Woman that did threaten, being challenged, and put to the Torture, did confess; yet thereafter it was found, that

she was altogether innocent, and that another had done it.

3. As to the pretended Acts of the Defender's alledged pursuing, and invading his Father, and firing Pistols at him, at *Lebian-burn* and *Culteral-lors*, in *Annis* 1683, and 1684. As it is most groundless, so, if need were, it could be made appear by the Persons who were in Company with him at that Time, that the Defender and his Father were then in entire Friendship all alongst the Journey, and he was so far from making any such Attempt, that it can be made appear, that the Defender did behave himself towards his Father with all the Submission and Respect that became a Son to have to his Father: But as to these, and all other Acts, preceeding *March* 1685, the Defender is secured by the Act of Indemnity; and as the Defender cannot be pursued for any Crime preceeding that Time, neither in Judgment nor out with the same, they in effect being no Crimes, being taken away by the Act of Indemnity, they cannot be so much as made Use of as Qualifications or Aggravations, to infer another Crime posterior thereto.

4. As to that pretended Qualification, that when the Defender did touch his Father's dead Body after it was taken out of the Grave, the Corps did bleed.

It is answered, That this is but a superstitious Observation without any Ground either in Law or Reason. And *Carpzovius* relates, *Part 3. Quest. 122. Numb. 31.* That several Persons upon that Ground had been unjustly challenged, and that he in his own Experience had seen a dead Body bleed in Presence of the Person who was not guilty; as also that he has seen the Body not bleed in Presence of the Person that was guilty. And *Matthæus de Criminibus*, is of the same Opinion, *Tit. 16. de Quæstionibus, Numb. 12. de Sanguine porro de Cadavere profluente quod dicitur id de plurimis experimentis comprobatur, tamen cum experimenta falsa sint; ratio vero idonea nulla reddi possit, non putaverim indicium ad torturam sufficiens esse; non enim sapientis Judicis est incerto experimento credere quod certa ratione dirimendum est.* And the Truth is, the Occasion of the dead Body's bleeding, was, that the Chirurgions that came out to visit the Body, did make an Incision about the Neck, which might be the Occasion of the bleeding; and also the very moving of the dead Body, when it was taken out of the Grave, and out of the Coffin, might occasion the bleeding; especially seeing the Body did not bleed for some time after, which certainly was made by the Motion, and by the Incision: As also a further Evidence, that it could not be the Defender's touching the Body, the Chirurgions did likewise touch the Body as well as he, and several others present; so that the bleeding could no more be ascribed to his touching, than the touching of the other Persons present.

5. As to the other Articles lybel'd, relating to the pretended Murder, they are but meer Stories, and the Truth is, and it is offered to be proven, that the Defender having gone to his Chamber and Bed the Night before his Father's Death, he did not stir out of his Bed, nor out of the Room, till the next Morning that *John Robertson* his Father's Servant came to his Chamber, where he was in Bed, and told him, that he had been in his Master's Room, and that he could not find him. Upon which the Defender immediately arose, and put on his Cloaths; and



went out to see where his Father was. And shortly after Word being brought him by some Person in the Town, that they did see his Father's Body lying in the Water, and it being generally concluded by all, that he had thrown himself in the Water, and the Body being taken out, and laid in a low Room, it was thought fit by all the Neighbours about, that he should be buried the next Day.

6. The Particulars lybel'd, to infer the Defender's Accession to his Father's Death, being but remote and uncertain Conjectures, it is a certain Principle in Law, that *ex præsumptionibus & conjecturis nemo criminaliter condemnari potest*, especially as to a Capital Punishment: As is clear from the Common Law, *Leg. 5. Digest. de pœnis, sed nec de supplicationibus debere aliquem damnari, satius enim est Impunitum relinqui facinus nocentis quam Innocentem damnari*. And which is the Opinion of all Lawers, writing upon the Subject: As *Bartol*, upon the foresaid Law, and *Farin. Part. 3. Oper. Crim. Quest. 86.* and the Lawers by him there cited. And *Muscard de prob. Conclus. 223*, layes it down as a certain Conclusion, *quod Argumenta quantumcunque urgentissima, etiamsi essent talia quæ mentem indicantis adeo coactarent quod aliud credere non possit, non tamen sufficerent ad condemnationem pœnæ corporalis sed duntaxat pecuniariæ.*

7. The Presumptions and Qualifications lybel'd, cannot be sustained even to infer an Arbitrary Punishment: Because they may, and are taken off by other Presumptions, that either the Father was not murdered, but that in a Frainzie, or melancholy Fit, he had thrown himself in the Water: Or, at least, if he was murdered, that the Defender had no Accession thereto, and the Presumptions condescended upon in Behalf of the Defender, eleid the Presumptions contained in the Inditement, are these. That it is notourlie known, that his Father was subject to melancholy Fits, and that in the Year 1679, the Time of *Bothwell-Bridge*, it is offered to be proven, that he was in a Fit of Distraction; and at another Time in his House at the *Nether-bow*, he was going to throw himself out over the Window, if one *Thomas Lindall* had not come in at the Time and pulled him back by the Legs, when his Body was half out at the Window. And some few Days before he went out of *Edinburgh* last, he came to *George Sterling*, Chirurgion, and desired him to draw Blood of him, for a Distemper in his Head, which he refused, unless he had Advice from a Physician. As also a Day or two before he went out of the Town, he was seen reading upon the Book of *Burtoun's Melancholy*. And that Day when he went out of the Town in Company of *Mr. Bell* the Minister, and *Aiton*, Merchant in *Haddingtoun*, they observed him to be melancholy, disordered, and more troubled than ordinary; or if it could be made appear, that the Father was murdered, yet it cannot be presumed that the Defender had any Accession thereto, or that he would have committed such an Act against the very Ties and Light of Nature. As also it appears by the foresaid Letter, written to the Defender by his Father, that they were in entire Friendship; as also when the Surmise went Abroad, that his Father had been murdered, if he had been conscious to himself that he had any Accession thereto, he would have certainly fled the Country, and gone away. But he was so far from

that, that upon the first Rumour of it, he came presently into *England*, and several Days thereafter, it being told him, that he was suspected to have Accession to his Father's Death, he came voluntarily and entered himself in Prison, that he might undergo the strictest and severest Trial: Which alone is sufficient, if it were no more, to take off all the Presumptions lybel'd, and to convince the World of the Defender's Innocence; and it being a Principle in Law, that *una præsumptio tollit aliam*, the Presumptions adduced for the Defender ought to be preponderat, *Muscard. Conclus. 1205*, is positive, That *præsumptiones quæ stant pro reis prævalent*. As also that *præsumptio affectionis naturalis prævalet contrariis præsumptionibus*. So that upon both these Considerations, the Presumptions alledged for the Defender ought to be sustained, to take away the Presumptions lybel'd, and to free him from the Crime.

His Majesties Advocate answers, That the Libel consists of three Articles, (*Primo*) Treason, by the Pannal's drinking the King's Confusion, and by the Murder under Trust. 2°. The cursing of a Parent. 3°. The Qualifications inferring the Pannal's Accession to the Murder of his Father.

As to the first, it cannot be denied, but that the drinking or wishing Confusion to his Majesty, is the highest Act of Contempt, Malice, and Disdain to his Royal Person; and as the Relevancy of this Article is not expressly contraverted, so the Atrocity of the Act, and the forcing others to do the same upon the common Grounds of Law, does clearly infer Treason, and it cannot be expected, that such extravagant Words should either be express'd, or particularly provided against by any Law in express Terms; but the Nature of the Words in express Terms of our Law discharging all Speeches to the Disdain of his Majesty, the Contempt of his Authority, do clearly and naturally comprehend the Words lybel'd, and by the common Law, *Ad leg. jul. Maj. crimen læsæ Majestatis ad exemplum legis scriptæ est vindicandum*.

And whereas it is pretended, that these Words were inadvertantly said, and that it appears by the Tract of the Pannal's Life, and his Readiness to engage in his Majesties Service, that the Words could not be deliberat and malicious. It is replied, That it is offered to be proven, that the drinking Confusion to the King, was openly and plainly propos'd; and that the Pannal did deliberately send out for Ale to drink certain Healths, and that this Health to the King's Confusion was the first or second, and that it was no Lapse or Mistake in the Expression; but that he forced others to pledge and drink that same Health. And the Malice and Disloyalty is evident, by the Health's Subsequent; *viz. Anti-christ's, &c.* and it is not at all relevant (after the reiterate and deliberat expressing of these Words) that he had retracted or drank the King's Health; for a Crime once committed, is not retracted or taken off by such inconsistent and unsequential Speeches; but to shew the Sense the Pannal had of the Importance of his own Words, the Pannal being informed, that some of the Persons present had divulged his having drunk the King's Confusion, the Pannal did conjure them to Secrecy, and did menace the Witnesses with a great Cane, that he would beat and brain them if ever they told it.



Whereas it is answered in general, as to all Crimes committed without the Kingdom, that they cannot be cognosed or punished here: It is replied, That as to Crimes against Nature, or the Law of Nations, as every Party is competent to be an Accuser, so every Judicature is competent; and therefore as to the Crimes of Treason, or cursing of Parents, wherever committed, they are punishable by the Justices: But because in relation to the Crimes committed abroad, there is not positive Probation, but Declarations and Testimonies; therefore as to these Crimes, his Majesties Advocate does not insist on them as distinct Crimes *per se*, but as Qualifications, Documents, and Evidences of the habitual Debauchery, and unnatural Malice express'd by the Pannal against his Father for a Tract of many Years.

Whereas it is answered, That as to all Crimes preceding 1685, they are taken off by the Indemnity: It is replied, The Indemnity 1685, is no general Indemnity, neither as to Persons nor Crimes, but particular Crimes are remitted, and particularly enumerat without any general Clause: And as cursing of Parents is not particularly enumerat, so by the Nature of that Crime, it cannot be included or comprehended in any general Indemnity: And the Words of the Act of Parliament, 20 *Act.* 1. *Par.* K. Ch. II. bears expressly, *That the Cursers of Parents shall be put to Death without Mercy.* So that a general Act of Indemnity, or Mercy, without a special Remission, could not include this Crime, which, as the Act of Parliament bears, is expressly against Nature, and the Law of God: And by the Opinion of all Lawyers, general Indemnities do not extend to all Crimes; but these Crimes which are called in Law *Crimina excepta*, are never intended to be indemnified, nor such Crimes, where the Interest of Parties is more than the Interest of Publick Justice, and in all former and general Indemnities, Murder and other Crimes are particularly excepted with a general Clause, excepting all such Crimes as use not to be comprehended in general Acts of Indemnity: So that this so horrid a Crime, wherein the Parent was more interested than the Publick, neither was, nor could be comprehended under a general Indemnity: As also that restricted, limited Indemnity, bears expressly an Exoneration for all Persons below the Degree and Quality of an Heretor, Wodsetter or Burgess; and whether the Pannal were an Heretor or not, yet it cannot be said, that he is below the Degree and Quality of a Wodsetter or Burgess; and therefore the Act of Indemnity is of no use to him.

Whereas it is answered, That Sir *James* was reconciled with the Pannal, and wrote kind Letters to him, whereby, *dissimulando*, former Injuries were taken off: It is replied, That Injuries are only taken off *dissimulando*, which are not atrocious, but never specifick Crimes, wherein the Discharge or express Renunciation of the Party injured cannot liberat *à vindicta publica*, the Punishment of Crimes, especially in Capital Punishments, belonging to the Magistrat; and the privat Party has not the sole Interest, nor can dispense with Capital Punishments: But the Letter founded upon, does not in the least infer the Party's Forgiveness or Dissimulation of the Injury. And a Father ordering his Son to call in for Chamberlain Accompts, without empowering him to

discharge the same, is not the least Evidence of Confidence in his Son, much less a remitting of his Crime.

As to the second Article, in relation to the Cursing, it is positively offered to be proven, not in single Acts, but by a Tract and Habit of cursing his Father in the most abominable Terms imaginable.

As to the third Article, in relation to the Murder, that this Matter may be clear, *Et ut constet de Corpore delicti*, these undoubted Qualifications are offered to instruct, that Sir *James Standsfield* was murdered and strangled, and that he did not drown himself. 1. It is offered to be proven by the Minister, that was that Night in the House, that long after ten o'Clock at Night, and that Sir *James* had retired to the Chamber, where he lay alone, the Minister heard the confused Whispers, Murmurs, and Noise of several Persons, both Men and Women, which affrighted him, and that he heard the Noise go away by the backside of the House, which leads directly to that Pool where Sir *James* his Body was thrown in the Water.

2. Sir *James's* Body was found swimming above the Water, and albeit it appeared by the Ice upon the Top of his Cloaths, that he had been several Hours in the Water, yet there had no Water entered in his Body; which is a Demonstration, that he was dead before he was thrown into the Water; for a Person thrown alive into Water, drawing in of Air and Respiration, being in the Water, he must draw in Water; and if the Person drawes in as much Water as fills his Concavities, he becomes heavy, having so much more Weight of Water, and therefore he sinks: But if a Person be thrown dead into the Water, when the Clap of his Throat is shut, the Water cannot enter, and there being so much Emptiness, the Body is light, and supported by more Parts of Water, than the Gravity of the Body can depress. 3. There being several Chirurgeons and others sent out by Order from Authority to take up and inspect the Body, to see whether there was any Evidence of Strangling, or other Symptoms of Murder upon the Body; it did appear to all these Persons, who did depone before a Committee of the Privy-Council, That from the one Jugular Vein to the other round the Neck, there was a Tumour of congealed black bruised Blood, three Inches broad, and that there was congealed Blood in the Throat; upon which Matter of Fact, the College of Physicians have given an unanimous Testimony in Writing, that Sir *James Standsfield* was strangled, and not drowned: And the Deaconry of the Chirurgeons being convened, have emitted a Declaration in Writing, concurring and agreeing with the Report of the Physicians: So that it is as clear as the Light of Day, that Sir *James Standsfield* was murdered.

3. For the Qualifications, that the Pannal was the Murderer, or accessory to the Murder of his Father, these clear Evidences are offered, which makes his Crime without possibility to be palliat or denied. 1. It is notorious, that the Pannal is a most debauched, vitious, pernicious Person, and has been Prisoner, or condemned to die in all the Places or Societies he ever haunted. He entered a Soldier in the *Scots* Regiment, where he was condemned to die at *Treves*, but made his Escape; and his being in Prison, in



the *Marshalsea-Prisons*, *Orleanse*, and *Brussels* (which makes the Circuit of his Travels) are not denied; and his profligate Life and constant Drunkenness, since he came to the Prison, is offered to be proven by the Keepers: And as it is unnecessary to trace all his Debauches; so there is one material Point offered to be proven, That upon the least Provocation, either by Man or Woman, the Pannal used to swear by horrid Oaths, that he would take their Lives, though he should die in the *Grass-mercat* for it.

3. Sir *James Standfield* for these Debaucheries having disinherited the Pannal, and disposed his Estate to his second Son; it is positively offered to be proven, That in the *Nungate* of *Haddingtoun*, in *James Smith's* House, the Pannal being told, that his Father would disinherit him, he with horrible Oaths vowed to cut his Father's Throat.

And whereas it is answered to this Qualification, That the saying that a Son would cut a Father's Throat, is but a remot Circumstance: It is replied, That the Law, and all Lawers do agree, That *Minæ præcedentes & damnum sequutum*, is a most pregnant Qualification of that Patty's Crime, especially where the Threats were to cut a Father's Throat, which of itself was so horrid and unnatural a Villany, that it cannot be doubted he who durst vow it, wanted but an Occasion to act it. And it is acknowledged, that though this be the clearest Presumption, yet *per se*, it is not full Probation: For though the Son had both vowed, and resolved, yet by an Accident he might have been prevented; but the Presumption at least lays the Burden, that except the Pannal could condescend, and document, that some other Person killed his Father, he must be reputed the Murderer.

3. It is offered to be proven, That Sir *James Standfield*, who was a Person of eminent Sobriety and Veracity, did declare to several Persons, that his unnatural Son had attempted his Life, and offered Violence to his Person, and particularly, that he had pursued him on Horseback, and fired Pistols on him; and that same *Friday* before Sir *James* was murdered, he did declare that it was not his Debts, or any thing under Heaven that troubled him, but that his Son and Family were plotting and contriving his Destruction, and the next Night he was murdered.

3. It is offered to be proven, That the Pannal's Mother declared, That her Son had vowed to be his Father's Death, and that he was a vindictive Person, and that she did apprehend he had murdered him. So as to this Article, there is a Concurrence of the Pannal's own Oaths, to murder his Father, and of his Father and Mother's Declarations, that he had attempted, and was still plotting the same.

The second Qualification is, that, that *Saturday-Night* Sir *James Standfield* came home, the Pannal would not come where his Father was, either to Supper, or Prayer; and being expressly desired by several Persons, to go to his Father, and speak with him; he declared (that same Night he was murdered) he could not endure to see, or look upon his Father; and he had been all that Day clost with *Thomson* and his Wife, and *Janet Jobnston*. So after ten Hours at even, after the Family was gone to Bed, he came out to *Thomson's* House, which is hard by the Gate, and there in Presence of *Thomson*, his Wife, and *Janet Jobnston*, he declared that his Father would neither give him Money, nor Cloaths, and cursed his Father,

and declared that he would shortly make ridd of him, which agrees with what he had several Times said in other Companies, that he was to be Laird before *Christmas*; and that he was shortly to be Master of all, and none can think how soon. As also, shortly before Sir *James's* Death, the Pannal's Mother falling in a Swoond, it was said to him, *Philip*, ye will shortly want your Mother; to which he answered, *By God*, his Father should be dead before her: And eight Days after, his Mother falling again sick, he repeated the same Words; whereby it is evident the Murder was deliberate and determined.

3. On the *Sunday* Morning, before Sir *James's* Body was found, *Philip* came to the Minister's Chamber, and told him that his Father was gone out in the Night, and that he had been searching for him about the Pools, and Water-side; and when the Minister reproved him for making such Insinuations against his Father, he laughed at him, and went away to the Pool, and stood looking upon his Father in the Water, but made no Discovery; and thereafter a Stranger coming by upon the Highway likeways, seeing Sir *James's* Body in the Water, he came back and discovered the Matter; at which *Philip* seemed surpris'd, and told that he had seen his Father's Body in the Water before, but he did not think fit to be the first Discoverer, which shews, that he was conscious of his own Guilt; otherways, upon the first Sight of his Father in the Water, he would have gone to him; but on the contrary, he never laid a Hand upon his Father's Body, either to pull him out of the Water, or to carry him into the House, for the Dread of some extraordinary Discovery, and did not allow the Corps to be brought within his Father's Gates, but caused carry the Corps to the *Wake-Miln*, where, to carry the Appearance of Strangling upon his Body, he entrusted *Janet Jobnston* with the Care of wounding him, who was known to be a Person so odious to Sir *James*, that he could not see her for her Baseness with the Pannal, and she did acknowledge, that she had not been for three Quarters of a Year within the House before; and yet this infamous Strumpet, who has been tortured by order of the Privy-Council, as accessory to the Murder, was chiefly intrusted to see the naked Body, and the Cloaths put on!

4. The Pannal did refuse to send for a Chirurgeon, and to let his Father's Body be sighted, though the Minister and others did expressly demand it; and the *Englishmen* in the Manufactory, who were acquainted with the Crouner-Laws, they made a Mutiny anent the Burial, till the Corps were sighted; yet the Pannal caused bury the Corps that same Night without shewing them.

The Corps being raised by Order, and Incision being made, whereby the Strangling did clearly appear, and the Corps being dressed clean, and Linnen put on, there did appear no Blood; but to take off Suspicion, the Corps were lifted up, and the Night-Cap being wrong put on, it was altered and changed, and thereafter the Corps were laid down without any Blood upon the Linnen; and the Pannal (who to this time had never touched his Father's Corps) being required to assist to lift the Body into the Coffin, having taken his Father by the Right-side of the Head with his left Hand, *James Row* bearing the left, the Pannal's Hand was altogether blooding, as if his Hand had been put into a Vessel of Blood; which, notwithstanding of all his impudent Resolution



ution to the contrary, had that horrible Impression, and Conviction upon him, that he let his Father's Head fall to the Ground, and cried out, *O God*, and run away and went to a Desk in the Church, where he lay groaning and in Confusion, but durst never return to touch the Corps; and as there can no natural Reason be given, but an ordinar and wonderful Providence of God, in this kind of Discoveries of Murder; so the Fact was never more evident, and sure: Though Half a Dozen of Persons were bearing the Corps, no Man's Hands were bloody but the Pannal's, and the Corps being two intire Days in the Grave, in that Weather and Season, the Blood by the Course of Nature was become stagnat and congealed; so that the former tossing and lifting of the Corps, and even the Incision itself had occasioned no such Effusion, but only some Water or Gore; but upon the first Touch of the Pannal the Murderer, there appeared Abundance of liquid florid Blood: And though this *per se* might not be sufficient, and as *Mattheus* is cited, it should not infer Torture; yet *Mattheus* acknowledges that most Part do sustain this, as a violent Presumption oft times experimented; yet in his Opinion it is not sufficient for Torture, because Torture being in itself a Punishment, it cannot be used, except where there is *semiplena probatio*, or where the Conscience of the Judge is satisfied, as to the Truth of the Crime, and therefore uses an extraordinary Course, to extort a Confession, which proves that this Presumption is *semiplena probatio per se*, according to their own Grounds.

And whereas it is alleged, that capital Punishment cannot be inferred from Conjectures, but from clear and positive Testimonies; it is answered, that the *Lex ult. Cod. de probationibus*, clearly states that Probation is either, *Testibus tabulis instrumentis documentis & indicis*. And *Mattheus* states a particular Title upon this single Question, *Cap. 6. Titulo 15. de probationibus*, and does most positively determin that Crimes are to be proven *Documentis, Argumentis & Indicis*. And it is most evident, that the Probation which arises from the Nature of the Thing, which is incapable to be sophisticate, or imposed upon, as Witnesses may be, that kind of Probation is the surest, because it is always the same, and admits no Variation. It's true, and it is acknowledged, that *Argumenta & Indicia* must be *clara & evidenti*, and Probation being *Quod facit fidem Judici*, every Man's Experience tells him, that the Complication and Conjunction of so many evident Qualifications, though none of them *per se* were sufficient, yet being all of them joined, it induces a greater Certainty, than two Witnesses positively deponing upon the Fact. And therefore the Evidence of the Probation belongs to the Inquest, and the Relevancy that these Articles conjoined, or any Part of them, are sufficient to infer the Crime, belongs to the Judge.

As to the Presumptions offered for the Exculpation of the Pannal, they are not at all relevant; for though so horrid a Murder is not to be presumed against Nature, yet being proved, or so strongly evinced, it does but conclude the Pannal's greater Guilt: And suppose that *Sir James Standsfield* was formerly Melancholy, and had been Frantick in the Year 1679, yet it is known he recovered his Health, and was of a composed, sedat Temper of Mind for many Years

thereafter, and was as capable and diligent about his Affairs, these many Years, as he had been formerly, and was so considered and employed by the wisest Men in the Kingdom; and at the Time of his Death there was no Sicknes, or returning of Frenzie upon him, but all that Week he had composedly done his Affairs; and did upon the *Saturday*, when he went Home, discourse rationally upon all the Subjects that occurred: But it being so clearly documented and proven that he was strangled, it is a ridiculous Conceit, and there remains no Possibility that after he was strangled, he walked out and drowned himself. And as to that Presumption, that the Pannal rendered himself Prisoner, it was indeed suitable to the rest of his Impudence, and he did not render himself till after the Order to apprehend him was intimate to him, when he could not escape, and when he was under Observation; and there did not want Project in fixing upon this Impudence when he could not escape, as a Qualification of Innocence, that he would render.

*Sir David Thoits without Repetition of the Replies made by his Majesties Advocat, doth make his Duply to the foresaids Replies, and every Member thereof, in order as follows; viz.*

**T**O the first, Anent the treasonable Words, the Pannal's Procurators oppon their former Answers, and the Act of Parliament whereupon that Part of the Dirty is founded, being only in order to such treasonable Speeches advisedly spoken. The constant Tract of the Pannal's Life, in drinking his Majesties good Health at Occasions, and offering to adventure his Life in his Service in the last Rebellion, sufficiently demonstrates, that if any such Expression did escape the Pannal, as it is denied, the same was only rash and unadvised, and not deliberat and advised, as is required by the Act of Parliament, to infer the Pains lybelled; and the Qualifications added by my Lord Advocat, bearing, that the Pannal did conjure the Persons then present to Secrecy, demonstrates that the Pannal was *ex incontinenti* heartily sorrowful and penitent for the same. And it's clear by that excellent Law of the *Code*, the Words whereof are, *Si quis Imperatori maledixerit, si ex insania miserando, si ex temeritate, & petulantia temnnda, si ex animo injuriandi ad principem remittendum*, which demonstrates, that by the Common Law, such an rash and unadvised Expression was never to be laid hold on to infer a capital Punishment, where the Person alledged, Expresser thereof, was not otherways suspect of Disloyalty.

2. Repeats the Defence as to Crimes alledged committen abroad, and it were against Reason and Equity, that Persons for one and the self-same Crime, should be subject to the Punishment of several Jurisdictions, where the Punishment of the saids Crimes, are different: But seeing my Lord Advocat declares he hath no Probation for these alledged Crimes, but Certificats and Affidavits, they cannot be obruded as a Part of the Libel, because the saids pretended Certificats and Affidavits, are neither insert in the Libel, or given out to the Pannal, and all Crimes are to be proven *testibus, non testimoniis*; and if the Custom of Affidavits should be introduced in this Court, all Pannals (how innocent soever) might be murdered, by being



ing deprived of their unanswerable Objections against the Granters of these Affidavits, &c. and therefore they cannot be sustained as a Qualification to load the Pannal, or make the Inquest have a prejudicat Opinion of him.

3. As to my Lord Advocat's Reply anent the Act of Indemnity, the former Defence and Act of Indemnity is opposed, and bears expressly Murders, Robberies, Slaughters, and all other Crimes committed against his Majesty, and Laws of the Kingdom, either by Word, Writ, or Deed; which undoubtedly excludes all alledged Crimes, said, done, or committed by the Pannal before that Time; and this Favour, *Et gratia principis*, is to be ampliat and extended, and not restricted, and all his Majesties Judges and Officers of State are commanded to sustain the same, according to the most ample Interpretations for the Pannal, that the Words will allow.

4. The Pretence that the Pannal was of the Quality of a Burger, or a Baron, is most irrelevant, the Pannal having no visible Fortune at the same time; and as my Lord Advocat himself acknowledgeth, no Expectation of any Fortune whatsoever: So that if Barons, Burgers, Life-renters, Woodsetters, and likewise these who have nothing in Possession at the Time, shall be secluded from the Benefit of that Indemnity, it is scarce intelligible to whom, and from what Cause the same was granted. 5. And as to that Part of the Reply, bearing, that this was a privat Injury, and so not comprehended within the Act of Indemnity, the former Defence is opposed, and all Pretence of privat Injury was taken away by Dissimulation or Death.

As to the Pretence that the Reconciliation can be no Defence against the Lybel, as to *vindicta publica*, and that the Letter whereupon the Defence is founded doth not import a Dissimulation; it is duplyed, That the Act of Parliament being an Comminatory Law, and principally intended in Favours of Parents, the same was never yet made use of, and it were very hard to make use of the same to deprive a Parent of his Child, for any rash or passionate Expression; especially, where upon Repentance the Father had remitted the Injury; but the Father being in effect Judge of the Injury, his remitting the same ought at least to assoilzie the Child from any capital Conclusion. And as to the alledged habitual Cursing, the same is denyed, and the former Defence founded upon the Act of Indemnity, is repeated and opposed, and the Lybel is opposed, which doth not bear habitual Cursing, but particular Acts at particular Times.

And as to the Qualifications alledged by my Lord Advocat, for clearing that the Defunct Sir James Standfield was murdered, the Pannal is truly sorry, that for his own Defence, and for clearing of his own Innocence, his Lawers should be necessitated to plead any thing relating to his Father's Infirmities, or Way and Manner of his Death. But it is duplyed, That the whole Presumptions adduced by my Lord Advocat are allanerly fallacious Conjectures, and can neither be *separatim*, or complexly relevant to infer any such thing, because, 1. That the Minister did hear a whispering Noise, and was thereby terrified, his Terror and Consternation having (as he himself pretends) put him in a Disorder and Confusion, he was thereby rendered incapable to observe or judge of any thing that happened. 2. That the Body was swimming above Water, imports nothing, the Defunct hav-

ing a great Coat of thick Cloth about him, which was sufficient to keep him floating above. 3. The Pretence that there was no Water in the Defunct's Body when the Chirurgions visited the same, imports nothing, because the Defunct's Body having been several times stirred before that time, by which the Water might have run out, as it actually did (in case there was any Water within it).

4. Albeit where a Man is drowned unwillingly, and endeavours to breathe, so long as he can, his Breathing may suck in the Water: Yet if a Man intend to drown himself, he will certainly endeavour all Means for quick Dispatch of himself, and thereby keep in his Breath; and the keeping in of the Breath after that Manner was sufficient, both to keep the Body floating, and the Water from coming in.

5. To put the Matter beyond all Question, the Defunct was laying in the Water a considerable Space from the Bank; and albeit the Ice was not so strong as to have carried a Child, yet the Ice was whole and entire betwixt the Defunct and the Bank, which demonstrats, that the Defunct had jumped in from the Bank, to that Place where he was lying. 6. As to that Pretence, that there was Blood about the Defunct's Neck, all lapper'd and bruised before Incision was made, the Defunct being pulled out of the Water, by an great Cleik, the touching of the Neck with the Cleik, when his Breath was just gone out, was sufficient to have made the Blood where that Part was, to lapper and congeal. 7. As to the Declarations of the Physicians and Chirurgions, they are only Declarations *ex auditu*, and upon Report of one or two Chirurgions, and hath no Foundation, but the Ignorance or Knowledge of the saids two Reporters; neither can any such Declarations be obruded against the Pannal, because not given out with the Lybel: But whatever may be inferred from these Presumptions, whether the Defunct was murdered or not, the same does not concern the Pannal, unless his Accession to the Murder were instracted, as is impossible it can be.

As to the Qualifications alledged by my Lord Advocat, for fixing the Murder, or Accession thereto upon the Pannal; it is duplyed to the first, That the Pannal's alledged vicious Life, and the Story at *Treves*, his being drunk in Prison, and threatenng to cut Throats upon small Provocations, the same are extrinsick to the Libel, and cannot be respected. 2. As to the alledged Threatning used in *James Smith's* House, the Lybel is opposed, bearing these Expressions, to have been used in the Year 1684, or some Year preceeding; and therefore the former Defence founded upon the Indemnity, is repeated, and opposed. And whereas my Lord Advocat pretends, that *mina precedentes cum damno sequuto*, is sufficient either to fix the Guilt upon the Person who used the Threats, or at least to burden him with the Probation, that another committed the Crime. It is duplyed, 1. That my Lord Advocat's Position is absolutely denyed, unless he can instruct some other positive Accession against the Pannal; and these pretended Threats being taken away, not only by the Act of Indemnity, but likeways by Dissimulation, which is not only offered to be inferred from the Letter made mention of in the Defence, but likeways by the Defunct's owning, receiving, intertaining, furnishing, and providing for the Pannal, in every thing suitable as his eldest Son, the same doth undoubtedly take away all Pretence that can be founded



founded upon threatenng, so many Years preceeding; and by no Law can the Pannal be burdened to prove who were either Actors, or in Accession to his Father's Murder.

As to the second Qualification bearing, that the Defunct said to several Persons, that the Pannal offered to invade him (denying the same) the Father's Assertion could not infer a Crime against the Pannal, unless the Crime it self were otherways proven by Witnesses, and the same is libel'd to have been said by Sir James before the Act of Indemnity. And Sir James's other Assertion, that he was in Trouble, for fear of Prejudice from his Family, cannot infer a Crime, especially against the Pannal; and far less can it be proven by the Relict and the other Son, who in Sir James's Apprehension were designing Mischief against him, and for their own Vindication, they would certainly depone partially against the Pannal. And the same is repeated against the other Expressions alledged spoken by the Mother; and Witnesses cannot be received to prove what another Witness said.

As to the Pretence, that the Pannal refused to sup with his Father the Night before his Death. It is duplyed, the Pannal was not at all in use to sup, except on *Sundays-Night*. And the Pannal had no Kindness for the Minister, because he and others of his Gang had endeavoured to keep up Discord betwixt him and his Father.

As to the alledged Bleeding of the Corps, the former Defences are opposed; and albeit the Pannal did help to lift his Father's Corps before the Incision, yet no Blood did appear till long thereafter that the Incision was made, and the Pannal did fall to grip that Part of his Father's Head where the Incision was. So that the Blood falling from the Wound, can neither be a Ground nor Presumption for Guilt; and though the Pannal was surpris'd to see his Father's Blood, yet the same did only proceed from natural Duty and Affection, and not from any Apprehension of Guilt. And these Qualifications being all libel'd and debated upon, it is humbly desired for the Pannal, that the Lords of Justiciary would give a separat Interloquitor upon every particular Qualification.

Sir *Patrick Hume* for the Pannal adds, That as to the Point of Treason, It is offered to be proven, that it was when he was drunk, and after Cups, and is so presumed, especially it being, as it is acknowledged by the Libel, in a drunken Company.

2. As to the Act of Indemnity, it is extended to all Crimes except the Archbishop's Murder, and *exceptio firmat, regulat, &c.* And the Act bears not that Clause excepting other Crimes, which uses to be excepted.

3. As to the Qualifications condescended on in my Lord Advocat's Answer, either they are libel'd, and so opposes the former Answer; and if they be not libel'd, they cannot be considered as Qualifications.

4. Whereas it is alledged, that the Pannal was in use to threaten to cut Throats, when in Passion, the Argument is retorted, for though he threatened, nothing followed; and so his Threatnings were but *verba jactantia*.

5. As to the Citation out of *Mattheus*, that Parties may be punished upon Presumptions, it is answered, that the Case there stated is where the Person who committed the Slaughter was apprehended in the Place where it was committed,

That he was all bloody, and with a bloody Sword, answerable to the Wound, and that he became pale when he was apprehended, and that he had made no Answer, but in Terrour fled away; which are such Acts as do evidently make appear the Slaughter, and could admit of no other Construction; but that cannot be pretended in this Case, where all the Presumptions are remote and extrinick, and even in the Case instanced by *Mattheus*, and others of that Nature, they are only to take Effect in order to an Arbitrary, but not a Capital Punishment, which is the Opinion of all Lawers who ever wrote upon the Subject, and particularly *Muscard, de prob. conclus. 123. Numb. 20,* and 31. where the Question is stated, *An plures presumptiones conjunguntur?* in order to infer a capital Punishment: And he concludes in the Negative, as a general Conclusion by all Lawers, but only to infer an arbitrary Punishment.

As to the bleeding of the Body, it is offered to be proven, that the Pannal touched his Father's Body before the Incision, and it did not bleed.

The Lords, Justice-General, and Commissioners of Justiciary, having considered the Libel, pursued by his Majesties Advocat against *Philip Standsfield* the Pannal: And the first Part thereof, anent the Treason libel'd, they find the same as it is libel'd, relevant to infer the Pain of Treason.

And as to the Pannal's cursing of his Father, mentioned in the Indytement; They find these Expressions, or either of them, *viz.* The Devil take him, the Devil rive him, God damn him, relevant to infer the Pain of Death: And repells the Defence founded upon the Act of Indemnity, and finds the Pannal is not under, or below the Quality therein specified.

As to the Pannal's murdering of his Father mentioned in the Indytement, they found the Libel as it is libel'd and qualified relevant to infer the Pain of Death, and remits the same with the Qualifications libel'd to the Knowledge of the Assise, and allows Witnesses to be led for the Pannal's proving his Father to have been melancholy the Day before the committing of the Murder, and remits to the Assise to consider the Import thereof, if it be proven, and repells the whole other Defences proponed for the Pannal.

The Lords continues the Dyet against the said *Philip Standsfield*, till To-morrow at Two of the Clock in the Afternoon; and ordains him to be carried back to Prison, and the Witnesses and Assises to attend, ilk Person under the Pain of 200 Merks.

*Edinburgh, the Seventh of February, 1687.*

*Philip Standsfield*, Prisoner, being this Day entered on Pannal, dilated, indyted and accused for the treasonable drinking of the King's Confusion, cursing his Father, and for the cruel and unnatural murdering of him in Manner mentioned in this Ditty.

The Interloquitor above-written was this Day read again in Presence of the Pannal, and the Assises after-named, *viz.*

*William Bailly of Lamington,*  
*James Glen, Stationer.*  
*Alexander Reid, Elder, Goldsmith.*  
*Charles Charters, Merchand,*  
*David Hepburn of Humby.*

*Edward*



Edward Gillespy, Merchand.  
 Robert Sandilands, Merchand.  
 Samuel Moncrief, Merchand.  
 Thomas Lendall, Merchand.  
 James Cleiland, Merchand.  
 Hepburn of Beinstoun.  
 William Paton, Merchand.  
 George Braithwood, Stabler.  
 John Marshal, Merchand.  
 Alexander Edgar, Chirurgion in Haddingtoun.

The Affize lawfully sworn, no Objection of the Law in the contrary.

His Majesty's Advocat for Probation adduced the Witnesses deponing, viz.

*John Robertson*, late Servitor to Sir *James Standsfield* of *New-Milns*, aged twenty-four Years, unmarried, purged of Malice, Prejudice, Hatred, Ill-will, and partial Counsel, and solemnly sworn, Depones, A little time before Harvest last, the Pannal being in the Kitchin of *New-Milns*, in the deceast Sir *James Standsfield's* House, where the Deponent was likewise present, he saw the Pannal, *Philip Standsfield*, take a Cup of Ale, and heard him say, there is the Pope's Confusion, the Antichrist's, the Chancelour's, and the King's Confusion, and put the Cup to his Head, and drank a little, and then gave it to *Samuel Spofforth*, and commanded him to drink it on his Knees; depones, that there were likewise besides *Samuel Spofforth*, *Jeremy Smith*, *Agnes Bruce*, and *Elspeth Jameson*; and depones, that *Philip Standsfield*, the Pannal, was not drunk at the time; depones, that at the naming of the several Confusions above-mentioned, he still drank a little of the Cup; and this is the Truth as he shall answer to God: The Deponent further depones, that he said to the Pannal, after the drinking of the said Confusions, that it was Treason, and he answered, ye Dog, what are you concerned; ye do not understand to whom ye speak.

*Sic subscribitur*, JOHN ROBERTSON.

*Agnes Bruce*, Servant to the deceased Sir *James Standsfield*, aged twenty-four Years, unmarried, purged and sworn, depones, That a little before Harvest last, she being in the Kitchin of *New-Milns* with *Philip Standsfield*, the Pannal, she saw him take a Cup of Ale, and drank the Confusion of the Pope and the King, and heard him bid *Samuel Spofforth* sit down on his Knees and drink the same, which accordingly he did; after this the Deponent went up Stairs, and knows no more what past at that Time, but heard they drank more Confusions. Depones, that about a Week after it being talked in the House, that he had drank the Confusions aforesaid, he said to the Deponent, God damn him, if he knew who divulged it, he would be their Death: And this is the Truth, as she shall answer to God. Depones she cannot write.

*Sic subscribitur*, LINLITHGOW.

*Samuel Spofforth*, late Servitor to Sir *James Standsfield* of *New-Milns*, aged 19 Years, unmarried, purged and sworn, depones, That a little before Harvest last, the Deponent was in the Kitchin of *New-Milns* with *Philip Standsfield*, the Pannal, where he heard him drink a Confusion to the Pope, Antichrist, and the King, and to the Devil; and the Pannal prest the Deponent to drink the same Confusions upon his Knees. Depones, *John Robertson*, *Agnes Bruce*, *Jeremy Smith*, and *Elspeth Jameson* were all likewise present at that time, and that these Confusions were drunk several-

ly: And this is the Truth, as he shall answer to God.  
*Sic subscribitur*, SAMUEL SPOFFORTH.

*John Robertson*, above-design'd, being re-examin'd, purged and sworn, depones, That the Deponent being at *Morum-Castle* after Harvest last, in order to give a Call to a Minister, the Deponent having met with *Philip Standsfield*, the Pannal, he said to him, Ye are a wise Lad; if ye have subscribed that Bond, the Devil take him, and particularly the Devil take his Father, and named his Father. Deponed, that at another time, in the midst of Harvest last, the Deponent and Sir *James Standsfield*, the Pannal's Father, being going to *Smeitoun* with a Minister, the Pannal asked him, where he and his Father was going? and the Deponent answered, that he was going to *Smeitoun* with his Father; and the Pannal, *Philip Standsfield*, said, Devil, let never one of them come back again, Horse nor Man. Depones further, That several times, and frequently, when the Deponent had been seeking the Pannal to come to Dinner with his Father, the Pannal's ordinar Answer was, the Devil dame him, and you both, and Devil rive him, for I will not go to him, and if he had a Sixpence a Day, he would not go near him, for his Father girned upon him like a Sheeps-head in a Tongs, and that he has heard him say sometimes, God damn his Father: And this is the Truth, as he shall answer to God.

*Sic subscribitur*, JOHN ROBERTSON.

*William Scott*, Clothier in *New-Milns*, aged thirty Years, married, purged and sworn, depones, That between *Michaelmas* and *Martinmas* last, the Pannal, *Philip Standsfield*, having come to the Deponent's Shop, and asked for some Tobacco, the Deponent said to *Philip*, his Father would not let him want for Money to buy Tobacco; and the Pannal, *Philip*, said, the Devil take him and his Father both, for there never came an honest Man out of *Yorkshire*. Depones, his Wife was present with him, when that Discourse past. Depones he cannot write. And this is the Truth, as he shall answer to God.

*Sic subscribitur*, LINLITHGOW.

*Agnes Bruce*, above-design'd, being re-examin'd, purged and sworn, depones, That she did hear the Pannal usually vow and swear he would kill any Person that offended him; and that the Pannal did haunt much with *Janet Johnstoun*, *George Thomson* and his Wife, and that he went frequently out of his Father's House after Supper to these Persons; and further depones, that she has heard the Pannal frequently curse his Father, and bid the Devil damn him, and rive him, and swell him; and that she has frequently heard him express his Hatred and Abhorrence of his Father, and that he could not abide to see his Father. Further depones, that the *Monday* at Night before Sir *James* came to *Edinburgh*, the last time he was in it, being about a Fourthnight before his Death, the Deponent was ordered to call the Pannal to his Mother, after he was gone to his Chamber, and that accordingly she did it; and when the Pannal came down, the Deponent left him with his Mother alone; and when she was without the Door, she heard him say to his Mother several times, *God damn him, if he did it not*; and desired his Mother to take a good Heart, for as long as he had, she should not want. Depones, she knows not what he meant by these Words, but knows there had been a little Quarrel betwixt Sir *James* and his



his Lady that same Night. Further depones, that on *Tuesday* thereafter, when Sir *James Standsfield* was going into *Edinburgh*, she did hear *Philip Standsfield*, the Pannal, say in his Mother's Chamber (his Father not being present) God let him never return, God let him never see his Father's Face again, the Devil go with him, the Devil rive him, and take him away; and that there was no body in the Room at the Time, but the Pannal and his Mother, and the Deponent was at the Door. Further depones, that about a Month before, Sir *James* having reproved the Pannal, upon the Occasion of an Accompt given in by *William Anderson*, Brewer, she did hear the Pannal say, in his Mother's Chamber, (Sir *James* not being present) God damn him, if he should not do ten times worse, and that he could not endure to see his Father's Face, and that he had hated his Father these six or seven Years. Further depones, that about a Fourth-night or twenty Days before Sir *James* his Death, it being said that *Philip* was to go to Town with his Father, she heard him say, he would be hang'd e'er he went with him; let him go, the Devil go with him, and let him never return; and this likewise in his Mother's Chamber, and in her Presence. Depones, the Pannal did ordinarily shift Occasions of being in his Father's Company. Depones, that the *Friday* before Sir *James* his Death, she knows the Pannal and *Janet Johnstoun* were a considerable Time together in the Pannal's Chamber, where the Deponent heard *Janet Johnstoun's* Tongue, but doth not know if *George Thomson* and his Wife were with them. Depones, that on the *Wednesday* before Sir *James* his Death, *Philip* having cursed some of the Servants, the Deponent said to him, God be thanked, he was not their Master; and that he answered her with an Oath, she knew not how soon he might be their Master: And further depones, that she thought Sir *James* not so merry as his ordinar the Night before his Death, but that he conveyed Mr. *Bell* to his Chamber, and thereafter came down to his own; and the Deponent having desired to speak with Sir *James*, his Servant, *John Robertson*, told her she could not, because his Chamber-Door was shut, and he was gone to Bed; and that she did then see Light in his Room, and when she was going away, found the Hall-Door, which was without his Chamber-Door, shut, and that the Hall-Door was not usually closed in the Night time, except Sir *James* had done it himself, and which he did but once in two or three Nights. Depones, that on the *Saturday's* Night when Sir *James* came Home, he did go to his Ladies Chamber, where he stayed not a Quarter of an Hour, and that his Lady fell a quarreling of him for going to another House before he came there, and that the Deponent came out of the Chamber, and knows not what more past there. Depones, the next Morning, when Sir *James* was mist, the Deponent went into his Room to put on a Fire, and found the Bed better spread up than it used to be, and the Curtains more drawn about it, and the Candle, which usually was at the Bed-head, she found it standing on a Chair at the Bed-foot. And further depones, that when the Defunct's Body was bringing up to the House, the Deponent would have had him brought to his own Chamber; but *Philip* swore that the Body should not enter there, for he had not died like a Man, but like

a Beast. Depones, that the Body was then put in the *Walk-Miln* (but knows not if *Philip* caused do it) and that the Body from that was brought to a Cellar within the Clofs, where there was very little Light. Depones, that she did not see any Water come out of his Mouth, and that when the Deponent lifted up the Linnen-sheet, which was over him in the Cellar, some of them caused let it down again, for it was not fit to let the Body be seen. Depones, that *Janet Johnstoun* was present with the Body in the Cellar with the rest, and though it was known that neither Sir *James* nor his Lady would look upon her for a good Time before, nor was she openly seen about the House, yet that Morning she went to the Ladies Chamber, as soon as the Body was taken out, and the Deponent was present and saw her come in, and well enough taken with. Depones, she heard *Philip*, after his Father's Death, Greet and Cry, but saw no Tears. Depones, immediately after his Father's Body was found, he would have forced his Father's Chamber-Door, it being shut; but the Key being gotten, it was opened, and he entred in, and first took his Father's Gold and Money out of his Pocket, and then got the Keys, and searched the Cabinet; and that within an Hour after his Father was brought from the Water, he got the Buckles of his Father's Shoes, and put them in his. Depones, that on the *Monday* after Sir *James's* Death, the Lady and *Janet Johnstoun* having quarrelled together about some Remains of the Holland of the Woonding-sheet, *Philip* came down out of his own Chamber, and the Deponent heard him say to *Janet Johnstoun*, Hold your Peace, when I command you, for he would reward her well for the Kindness she had done to him at that time. Depones, that when the Order came from *Edinburgh* to raise the Corps again, the Deponent did meet *George Thomson* the Taylor, and perceived him shaking and trembling, and asked him what troubled him? And that his Answer, was, he heard the blackest News that ever he heard in his Life, for Sir *James's* Body was to be raised again, and said he would sew no more in the House of *New-Milns* for the World, and carried the Mournings to his own House. Depones, she knows nothing of false Keys made use of about the House, only she heard the Lady say, that there were. Depones, *Philip* had no lock-fast Place in the House, except a little Coffer, and that it once being opened, the Deponent did see several Keys within it, and that he offered once the Key of one of the Rooms to the Deponent, but the Deponent took it not, because she had the ordinar Key of the Room. Depones, that *Philip* was in use to ly alone, but that after his Father's Death, he would not ly in a Room alone at *New-Milns*, and that he declared to the Deponent, that he was afraid to be alone in a Room, either Night or Day, and that he slept not the Night after his Father died, and that he should not go into the Room where his Father lay, if once he had the Cabinet out of it. Depones, that a short time before Sir *James* died, the Lady having fallen in a Swond, and the Deponent having told *Philip* of it, *Philip* came to his Mother's Chamber, and that his Mother told him then, that he was like in a short Time to lose his Mother; and that he answered, in the Deponent's hearing, that his Father should be dead first: And depones, that some few Days thereafter, in his Mother's Chamber again, and in the Deponent's hear-



hearing, he renewed the same Words with an Oath : Further depones, that two Nights after Sir James's Death, the Lady told to the Deponent, that something then came in her Mind which she had heard, to wit, that *Philip*, before he went to *London*, when he was in his Pomp, having heard that Sir James was to give his Estate to his second Son, in the House of *James Smith* in the *Nungate*, had vowed to kill his Brother, and the like, or little less to his Father ; and that thereafter when they were coming into *Edinburgh*, the Lady renewed again to the Deponent the same Words, and added, what if they should put her Bairn in Prison? And this is the Truth, as she shall answer to God. Depones she cannot write,

*Sic subscribitur,*

LINLITHGOW.

*John Shand*, sometimes Servitor to Sir James *Standfield*, aged 43 Years, unmarried, purged, and sworn, depones, That a little after *Philip Standfield*, the Pannal's Marriage, the Pannal and Deponent being in *James Smith's* House, in *Nungate of Haddington*, the Pannal did expostulat with the Deponent, that his Father dealt too narrowly with him, he being then married; and the Deponent told the Pannal that his Father was in Straits, and exhorted him to be dutiful to his Father; thereafter the Pannal said, if I knew my Father would give his Estate to my Brother *John*, I would cut his Throat; and the Landlord of the House being by, and present, and surprized, cryed out, *God preserve me, what means the Man!* the Landlord understanding by the Word *His*, his Father: And though the Deponent took the Expression in the same Sense as *James Smith* did, yet the Deponent endeavoured to excuse it, by saying it was not his Father that he meant, but his Brother, or his Man *Donald*; and the Pannal being present, said nothing for clearing of the Expression; whereupon the Deponent went away, and left the Pannal, and could not endure to stay longer in his Company: Depones, the Night before Sir James's Death, being the *Friday*, the Deponent was with Sir James in his Chamber, in *Edinburgh*, where the Defunct was reading a Sermon-Book, and appeared to be sad, and said to the Deponent, I have no Comfort in my Wife and Family. And this is the Truth, as he shall answer to God.

*Sic subscribitur,*

JOHN SHAND.

*Mr. Roderick Mckenzie*, Advocate, being solemnly sworn and purged, depones, That about eight Dayes before Sir James *Standfield's* Death, the Deponent and he having met in the Parliament-Clofs, the Defunct invited him to take his Morning-Draught. And when they were gone to *Mr. Sheil's* House, the Deponent perceiving him to be in some Concern, the Deponent asked him, what troubled him? The Defunct answered, that he had no Satisfaction at Home: Whereupon the Deponent said, that People reported that he was partly the Occasion of it, having disherished his Son the Pannal, and acquainted him therewith: And the Defunct answered, ye do not know my Son, for he is the greatest Debauch in the Earth: And that which troubles me most is, that he twice attempted my own Person: And this is the Truth, as he shall answer to God.

*Sic subscribitur,*

ROD. MCKENZIE.

*Archibald Dunbar*, Merchand in *Edinburgh*, aged 26 Years, married, purged, and sworn, depones,

That the Deponent having met with the deceast Sir James *Standfield* at *Culter*; but he does not remember positively the Time, but it was either in the Year of this King's Parliament, or the Harvest before; and Sir James and the Deponent, and some other Company being in an Roun, Sir James was discoursing of his Son's Undutyfulness, and within a little while having heard a Shot at the Utter-door of the House, and the Deponent and others offering to go out to see what the Matter was, Sir James was unwilling to let them, lest they should come to hazard. And thereafter having heard another Shot, they did offer to go down again, and Sir James still dissuaded them, and said, that it might be his distracted Son *Philip*. And they having enquired if he was in the Country, and how he came to fear any harm from him, Sir James said, he believed he was in the Country, and that in his going South, he had followed him to *Lothian-burn*, and shot two Pistols, first one, and then another at him; and if it had not been that Sir James was well horsed, and his Son *Philip* upon a Work-Horse, he had killed him. And *Samuel Menzies* having said, he was sure there could not be Ball in them; Sir James said, he had gotten too many Proofs of his Son's Unnaturalty to him, that he had no will to be in his Reverence. Depones, that Sir James all that Night went not to Bed, and the Deponent sat up with him, and conveyed him into *Edinburgh*. And this is the Truth, as he shall answer to God.

*Sic subscribitur,*

ARCHIBALD DUNBAR.

*Mr. William Clerk*, Advocat, purged, and sworn, depones, That having frequent Occasions to be with Sir James *Standfield*, and he having desired him to draw a Disposition of his Estate to his Son *John*, Sir James did complain of his Son *Philip's* Undutyfulness to him: And the Deponent having dissuaded him to do it, since his Son *Philip* might be reclaimed; Sir James said, no, for he had no Expectation of it; for when he was at the *Lead-bills*, there was some Pistol shot at him, which he was sure came from his Son *Philip*. And this is the Truth, as he shall answer to God.

*Sic subscribitur,*

WILLIAM CLERK.

*Mr. John Bell*, Minister of the Gospel, aged forty Years, *Solutus*, purged and sworn, produces a written Declaration signed under his Hand, upon what he knows relating to the Murder; and depones the same is Truth, as he shall answer to God.

*Sic subscribitur,*

JOHN BELL.

*Follows the Tenor of the said Declaration.*

The Declaration of *Mr. John Bell*, in answer to several Interrogatories proposed by his Majesties Advocat before the Lords of the Committee of the Council.

*Imprimis*, I declare, that at Sir James *Standfield's* earnest Desire, I went from this Town with him to *New-Milns*; and that by the Way I discerned nothing but sound Judgment, and Reason in Sir James, for his Discourse was both rational and pertinent, and that both at Supper that Night, and after Supper, his Discourse was rational, and his Carriage most civil, and was pleased to accompany me to my Chamber, and sat with me there (as I supposed) until it was about ten o'Clock at Night, discoursing pertinently, and to good Purpose.

2. I declare, that having slept but little, I was awakened in Fear by a Cry (as I supposed) and



being waking, I heard for a Time a great Dinn, and confused Noise of several Voices, and Persons sometimes walking, which affrighted me (supposing them to be evil wicked Spirits) and I apprehended the Voices to be near the Chamber-door sometimes, or in the Transe, or Stairs, and sometimes below, which put me to arise in the Night, and bolt the Chamber-door further, and to recommend myself by Prayer, for Protection and Preservation to the Majestie of God: And having gone again to Bed, I heard these Voices continue, but more laigh, till within a little Time they came about to the Chamber-Window; and then I heard the Voice as high as before, which increased my Fear, and made me rise again to look over the Window, to see whether they were Men or Women; but the Window would not come up for me, which Window looked to the Garden, and Water, whither the Voices went on till I heard them no more, only towards the Morning I heard walking on the Stairs, and in the Transe above that Chamber where I was lying.

3. I declare, that I told the Women who put on my Fire in my Chamber that *Sabbath-Morning*, that I had rested little that Night, through Dinn I heard; and that I was sure there were evil Spirits about that House that Night.

4. I declare, that about an Hour after Day, *Philip* came to my Chamber, and asked if Sir *James* came to that Chamber this Morning, and told me that he had been seeking him upon the Bank of the Water: Unto which I replied, I have not seen your Father; but what mean ye by the Banks of the Water? Whereupon *Philip*, without answering, went down Stairs immediately, and within a little Time I followed to see what he meant; and having gone without the Gate, and up the Cawsey that leads to the Manufactory, one came running, and said, they had found Sir *James* lying in the Water: Whereupon I was stricken with such Astonishment, Fear, and Trembling, that I could go no further, but returned trembling to the Chamber; and having sitten down on the Bed-side, I said to an honest Man, who accompanied me, this is the saddest Day that ever I saw: My Affrightment in the Night was terrifying to me, but this is more grievous. And having gone to an honest Man's House, where I took Horse that Morning, I said, if the Majestie of God did ever permit the Devil and his Instruments to do a honest Man wrong, then Sir *James Standsfield* has received Wrong, this last Night, which the Lord will discover in his good Time.

5. I declare, that after my return from *Morum*, that *Sabbath-Evening*, *Philip* told me that he had advertised several Friends at *Edinburgh*, and that he was expecting the Commissary amongst others that Night: Whereupon I commended what he had done, in sending for such intelligent Persons, and that for two Reasons. (1.) because it was necessary his Father's Body should be sighted; (2.) because they could advise him about his Burial. *Philip* answered, that he was seen by these that took him out of the Water. But I replied, that was not enough, for the Murder committed was either a violent Murder, or a distracted Murder; and having described what a distracted Murder was (upon *Philip's* relating some Distemper his Father had been in some Years formerly) I said, that I conceived no Person could come to such a high Act of Frenzie, to do such a Thing, but it would be known on him many Hours, yea

some Days before; but I could testifie, that Sir *James* was in his right Reason at ten o'Clock; wherefore I inclin'd to think it was a violent Murder committed by wicked Spirits; and so advised that the Corps might be sighted by the nearest Physicians and Friends, and the honest Men living in that Town: Nevertheless, they went and buried Sir *James* that Night, without either acquainting me, or several honest Persons who lived in the Place. Mr. *John Bell* depones his above written Declaration in Truth, as he shall answer to God.

*Sic subscribitur,* { LINLITHGOW,  
JOHN BELL.

Sir *Robert Sinclair* of *Steinstoun*, purged and sworn, depones, Sir *James Standsfield* being at the Deponent's House, told the Deponent, that he regrated that his Son *Philip* had mispent his Time and Money; and when he came home from *London*, he was ashamed to tell how he came on him in his Chamber at *London*; and this is the Truth, as he shall answer to God.

*Sic subscribitur,* RO. SINCLAR.

*James Murehead*, Chirurgion, aged 32 Years, married, purged and sworn, depones, That after the Deponent and *James Craufurd*, Chirurgion, had opened the Corps about the Neck, and sewed it up again, and removed the foul Linnen, and put on again the clean Linnens, in doing whereof they were obliged to shake the Body to and fro, and move the Head back and forward, the Deponent desired that the Friends might lift the Body, and put it in the Coffin, and that the Pannal, having come and lift up the Head, he did let it fall upon the Table suddenly, and that it made a considerable Noise at falling, and that the Pannal retired back quickly, rubbing his Hands on his Breast, and crying, *O God! O God!* and some such other Words; and that the Deponent being astonished thereat, looked to the Corps, and as the Pannal did take away his Hand from it, did see it darting out Blood through the Linnen, from the left Side of the Neck which the Pannal touched, and that the Deponent was amazed at the Sight, partly through the darting out of the Blood, and partly through the Apprehension he had of the Murder. Depones, he saw no body touch the left Side of the Defunct's Head the Time it bled, but the Pannal. Depones, that as soon as the Deponent recovered out of his Amazement, he cryed to the Boy, to give the Pannal some Triacle-Water, which he did; but depones he did not see *Philip* the Pannal return again to the Body of his Father. Depones, when the Deponent and the other Chirurgion were putting on the clean Linnens, and stirring and moving the Head and Craig, he saw no Blood at all. And this is the Truth, as he shall answer to God.

*Sic subscribitur,* JAMES MUREHEAD.

*James Murehead*, and *James Craufurd*, Chirurgions, give in their Report and Declaration in Write, anent the Murder of Unquhile Sir *James Standsfield*, which they renewed upon Oath, in Presence of the Justices and Assisers, and whereof the Tenor follows:

*Edinburgh*, Decem- } November 30, 1687. We  
ber 1, 1687. } viewed the Corps in *Morum*  
Church.

We, under Subscribers, *James Craufurd* and *James Murehead*, Chirurgions in *Edinburgh*, having Order from Sir *John Dalrymple*, his Majesties Advocate, to go to *Morum*, and there to take up the Corps of



of Sir *James Standfield*, and to fight and view the same exactly, and, if need were, to open up the Body, and to consider whether there appeared any Evidence of Wounds, Bruises, or Strangling upon the Corps, besides what might have happened by his falling or drowning in the Water, &c. In Obedience thereto, we caused take up the said Corps, and in Presence of *Philip Standfield*, *Mr. Andrew Melvil*, Minister of *Morum*, *James Hamilton*, Writer to the Signet, *James Row* and *Alexander Campbel*, Merchants in *Edinburgh*, *Umphray Spurway*, *James Dick*, *James Mitchel*, and *John Robertson*, Indwellers in *New-Milns*, and some others, having with all possible Exactness viewed the Corps, we observed the Face a little swelled, and inclining to a dark reddish Colour, some Fulness of some capillarie Veins in the Pallat of the Mouth towards the Uvula, as also a large and conspicuous Swelling, about three Inches broad, of a dark red or blae Colour, from one Side of the Larinx round backwards to the other Side thereof; we observed the Jugular Veins on both Sides the Neck very large and distended, and full of Blood; there was a large Swelling under and betwixt the Chin and the Cartilago Scutiformis; there was also a little Scratch below the left Mandibula, which had rankled the Cuticula, and made some little Impression on the Cutis: Having made Incision from the Chin down about the Larinx, and cross upon the Swelling of the Neck, we found a greater Laxness and Distance (as we think) than ordinary betwixt the Cartilago Scutiformis and Os Hyoides; we found the Tumour on the Neck, containing bruised, like dark or blackish Blood; the Jugulars, when cut, bled considerably, especially that on the left Side.

Having opened his Breast, we found the Lungs distended to the filling up their Capacities, but free of Water: his Stomach, Liver, &c. were all in good Condition; we found no Water within the Corps; the Corps had no Smell at all; the Breast, Belly, Privy-Parts, &c. were all well coloured, there was no Swelling in his Belly, nor any thing by ordinary to be seen on his Head. This we attest, and subscribe with our Hands.

*Sic subscribitur*, { JAMES CRAUFURD,  
JAMES MUREHEAD.

*Edinburgh*, December 6, 1687.

In Presence of the Lord Archbishop of *Glasgow*, Lord *Tarbat*, President of Session, *Advocat*, and *Castlehill*:

*James Murehead*, and *James Craufurd*, Chirurgions, being solemnly sworn in the Presence of the Committe of Council, depone, That the written Report anent the Body of the Deceist Sir *James Standfield* is true, according to their Skill: And this is the Truth, as they shall answer to God.

*Sic subscribitur*, { JAMES CRAUFURD,  
JAMES MUREHEAD,  
JOHN GLASCOW.  
J. P. D. C.

*Edinburgh*, February 7, 1687.

In Presence of the Justices and Assifers.

*James Murehead*, and *James Craufurd*, Chirurgions, being solemnly sworn, depone upon the Truth and Verity of the above-written Declaration in all Points,

*Sic subscribitur*, { JAMES CRAUFURD,  
JAMES MUREHEAD,  
Linlithgow.

*Follows the Chirurgions of Edinburgh their Opinion anent the said Murder.*

WE, under Subscribers, Chirurgions in *Edinburgh*, having fully considered the Report made by *James Craufurd*, and *James Murehead*, concerning the Condition of the Corps of Sir *James Standfield*, and though it be not usual to declare more than Matter of Fact, yet in Obedience to your Lordships Commands, where ye desire to be informed, if these Symptoms, found upon the Body, do import Drowning or Strangling; we humbly offer our Opinion, so far as our Art or Experience will allow. And whereas the Report informs us, that there was found a Swelling, and preternatural Redness in the Face, a large conspicuous Tumour, about three Inches broad, of a dark red, or black Colour, from the one Side of the Larinx round backwards to the other Side thereof, a large Swelling betwixt the Chin and the Cartilago Scutiformis, the Jugular Veines, on both Sides very large and distended; and when Incision was made downwards, betwixt the Os Hyoid and Larinx was observed a Laxness, and Distance between the Os Hyoid and the Cartilago Scutiformis, Incision was made cross alongst the Tumour, it was found full of bruised Blood; the Jugulars likeways, when opened, yielding a considerable Quantity of Blood, especially on the left Side, no Smell or Corruption appearing in any Part of the Body. It is very probable these Parts have suffered some external Violence, which hath made them appear so far different from their natural Figure and Colour, and could not be caused by Drowning simply. As to the other Part of the Report, the Breast and Belly being opened, the Lungs found distended, the Bronchi full of Air, without any Water, nor any Water found in the Stomach or Intestines, a Body, when drowned, being generally found to have much Water in it, with other Circumstances of the Report considered, gives just Ground to think he was not drowned. This we subscribe at *Edinburgh*, the 3d Day of *February*, 1687. *Sic subscribitur*,

JOHN BALLIE, Deacon, WIL. BORTHWICK,  
GEORGE STIRLING, THOMAS EDGAR,  
JAMES CRAUFURD, JAMES MUREHEAD.

*Follows the Report of the College of Physicians, Edinburgh*, February 6, 1687.

THE College of Physicians, being assembled at the Desire of his Majesties *Advocat*, to consider a Report made by some Chirurgions, concerning the Body of the late Sir *James Standfield*, and to give their Opinion, whether by the said Report, there is any just Ground to believe, that the said Sir *James Standfield* was strangled or drowned? And they have accordingly considered the said Report. They are of Opinion, supposing the Verity of the said Report or Declaration, that there is sufficient Ground to believe, that the said Sir *James Standfield* was strangled, and not drowned. In Testimony whereof their Presents are subscribed by Sir *Andrew Balfowr*, President of the said College.

*Sic subscribitur*, A. BALFOWR, P. C. R. M.

*Umphray Spurway*, Clothier at *New-Milns*, aged 50 Years, *solutus*, purged and sworn; depone upon the Truth and Verity of his own Declaration given in by him, which is all written, and subscribed with his own Hand, and consists of two Leaves of Paper, written on all Sides, which is Truth, as he shall answer to God.

*Sic subscribitur*, UMPHRAY SPURWAY.  
*Follows*