







ESSAYS

Political and Moral

By J. G. [Name]

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# ESSAYS

## Ecclesiastical & Civil.

CONTAINING  
Learned and Judicious Discourses on several Subjects, in twenty four Heads, *viz.*

Ecclesiastical Matters.	High Treason.
Ecclesiastical Cognizance.	Petty Treason.
The Worship of God.	Felonies.
The Worship of God in his Church	Contempts against the Crown.
The Duty of the Priest in God's	Offences against the Commonwealth in general.
Worship.	Offences against the particular
The Duty of the People in God's	Duties of Officers.
Worship.	Offences against Commerce and
The Government of the Church.	Trade.
Supremacy in Ecclesiastical	Offences against Matters of Cha-
Matters.	rity.
Ecclesiastical Offences tending to	Offences concerning Provision
Foreign Usurpation.	and Food.
Ecclesiastical Offences tending to	Offences which are private Injuries
Domestick Sedition.	Offences <i>contra Bonos Mores.</i>
External Honour and Reverence	Offences touching Matters of
of the Church.	Pleasure.
The Goods of the Church.	

To which is subjoined a Treatise of the Work of  
the Sessions of the Peace.

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*Edm. Warburton.*  
By the late Learned  
Sir *BULSTRODE WHITLOCKE*, Knt.  
Lord Keeper of the Great Seal, and Ambassa-  
dor from *Oliver Cromwell* and the Common-  
wealth of *England* to *Christina* Queen of *Sweden*.

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LONDON: Printed for *William Hawes*, at the Bible and Rose in  
*Ludgate-street*, 1706.



# ESSAYS

## Eccelesiastical & Civil

CONTAINING  
Laws and Judicium Discourses on several Subjects  
as they concern the People, &c.

Of the Nature of the Church	Of the Nature of the Church
Of the Duty of the People in Gods	Of the Duty of the People in Gods
Of the Government of the Church	Of the Government of the Church
Of the Agreement in Ecclesiastical	Of the Agreement in Ecclesiastical
Of Ecclesiastical Officers relating to	Of Ecclesiastical Officers relating to
Foreign Jurisdiction	Foreign Jurisdiction
Ecclesiastical Officers relating to	Ecclesiastical Officers relating to
Domestic Subjects	Domestic Subjects
Several Hobors and Reverences	Several Hobors and Reverences
of the Church	of the Church
The Duty of the People	The Duty of the People

To which is prefixed a Treatise of the Work of  
the Ministry of the Word

By the late Learned  
SIR HASTING WATSON BART  
Lord Keeper of the Great Seal, and Ambassador  
at Rome, Venice, Genoa, and the Company  
of the East India Company

LONDON: Printed for W. B. at the Sign of the  
Golden Ball in St. Dunstons Church Lane 1700.

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THE  
BOOKSELLER  
TO THE  
READER.

THE ensuing Sheets,  
were the *Genuine Off-  
spring* of the great Sir *Bul-  
strode Whitlocke*, and com-  
municated to me by his Son,  
*Carleton Whitlocke* of the  
*Inner Temple*, Esq; who had  
so great a valuation for  
them, that he wistit to live  
only so long as to see them  
Published. But Providence  
thought

*The Bookseller to the Reader.*

thought fit otherwise to dispose of him, and he died before the whole was Printed; from whom I expected a Preface concerning the *Author*, and this present *Work*; which contains profound *Arguments* upon many difficult and abstruse *Heads*; and tho' they are not drest up in the gay Attire of the *Modern Stile*, yet I judge it more proper to exhibit them in their *Native Simplicity*, than permit them to be polited, and by that means render them liable to be suspected as *Spurious*. I doubt not but the *Candid* and *Judicious*,  
will



*The Bookseller to the Reader.*

will find their Account in  
the perusal of them; to  
whose Censure I freely sub-  
mit them.

*W. H.*

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**First**

The Reader will find their Account in  
the parts of them; to  
whole Content I freely sub-  
mit them

W. H.

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First

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gate-street.

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First H E A D,  
*Of Ecclesiastical Matters.*

**B**Y *Ecclesiastical Matters* are usually understood at this day such Matters as do more particularly concern the *Church*, and Persons related to the *Church*, and Things pertaining to the *Church*, as the word *Ecclesiastick* doth signify. The distinction between *Ecclesiastick* and *Lay Matters* some have supposed, and not without ground, that This, and the like Distinctions of *Spiritual* and *Temporal*, *Ecclesiastical* and *Civil*, *Clergy* and *Laity*, and the like, are all Children of the same Parents, and have their Original from the Pride and Cunning of the Priests and Fryars of the See of *Rome*: That these being well instructed, and their own Interest concern'd, to advance the *Hierarchy* and Kingdom of their Sovereign Lord the Pope, and consequently the Worship and Wealth of Themselves who were his holy Subjects.

They preached and informed the unlearned People of these Distinctions, That they who did Service in the Church, *Church-men* as they styl'd themselves, even to the *Sexton* who digg'd the Grave, in the Church or

B

Church-

Church-yard, might be taken as a Generation separate and above other Men, and more *Holy*.

*Prov. 3. 12.* The wise Man mentions such as these, *Generatio qua sibi munda videtur, tamen non est tota a sordibus suis. Generatio cujus excelsi sunt oculi, & palpabra ejus in alta surrecte.*

*Isa. 65. 5.* The Prophet seems likewise to allude hereunto when he describes a sort of People, which some suppose to intend some Ecclesiastical Persons, who say to others, *Recede a me, non appropinquas mihi, quia immundus est; Thou art a Lay-man, stand further off from me who am an Ecclesiastick Person, and therefore more Holy than Thou.*

*Lay Pens.* By such means, and Distinctions of their own making, They set up Themselves in an Exemption from, and in a rank above the poor *Lay Pens*, whom They would have Subjects to the Subjects of his Holyness. And from hence, they suggest this distinction of Ecclesiastical and Lay, and the like, does arise; and to this day, the meaning remains, That by Ecclesiastical Matters are intended Persons and Things which do relate unto the Church.

Second

## Second H E A D.

## Of Ecclesiastical Cognizance.

IT may be observed, that if by *Ecclesiastical Matters* those things and Persons are intended, which have relation to the *Church* and the Service thereof, How then is it that the Court of the Sessions of the Peace, consisting of *Lay Judges*, and the Grand Inquest being of Lay Men, should have cognizance of those Ecclesiastical Matters, the Cognizance whereof doth more properly belong to the Ecclesiastical Judges?

To this is answer'd, That all Ecclesiastical Jurisdiction, (I speak not of Ordination) deriv'd from Tyrannical Princes, as that of Bishops, whose Godliness in the Primitive Times, was so much Reverenc'd, that the first Christian Emperors to grace them, gave unto them Jurisdiction in cases of *Tithes*, because they were paid to Men of the Church; and in cases of Matrimony, because it was commonly solemniz'd in the Church; and in cases of *Testaments*, because they were commonly made in *Extremis* when Church-men were present, giving Spiritual Comfort to the Testator.

Sir Jo. Davys  
Rep. 97. B.  
98.

And the proceedings in this case, is according to the Imperial Law; for they began before any Canon of the Church was made: And as in the Empire this Authority

rity and Cognizance was deriv'd from the Emperor, so it is in *England* from our King and State, by whose Royal Assent in Parliament, and the usage and admittance among us, the Proceedings of our Ecclesiastical Courts are Authoris'd, and the cognizance of Ecclesiastical Matters, hath been given to Temporal Courts, and to Lay-Men as well as to Ecclesiastical Persons, Exemptions granted, and the Prince's Authority in these Cases acknowledged; as appears by the practice in this Nation, both before and since the time of *William* the First.

*Sir John Davys, Rep. fol. 88, 89.*  
*Pope Eutherius.*  
 Pope *Elutherius* writing to *Lucius*, the first *British* Christian King calls him *God's Vicar* within his Kingdom; thereby acknowledging his Authority in Matters Ecclesiastical: But afterwards the Pope himself was pleased to assume that Title.

*K. Kenulph.*  
*Coke's Eccles. Cas. 5. Rep. fol. 9. B.*  
*Stamford l. 3. c. 38. f. 111.*  
*H. 7. f. 23. 35.*  
 The Saxon King *Kenulph*. by his Charter in Parliament, granted to the Abbot of *Abnidon*, (which was *Abington*) almost 900 Years since, That he and his Successors should be for ever exempt from all Episcopal Jurisdiction, and should have *Episcopal Jurisdiction* within himself, and that without the Pope's Approbation, which was as much to shew the King's Authority, as if he had granted the same Exemption and Jurisdiction to Lay Men: And this Charter was afterwards Confirm'd by his Successor, the Saxon King

*Edwyn.*

*Edwyn*. And it was granted, that the Inhabitants should not be depress'd by the Yoak of any Bishop or his Officials; but in all things should be free, and submit to the Decree of the Abbot.



It appears, that in the time of the Saxons Selden *ad*  
 the Ecclesiastical and the Temporal Judges, Eadm.  
 fate both together in one Court; the Bishop, Not. fol. 166,  
 or his Officer, and the Sheriff, in the Hun- 167.  
 dred Court; as the Laws of *Canutus* and Jos. 17: 4:  
 of *Edgar* do manifest; and both of them had  
 their Jurisdiction from the King, and both  
 Ecclesiastical and Lay Men fate together as  
 Judges, till they were divided by the Char- Edgar.  
 ter of *William*, whom they call the Conque- Selden *ad*  
 ror. Eadmerus

The like was us'd among the Jews, where  
 the highest Court of Justice, their Great rot. fol. 161.  
*Sanhedrin*, as also the Inferior Courts, con- Coke's *Eccles.*  
 sisted of Ecclesiastical and Lay Judges toge- Cas. 5. *Rep.*  
 ther. So doth our Star-Chamber and the fol. 10.  
 High-Commission Court at this day, which Leg. St. Ed-  
 are founded by the King by Act of Parlia- ward, c. 19.  
 ment.

*Edgar* in his Oration to his Clergy, saith  
 of them, *De quorum omnium moribus ad nos*  
*spectat Examen.*

*Edward* the Confessor begins his Laws,  
*Ut Populum Domini & super omnia sanctam*  
*Ecclesiam Regat, ut Vicarius summi Regis.*  
 And if he have that Jurisdiction in him, he  
 may grant it to whom he please.

After the Conquest, which was not with-  
 out some Dependence on the Pope's Blessing,  
 and desire to continue it, yet in *William* the Eadmerus,  
 First's time, *Eadmerus* testifies, That *Cuncta* fol. 6.  
*Divina simul & Humana ejus nutum expecta-*  
*bant, Primatem quoq; regni sui non sinebat quic-*  
*quam Statuare, aut prohibere, nisi que sue Vo-*  
*luntatis accomoda & a se primo essent ordinata.*  
 This shews this King's full Power, exercised  
 by him in Ecclesiastical Matters, which he

Selden *notæ*  
ad Eadmer.  
fol. 165.  
*Battle-Abbey.*

ordered, as he pleased, and gave Cognizance of them to whom he thought fit, as by his Charter granted to *Battle-Abbey*; the Examples is from *Episcopal Jurisdiction*, and makes the Abbot Supreme Judge and Lord, and that in a Stile Imperious.

Coke *Eccles.*  
*Caf. fol. 106.*  
7 Ed. 3.  
*Imp. 19.*  
*Ibid.*

He also made appropriation of Churches with Cure, to Ecclesiastical Persons, and divided the Bishop's Court from the Hundred Court.

In the Charter of *H. 1.* Founder of the *Abbey of Reading*, he saith, *We do ordain, as well in regard of Ecclesiastical as Royal Power.*

Hoveden.

We find an Enquiry in these Ecclesiastical Matters, very ancient at the Common Law, as appears by our Records, and by the Articles of Enquiry before the Justices in Eyre, set down by *Roger Hoveden*, in *H.* the Second's time.

Selden *Notæ*  
ad Eadmer.  
fol. 143.  
*King John's*  
*Charter to*  
*Willi. Mar-*  
*shall.*

The Charter of King John granted to *William Marshall*, Earl of *Pembroke*, the Donation of the *Pastoral Staff* of the *Abbey of Nutlega*, which was in those days a meer Spiritual Right. And so the Kings of *England*, as other Princes of *Christendom*, gave the Bishopricks *per Annulum & Baculum*, tho' there were many Conflicts about it.

Coke *Eccles.*  
*Caf. fol. 11.*  
3 *H. 3. pro-*  
*hib. 13. 4. H.*  
3. 15 *H. 3.*  
*Prohib. 15.*  
22

In *H. 3d's* Time and ever since, there hath been frequent use of *Prohibitions*, and the King's Courts receive Certificates from the *Bishops*, when Issue is joyned upon the Loyalty of *Marriage*, *Bastardy*, or such-like, and they command the *Ecclesiastical Courts* to *absolve a party Excommunicate*, if they see cause, which is an high Cognizance of Ecclesiastical Matters, and in those who are Lay Judges in the King's Courts.

In *Edward* the First's time, the Ecclesiastical Persons themselves desired an Act of Parliament to give unto them Cognizance even of Ecclesiastical Matters; whereupon, the Statute *de Circumspecte agatis* was read, <sup>13 Ed. 1.</sup> and thereby Cognizance given to the Ecclesiastical Courts, of Causes Ecclesiastical, and yet the Makers of that Law were *Lay-Men*.

In the same King's time, the Lands of the Arch-Bishop of *York* were seiz'd into the King's Hands; and the Bishop in contempt, for refusing to admit a Clerk whom the King had presented, and this was held to be according to the Common Law of *England*, and Warranted by former Laws and Presidents, upon a Question concerning the Statute of *Bigamy*. This King in Parliament Expounded the Council of *Lyons* for excluding Clerks from *Clergy* in that Case, and resolved to give no Aid to the Pope. <sup>19 Ed. 1.</sup> *Tit. Quare non admittit 7.* *Arch-Bish. of York.* *Coke Eccles. Cas. fol. 12.* *Stat. de Bigamy, 4 E. 1.* *Council of Lyons.* *Clerks excluded from Clergy,*

In *Edward* the Second's time, by a Statute likewise are authorized the Proceedings before the Judges Ecclesiastical. <sup>9 Ed. 2. c. 16.</sup> <sup>15 Ed. 3. c. 6.</sup> <sup>17 Ed. c. 6.</sup>

So are they also by a Statute of *Edward* the Third: And there are divers Resolutions in this King's time; That the King may exempt any Ecclesiastical Person from the Jurisdiction of the *Ordinary*, and may grant him *Episcopal Jurisdiction*, as he did to the Religious Houses by him Founded. <sup>Ordinary Ep. Jurisdiction.</sup>

Another Statute in his time Authoriseth their proceedings in Matters Ecclesiastical. <sup>31 Ed. 3. c. 11.</sup>

It was also resolved, That a *Prior*, being the King's Debtor, may Sue an Ecclesiastical Person for *Tithes* in the *Exchequer*; for before the Statute of *18 Edw. 3. c. 7.* Right of *Tithes* was determinable at the Temporal Courts. <sup>38 Assis. p. 20.</sup> <sup>Prior King's Debtor.</sup>

*Ibid.*

Courts, and in many Mannors of the King, and of other Lords, they had *Probate of Wills*.

38 *Affis* p. 22. The same King translated *Canons Secular* into *Regular* and *Religious*, and made the *Regular, Prior* and *Covent* of *Westminster*, who were  
49 *Affis* p. 8. *Prior and Covent* of *West-* Regular, and most Persons in Law, capable  
*minster.* to Sue and be Sued.

39 Ed. 3. fol. 20. He again seized the Lands of a Bishop for a Contempt, in not admitting a Clerk presented by him.

14 Hen. 4. fol. 14.

*Affoyle the Party.*

In *Henry* the Fourth's time it is Resolved, That if a Person be Excommunicate for a Cause not belonging to the Bishop, that the King may Write to the Bishop, and command him to *Affoyle* the Party; which testifies the King's Authority in those Cases.

2 Hen. 5. c. 1.

*Hospitals*

King *Henry* the Fifth, by consent of Parliament, gives Power to Ordinaries to enquire of the Governace of Hospitals, and to make Reformation thereupon.

10 H. 7. fol. 8.

King *Persona mixta.*

In *Henry* the Seventh's time, it is said for Law, that the King is *Persona mixta*, having both Ecclesiastical and Temporal Jurisdiction.

In *Henry* the Eighth's time the Enquiry by Juries in Ecclesiastical Matters, became more large than in former times, which grew thus when that King could no longer endure the Encroachments of the See of *Rome*, it was held necessary in the withdrawing from them, to settle and establish the Change, by certain *prescript Laws*, and therefore in his time, as in all succeeding times, sundry Acts of Parliament were made, to keep up and maintain the Estate of Ecclesiastical Affairs, as it was by those Laws Enacted.

There-

Thereupon, grew a necessity of enlarging the Temporal Power; for whatsoever is introduced by Act of Parliament, the Enquiry of it belongs to the Country, and the Judging of it to the Temporal Courts, where Lay Men are Judges, and the Rule of Proceeding must be by the Common Law.

Amongst those Statutes of *Henry 8.* one <sup>24</sup> *H. 8. c.* recites, *That the knowledge of Ecclesiastical Causes, by the goodness of Princes of this Kingdom, and by the Laws and Customs of the same, appertain to the Spiritual Jurisdiction. It Enacts, That they shall be definitively determin'd within the King's Jurisdiction, and not elsewhere.*

By reason of the great Alteration made by this King in Ecclesiastical Affairs, Writs of *Prohibition* became more frequent than before; and the reason thereof, is because the Statute of *Dissolutions*, and the Statutes of this King, and of his Son King *Edw. 6.* of *Tithes*, the divers *Exemptions* and discharges from *Tithes*, in the Lands that came to the Crown by *Dissolution*, are confirmed by Act of Parliament. In which case there is no relief against a Suit for *Tithes* in the Ecclesiastical Court, which takes no notice of those *Exemptions*, but by *Prohibition*, and that is helpful in these Cases, as well to Ecclesiastical Persons, as to Lay-Men, and are the only Judges, by the King's Authority, and have Cognizance in those cases, tho' they concern Ecclesiastical Matters.

It is evident by Record, that *Prohibitions* were used in *Henry the Third's* time, and ever since; and at this day in Countries subject

subject to the Papal See, there is an Appeal in some Causes from the Ecclesiastical to the Temporal Judges, who are Lay Men, as is Extant by their own Writings.

1 Eliz. c. 1.

I shall conclude on this Subject with the Statute of Queen *Elizabeth*, which unites all Spiritual and Ecclesiastical Jurisdiction to the Crown, and Enacts, *That the Queen, her Heirs and Successors, by Letters Patents, may Assign and Authorize such Persons, being Natural Born Subjects, as they think meet (no distinction of Ecclesiastical or Lay Men) to exercise any Spiritual or Ecclesiastical Jurisdiction within this Realm.* And we may remember, Lay Men, as well as Ecclesiastical Persons, to have had Jurisdiction and Cognizance in Ecclesiastical Matters, by virtue of this Statute. These Instances, which amongst many others, I have remembred, are manifest Proofs of the King's Sovereign Authority in Ecclesiastical Matters, and his Power to transfer the same, or any part thereof to others under him.

Dr. Feild of  
the Church,  
p. 680.

A Learned Doctor saith, *That Causes Ecclesiastical are of two sorts; some are Originally and Naturally such, and some only in that they are referred to the Cognizance of Ecclesiastical Persons, as the Probate of Wills, Matrimony, &c.*

Sir John Davys's Rep.  
Case of Pre-  
munire.

And a Common Lawyer saith, *That for 300 Years this Distinction was not known or heard of in the Christian World; That the Causes of Testaments, Matrimony, &c. termed Ecclesiastical or Spiritual, were meerly Civil, and determined by the Civil Laws of the Magistrate.*

If the Expression of Ecclesiastical or Spiritual, be interpreted by the contradistinct Member, it seems to direct us to understand such matters as concern Eternity, for that is the true Opposite to what is Temporal. *The things that are seen, are Temporal, and the things that are not seen, are Eternal.* 2 Cor. 4. 18.

For Persons and Causes, Spiritual or Ecclesiastical, that are properly and indeed such; as those which concern matters of Faith and Holiness, and what conduceth to the eternal welfare of Men's Souls, whatsoever the Interest or Duty in those Matters, and whatsoever Jurisdiction in such Matters, may Lawfully be exercis'd by the Magistrate, the same belongs to Temporal Princes in their respective Dominions under God, and to none other.

It occurs, that this Supream Ecclesiastical Jurisdiction, was in the Ancient times in *Fathers of Families*, and by the same Reason, is proper to be in Temporal Princes, who are Fathers of their Country, and the first guide of the Requisites, as to publick Exercise and actions of Religion, was the original Domestick Discipline in private Families, where the Father was King and Priest. *Adam* directed his Sons to Sacrifice, and *Seth, Noah, Melchisedec, Abraham, Isaac, Jacob*, and the Princes of those times, Fathers of Families, were the *Priests* also, as appears by many Instances hereof in the holy Story, where they are obvious. That the Priesthood was in the first Born, as in *Melchisedec*, who is taken by some for the first Born of *Noah*, and in the rest of the first Born, the Fathers of Families in those times before

*Fathers of Families.*

Calibur.

Downing.

*Discourse of the State Eccles. p. 57.*

Adam.

Seth, Noah,

Melchisedec,

Abraham,

Isaac,

Jacob.

fore *Aaron*, is evident in Scripture, and is admitted both by *Christians* and *Hebrews*.

*Abraham* and every Patriarch or Prince within his Territory, and Father of a Family, within his Family did exercise the Office of Priest likewise; they built Altars where they came, Offered Sacrifice, and called upon the Name of the Lord.

Gen. 18. 19. God saith of *Aeraham*, *I know him, that he will command his Children, and his Household after him, and they shall keep the way of the Lord.* And the same Command and Jurisdiction in Sacred Matters, belong'd in those times to every Father of a Family; and doubtless they may and ought to command the same thing at this day.

Exod. 24. 9.  
Num. 3. 10.  
Deut. 2. 9.  
Moses Priest of Priests. We may consider this Jurisdiction in the succeeding Princes of the Israelites. *Moses* Consecrated and Commanded *Aaron*, and Preached to the People, and he is stiled the Praise of Praises, and the Supream King, and also Priest.

The next Prince that succeeded *Moses*, was *Joshua*, a most Successful Gallant Captain; he had the Presence of God with him, as *Moses* had, and Commanded, as he did, all sorts of Persons; he built an Altar in Mount *Ebal*, and Offered Sacrifice there, and read the Law to the Priests and Levites, and Preached to the People.

*Deborah* was a Prophetess, and Judge or Prince of Israel. *Samuel* was a Prophet, and Prince or Judge of Israel; and he and most of the Judges in Israel, did exercise their Ecclesiastical Jurisdiction; so did *David*, *Solomon*, *Jehosaphat*, *Hezekiah*, and other Kings of Israel and of *Judah*, whereof there is plentiful

*Bertramus.*  
*Menachius.*  
*Selden.*  
*Sigonius,* &c.



tiful mention in the holy Story, and in those Authors who have written upon this Subject.

The Hebrew word for a Priest, signifies likewise the Prince of a Territory; not that Priesthood made one a Prince, or did carry command with it, but that Princes were Chief-Priests also within their Territories.

Before the Law given in *Sinai*, *Moses* had Cognizance as well of Sacred as of Profane Matters, as they were termed, without the distinction of Ecclesiastical and Civil; and this appears in the Tribunals set up by *Jethro's* Advice, and in his Judgment in those Sacred Causes; and to him the Appeals were made, whether the Matters were Sacred or Profane.

The like Jurisdiction was in the Heathen Princes, who from the Precedent of the Hebrews (tho' miserably Deprav'd) drew their Customs to have publick Priesthoods which were Patrimonial and Hereditary, and among the Prince was also the High-Priest.

The *Chaldean* Kings were also Priests.

A Prince and a Priest was all one among the *Egypti*; so the *Magi* among the *Persians*, and the Priests of *Apollo* at *Delphos* among the *Grecians*: *Aristotle* speaking of Kings in the time of the *Herees*, saith, 'That they were Rulers of matters of War, and of Sacrifices, or Sacred things, which pertained to the Sacerdotal Function. And in another place he saith, 'That the King was Leader or General of the War, and Judge and Moderator of Divine things.

In

Julius Cæsar  
*potestatem  
 Pontificam,  
 cum Cæsarea  
 potentia con-  
 junxit.*

Sir Walter  
 Raleigh his  
*Treatise of  
 War.*

In like manner the Roman Emperors were High-Priests also. And it is noted of *Julius Cæsar*, that to the end he might fully reover into his power, the Temporalty, he joyned the Pontifical Authority with the Cæsarian Power; and so have all Wise Princes his Successors.

The *Mufti* among the *Turks* holds all he hath at the Discretion of the great Sultan; most Nations of the World, after the Precedent of the *Hebrews*, placed the Supream Jurisdiction in Sacred Matters, in their Kings and Supream Rulers, who exercis'd the same.

It is evident, that the Supream Ecclesiastical Jurisdiction was in the Christian Emperors.

Writers of Church Matters do shew, That the Clergy for 550 Years together after *Christ*, claimed no Jurisdiction or Superiority in those Matters, but left the same, and submitted themselves therein to their own Princes; who took upon them the Sovereignty in the Matters and over the Persons, which were afterwards called by the Priests *Ecclesiastical*.

Martin Bo.  
 lon. Ind. &  
 Lib. 6. *Platin.*  
 in Boniface,  
 Martin Po-  
 lon. Silver.  
 Virgil &  
 Mar. *causa* 2.  
*quest.* 7. c.  
 Leo 4.  
 Euseb. l. 10.  
 c. 5.  
 Optat. l. 1. 5.  
 Cont. Parm.  
 Aust. Epist.  
 162. 166.

By *Constantius* the Bishops *Julius* and *Liebrinus* were Banish'd; *Boniface* the First, by *Honorius Silverius*; and *Virgilius* by *Justiniaan*; *Martin* the First, by *Constantine* the Third, and many others. *Leo* the Fourth, submitted himself in all things great and small to the Commissioners of *Lodowick* the West Emperor, and offered to amend all that was amiss by the Prince's Judgment. In the Strife between *Donatus* and *Cecilianus*, the Matters and Persons being both Ecclesiastical,

ftical, *Meltiader* then Bishop of Rome, was appointed with others, by *Constantine*, to determine the Matters, from whose Judgment, the Parties Appealing, the Emperor appointed new Judges; from whom they Appealing likewise, at last *Constantine* decreed it, sitting himself in Person as Judge of it.

*Theodosius* the Elder, *Damascus Siricius*, and *Theodosius Anastasius*, complained against *Flavianus*, for Matters Ecclesiastical; but the Prince heard and Justify'd him.

Of *Arcadius* his Son, *Inntensius* Bishop of Rome, requested a Council for tryal of *Chrystom's* Cause; But the Petition was denied, and the Messengers sent away with Reproach.

By *Honorius* the Bishop of Rome, *Bonifacius* and *Eulabius* chosen in a Tumult, were both commanded to depart the City; and *Boniface* being Restor'd, put up a Supplication to the Prince, for a Decree for future Elections, which was made by him.

*Leo*, Bishop of Rome, made Suit to *Theodosius* the Younger, to command a Council in *Italy*, for suppressing *Eutiches* his Error, but the Emperor appointed it at *Ephesus*, and would not be perswaded to reverse their Judgments.

But his Successor *Marcian* did it upon the Supplication of the Pope, and commanded the Council of *Calcedon*, where himself Sitting in Person, forbade the Bishops to defend or avouch any thing of the Flesh and Birth of our Saviour, otherwise than the *Nicene* Creed did contain.

*Justinian* faith, We command the Blessed Arch-Bishop of Rome to Obey the Law then made.

*Gregory*

Gregory Ep. Gregory the First writing to *Mauritius*, useth  
 l. 4. c. 76. 78. this Stile; *My Lord, my most Gracious Lord,*  
*I your Servant, and subject to your Commands,*  
 &c. And he makes many Submissions to  
 the Emperor, who Overruled in his Epif-  
 copal Jurisdiction.

Agatho. *Agatho* Bishop of *Rome*, 680 Years after  
 Sixth Synod, Christ, when *Constantine* the First, sent for  
 Aft 14. some Learned Men out of the West to come  
 to the Sixth General Council, returns this  
 Answer; 'Your Princely Favour mildly  
 'Commanding, our Baseness hath obedient-  
 'ently fulfilled that which was by you Com-

Agath. Ep. 2. manded. And in another Epistle he saith,  
 'All the Bishops of the North and West  
 'Parts, Servants of Your Christian Em-  
 'pire.

Distinft. 10. *Leo* the Fourth submitted himself to *Lo-*  
 lib. de capitulis. *dowick* the Father, and afterwards confirm'd  
 his Obedience to *Lotharius* the Son, promi-  
 sing Submission to their Decrees.

Novel. Const. In the 20th *Constitution*, wherein *Justi-*  
 3, 5, 6, 16, &c. *nian* disposeth of Crimes and Causes Eccle-  
 siastical, almost every Sentence is a *Command*  
 The like in the 123d, Entituled, *Of Divers*  
*Ecclesiastical Chapters.*

Socrates l. 1. The like is in the Laws of *Constantine*,  
 Code l. 1. *Charles, Lodowick, Lotharius*, and others. By  
 Novel. constit. all which, and many others of the like na-  
 Leg. Franch. ture, that are omitted, it appears, That  
 lib. 1. all the Submission and Obedience, which  
 Subjects do owe to their Prince, was acknow-  
 ledged by the Clergy themselves to the Em-  
 perors; and that the Supream Ecclesiastical  
 Jurisdiction was in their Temporal Prin-  
 ces, and was Enacted by them accordingly.

This Jurisdiction was also in the Kings of France, and practis'd by them. The Divines of Paris, by the King's Encouragement, did condemn Pope Julius his Doctrine, with the sound of Trumpet, allowing him as little Supremacy as Charles the French King did, who by Advice of Bishops, Princes, and Universities of his Realm, Decreed, That the whole Church of France, should depart from the Obedience of Benedict.

*Gerf. 4.*  
*Jo. Marcius,*  
*de Schinat. &*  
*Comil. c. 22.*  
*Lazan. Epist.*  
*c. 267.*

And Charles the Seventh, at a Parliament at Bourdeaux, made the Law called the Pragmatical Sanction, for the perpetual observation of those things which the Council of Basil had Decreed; which curbed and cashier'd the Pope's Power.

*Nauster. genar.*  
*48. circa An.*  
*1488.*  
*Leland.*

And tho' the Pope Reversed it, and laboured the King to do it, yet all the Clergy of France adhered to the King, owning his Authority therein, and Appealed to a General Council.

*Lateran Con-*  
*cil. sub Leo.*  
*Señ. 10.*

A little before this, in a Council at Tours, the Prelates of France gave their full Resolution to Lewis XII. That it was lawful for him to forsake the Pope's Obedience, and to despise his Curses.

*Chror. Musæi.*  
*Anno 1510.*

But Philip the Fair, before that, Imprisoned the Pope's Legate, and Sequestred himself and his whole Realm from his Obedience; and at length took the Pope's own Person, and kept him in Prison, till he Dy'd.

*Lazan. Hist.*  
*Universal.*  
*Epitome c.*  
*247.*

At last, Francis I. in his Interview with Leo the Tenth, did remit the force of it, in the Accords of France, which caused his Secretary to say, That the Garland of France was Betray'd. Many more Instances might be given of the Kings of France exercising

*Concord. Gal.*  
*Budaus.*

Supream Ecclesiastical Jurisdiction within their Kingdom.

The like Jurisdiction was practised by the Kings of *Spain*, and was in them. In *Castile* they have some limited Ecclesiastical Power, by a Privilege of *Adrian VI.* granted to *Charles V.* But when they see their Time, they take so much as will serve their turn.

Thuanus's  
Hist. l. 71.

As *Philip II.* seized upon the Temporalities of the Arch-Bishop of *Toledo*, then when the Bishop of *Goanza* was apprehended at *Rome* for the New Heresie, and when *Sixtus V.* sent to him, That if he would undertake the War against *England*, he would Remit to him the Revenues of that Bishoprick, the Wise Prince answered, That *he would receive none of the Bounty of his Bishops.*

And tho' at Home his Power is but what he pleaseth to take, yet in other his Territories, it is Lawfully as large as any other Prince, as in *Burgundy* and *Belgia*, he hath the same Right as the King of *France* once had.

Thefaur. 47.

As *Charles V.* made a Statute of *Mortmain*,  
' That it should not be Lawful for any Ec-  
' clesiastical Persons, or Sacred Places, to  
' take or have any Immovable Things, with-  
' out the License of the Prince.

Heig. Luis.  
de Regal.  
Portugal.

And *Philip* the Second, his Son, in publishing the Council of *Trent* in the *Netherlands*, did not let it pass in all Points with the full strength of an Ecclesiastical Law, but restrain'd it with an express Clause, ' That it  
' should not prejudice any Privilege of the  
' King, touching Possessions, Judgments,  
' or Ecclesiastical Livings, or Nominations  
' thereunto.

And

And surely the Kings of *Spain* have the Boten. in Lu-  
like Prerogative in *Portugal*, because the *fiac. ques. l. 3.*  
Council of State in that Kingdom, had the  
right of *Presentation* to all Bishopricks and  
Abbeys.

*Sicily* hath been held of the See of *Rome* Guichard.  
as a *Spiritual See*, yet there the Kings of *Hist. l. 4.*  
*Spain* do not only claim Supremacy of Over- Baron. An.  
seeing, but also Superintendency in order- 1209.  
ing of Ecclesiastical Affairs

This Supream Ecclesiastical Jurisdiction,  
was likewise in most of the other Princes of  
*Christendom*. *Poland* and *Hungary* were by Thesaur.  
*Benedict VII.* converted from Paganism, and polit. apol. 50.  
thereupon wholly at the Pope's disposal in Herb. Hist.  
matters Ecclesiastical. And although the Pol. l. 1. c. 7.  
Power of the Kings of *Poland* be limited by  
an Election, yet they appoint and chuse at Thuan. Hist.  
their pleasure, *Arch-Bishops*, *Bishops*, and *Ab-* l. 56.  
*bots*.

And the Kings of *Hungary* used the same Guyc.  
Power as the Kings of *England* do; whereof Coment. prag-  
a *Canonist* saith, That tho' of right they can- mat. sanct.  
not, yet the Kings of *England* and of *Hun-* tit. de Sanat.  
*gary*, do bestow Benefices (as he would have  
it) from the Pope. But in truth, it is in  
right of their own Supream Jurisdiction in  
matters Ecclesiastical.

*Sweden*, *Denmark* and the *Netherlands*,  
have exercis'd the like Jurisdiction, especi-  
ally when they introduced the Reformation  
of Religion, and abolished the Power of the  
See of *Rome*; whereupon it is said, that Gu- Gustavus.  
*stavus I.* of *Sweden*, asserted his Country from  
the *Danish* and *Popish* Servitude. *Scotland*  
hath likewise had her Jurisdiction in these  
Matters:

Sir J. Davys  
 Rep. fol. 88. And of *Ireland* it is observed, that there  
 10 H. 7. c. 5. they have made as many Laws against *Provi-*  
 33. H. 6. c. 9. sions, Citations, Bulls and Briefs of Rome, as  
 22 H. 6. c. 3. are to be found in all the Parliament  
 40 Ed. 3. c. Rolls of *England*. Besides, *Poyning's Law*  
 13. Enacts, There the Statutes of Provisors and  
 7 Ed. 4. c. 10. all other Laws against the See of *Rome*. Al-  
 16 Ed. 4. so in the famous Parliament of *Kilkenny*,  
 6. 10. and in another Parliament, it is declar'd,  
 That the publishing of Bulls of Provision of Rome,  
 is High-Treason.

And this shews the foundation of that  
 Authority, whereupon the Justices of the  
 Peace build their Proceedings, in Matters  
 Ecclesiastical, whereof they have Cognizance  
 by the King's Commission, to take care that  
 Obedience be given to the Laws of the  
 Kingdom.

Upon the Eighth Head of Supremacy in  
 Ecclesiastical Matters, something will be  
 added.



## Third H E A D.

### *Of the Worship of God.*

**T**He Worship of God, is a Reverence and Adoration of Divine Power, implanted in the Hearts of all Mankind. I am of Opinion, that there is no *Atheist* in the World, but that every Man who hath any Sense or Reason in him, doth believe that there is a God, a Divine Power, that hath Made and doth Order and Govern all things.

I confess, that many do live in the World, as if they were not of this Belief; and as the Psalmist saith, *The Fool hath said in his heart, there is no God*; that is, as the Viscount of St. *Alban's* Expounds it; 'The Fool would fain perswade himself that there is no God, that he might the more freely give up himself to his Lusts and Sensuality, yet he cannot bring his Heart to believe it; he only saith so in his Heart, but his Heart cannot believe it: He convinceth himself by every thing which he beholds; that makes it appear that there is a God, that must needs be the Maker and Governor of them.'

*L. St. Albans  
Essay of Athe-  
ism.*

Some others have been, and are, who out of a distaste of their own condition (as a Reverend Bishop shews) and to raise their own Esteem, have publish'd the Doctrine of *Atheism*, and gained some Disciples, and

*Bishop of St.  
Andrews.*

Regard to themselves, by such who desired to live more Wickedly than others; yet none of these but would put it upon Nature, which is the same thing, the Name only changed, or Accident, which the universal Order of all things could not admit, nor could they Maintain their pretended Opinion, by the least colour or shadow of Sense or Reason. Yet would they live as without God in the World: And some of them when they come to Die, would seem to continue in their *Atheistical Phrensy*; but doubtless, whilst they Live, *qualibet Herba Deum*; Every Leaf and Grass, the Sun and Moon, and Stars, the Heavens, and the Earth, and themselves must satisfy them, that there is a God who ought to be Worshipped.

And when they come to Die, which is a Solemn thing, what their Thoughts or Opinions then are, is only known to God and themselves; and doubtless the Stings of their own Consciences have sufficiently convinced many of them, and after this Life ended, the Torments of Hell-fire have dreadfully punish'd and will punish the most Confident of them.

Examine all Nations and People that ever have been, or are upon the Earth, and you will find, that they all Worshipped a God, some Idol, or Beast, or Bird, or Plant, as a God, and none were ever yet Discovered, or Convers'd with, though never so Barbarous, but they acknowledged a God, whom they Religiously Worshipped; even the new Discovered *Americans* are found to be Worshippers of the *Sun*, and others of them the *Moon*; all of them do Worship something which

which they take to be God ; only Christians are most Inexcusable, who having knowledge of the true God, do yet too many of them worship Images, and live as without God in the World, to the scandal of their Profession, and to the high Dishonour of God.

By matters of Religion are intended such Matters as concern the Worship of God in Doctrine and Discipline.

It is no loose Consideration by what Care Seneca *Ep.* and Cost Kingdoms and States should be <sup>25.</sup>

Preserved, seeing they revive and uphold all Happiness to Men. The only infallible Ground of their Preservation, is true Religion. And tho' ill Manners are by accident *Ex malis Moribus Bonæ Leges.* the cause, or rather the occasion of good Laws, which are better in Execution, and best in Obedience ; yet good Manners cause Obedience, and Religion begets good Manners.

But Religion cannot subsist without Exercise and Action.

There is a double Worship of God ; one in Private, the other in Publick: In the private Worship of God, every Man is left to himself, and to his own Devotions in his Chamber, or Closet, or Heart, wherein no Earthly Power can impose upon him ; and it is a very great Mercy of God to his People, That whatsoever Orders or Ceremonies in God's Worship may be enjoy'd by publick Authority to be made use of publickly, yet as to private Worship of God, every Man hath the liberty of his own Conscience, to Worship God so as he thinks most agreeable to his holy Will ; and no Earthly Power can take away this Freedom from us.

As to the publick Worship of God, the Law hath interposed, and ordained a *Form of Prayer, and Divine Service* (as they term it) and Penalties upon all such as do not conform thereunto.

The celebration of Divine Service in our Churches, before *Edward* the Sixth's time, was in divers Forms; as the Use of *Sarum*, of *York*, of *Bangor*, and of *Lincoln*, as is mentioned in the Statute; but all were after the Romish Church.

1 Ed. 6. c. 1.  
*Sarum.*

2 Ed. 6. c. 1.  
*York.*

*Bangor.*

*Lincoln.*

*Littleton,*

*fol. 30, 31.*

*Tenure by Divine Service.*

And anciently there was a Tenure by Divine Service, as when one gave Lands to an *Abbot* and *Covent*, or other Spiritual Persons, and their Successors, to hold by Divine Service in certain to be done, as to say *Mass* for the Souls of the Grantor and his Heirs, every *Wednesday* in the Week, or every Year on such a day, to Sing *Placebo* and *Dirige*, &c.

*Fealty.*

*Frank Al-*

*moigne.*

*Oriſons.*

If this were not done, the Lord might Distrain for it, and the Grantee was to do Fealty; and this was Tenure by Divine Service. But if the Lands were given in *Frankalmoigne*, and no Service in certain to be done, yet the Grantees were bound to make Oriſons, Prayers, Masses, and other Divine Service, for the Souls of the Grantor and his Heirs that were Dead, and for the Prosperity of those that were Living: And if it were not done, it was Punishable by the Ordinary in his Court.

2 E. 3. fol. 27.  
*Pl. 18.*

According to this, are divers Resolutions in *Edw.* the Third's time; 'As where Lands are given to find a Chaplain to celebrate Divine Service in a Chappel of his Manor, or in another Church: Or to sing every

every day a *Mass*, and to have a Clerk to help him; or to do an *Obit* every day in the Week. These were held Tenures by Divine Service.

And if a Religious Person did Covenant to find two Chaplains to celebrate Divine Service in a Chappel of the Covenantees, his Heir, upon Default, might bring an Action of Covenant, or he might Release it.

The Judges in *Henry* the Sixth's time, Resolved, That a *Præcipe quod Reddat*, lies of Divine Services: And that if one grant Land to an House of Religion, to find a Chaplain to Sing for the Soul of another, These Divine Services may be granted over. And there it is said, 'That if the Grant be to Sing for his own Soul, it cannot be granted over; and that Divine Services are of so great Value, that they cannot be extended to any Value.

In *Henry* the Eighth's time an *Abbot* and *Covent* having granted to a Man and his Heirs, to find one of his *Monks* to Sing *Mass* and *Martens*, and *Vespers* every Holy-day in such a Chappel, on a Forfeiture, the Heir brought an Action of Debt upon a Default, for this Forfeiture.

At this day, an Action upon the Case lies against a Parson or Vicar of a Parish, for not celebrating Divine Service in a private Chappel of a Mannor, for the Lord and his Tenants, if he *prescribe* for it.

But if it be a Chappel of Ease for others also, upon Default, the Remedy must be in *Court Christian*, as it hath been resolved in *Q. Elizabeth's* time, with which accords the *Abbot of Wooburn's* Case, and *Littleton* in his Chapter of *Frankalmoigne*.

4 E. 3. fol.

51. pl. 52.

26 Affis. Pl.

37.

21 E. 3. fol.

18. Pl. 2.

42 E. 3. fol.

13.

2 H. 4. fol. 6.

9 H. 6. fol.

52. B.

28. H. 8.

Dyer 24.

Coke 5. Rep.

fol 53.

William's

Case.

22 H. 6. fol.

46. B.

Littleton

How-fol. 30.

However they went much too far one way, in those Blind times, when they were persuaded by the Cunning of their Ghostly Fathers, to give very liberally to Priests, to pry for their Souls when they were Dead, and to believe, that their *Orisons* and *Masses*, and *Requiems*, would redeem their Souls out of *Purgatory*, and bear them up to Heaven.

It were also to be wished in these times of more Light, some would not go too far another way, in too slight an estimation and neglect, if not contempt of the publick Worship of God.

The old way, blessed be God, is now Reformed, and the Tenures by Divine Services (as they were term'd) and the Actions for them are now out of Doors; so are also the several Usages and Forms of them, after the manner of the Romish Church, which (as the Statute of *Ed. VI.* saith) were corrupt, vain, untrue, and superstitious, and as it were a preparative to Superstition.

And now one uniform Order and Form of celebrating Divine Service, and the publick Worship of God is Established, and settled by several Acts of Parliament.

We may first take consideration of the Statute of *Ed. VI.* which Enacts, 'That the  
' most Blessed Sacrament, shall not be denied  
' without a Lawful Cause, to any Person, that  
' will Devoutly and Humbly desire it. And

it is *Rastal's* Note upon this Statute, That the time of it, was before the *Mass* was taken away, when the Opinion of the *Real Presence* was not removed: Yet that Statute Enacts, 'That the Sacrament shall be Ad-  
' ministr'd under both Kinds, of Bread and  
Wine,

*Rastal's Abr.*  
*of Service and*  
*Sacraments.*

fol. 365. Pl. 1.  
2 and 3 E. 6.

c. 1.

Wine, which it saith, is more agreeable to the first Institution of it, and more conformable to the Practice both of the Apostles and of the Primitive Church, for 500 Years after Christ's Ascension.

Next follows another Statute of *Edw. VI.* <sup>2 and 3 E. 6. c. 1.</sup> which recites, 'That the King, with the Advice of his Uncle, the Lord Protector, and others of his Council, had appointed the Arch-Bishop of *Canterbury*, and certain of the most Learned and Discrete Bishops and other Learned Men of his Realm, having as well eye and respect to the most sincere and pure Christian Religion, taught by the Scripture, as to the Usages in the Primitive times of the Church, That they should draw and make one convenient and meet Order, Right and Fashion of Common and Open Prayer, and Administration of the Sacraments, to be used in his Dominions; which at that time, was by those Persons, set forth, and deliver'd to the King, and by that Statute Enacted in a Book of *Common-Prayer* and Administration of the *Sacraments*, and other *Rites* and *Ceremonies* of the Church of *England*.

By a third Statute of *E. VI.* the same Book <sup>5 and 6 E. 6. c. 1.</sup> of *Common-Prayer*, being Faithfully and Godlily perused, Examined and made fully Perfect, is Enacted, *to be receiv'd and us'd in all places in the King's Dominions.*

Then upon the change of Religion again, introduced by Queen *Mary*, Those Statutes made by her Brother *Ed. VI.* touching the Publick Worship, were all Repealed, and the *Mafs* and former Idolatrous Form of Worship was set up again.

But

1 Eliz. c. 2.

But by the great Blessing of God, when Queen *Elizabeth* came to the Crown, in the first Year of her Reign, she repeats the Statutes made by her Sister Queen *Mary*, touching the publick Worship of God, and confirms the Book of Common-Prayer, as it was set out by her Brother in the 5th Year of his Reign, with addition only of certain Lessons, and the form of the Litany altered (as being too near to the *Mafs-Book*) and two Sentences were added in the delivery of the Sacrament.

8 Eliz. c. 1.

In the Eighth Year of Queen *Elizabeth*, the same Book of Common-Prayer is Enacted,  
 ‘ To stand and remain Good and Perfect to  
 ‘ all Respects and Purposes; and so it stands  
 ‘ at this day, The Form of our publick  
 ‘ Worship of God.



## The Fourth HEAD.

### *Of the Worship of God in his Church.*

There hath been much Dispute among Authors, concerning the word *Church*, and the Signification of it; and of the *Visible Church*, and *Invisible Church*. Upon which Subjects, diverse, Large and Learned Tracts have been Written. The *Grecians* use the word ἐκκλησία for Congregations, Meetings, *Ecclesia*, and Assemblies of People for publick Worship; or for other Occasions; insomuch as the Poet useth the word ἐκκλησία ἄδῶα, for the meeting of Women at Gossipings.

Some derive it from καλέω, to Call, because People were called together to such Meetings; and from their word ἐκκλησία, the *Latins* took their word *Ecclesia*; which is used for a Church, or place of publick Worship; and from thence we say Ecclesiastical Persons, Ecclesiastical Matters, and Ecclesiastical Courts; and the like in reference to the Church, which is concerned in them.

The other Signification of the word *Church* is for the Place or Building, which being Dedicated, and Consecrated to the publick Worship of God, is frequented by the People for that End, and appointed to be the place for their common Meetings, for the publick Worship of God, and to call upon his Name there.

In this Sense we are to take the word *Church*, the Room or Place in every Parish, where the Inhabitants within that Precinct or Parish, are appointed by the Law to meet, and to perform their publick Worship to the Lord.

I confess, That before any Commonwealths were, every Father of a Family, was both King and Priest in his own Family, and they performed their Religious Duties only within themselves, as their Civil Government was likewise within the same Limits.

Euseb. *Pamph*  
fol. 146. &  
159.

Yet this was a Church within their Family; so were those Assemblies of the Primitive Christians, who were so Zealous of their Common Meetings, that before they had any Churches of their own, and when for fear of their Persecutors, they durst not be seen nor known to Meet; and afterwards, when their *Oratories* and *Churches* were Destroy'd, yet then they would Assemble themselves together in Upper Chambers, and in other Private Places, and at the Mine-pits in *Palestina*, and rise before day to celebrate Christ in Psalms as God, and continued long together in their Devotions, to the danger of their Lives. Yet questionless, these places of Meeting, were as acceptable to God at those times, as the most magnificent Structures of Temples were afterwards.

Euseb. *Pamph*  
p. 172. 154.  
Tert. *Apol.*  
c. 2.

After the Establishment of Commonwealths, in all Nations they had publick Meetings, and Places where they performed their Religious Duties, and offered up their Sacrifices to the Gods whom they Worshiped.

Gen. 4.

*Cain* and *Abel* had their place of Sacrificing;

cing; *Noah* built an Altar, and there offered Burnt-Offerings to the Lord; so did all the Patriarchs. The Well *Beer-sheba* was the place where *Abraham* offered Sacrifice, and called on the Name of the Lord. There *Isaac* also built an Altar, and called on the Name of the Lord, who appear'd to him there; and afterwards to *Jacob*, who there offered Burnt-Offerings to the Lord.

Gen 8. 20.

Gen. 21. 33.

Gen. 26. 24.  
Seld. Hist. of  
Titbes. fol. 4.  
B.

Gen. 46. 1.

But there is no mention in Scripture of any publick Place chosen by God, where he would have his Name called upon, till he brought his People out of *Agypt*, after which time, they receiv'd the Command of God, that a Common Place should be, where his People should meet together, to call upon his Name, to hear his Word, and to offer their Sacrifices to him. Then was built the *Tabernacle*, the most admirable Frame whereof is described by *Moses*, and divers ancient Authors have written large Tracts of it; *Josephus* among the rest, calls it *Templum portabile*.

Godwyn's  
Jewish Anti-  
quities. fol.  
14.

Exod. c. 26.

Joseph. Ant.  
l. 3. c. 5.  
I K. 6.  
2 Chron. 3.

Afterwards *Solomon* built the Temple at *Jerusalem*, the Beauty and magnificent Structure whereof is set forth in the holy Story.

After that, when the Jews were in Captivity in *Babylon*, they began to build them Synagogues, the use whereof they retain'd, and built many of them, after their return from Captivity, and by their Zeal for Re-edifying of the Temple, and *Daniel's* Praying with his Window open towards *Jerusalem*, and divers other Passages, their Opinion and Zeal for the Place and Temple of the Lord is manifest. The word *Synagogue* signifies a Congregation, where the People were met to Pray,

Sigo. de Re-  
pub.  
Hebraeor. l. 2.  
c. 8.Godwyn An-  
tiquit. Hebr.  
56.

Dan. 6. 10.

*Hom. l. 2. c.*

Pray, and to hear the Law Expounded, and they continue among the Jews to this day, and are likened to our Churches; into them, and into the Temple, the Scripture makes often mention, of Christ and his Disciples going to teach the People.

As soon as Christianity was permitted, and in the Intervals of Persecution, the Christians provided Churches for their common Meetings, to Worship God together in those Places.

In Imitation of the Jews, the Heathens had their Temples Dedicated to their Idol Gods: And when the World had the greatest of Blessings, the profession of the Gospel Established, the Temples of the Pagan Gods were converted to Churches for Christians to Worship the true God; as appears by the Stories of this and other Nations.

Then the Zeal of Princes, and other good and Great Men, being encouraged by the Priests and Religious Men of those Times, who were sensible, that the magnificent Structures of Churches would bring the more Reverence and Respect of them, who called themselves Church-men. This brought on the Building of many stately Cathedrals, and other Churches; and in time, the great number of Parish-Churches and Chappels, which remain at this Day.

To these Churches and Chappels, the several Inhabitants, within their respective Precincts, are to resort at such times as the Law appoints to perform together, and the publick Worship of God in these Places.

And the Magistrate, who accounts himself *Custos & Vindex utriusq; Tabulae*, I mean the State of this Realm, the King and Parliament, have thought fit to Enact fundry Laws and Statutes, to enjoyn People at certain days in those Statutes appointed, to repair unto their severall Parish-Churches, Chappels, or other places of publick Meetings, for the Service of God. But when Men out of tenderness of Conscience cannot submit to some Particulars enjoyn'd by Authority, in Matters touching the Worship of God, fearing or doubting lest if they should do it, that they should offend God, and hazard the welfare of their precious Souls, and upon these Grounds do scruple an actual Submission and Conformity, and live peaceably in their ways; for a Permission to be given to these Men, to Worship God as they think will most conduce to the good of their own Souls, especially when they agree in the fundamental points of Doctrine, with the rest of their Brethren, and with the Confession owned by the Authority under which they live; That these Men may not be punish'd in their Estates or Liberties, and much less in their Lives for this Nonconformity, is an Indulgence to be wish'd for.

I do not mean that a Toleration should be granted of Idolatry, or any known Blasphemy, or Sin against God, the granting whereof would bring the Sin upon the Grantor.

By Indulgence in matters of Religion, is here intended a permission of Liberty of Men's Consciences, in Matters not Sinful of themselves, and by Grant whereof or Pre-

D

tence

tence from it, there is no breach or disturbance of the publick Peace.

*Indulgence upon Polity.*

*Publick Peace.*

It is the Interest of the Government from grounds of Polity, to grant Indulgence in matters of Religion. The chief and fundamental grounds of Polity, is the preservation of the publick Peace, which is the Being of a State, and without which, there can be no Society or Government of Men, and nothing tends more to the preservation of Peace in my humble Opinion, than the granting of such Indulgence doth.

*Trade and the increase of People.*

Other grounds of Polity supporting the Interest of the State, as the Encouragement of Trade, the increase of People, their dependance upon the Government, and the satisfaction of unquiet Minds; all which are built upon the grounds of Polity, and increase the States Interest, and are not more effected, than by granting such Indulgence. Hereby it seems to me, that the publick Peace will be the better preserved; and that may appear from the late Examples of some of our Neighbours, who endured many Troubles and much disturbance of their Peace, and great calamities of War, before such Indulgence was granted to them. But after the granting thereof, much Peace and Security ensued to the Inhabitants. This was the case of the *Netherlanders*, whom their Popish Governours, and afterwards their Native Rulers could not retain them in their due Obedience, till a free and large Indulgence in matters of Religion was settl'd among them; after which, none of their Neighbours enjoyed more Peace and Tranquility within themselves, nor were more united for their common

*Netherlanders.*

common Defence against Foreigners than this People.

Another Example we have to the same purpose from our Neighbours of *France*, where France. the number of Dissenters from the Religion publicly professed and owned, was not one of an Hundred: Yet the Wise and Valiant Prince *Hen. IV.* saw so great Mischiefs to his State, and such a flood of Civil Dissention, never ceasing for want of this Indulgence, that he and his Parliament thought fit to grant it; and after the granting of it, enjoyed much more Tranquility in their State than before.

In a far greater measure it may be presumed to conduce to the Peace of *England*, to grant such Indulgence, where they agree in the same Fundamentals of Profession of Religion; and where there are as many, if not more Dissenters, in some Particulars of Ceremonies, from the Profession owned and commanded by Authority, than there are Conformists thereunto.

If the Wisdom of *France* found it unfit and unsafe to provoke so small a Number among them, who differ'd from them in the Main Fundamentals of the Religion profess'd and avowed by their State, but rather judged it agreeable to Prudence and Publick Security, to grant them an Indulgence, and have enjoyed the peaceable Fruits thereof: How much more in Polity, will it conduce to the preservation of our Peace, to grant such Indulgence to those Dissenters among us, who are greater in Number, than those who would impose upon them what is contrary to their Consciences, who it is thought are the

H. 4. of  
France,

lesser Number, tho' in Authority over their Fellow Subjects, as to these Matters. That which *Henry* the Fourth of *France* said to his Parliament, to perswade them to consent to his Edict of Indulgence to those of the Religion, may be found true elsewhere, I  
 ' I tell you, (said the King) Necessity and  
 ' Utility mov'd me to it; I did it by the  
 ' Advice of all my Council, who found it  
 ' good and necessary, for the estate of my  
 ' Affairs, the good of my Service, to con-  
 ' tinue the concord, and to dissipate those Un-  
 ' happineses that Discord hath produced.

By the granting of such Indulgence, the publick Peace may be the better preserved, as it appears to me from the Examples of elder Times, whereof I shall instance in a few briefly.

Christians.

*Christians* have been so strangely Hated and Persecuted in the Birth of the Church, That some gave them no other name but *Impostors*, and some accused them of injury of the *Air*, of the sterility of the *Seasons*, of the overflowing of *Rivers*, of *Earthquakes*, *Dearth* and *Pestilence*, and of all the Calamities which fell upon Men.

Emp. Adrian.

But the Emperor *Adrian*, would not  
 ' That they should be questioned, nor curi-  
 ' ously searched into as to the matter of  
 ' their Religion. And *Antoninus*, his Succes-  
 ' sor, commanded, ' That he who Accused  
 ' them, should be Burn'd alive: So much  
 ' did they judge it to conduce to the Peace of  
 ' the Empire, not to trouble those Men in  
 ' their Religion.

Antoninus.

After that the whole Empire had found the wicked and cruel General Persecution of

*Dio-*



*Dioclesian* and *Maximinus*, to be Vain and Fruitless, and that for one Christian they caused to be Burn'd, one Hundred sprang up out of their Ashes, their Successors found it true, That Kings have no Command over the Hearts, as over the Bodies of their Subjects; and that the publick Peace is not preserved, but broken by Persecution; that Religion could not be forced; that Truth could not be joyned with Violence, nor Justice with Cruelty; and that there is nothing so free and voluntary as Religion; that the Permission and Indulgence of that Freedom, tends most to the Preservation of publick Peace; a main Ground of all Polity.

*Pagan* Princes have Indulged the Christians. *Decius* had been counted as great a Prince, both in War and Righteousness, both in Military and Civil Affairs, as any of his Predecessors, if he had moderated his Cruelties against the Christians, and Indulged them in their Religion.

*Christian* Princes have likewise Indulged and suffered *Pagans*, and would not admit *Paganism* among them to be punished. The Emperors *Honorius* and *Theodosius*, although burning with the Zeal of advancing their Religion, yet would not that the Heathens should be forced to be Christians, and required their Judges and Presidents of Provinces not to Trouble them, so long as they did live without Disturbance or Sedition, in the Places where they were subject to the Laws Politick of the Empire.

The *Jews*, although Irreconcilable Enemies to the *Ethnicks*, and to the multitude of their Gods, yet have they dwelt with the greatest Security among the *Grecians*, the

*Parthians, Medes, Elamites, Mesopotamians,* and none ever chased them out of the *Roman Empire*; they have had there in all times their *Synagogues*, especially *Nerva* and *Antonius Pius*.

*Nerva.*  
*Antonius*  
*Pius.*

They have lived Peaceably, and been Indulged in *England, France, Spain, Poland, Germany,* and other Countries; and whensoever they were driven out of any Country, it was not for their Religion, but for their *Usuries, Exactions,* and other *Cruelties*.

The *French Historian* further Noteth, that Princes well-advised, have never put some of their Subjects to Death, to make others of them believe that they have not wasted their Provinces by War, to instruct the Consciences of their Subjects by the Sword, knowing well, that Religion is an Act of *Union, Concord,* and *Instruction*; and War, nothing else but *Sedition, Misery,* and *Destruction*.

And they who have moved Heaven and Earth, that is, have made use of every Engine to force the Consciences of their Subjects into one and the same Religion, have been at length constrained to desist, and to suffer them to Live, rejecting the Counsels of bad Physicians, who have nothing but *Stibium* and letting Blood for all Diseases.

*Bobemians.*  
*Zisca.*  
*Procopius.*

I might farther Instance in the Story of the *Bobemians*, under *Zisca* and *Procopius*, where all the Power and Force of the Emperor and of the Pope, could not bring them to a Conformity, till Indulgence in matters of Religion was granted to them; upon which their Dissentions were appeased. And the like might be observed among the *Ger-*

*mans.*

*mans*

*mans*, after the time of *Luther*, and likewise among the *Helvetians*, by the granting of Indulgence in Matters of Religion, the Peace was preserved, and freedom from the Calamities of War ensued. *Helvetians.*

If Force be used to keep the People quiet and in Obedience to that from which their Consciences dissent, this Force cannot be maintained without a vast Charge, that Charge will increase the Discontent, and that must cause increase of Force, and that again increase of Charge, and consequently of Discontent; and so it will run in a course of Unhappiness and Unsettledness.

This Force must either be a *Country Militia*, or a *Standing Army*; a *Country Militia* will be so favourable to their Neighbours, and perhaps so inclinable to their Opinions, that they will be of the less use, in what may be expected from them in such a Service. *Militia.*

And if the Force should be a *Standing Army*, how many Examples are there to be found, of such Forces to command their Commanders? And what the Opposition, or Issue of such a Force hath been, and not improbably may be, is Dreadful to imagine. *Standing Army.*

*Henry* the Fourth of *France*, desir'd as much as might possible be, to avoid the guilt of those that by adventuring to correct things *Incorrigible*, do shew, that the Evil is stronger and more powerful than the Remedy; where things are Old and Rooted, they labour in vain who would remove it by Violence. *Tacit. An. 1.*

*Theodosius* did highly commend the good Bishop *Proclus* for his sweetness of Deportment. *3.*  
*Potius est o-*  
*mittere adulta*  
*& praevalida*  
*vitia quam il-*  
*lud esse, &c.*  
*Theodosius.*  
*Proclus.*

ment toward Erring Persons, and the Experience which *Christendom* hath had in this last Age, is Argument enough, That Indulgence to Differing Opinions is so far from Prejudice to a State, that it advantages the Publick, because there is not so much as the pretence of Religion left to them to contend for it, being already Indulged to them.

*France.  
Hugonots.*

When *France* fought against the *Hugonots*, the spilling of her own Blood was Argument enough of the Imprudence of that way of promoting Religion; but after she gave Indulgence to them, the World is witness how Prosperous she was afterwards in all her Dominions.

Another way of keeping quiet all Dissenters, is moved by some to be the Extirpation of them, either by Banishment or Death. These would Unpeople their Native Country, and disarm their Sovereign of so many Thousands of strong and valiant Subjects, abate their own Rents and Wealth, and Trade, to Enrich remote Regions. But this way of Banishment will be needless; for if those Dissenters may not be permitted the freedom of their Consciences in their own Country, they will Banish themselves, and live more Comfortably and Contentedly among Foreigners.

*Pistor. Episc.  
contr. Arru.  
p. 295.*

*Hillary* Reproves these Courses, and saith, The Church terrifieth Men with Exiles and Imprisonments, and so she compelleth them to believe in her, who herself was least expos'd to the danger of Banishment and Bonds; she who was Founded under the Terror of Persecutors, who was propagated by Priests in Banishment, now Banisheth Priests. She glorieth

rieth in being loved by the World, who could not have belonged to Christ, if the World had not hated her: It must needs be that we are fallen into the Time of *Anti-Christ*.

But some Merciless Spirits would yet go higher, and force a Conformity on pain of Death, the which they hope indeed may Extirpate the Dissenters from them.

These Meek-minded Men who thirst for the Blood of their Brethren dissenting from them, do fancy Impossibilities.

Did the Massacre in *France* extirpate the *Hugonots*? It did indeed extirpate those who were Massacred, but it did make the Dissent to grow; the *Blood of Martyrs is the Seed of the Church*, and so waters the Persecuted Opinion, that it grows much the faster; they are like Camomil, the more they are Bruised and Trampled upon, the more they Flourish, as the Stories of the Church do manifest.

The first that Preached the bloody Doctrine of putting to Death Erring Persons, was *Dominic*, the Founder of the *Begging Order of Fryars*; and therefore the Inquisition is entrusted only to the Fryars of his Order: And it is related, That his Mother, the Night before he was Born, did Dream, That she was brought to Bed of a huge Dog with a Fire-brand in his Mouth; and such a one he proved.

He so Preached against the poor *Albigenses*, that 100000 of them were Murder'd by the Papists; and of those that were Taken, 180 were Burnt to Death, because they would not abjure their Doctrine; and this was the first

first Example of putting to Death Dissenting Persons. The Pope had as great Power in *England* as in any Country, yet here were no Executions for matter of Opinion, till the Time of *Hen. IV.* who being an Usurper, was willing to engage the Clergy to his Party, by destroying their Enemies, and that was done by colour of an Act of Parliament, which before this, had been Repealed, because it was made without the Assent of the Commons, and the Writ for *Burning them*, is not found in the Ancient Register.

Clergy.

Lactantius

*Instit. l. 5. c.*  
*20. p. 418.*

*Lactantius* reproves this way of Cruelty, where he saith, ' There is a vast difference between Butchery and Godliness; neither hath Truth any concord with Violence, or Cruelty with Righteousness. And sure no other Blood is available in Religion, but the Blood of Christ only.

Those are much mistaken, if not misled by *Satan*, who move this way of putting to Death those who dissent from their proud Opinions.

Another ground of Polity for the allowing of this Indulgence, is for the advancement of the Trade of this Kingdom, and is the more considerable with us, because we are Islanders. The *Nonconformists* generally are Sober, Industrious, Trading Men, either Merchants, or Artificers, both which are useful and necessary Members of a State, and perhaps more than debauched Drones, who are Born to consume Provisions, but not to encrease the Publick Wealth, as Traders do, as well as their own, and add also to the Riches of the Prince, and Safety of the Nation where they Live.

Trade.

Except

Except such Indulgence be granted, there will be little occasion of more Laws against them, they will abjure their Country without any Law to command it; if they may not enjoy their dearest Interest, the liberty of their Consciences in their Native Country, they will seek for some other Place, (though in remotest Regions) where they may enjoy it, and hereof we have seen some Experience.

And their Industry and Persons will procure their Welcom wheresoever they come; and even Pagans will allow them their desired Freedom, if their Country-men and Fellow-Protestants should deny it to them: But I suppose and hope, that no Sober English Protestant will think of any such way as Extirpation by Banishment or Death, of those who differ in Opinion from them.

Another ground of Polity for the granting of this Indulgence, is from the *Increase of People*, which will thereby follow, and the Lessening of them if it be denied; and the multitude of People adds greatly to the Prince's Interest, and to the Strength and Wealth both of him and his People; the loss of every single Person, is a loss both to King and Kingdom.

God gave this Blessing to *Abraham*, *Thy Abraham, name shall be called Abraham, for a Father of many Nations have I made thee.* *Gen. 17. 5.* And the name *Abraham*, signifies a *High Father of a Multitude*. Every Prince is a Father of his Country, and the more Subjects he hath, the greater is his Blessing; and the greater multitude he hath of Subjects, the Higher Father he is; and the more Children he hath,

hath, the granting of such Indulgence will keep them at Home with their Politick Father, whose Riches, Honour, and Strength, will be encreased by them.

Another ground of Polity for granting this Indulgence, is because thereby the Persons to whom it is granted, will be brought to an entire Dependance upon the State, who grants it to them. Subjection is due in regard of Protection, and where Men have the liberty of their Consciences from the States Favour, the Interest of Protecting that Liberty, and making it secure to them that have it, obligeth them to Faithfulness, and to endeavour the preservation of that Power in its full Force, by which this great Interest is sustained.

*Satisfaction  
of Men's  
Minds.*

The last ground of Polity, which I shall now mention for the granting of this Indulgence, is from the satisfaction of Men's Minds.

Whilst Dissenters are in Doubts and Fears lest they may be Punished and Persecuted for their Dissent, whilst they see Laws rigorously executed upon others, in the same condition with themselves, and know not how soon it may be their own Case; this perplexeth their Thoughts, disturbs them in their Business, causeth them to transport their Stocks beyond Sea, and sometimes their Persons and Trades also; which hath been no small Detriment to *England*.

But by granting of this Indulgence, Men's Minds will be satisfy'd, and quieted; they will cheerfully and industriously follow their Callings, whereby Trade will be promoted, the Wealth of the Nation, and the Strength and



and Peace of the King and his Kingdoms will be advanced.

Laws are the Sinews of Government, they are the Bands of Peace and Property, and the Cement of Civil Society, that which maketh Men to live quietly and justly in this World, and without which we might expect nothing but Confusion. No Law can be made, without the Royal Assent, which is to the keeping and observing as well as to the making of it; and where Princes keep themselves within the limits of their own Laws, and do observe them, they add much to the satisfaction of their Subjects, and to their own Interest; but if one think himself loose from them, the other will attempt to be so likewise.

From the grounds of the Law of Nature, it seems evident to me, that it is convenient and fit to grant Indulgence in matters of Religion: This is that Law which the Apostle mentions, speaking of those who *have the Law written in their hearts, their Consciences also bearing Witness, and their Thoughts the mean while accusing or else excusing one another.*

The Law of Nature gives a Liberty to every Man's Thoughts, Conceptions and Opinions; and no Man can change his Opinion when he will, nor ever doth heartily or resolutely, but when he in his Church cannot do otherwise, and then to use Force, may make him an Hypocrite, but never to be a right Believer; it either punishes a Man for keeping a good Conscience, or forces him into a bad; it Persecutes a Truth, or drives into an Error; it teaches a Man to Dissemble, and to be safe, but never to be Honest.

It

Bishop Taylor  
*lib. Prophef.*  
 p. 516.

It is therefore an unnatural thing to persecute disagreeing Opinions: For the Understanding being a thing wholly Spiritual cannot be restrained, and therefore neither punished by corporal Afflictions: And since no punishment of the Body can cure a Disease of the Soul; it is disproportionable in Nature, and in all Civil Government, to punish where the punishment can do no good; it may be an act Tyranny, but never of Justice; and it is agreeable to the Law of Nature, to grant Indulgence in such Cases.

Nature hath made Mankind an excellent Emblem of *Uniformity*, and which may reach in the Parallel, to matters of Religion; all Men have like Bodies and Souls, in the Frame of the one and Faculties of the other; yet their Bodies differ in Structure and Countenances; they have all likewise Rational and Intellectual Souls, yet in their Conceptions, Thoughts and Opinions, there is as much Variety as in their Statures and Countenances; nevertheless, they are all Men and Women of the same Frame and Constitution of Mankind; so it is with Dissenting Opinions in matters of Religion, they are all Christians of the same Make, Profession and Faith; They agree in the Fundamentals of the Gospel, with those in Authority, but differ in Opinion, perhaps in some lesser Matters, pertaining to the Worship of God: But this Dissent makes them not cease to be Christians still, they are uniform in the Foundation; and therefore to indulge them is agreeable to the love of Nature.

The variety of Opinions ought to be look'd upon as an Argument only of diversity of  
 Ope-

Operations, while the Spirit is the same, and that another Man believes not so well as I, is only an Argument, that I have, a better and clearer Illumination than he, that I Excell him in this, and perhaps Excelled by him in many more, and this is no cause for me to persecute him, but rather from the grounds of Nature, that he be Indulged.

From the grounds of the Law of Reason, it seems to me to be required, that this Indulgence should be granted. Reason is a great and wonderful thing, and how it comes, where it lodgeth, and in what manner it acteth, we know not, but it greatly declares God, whose Power and Wisdom we cannot sufficiently Admire and Adore.

*The Law of Reason.*

Reason is the guide of Humane Affairs, and that Conduct which is without it, seldom comes to any good Effect : To act contrary to Reason, is to act as a Beast, not as Man : Reason is the distinction betwixt Men and Beasts : God gave Man Dominion over the Inferior Creatures, and Reason to make good that Dominion ; for in many other Faculties, some of them do excell Man, but Reason makes him Lord over all of them.

Reason is said to be that Image, or likeness of God, after which Man was Created ; and therefore to do things agreeable to the Law of Reason, is to do things as near as we can like unto God. To Persecute Dissenting Brethren seems contrary to Reason, and to the Proceedings of God with his Subjects, and rather an Imitation of that Tyrannous Emperor, who would have all conform to his Stature ; those who were not so Tall as he, to be stretched and racked out to the length

length of his Bed, and those who were taller, to be cut short to the Length of it.

*Sempronius.*  
*Caius.*

It is unreasonable that *Sempronius* should force *Caius* to be of his Opinion, because *Sempronius* was Consul this Year, and Commands the *Lictors*; as if he that kill a Man, cannot but be Infallible; and if he be not, why should I do Violence to my Conscience, because he can do Violence to my Person?

It seems hard, that because I am in Authority, therefore I should Persecute and Ruine another for not being of my Opinion; it is against Reason to do so; when for ought I can know to the contrary, his Opinion may be the Truth, and mine an Error: And so it hath been in the Persecutions of the World in all times, the Persecutors generally have been in the Wrong, and the *Persecuted in the Truth*, as afterwards appear'd.

And hereof there are many Precedents in the Stories of all the Reformed Churches, where we may find, That the same Opinions which at one time were condemned for *Heretical*, and rigorously Persecuted, came afterwards to be Established by publick *Edicts*, for professed Truths of Doctrine.

*Waldenses,*  
*Wicklans,*  
*Lollards,*  
*Lutherans,*  
*Calvinists.*

So it was with the Opinions of the *Waldenses*, of the *Wicklans*, of the *Lollards*, of the *Lutherans*, of the *Calvinists*, and others; the Opinions of the Popes Supremacy, of *Transubstantiation*, of worshipping *Images*, of *Prayers for the Dead*, of *Purgatory*, of *Pardons*, and the like, which were held Orthodox Articles of the Christian Faith, and so declared by the Church of *Rome*, and by *General Councils*, and those to be Hereticks who denied them. And so it is in the *Romish Church*

Church at this day, and many Burnt for differing from these Opinions.

But through the goodness of God, in this Kingdom, and other Reform'd Churches, those Opinions are Condemn'd, and the contrary Establish'd; such Incertainty there is in the Judgment of Men concerning some matters of Religion. And indeed, it is impossible perfectly to determin them without an Infallible Spirit, which none will lay claim unto, when they remember that they are but Men.

He that considers the Catalogue of Heresies, which are mounted to 520, shall find many reckon'd for Hereticks for Opinions Disputable and Undetermin'd, and of no Consequence; and some numbred for Hereticks, which by every side respectively are acquitted: And since no ground can secure a Man tho' in Authority from possibility of Mistaking, we were Miserable, if it would not secure us from Punishment.

*Epiphanius.  
Philastr.  
Austin.*

There is a popular Pity that follows all Persons in Misery, and that breeds likeness of Affections, and oftentimes likeness of Perswasion, and the rather because a Jealousie ariseth, That they who persecute an Opinion, are destitute of sufficient Arguments to confute it.

Concerning those things which Men now-a-days call *Heresy* and *Nonconformity*, they cannot be so formidable as they are represented. It was an ancient Accusation against the *Primitive Christians*, That in their Conventicles they plotted Sedition against the Emperors; but never any such thing was proved against any one of them.

*Primitive  
Christians.  
Conventicles.*

Laws of Men.

From the grounds of the Laws of Men, it seems to me, the States Interest to grant this Indulgence, where Laws have been made, and the issue of them have for the most part proved Unsuccessful as to the thing intended, and as to the Persons engaged in them, there is no encouragement to make the like, but Laws made against Persons differing in Opinion. Persecuting of Christians hath proved very unsuccessful, and miserable to those engaged in them, as appears in all Histories of that Matter; as the Church which was in part slain by the Murderer *Cain*, in the Person of *Abel*, was by Divine Providence, revived in the Person of *Seth*, whose Name in the Hebrew, signifies *Substituted*.

Cain.

Abel.

Seth.

Sir Samuel  
Moreland's  
Preface to the  
History of  
Piemont.  
Martyrs.

So the Church, against which such severe Laws have been made, and such cruel Massacres Executed, in the Persons of so many noble and renowned Martyrs; God has always renewed in the Persons of others, his chosen Saints and Servants, according to that of the Poet, *Uno sublato haud deficit alter Aureus*. Those who have died by such unrighteous Laws, have spoken more for the Truth by their Death, than in all their Life-time, and there have been famous Worthies in all Ages, who like the Ancient *Heathen Race-runners*, having finished their Course, have always delivered the Lamp of their Doctrine to the next Runner. Thus in the Vallies of *Piemont*, *Claudius* to his Disciples, and they to their succeeding Generations; so did *Bertram* to *Berengarius*, *Berengarius* to *Peter Brus*, *Peter Brus* to *Waldo*, and *Waldo* to *Dulcinus*, *Dulcinus* to *Gandune* and *Marsilius*, they to *Wickliffe*, he to *Huss*, and *Ferome of Prague*,

Heathen Race-

runners.

Piemont.

Claudius.

Bertram.

Berengarius.

Peter Brus.

Waldo, Dul-

cinus, Gan-

dune, and

Marsilius.

Wickliffe,

Huss, and Je-

rom of Prag.

Prague, and their Scholars, and the Thaborites to Luther and Calvin.

Thaborites.  
Luther and  
Calvin.

And all these Dissenting Opinions, the more they have been Persecuted, the more they have been Propagated; the more they have been Diminished, the more they have Increased. And the severe Laws of Man made against them, have proved fruitless and unsuccessful: And not only have such Laws been Ineffectual, but those who were engaged in them, have many of them fallen into great Misery, as by the Stories of the Heathen Emperors, Bishops of Rome, and other Princes, is set forth, who made and executed such severe Laws against Dissenters.

Pharaoh after Ten remarkable Plagues, was with his Great Army, Drowned in the Red Sea. The Jews insisted upon their Law; We have a Law, and by that Law he ought to die, because he made himself the Son of God. And they took the Blood of our Saviour thus persecuted to Death, upon themselves and their Children; and if all the Stories of the World were put together, they could not instance in so great Miseries as befell this Nation, when Titus Sack'd Jerusalem.

Pharaoh,  
Exod. 14. 27,  
28.  
Jews,  
Joh. 19. 7.

The Lord smote Antiochus with an Incurable Disease in his Bowels, and the Worms rose out of his Body, and his smell was Noyfom to all his Army. Herod the Great Stank alive. Herod Antipas was miserably Confined: And Herod Agrippa was eaten up of Worms. Nero Slew himself, and 30000 of his Subjects were swept away with the Pestilence. Galba was slain by Otho. Otho Stabb'd himself.

Joseph. de  
Bello Judaico.  
Titus. Jeru-  
salem.  
2 Mac 9.  
Joseph. Ant.  
lib. 17.  
Acts 2. 23.  
Herod the  
Great.  
Herod Anti-  
pas.  
Sueton.  
Dion.  
Nero.  
August. de  
Civ. Dei. l.  
18. c. 52.

*Domitian* was Slain by his own People, and the Senate Commanded, that his Name should be blotted out, and his Statues Broken.

Orof. l. 7. c. 12.  
Euseb. Hist. and Ziph. Eatropius.  
In *Trajan's* time the River *Tiber* Overflow'd, and Lightning burn'd some of their Temples and Houses in *Rome*. Four Cities were Ruin'd by an Earthquake, and the whole Empire was punished with Famine and Pestilence.

Orof. l. 7. c. 15, 16.  
Euseb. Chron. Hist. l. 5. c. 1.  
In the time of *Antonine* and *Lucius* was an horrible Depopulating Plague. *Severus* had three Civil Wars, and a great number of his People Slain.

Orof. l. 7. c. 17.  
Spartianus. Herodian.  
*Maximinus* had his Throat Cut by his Soldiers, who took his Head and the Head of his Son, and shewed them upon Pikes to the City, and then Burnt them.

Orof. l. 7. c. 21.  
Eutrop. l. 9.  
Euseb. Euseb. Victor. Cyprian de Morte.  
*Decius* was Slain by the *Tartars*, and his Body, as they relate, carry'd away by the Devil, and an horrible Plague was through the Empire.

*Gallus* was Slain by *Æmilius*. And *Cyprian* Writes of those Times, ' That in one Instant, and that in an admirable manner, ' the Equity of our Cause has appear'd, by ' the horrible Death of Kings, Rulers of ' States, Death of Soldiers, and loss of Battles.

Orof. l. 7. c. 22.  
*Valerian* became *Sapores* his Foot-stool, or to hold the Reins when he got on Horse-back, and was flea'd Alive, and his Son was Slain.

Euseb. l. 7. c. 30.  
Orof. l. 7. c. 23, 27.  
*Claudius* was possessed with an Evil Spirit, which tore his Tongue in pieces, and Choaked him.

*Ævelian* was Slain by his Servants: Others say, That as he was Signing an Edict against the



the Christians, he fell down Dead suddenly.

*Dioclesian's* Body being wasted by a continual Flux, grew so dry, that Vermin bred in his Tongue, and he had such a noisom Smell with him, that no Body would come near him, and so he dy'd, horribly Blaspheming; and his Colleague *Maximinian* was driven out of *Rome* by his own Son, and fled to *Marseilles*, where he was Hanged.

Euseb. l. 8.  
c. 18. & 28.

*Flaccus* the Provost was smitten so that his Soul and Bowels quitted his Body at the same time; and *Dioscorus* was struck Dead by a Thunder-bolt.

*Maximinus* his Guts strangely swelled, and Worms crept out of his Body, and he died noisomly. This Lieutenant had horrible Pains in his Bowels, and so was consumed to Death.

Euseb. Hist.  
l. 8. c. 16, 17.  
Oros. l. 7.  
Euseb. l. 9.  
c. 7. & 10.

*Julian* the *Apostate*, with a deadly Stroak, some think by an Angel, others say Died Bleeding.

Oros. l. 7.  
c. 30.  
Marcel.  
l. 22.

*Nazianzen* saith, ' That the Earth opened her self and swallowed up the Carkass of this Miserable Wretch.

Tract. Cont.  
Jul.

His Uncle *Julian* was seized with a Loathsome Disease in his Bowels; that he could not make Water, nor void his Ordure, but through his Mouth, and so Died.

Theodos.  
Ecl. Hist.  
l. 3. c. 11, 12.  
Nicephor.  
l. 10. c. 29.

His Treasurer had all his Blood come out of his Body at his Mouth, and so Died. And another of his Agents Died of Torments in Prison.

Elpidius.  
Solomene.

*Valerius* was surpris'd by the *Goths*, and Burnt Alive. *Craesus* endured an Ignominious Death. *Gunderic* was possess'd with an Evil Spirit. *Humeric* was torn in pieces by the Devil. *Proculus* grew Mad, bit his Tongue to pieces, and Died with Rage.

Socrat. Hist.  
l. 4. c. 16.  
Chron. Sigat.  
Greg. Turon.  
Victor,

Oros. l. 7. c.  
37.  
Aug. de Civit.  
Dei. l. 5. c.  
23.

*Rhadagaisus* as he was making Laws against the Christians, was delivered up with his Army to his Enemies, and after many Reproaches, put to a Cruel Death.

*Attila* having made himself Drunk, was Choaked with his own Blood.

Paul. Diac.  
f. 17.

*Theodorick* seeing a Fish upon his Table with its Mouth gaping, fancied it to be the Head of one of those whom he had Persecuted to Death, and fell into Melancholy, and Died.

*Antharis* was Poisoned.

*Phocas*, who granted the Primacy to the Bishop of *Rome*, and made and executed severe Laws against differing Opinions, had his Hands, Feet, Privities and Head cut off, and was put with his Children into a *Brazen Ox*.

Onupbrius  
Panninus.

The Bishops of *Rome* who made several Laws against all who did not believe as the Church Believed, when they wanted Enemies abroad, have run one against another with all Violence, Wars, Murders, and Confusions; and in the space of 294 Years, had seven great Schisms in that Church, calling one another *Schismatics*, *Hereticks*, and other odious Names.

Most part of them were tormented with grievous Diseases, and many surprized by sudden Death. Some were driven out of their Seats and Imprisoned; divers were Poisoned.

*Lucius* the Second was Stoned by his own People. *Lucius* the Third was Banish'd, and by his own Servants beaten to Death.

*Adrian* the Fourth, was Choaked by a Fly. *Joan Brought to Bed*, and Died Ignominiously

miniously in the Streets: *John* the Twelfth was Stabb'd by a *Roman*, who found him in Bed with his Wife. *John* 21. with the fall of a Vault.

*Henry* the Second of *France*, died with a *D'Aubignes'* Hurt at Tilting, and confessed he had wrong-<sup>Hist.</sup> ed the poor Dissenters.

*Philip* the Second of *Spain*, after his cruel Laws made and executed upon Dissenters, was eaten up of Lice, and so Died.

*Francis* the Second having made a Vow to Extirpate the *Protestants*, presently Died of an Imposthume in one of his Ears.

*Charles* the Ninth, having caused the Execution of the Massacre in *France*, was troubled constantly with hearing of Groans and hideous Noises in the Air, and his Blood sprang forth from all the Passages of his Body, and so he Died. <sup>Theod. l. 17. P. 990. Du Haillan de Senir.</sup>

*Henry* the Third, his Brother, was Stabb'd by a *Jacobin*, in the same Chamber where he had plotted the Massacre. The Duke of *Guise*, who executed it, was Murder'd, and his Son and Brother were put to Death at *Blois*.

Grave *Wittenberg* Bragging that he would ride up to the Horse Belly in the Blood of the *Lutherans*, was that Night Choaked with his own Blood. <sup>Illiricus.</sup>

Chancellor *Du Prat*, who first gave Jurisdiction to Parliaments against the *Protestants*, had his Stomach eaten through with Worms, and Died. And *John Morin* died of a Woolf in his Legs. <sup>French Book of Martyrs, l. 6. p. 473.</sup>

An *Inquisitor* surprized with a loathsome Disease, complained of his Executing their carnal Laws against the *Protestants*.

Fox, p. 541.

Doctor *Lambert* Died in a Ditch.

Arch-Bishop *Arundell* had his Tongue so swollen, that he could neither Eat nor Speak, and so Died.

Bishop *Gardiner* would not Eat till he heard of the Burning of *Latimer* and *Ridley*, and then his Tongue swell'd and grew black, and he Died.

The Law against the *Lollards* differing in Opinion, was in *Richard* the Second's time, who was Deposed by his Cousin, *Henry* the Fourth, and *Arundel*.

*Henry* the Fourth lived and died full of Troubles. His Son, a gallant Prince, was soon cut off; his Grand-child miserably used, and Queen *Mary* never Prospered after her Laws against different Opinions; and she died of a *Timpany*, after Prayers had been made for the Child she went with, *That it might be a Man-child, a Proper Child, &c.*

Many more Instances might be given to this purpose. And it is Noted, That there hath hardly been any famous Persecutor of different Opinions in any Age or Place, that hath gone down to his Grave, without some remarkable Tokens of Divine Vengeance upon him.

*Cyprian.*  
*Lactantius.*  
*Hillary.*  
*Min. Fel.*  
*Severus.*  
*Chrisostom.*  
*Hierom.*  
*Austin.*  
*Damasus.*  
*Theophil.*  
*Socrates.*  
*Bernard.*

In the first 300 Years after Christ, there was no Law, nor Sign of Persecuting any Man for his Opinion, tho' then horrid Opinions were commenced; but they thought it not only Unlawful, but Unreasonable, and destructive to Christianity. And so is the Judgment of *Tertullian*, That it is of Human Right and Natural Power for every one to Worship as he thinks best; and it is no part of Religion to force Religion, which ought to be

be undertaken Voluntarily, and not by Compulsion.

All Wise Princes, saith Bishop *Taylor*, till they were overborn with Faction, or sollicit-ed by peevish Persons, gave Toleration to different Opinions which did not disturb the Publick Interest. *Lib. of proph. Preface.*

When *Nestorius* in his Sermon before *Theodosius*, said to him, 'O Emperor, give me the Land free from Hereticks, and I will give thee Heaven; with me scatter the Hereticks, and with thee I will scatter the *Perfians*. But *Theodosius* and *Valentinian*, wise Princes, disliking this Inhuman Doctrin, restrained him from his Violence and Inhumanity; and these were Prosperous Princes, and have to all ages a precious Memory, and the Reputation of great Piety for their Indulgence. *Nestorius. Theodosius.*

It is Bishop *Taylor's* Opinion, 'That no Christian is to be put to Death, Dismembered, or otherwise directly Persecuted for his Opinion, which doth not teach Impiety or Blasphemy. Matter of Fact may be Punished, but no matter of meer Opinion; no Errors that of themselves are not Sins, are to be persecuted with Corporal Pains. The greatest Persecutions that ever have been, were against Truth, even against Christianity it self; and it was a Prediction of our Blessed Saviour, That Persecution should be the loss of true Believers, as formerly, he that was born after the Flesh, Persecuted him that was born after the Spirit. This is agreeable to the Laws of Justice and Charity, which bind with greater Zeal to spare and preserve the Innocent, *Ibid. p. 520, & 521.*

cent, than to condemn a Guilty Person; and there is less Malice and Iniquity in sparing the Guilty, than in condemning the Good.

*Ibid.* p. 531.

In the best Times among the best Men, when there were fewer Temporal Ends to be served, when Religion, and the pure and simple Designs of Christianity, were only to be promoted; Then no Persecution was actual, nor perswaded, nor allowed towards disagreeing Persons, and it were happy if it might be always so.

Austin, l. 2.

c. 5.

*Retract.*

*Tertul.*

*Ciprian,*

*Ferom, &c.*

*Euseb. de vi-*

*ta Const.*

Austin's Opinion was, 'That it pleased no good Man to rage against Hereticks to Death; and many of the most Learned agree with him.

Constantine made a Law, That those who Err, shall enjoy Peace and Quiet equally with the Faithful.

Gracian Decreed, 'That every one should follow what Religion he pleas'd, and that all might repair without fear, to Ecclesiastical Meetings.

Socrates, l. 7.

c. 12.

Theodosius made some severe Laws against Anabaptists and others, but they were in Terrorem, and not Executed.

Austin admonished Macedonus carefully to provide, 'That no Heretick should be put to Death, alledging it not only to be Unchristian, but Illegal also, and not commanded by Impartial Constitutions, for before his Time, no Laws were made for their being put to Death.

*Ibid.* p. 583.

But afterwards many got a trick of putting them over to the Secular Power, which at the best is no better than Hypocrisie, removing Envy from themselves, and laying it

it upon others ; a refusing to do that in External Act, which they do in Council and Approbation, which is a transmitting the Act to another, and retaining a proportion of Guilt to themselves, even their own and the others too. It is strange, that for so many Ages, the greatest Princes should subject themselves and their Officers to be as Vassals and Executioners of Priests Commands, especially in so dirty a Work as that of Persecution, and by order of the Clergy, to imbrew themselves in Innocent Blood.

A great Instance for Indulgence, is in the differing Temper, Government and Success, which *Margaret of Parma*, and the Duke of *Alva* had ; The Clemency of the First, had almost extinguish'd the Flame ; but when she was removed, *d'Alva* Succeeded, and managed the matter of Religion with Fire and Sword ; he made the flame so great, that his Religion and his Prince too have both been almost quite turned out of the Country.

The Best of Men, and the most Glorious Princes, were always ready to give Toleration, but never to make Execution for Matters Disputable, and Wisdom is driven out where the Matter is done by Force.

King *James* gave that wise Counsel to the States of the United *Netherlands*, 'To Indulge the differing Opinions among them in matters of Religion, and to let them Sleep, but to prohibit their Ministers the publick Dispute of them.

The like Counsel in the Divisions of *Germany* at the first Reformation, was thought reasonable by the Emperor *Ferdinand* and his Son

*Margaret of Parma.*

*Duke of Alva.*

*Ibid. Pref.*

*Ennius. Pelli e medio Sapientiam, ubi vires agitur.*

Letters dated *March 6. 1613.*

*Ferdinand. Maximilian.*

Son *Maximilian*, for they had observed, That Violence did Exasperate, was Unblef-fed, Unsuccessful, and Unreasonable, and therefore they made Decrees of Toleration, and appointed Expedients to be drawn up by Discreet Persons; and *Cassander* designed to this Great Work, did something towards it.

The Council of *Basil* and the Pope, did the like, and granted Indulgence to the Prote-stants of *Bohemia*, which quieted them.

Philibert,  
Duke of Savoy.

And *Emanuel Philibert*, Duke of *Savoy*, re-penting of his War against those of *Piemont*, at length granted them Indulgence: And as much is done by the Nobility of *Poland*. The

Anno 525.

Bishop Tay-  
lor's Epistle  
Dedicated to  
the liberty of  
Prophec.

Wisest of Princes, and the best of Bishops, gave Toleration and Impunity. And in the time of *Justinian*, the *Catholicks* and *Novati-ans*, had Churches indifferently permitted in *Rome* it self; and when the first Persecution was made against them at *Rome*, by Pope *Innocent I.* at the same Instant the *Goths* Invaded *Italy*, and became Lords of all; it being just in God to bring a Persecution upon them for true Belief, who with an incom-petent Authority, and insufficient Grounds, do persecute an Error less material, in Per-sons agreeing with them in the profession of the same common Faith. It is not warrant-

Laws of God.

ed by the Laws of God, that those in Au-thority should impose upon the Consciences of their Fellow-Subjects (who live Peaceably and Industiously) to believe and practise in matters of Religion, just as their Governors will have them, upon pain to be Ruin'd, if they will not conform to matters concerning their Souls, as the Governors in this World do



do direct. Whereas every Man's Conscience is his own peculiar Province, of which he is sole Monarch under God, and deputed by him for this Government; nor can the Soul be subject or compelled by any, but is the *Arcanum Imperii Divini*, reserved by the Knower of Hearts for his own Sovereignty; and Man he hath appointed his Vice-gerent over his own Soul, for the Conduct thereof through this Life.

It's truly said, 'That Religion ought not and cannot be Compelled; Conscience is a Free Agent, which may be Wounded, but it cannot be *taken Prisoner*; Persecutors may compel *Hypocrisie*, but not *Religion*; and it is a vain thing and disagreeable to the Laws of God, to endeavour by Law and Force to unite differing Opinions.

The Understanding is a natural Faculty, subject to no Command, but where the Command is itself a Reason, fit to satisfy and persuade it; Men may Perswade, but not Enjoyn, where God hath not; and to conform a Man's Conscience to the Command of his Superiors, cannot safely be done, but where God so directs the Conscience.

It is therefore contrary to the Law of God, and his wise Frame of our Understanding, to go about to force Men by Laws, but most suitable to God's Order and Frame, to leave them Free whom God hath made so. Persecution is defined to be a *violent conspiracy against one*, proceeding from an *Enmity of Zeal*, a proud pursuit against Peaceable Men, for not conforming in matters of Religion.

*Actuat. quadam Conspiratio in aliquem, ex Zelo inimico procedens.*

But

But Indulgence is a meek and charitable permission of Men to enjoy such freedom of their Consciences as God hath given them.

Bishop Taylor's Lib. of Propb. p. 52. Christian Religion.

It was one of the Glories of the Christian Religion, That it was so Pious, Excellent, Miraculous, and Perswasive. That it came in upon its own Piety and Wisdom, with no other force, but a torrent of Arguments and demonstration of the Spirit, a mighty rushing Wind, to beat down all strong Holds, and every high Thought and Imagination: But towards the Persons of Men it was always full of Meekness and Charity, Compliance and Toleration, Condescention, and Bearing one with another. Now these things are best conserved with that which gives it the first Being, and which is agreeable to its Temper and Constitution. That Precept which it chiefly Preaches, in order to all the Blessedness in the World, that is of Meekness, Mercy, and Charity, should also preserve itself and promote its own Interest.

It would be a mighty Disparagement to so Glorious an Institution; That in its Principle it should be Merciful and Humane, and in the Promotion and propagation of it, so Inhumane; and it would be Improbable and Unreasonable, that the Sword should be used in the perswasion of one Proposition, and yet in the perswasion of the whole Religion, nothing like it. To do so, may serve the End of a Temporal Prince, but never promote the Honour of Christ's Kingdom: It may secure a Design of *Spain*, but will very much disserve Christendom to offer to support it, by that which good Men believe to be the distinctive cognizance of Mahometan

humetan Religion from the Excellency and Piety of Christianity.

That is Error and Herefy; that is Cruel and Tyrannical; that is God-like and Gospel-like; that is Meek, Charitable and Indulgent; for the Truths of Christ and of his Religion, are most Meek, and Charitable, and Merciful; and by these only Means, he was pleas'd to introduce his Gospel.

They who walk contrary to Christ's Will, never meet him, nor enjoy him; *His ways were ways of Pleasantness, and his paths were paths of Peace*; and they who walk in ways of Violence and Persecution, can never hope to come where he is.

It is a strange Presumption for Men to advance their Worldly Wisdom above the Divine Wisdom of Christ, who is Wisdom itself; who thought fit to introduce Christianity by Meekness and Indulgence: But some proud Men think it a better way to propagate it by Violence and Cruelty, which is not the way of Christ, but of Satan.

So *Athanasius* holds, *Let them tell us, saith he, from whence they learn'd to Persecute, for they cannot say they received it from the Saints, but from the Devil, who said, I will Pursue and Overtake.* And it is a very unbecoming course to force and compel such as are not willing; for the Devil, who hath nothing of Truth, makes his Attempts with the Ax and Iron-Crow to break open the Doors of them that receive him. But our Saviour is so gentle, that he teacheth, *If any will come after him; A new Commandment I give unto you, that you love one another, as I have loved you; that ye also love one another;*

Athanasius  
*Apolog. de fug. sua.* p. 557.  
*Ibid.* p. 643.  
I John 13. 34,  
I 35.  
by

by this shall all Men know, that ye are my Disciples, if ye have love one to another.

I cannot deny, but that there is mention of this New Commandment in the Old Law, *Levit. 19. 18.* where it is said, *Thou shalt not avenge nor bear any grudge against the Children of thy People, but thou shalt love thy Neighbour as thy self: I am the Lord.*

*Job. 15. 17.* Our Saviour repeats this Command, and saith, *These things I command you, That you love one another.*

*Mat. 5. 43. and 22. 35.* There is no one Duty in the whole Bible more repeated and pressed than this Duty of Love is; and Christ's Command may well be called a New one, because it goes farther than the Old, and what the *Publicans* did in loving their Friends; for Christ in his New Commandment teacheth us to love our Enemies.

*Rom. 13. 9. Gal. 5. 14.* All Commandments are said to be comprehended in this saying, *Thou shalt love thy Neighbour as thy self.*

*Jam. 2. 8.* This Commandment of Love, is by the Apostle truly stiled the Royal Law; 'If ye fulfil, (saith he) the Royal Law, according to the Scripture, thou shalt love thy Neighbour as thy self, ye do well.

*Gal. 6. 1, 2.* The Apostle gives this Exhortation, 'Brethren, if a Man be overtaken in a Fault, ye which are Spiritual restore such a one in the Spirit of meekness, considering thy self, lest thou also be Tempted: Bear ye one another's Burthens, and so fulfil the Law of Christ.

Error in Opinion in matters of Religion, is by some esteemed to be a greater Fault than sometimes in truth it is; we must consider

sider this and our selves, who may be, and are as apt to be overtaken with a fault of Error, as others are, and those which are Spiritual, that is not meant of Priests or Ministers only, but all who profess Christ in the Spirit, they are all Spiritual Persons, they must restore such a one that is in a Fault or Error of Opinion. And how must they Restore him? It follows, In the Spirit of Meekness, not by Reproaches, or Confiscations, or Imprisonments; not by Force, by *Fire* and *Faggot*, but in the Spirit of Meekness, which is the Spirit of Christ; and those who are governed by this Spirit, are true Christians, and these fulfil the Law of Christ, which is the new Commandment, to *Love one another.*

The same Apostle speaking of the Demeanor of himself, and other of the Apostles, which is a Precept to all Believers, he saith,  
 ' But we were Gentle among you, even as a  
 ' Nurse cherisheth her Children.

' Let all Bitterness and Wrath, and Anger, *Eph. 4. 31*  
 ' and Clamour, and evil Speaking, be put  
 ' away from you, with all Malice; and be  
 ' you kind one to another, tender Heart-  
 ' ed, forgiving one another, even as God  
 ' for Christ's sake, hath Forgiven you.

To *Timothy*, and in him to all Christians, *2 Tim. 2. 24.*  
 ' The Servant of the Lord must not strive  
 ' but be gentle unto all Men, apt to teach,  
 ' patient, in Meekness instructing those that  
 ' Oppose themselves, if God peradventure  
 will give them Repentance to the acknow-  
 ledging the Truth.

They that oppose themselves, such as differ in Opinion from us must not be Struck  
 F by

ΠΛΙΚΤΙΚΟΣ  
 δούλογκν, κ  
 του δε μακε-  
 δαι.

by any of God's Servants; and yet if any Man will smite these who are his Opposites in Opinion, he will get nothing by that, he must quit the Title of being a Servant of God for his Pains, and this reacheth as well Secular as Ecclesiastical Persons. I meant, saith our Bishop in these Cases, where meekness of Instruction is the Remedy; or if the case be irremediable, Abscission by Censures is the Penalty. The Apostle here speaks of those who apparently are in an Error, because he mentions their Repentance and acknowledging the Truth, yet the means to effect this, even in such a case he directs to be Gentleness, Meekness and Instruction, and so he would have them Indulged, and not Persecuted.

Tit. 3. 2.

He gives also this Precept or Instruction, to *Titus*, and in him to all Believers in Christ, 'That they speak Evil of no Man; That they be no Brawlers, but Gentle, shewing all Meekness unto all Men. The Apostle asks this Question; Why is my Liberty judged of anothers Conscience?

1 Cor. 10. 29.

Let no Man be hasty in calling every disliked Opinion *Heresy*; and when they have resolved that they will call it so, let them use the Erring Person like a Brother, not beat him like a Dog, or convince him with a Gibbet, saith the Learned Bishop; For why should my Liberty be judged of another's Conscience? 'We must walk in all Lowliness and Meekness, with long-suffering, forbearing one another.

Eph. 4. 2.

Bish. Taylor's  
 Lib. of Propb.  
 p. 521.

It is impossible for any Industry to consider so many Particulars, in the infinite number of Questions, as are necessary to be considered,

sider'd, before we can with certainty determine any; and after all the Considerations which we can have in a whole Age, we are not sure not to be Deceived. The obscurity of some Questions, the nicety of some Articles, the intricacy of some Revelations, the variety of humane Understandings, the windings of Logick, and the tricks of Adversaries, the subtilty of Sophisters, the ingagement of Educations, personal Affections, the portentous number of Writers, the infinity of Authorities, the vastness of some Arguments, as consisting in enumeration of many Particulars, the uncertainty of others, the several degrees of Probability, the difficulties of Scripture, the invalidity of proof of Tradition, the opposition of all exterior Arguments to each other, and their own Contests, the publick Violence done to Authors and Records, the private Arts and Supplantings, the fast Tyings, the indefatigable Industries of some Men to abuse all Understandings, and all Persuasions into their own Opinions. These, and a thousand more, even all the difficulties of things, and all the Weaknesses of Man, and all the Arts of the Devil, have made it impossible for any Man in so great varieties of Matter, not to be Deceived.

It is certain, that the best and ablest Doctors of *Christendom*, have been actually Deceived in matters of great Concernment; which thing is evident in all those Instances of Persons, from whose Doctrines all sorts of Christians take liberty to Dissent.

The Errors of *Papias*, *Ireneus*, *Lactantius*, and *Justin Martyr*, in the *Millenary* Opinion

of *Cyprian*, *Tertullian*, the *Asian* and *African* Fathers, in the Question of Re-baptization of *Austin* in his Decretory and Uncharitable Sentence against the Unbaptized Children of Christian Parents; the *Roman* and *Greek* Doctors in the Question of the Proceſſion of the Holy Ghoſt, and in the matter of Images, are Examples beyond Exception.

Now, if theſe great Perſonages had been Perſecuted or Destroyed for their Opinions, who ſhould have answered the Invaluable Loſs the Church of God ſhould have ſuſtained, in miſſing ſo Excellent, ſo Exemplary and great Lights.

But then if theſe Perſons Err'd and by conſequence might have been Destroy'd, what would have become of others, whoſe Underſtanding was lower, and their Security leſs, their Errors more, and their Dangers greater? At this rate all Men ſhould have paſſed through the Fire; for who can eſcape, when *Auſtin* and *Cyprian* cannot? But the Piety of Princes did then Indulge ſuch Good Men.

In the Beſt and moſt Pious Times, the Church always deteſted Hereſies, and ſuch as have declared themſelves opinionative and obſtinate in their Errors, who render themſelves Invincible by Reaſon, and ſuffer themſelves to be overcome by their Opinion. Yet then the Punishments which ſhe hath uſed, have been ſeldom, and they have been more Shameful than Cruel, more Medicinal than Mortal, loving rather to ſee their Faces bluſh with Shame than with Blood.

The Emperor *Theodoſius* would Reſtore his Subjects to the concord of Religion, and of  
 Divine



Divine things, more by Sweetness than by Force, more by Force and Love, than by Punishment and Cruelty, which were true grounds of Piety for his Indulgence.

The four Councils have not used other Arms against Dissenters, than the Word of God; That of *Nice* of 300 Bishops against *Arrius*; That of *Constantinople*, of 150, against *Macedonius*; That of *Ephesus* of 200, against *Nestorius*, and of 630 against *Eutiches*.

These Reverend Fathers held, That Herefie is an obstinacy of Soul, which is not subjected to the Torments of Bodily Death; that Punishments do rather discover and give Breath to a Sect, than Smother or Strangle it; and Punishments are of no use, except it be to break the Bonds of Affection; for meeting with Souls so Constant and Resolved, it draws away more in one Hour, than their Lives could have done in ten Years.

War, saith the Historian of *Henry the Fourth*, is not dead in a State where Consciences are divided, but only Sleepeth; there is nothing that doth more slide and speedily penetrate into the Perswasions of Men to stand one against another, than this of Religion; every one thinketh that his own is best, and judgeth so more by his Zeal and Passion, than by Knowledge or Reason. It was wise Counsel of the Learned Doctor of the Laws *Gamaliel*, who advised the publick Assembly of the Jews, to *Refrain from these Men*, the Apostles differing in Opinion from the Jews; and he gives this strong Reason for what he said;

*Hist. of H. 4.*

*Acts 5, 38, 39.*

For saith he, ' If this Counsel or this  
' Work be of Men, it will come to nought;  
' but if it be of God, ye cannot Overthrow  
' it, lest happily ye be found fighters against  
' God.

*Mercurius  
Tresmegistus.*

It were to be desired that all did exercise  
but one Religion, in asmuch as in this Uni-  
ty is Truth, which is but one.

But admitting Schism to be formed in a  
State, and an Evil to be grown old, it will  
be difficult to shake that which is deeply  
rooted, by the feeble hand of Men.

*French Hist  
of Hen. 4.*

We ought to perform our Duties, and  
leave the Triumph and Conquest of Souls to  
the Eternal Wisdom, who Remarks and Fas-  
hions Hearts as he pleaseth, and gives the  
Signal to so many straying wandring Souls,  
to cause them to enter into Salvation, it be-  
ing not possible for Men to impose any ne-  
cessity upon things which God hath left free,  
as Mens Consciences, which ought to be as  
free as their Thoughts.

*Luther and  
Calvin.  
Baronius,  
Annal 897.*

As to the Reproach of the Reformed Re-  
ligion, That it is but of a late date, since  
the time of *Luther* and *Calvin*; to this the  
same Answer may be given which *Baronius*  
makes for the Popish Church. ' Although,  
' (saith he) the Sun and the Moon be al-  
' ways the same, yet sometimes by the in-  
' terposition of Clouds, they and the Stars  
' shine with less Splendor, and by the Eclip-  
' ses become more obscure: Do not there-  
' fore (saith he) with overmuch Rigor exact  
' more from the Apostolick See, than hath  
' been Divinely Revealed in the *Symbolical*  
' *Signs.*

It

It may be made good by undoubted Testimonies, That the Church of Christ had in it the same Opinions, and Christians professing them, which the Protestants now hold, and that from the time of the Apostles, to this day.

And, if we had no other Light to guide us in this dark and cloudy Night, yet the Fires wherewith those *Cadmeans*, or Generation of Vipers have burnt the Bodies of the Saints, will serve us as so many Torches to keep us from losing our way, between the days of the Apostles and those of *Luther* and *Calvin*.

But to fall lower, even to the times of the Apostles themselves, It is affirmed of the *Aethiopian* Christians, the *Abyssins*, Inhabitants of the Empire of *Precious John*, commonly call'd *Prester John*, That ever since their conversion to the Christian Faith, which was by *St. Thomas* the Apostle, and by their Queen *Candaces*, they have held and professed the same Articles of Faith, and the same Opinions which the Protestants now hold. Their Confession of Faith, was and is in effect the same with the Apostles Creed, and that of *Athanasius*. The Stile of their Emperor gives a relish to it, which is thus.

' In the Name of God, the Father Almighty, Creator of Heaven and Earth, of things Visible and Invisible. In the Name of God the Son, Jesus Christ, who is the same with the Father, from the beginning of the World, Light of Light, true God of true God; and in the Name of God the Holy Spirit, which is also a living God, proceeding from the Father.

Sir Samuel Moreland's Pref. to the Hist. of Piemont.

Giacomo Berratus's Travels into Æthiopia, p. 121.

Ibid. p. 124.

Ibid. p. 54.

Ibid. p. 130.

Their Opinions are, that they neither Worship nor Pray to the Virgin *Mary*; they do not acknowledge Superiority of the Bishops of *Rome*; that they ought to Honour the Saints and Angels, but not to make Prayers to them: They receive the same Books of the Scripture as we do; their Clergy have liberty to Marry; they believe that none can be Saved without the Blood of Jesus Christ, which is sufficient to cleanse us from all our Sins, without any other Assistance; and that we are not to trust upon the Merits of the Apostles and Saints that were Sinful Men as we are.

They believe whatsoever is in their Books call'd *Manda* and *Abatit*, which they fancy that the Apostles and Disciples being Assembled at *Jerusalem*, did cause to be Written for the Benefit of Christianity, and in them are Precepts to Fast every *Wednesday*, in remembrance of the Wicked Resolution of the Jews, on that day to Crucify Christ.

To Fast every *Friday*, because on that day Christ was Crucify'd for our Sins. To Fast 40 days in *Lent*. To meet together on the Lord's-day, and then to have the reading of the Holy Writings of the Apostles and Prophets, which are to be Expounded by some appointed for that purpose; and this day they observe, because Christ on the first day of the Week, did rise from the Dead.

They also observe the Sabbath-day, because God on that day had finished the great Work of the Creation of the World, and on both these days they meet and spend the time in Prayer and holy Duties; in which days it is not permitted to do any servile Work. They

They allow no Masses, or Prayers for the Dead, but Rejoice at the death of a Friend, as the *Scythians* did from the belief of a Resurrection, and the assurance that the Party that is Dead is free from all the sense of Misery and Affliction, unto which the Living are expos'd.

They receive the Sacrament in both Kinds, commonly every Sunday; they do not think the Bread to be Transubstantiated into Flesh, nor the Wine into Blood; the words of Consecration they understand without any Interpretation; that they declare unto us the Use and Benefit we are to receive by this Sacrament, and they do not trouble their Heads whether Corporally or Spiritually, Christ is present in his Ordinance.

Upon which Passage, the Author of the *Ibid.* p. 143. Relation, tho' a *Papist*, hath this Observation; 'They hope (saith he) for Salvation, without the knowledge of these Curiosities.

In Baptism they do not Sanctify by Exorcisms, nor do they mingle any other Ingredient, but as the Eunuch of Queen *Candaces* was Baptized by pure Water, so do they Dip or Sprinkle with the same Element, free from Mixture, all that are Baptized.

In the celebration of the Sacrament, they use no Ceremonies, nor insignificant Gestures at the Consecration, but as Christ Comanded so they Practise.

They do not enjoyn Confession to the Priest, but leave it to every one's Liberty, and allow no Absolution nor Penance. 'It p. 151. were to be wish'd, (saith our Author) that Christians

Christians all over the World, were of  
 their Disposition; they would not then  
 Curse and Damn their Brethren for Trifles,  
 nor send them to Hell, because they do  
 not jump with them into the same Opini-  
 ons, and follow the same frivolous Customs  
 invented by themselves. A Christian Con-  
 descention becomes us, we should not rack  
 and send to the Flames Men of the same  
 Profession, because only they dare not join  
 with us in Indifferent Performances

They receive the same Books of the Old  
 and New Testament as we do: The Whip-  
 pings and Macerations of the Body were  
 never seen among them, and they know no-  
 thing of Indulgences and Pardons granted  
 by the Rulers of the Church: This Trade  
 was never introduced among them. And  
 when they were earnestly solicited from the  
*Romish* Church, to admit Worshipping of  
 Images, Prayers for the Dead, Transubstan-  
 tiation, Pardons, and the Supremacy of the  
 Bishop of *Rome*, they would by no means be  
 perswaded to it.

So that it appears, this Religion hath  
 been in the World 1500 Years, before the  
 time of *Luther* and *Calvin*, and many Hun-  
 dreds of Years before there was any Pope,  
 or Supremacy claimed by him: And there-  
 fore the Precedents and Resolutions found-  
 ed upon this Religion amongst us, which is  
 so Ancient in the World, is not a weak  
 foundation of Argument for the Indulgence  
 desired

I may be pardoned to insist the longer on  
 this Point of the Antiquity of the Protestant  
 Religion, being a thing of so great conse-  
 quence to us.

I shall therefore come nearer Home to evince the Truth thereof, and shew you, that among the *Waldenses* and *Albigenses*, the same Opinions in matters of Religion which the Protestants do now profess, were held and professed by them from the time of the Apostles, and continue their profession in this Day, of whom *Beza* gives this Character.

As for the *Waldenses*, give me leave, (saith he) to call them the very Seed of the Primitive and purest Christian Church, being those who have been so upheld, as is clear and manifest, by the Providence of God, that neither those infinite Storms and Tempests, whereby the whole Christian World has been shaken for so many Ages together, and at length the Western Parts so miserably Oppress'd by that Bishop of *Rome*, falsely so called, nor those horrible Persecutions which have been directly rais'd against them, were ever able so far to prevail upon them as to make them bend, or yield a voluntary Subjection to the *Roman* Tyranny and Idolatry.

Here are to be found, besides the Arguments which may be drawn from the ancient Confessions of Faith, and several other Authentick Manuscripts, which have been in former times so miraculously preserved from the Flames, during their hottest Persecutions. Besides these, are to be found the most Eminent and most bitter of their Enemies, that have let fall many seasonable Passages in their Writings, which they composed against these poor Faithful ones, whereof some by manifest Deductions, others in plain Terms, avow the Antiquity of their Religion

*Beza de Vald.*  
*Treatise of the*  
*Pillars of*  
*Learning and*  
*Religion.*

*Sir Samuel*  
*Moreland's*  
*Pref. to the*  
*Hist. of Piemont.*

Religion under the name of Heresy, even from the Apostles time.

*Fonas Aurelianus.*  
*Prior Roncosum de Cessini.*  
*Rainerius Saccon.*

*Sir Samuel Moreland's Pref. to the Hist. of Piemont.*

*Gaguinus. Rouyan.*  
*Bellarmin de nor. Eccles.*  
p. 285.

*Du Haillan. Philip. Aug.*  
2. lib. 10. p.  
§24. Tom. 1.

So that now, what need we any further Witness? We have heard themselves speak and justify sufficiently what we assert; and certainly they will henceforth Blush, and be ashamed to upbraid us, where our Religion was before the days of *Luther* and *Calvin*? We may call divers of their most Eminent Doctors to Witness for us, that it was in the Vallies of *Piemont*; and tho' they were most cruelly Persecuted, and some poor Mothers and their Infants flying from their Persecutors, were Starved to Death in the Cold and Snow; others of their Women were Ravished, and afterwards Staked down to the Ground; others were strangely Forced, and then their Bellies rammed up with Stones and Rubbish; the Brains and Breasts of others, sodden and eaten by their Murderers; and others had their Flesh sliced from off their Bones while they were alive, till they became meer Skeletons or Anatomies; and many Aged Persons were cruelly burnt in their Beds.

*Du Haillan* of the Romish Persuasion, describes the horrid Butcheries executed by the Pope's Order against the poor *Albigenses* having published the *Croisade* against them, promising those who would assist in this Persecution, the remission of all their Sins. And *Bellarmin* Boasts, That the Papal Army slew at one time 100000 poor *Albigenses*; and Pope *Gregory* the Thirteenth Glories in the Massacres done in *France*.

At the Taking of the City of *Beziers*, 60000 of them were put to the Sword. At *Vauz* the Captain of the Town was Hanged, Eighty



Eighty Gentlemen Beheaded, many Burnt, and a Lady cast into a Well and Stones thrown upon her: Great Butcheries were committed at *Moisac*, and at the City of *Tholouse*; and of those Slain and cast into the River, were 20000.

The Persecuting of different Opinions, is that which causeth the Schism and Division, and not the Dissenting in Opinion; the Dissenters are only Patient, the Persecutors of them, are they that make the Breach and Schism.

If one be a Nonconformist, he Troubles no Body, he Disquiets no Body by his Nonconformity, but when he is troubled and punished for his difference in Opinion; this Trouble causeth the Rent and Division in the Church, which otherwise would be whole: So that Persecutors are more properly Schismaticks than they who are Persecuted.

He that conforms not in Religious Matters, is sure to gain no Advantage nor Pleasure in his Nonconformity, by being Unpunished for it; but his Conscience directing him to his Nonconformity, he adheres to that Principle, whether he be Punished for it or not; only the Indulging or not Punishing of him, testifies the Grace and Favour of his Prince and Government to him, but neither encourageth nor discourageth this Division in him.

All good Christians heartily desire and pray for Uniformity, and the Psalmist tells *Psal. 133* us 'How good and pleasant a thing it is, for Brethren to dwell together in Unity.

The

Eph. 4. 3.

The Apostle Exhorts us to keep the *Unity of the Spirit in the Bond of Peace.*

Eph. 4. 15.

But this unity of the Spirit, this Bond of Peace is most broken by Persecuting of different Opinions; the unity of the Faith, and of the knowledge of the Son of God, is the way to come unto a perfect Man, unto the measure of the Stature of the fulness of Christ.

Mat. 18. 7.

Christ tells us, that Offences must come, but Woe to that Man by whom the Offence cometh; but this Offence must be such a one as gives just cause of Scandal, and must be an Offence to God, not every different Opinion from those in Power, which they take for an Offence, when in truth it is none: The Offence comes more by him that Persecuteth, than by him that Pardoneth.

Phil. Nye,  
*Beams of former Light.*

All Vines and Cedars, and every Plant and Herb, every Beast and Bird, and Fish, are uniform in their Kinds, yet there are Differences in every one of them.

Bish. Taylor's  
*liberty of Propb.*

A forced Conformity in all Ages hath been the occasion of the greatest Differences and Disturbances: I say, the neglect of Scripture Rules, the which guide and Direct an Uniformity in Matters of Substance and great Consequence, and by Canons and Injunctions, and other ways, erect an Uniformity in matters of doubtful Dispute, and not of much concernment, if they were Cleared.

The pretence of Uniformity, and upon that account taking liberty to impose doubtful Traditions, hath been in all Ages, an Utensil in the hands of the Church Governors, by which they have exercised greatest Tyranny, and put themselves in a capacity  
to

to bring Ministers and others, under what Bondage they pleased.

One Council decrees, that the Ministers must live single Lives for Uniformity. *Bel-larmine* Disputes to have the Service in the same Language in all the Pope's Dominions for Uniformity sake; and what thing, be it never so absurd, but may be brought into the List? There is an Uniformity arising from the virtue of internal Principles, as also from external Mould or Frame; the one is Free and Natural, the other Compelled and Forced: That from internal Principles, is an Excellency in Nature and in Grace.

The Matters in difference, do relate to things Spiritual and Supernatural; and that the Will of God cannot be known in these things but by Revelation from himself, all Men will acknowledge; and that Divine Revelation cannot be apprehended or assented unto, but according to the nature and measure of that Light which God is pleased to communicate unto them, to whom such Revelation is made. *Peace-Offering, P. 19.*

That this Light doth so equally affect the Minds of all Men, or that it is possible it should do so, considering the divers ways and means of its Communication, with the different Dispositions of them that receive it, that they shall all have the same apprehensions of the things proposed unto them, none will judge but such as take up their Profession in these things, on Custom, Prejudice, or Interest.

The word of God abounds with nothing more, as to our Duty in this World, than with Precepts for, and Exhortations unto mutual *Ibid. p. 23. 24.*

mutual

mutual forbearance for one another in our Mistakes and Failings ; and although there be Force and Light enough in its General Rules to guide us in all Particulars ; yet lest any should imagine that the Cause under Consideration , might be exempted from them, even that also is variously Instanc'd in, and confirmed by Examples, approved by himself.

*Phil.* 3. 15,  
16.

The Great Apostle who gives that General Rule, That we should walk together in one Mind, so far as we have attained ; and for other things of Difference, waite for the revelation of the mind of God unto them that differ every where, applies his own Rule unto the greatest Difference that was in those days, and long after ; between the *Jewish* and *Gentile* Believers.

*Rom.* 14. 15.

The one continued under a supposal of an Obligation to the observation of *Mosai-cal* Rites and Ceremonies, from which the other was Instructed ; that they were set at Liberty. This Difference, as it is the manner among the Sons of Men, wrought various Jealousies between them, with Disputes and Censurings of each other, whereof the Apostle gives us a full Account. Neither did they rest here, but those of the Circumcision every where kept their Assemblies and Worship, distinct from the Congregation of the *Gentile* Believers ; hence in most Places of Note, there were two Churches, one of the Jews, and another of the Gentiles, walking at Peace in the faith of the Gospel, but differing as to some Ceremonial Observances.

Yet

Yet the holy Apostles of Christ held this to be no breach of the substantial Uniformity of the Church; and that it was for the Interest of Jesus Christ's Kingdom to indulge this difference of Opinion. And therefore the whole Society of the Apostles to prevent any evil Consequence of this difference in their Assembly at *Jerusalem*, assign'd to the several Parties, their particular Bounds, how far they should accommodate themselves unto one another by a mutual condescension, that they might walk in Love and Peace, as to what remain'd of Difference among them.

The Jews are taught by no means to impose their Rites and Ceremonies on the Gentiles, and the Gentiles to abstain from some things for a season, whereunto their Liberty did extend, whereby the other were principally provoked. Their Bounds being so fixed, and their general Duty stated, both Parties were left at liberty as to their Practice in the things wherein they could not yet be Reconciled; and in that different Practice did they continue for many Years, until the occasion of their Division was by the Providence of God, in the destruction of the Judaical Church utterly taken away.

These were the Rules they proceeded by; this their Course and Practice, who unquestionably under the Lord *Jesus*, were entrusted with supream Authority over the whole Church, of that kind, which is not transmitted unto any of the Sons of Men, after the ceasing of their Office and Work, and were guided infallibly in all their Determinations,

- nations, Coercions: Restraints; Corporal Punishments were far from their Thoughts, yea, the very exercise of any Ecclesiastical Power, against them who dissented from what they knew to be Truth; so that in general, they were found in their Faith, and walked in their Lives as became the Gospel of Christ; they disclaimed all thoughts of Proceedings against disobedient Persons, or any Power or Warrant from Christ so to do with external Force or Penalties, avowing their Authority over all that was ever to be put forth in things of that Nature to be Spiritual, and in a Spiritual manner only to be exercised. And the Apostle lets them know, That the coercion of Miscarriages under the Gospel by threatnings of the future Judgment, was more weighty than the severest Penalties that were appointed by the Law of *Moses*.
- 2 Cor.* 10. 4. 5. Impositions of things Indifferent with Subscriptions to precise Determinations in Points Doubtful and Ambiguous, with confinement of all Men's Practices in all outward Ceremonies and circumstances of Worship were not held necessary for an Uniformity in the Church, and were things not born in the World for some hundreds of Years after the first planting of Churches.
- Heb.* 10. 28, 29, 30. *Origen* pleads expressly that there ever were Differences among professors of Christianity from the Beginning, and that it was impossible but that there should so be, which yet he shews, hindred not their Faith, Love, and Obedience.
- Ibid.* p. 27. *Justin Martyr* declares his forbearance, and the Churches of those Days, towards those who
- Origen Cont. Cels.* 1. 3.
- Just. Mart. Apost.* 2.

who believing in Christ, yet thought themselves obliged to the observation of *Mosaical Rites and Ceremonies*, provided that they did not impose the Practice of them upon others.

*Ignatius professeth*, That to Persecute Men on the account of God or Religion, is to make our selves conformable to the Heathen that knew not God.

*Ignat. Epist. ad Philadelphos.*  
*Tertullian.*  
*Origen.*  
*Arnobius.*  
*Lastantius.*

Several other Learned Men pleaded openly for a liberty in Religion, as founded in the Law of Nature, and the inconsistency of Faith and Compulsion. And the Synod of *Alexandria* in the case of *Athanasius*, condemned all External force in Religion, and Reproached the *Arrians* as the first Inventors and promoters of it.

What is it that is aimed at by this external Coercion and Punishment that all Men may be of one Mind in the matter of the Worship of God, a thing that never was nor never will be by that Means effected in this World; for neither is the Means suited to the procurement of it, so far as is possible. And when neither the reason of the Thing it self will convince, nor the constant Experience of so many Ages, it is in vain for any to contend withal.

Thus you see that Uniformity was not exacted of Christians in the purer times of Christianity, nor by our Lord Christ and his Apostles, as it hath been in later Times, but they esteemed it to be the Interest of the Church to indulge different Opinions of those who agree'd in the Fundamentals of Christian Religion, and lived answerably thereunto, and I hope the same Judgment will now be followed, and yet the necessary and

beautiful Uniformity of the Church will be sufficiently preserved.

p. 8. 9.

The Author of that Ingenious Treatise before cited, Intituled, *A Peace-Offering in the name of the Nonconformists*, saith thus.

‘ What are we, that publick Disturbance  
 ‘ should be feared from us! *Nec pondera re-*  
 ‘ *rum, nec momenta sumus*; By what way or  
 ‘ Means, were we never so desirous, could  
 ‘ we contribute any thing thereunto?  
 ‘ What Designs are we capable of! What  
 ‘ Interest have we to pursue! What Assi-  
 ‘ stance to expect or look after! what Title  
 ‘ to pretend! what hopes of Success! What  
 ‘ reward of any Hazard to be under-  
 ‘ gone! We have no form of Government  
 ‘ Civil or Ecclesiastical, to impose on the  
 ‘ Nation; lay no pretence unto Power to  
 ‘ be exercised on the Persons of any of his  
 ‘ Majesty’s Subjects; have no expectation  
 ‘ from Persons or Nations, that might in-  
 ‘ dure us to further or promote any sinister  
 ‘ aims of other Men; the utmost of our aim  
 ‘ is to pass the residue of our Pilgrimage in  
 ‘ Peace, serving God in the way of our De-  
 ‘ votion: We covet no Man’s Silver or  
 ‘ Gold, their Places or Preferments.

‘ Our whole desire is that of *Israel* of old  
 ‘ to their Brother *Edom*, *Let us pass, we pray*  
 ‘ *thee, through the Country, we will not pass*  
 ‘ *through the Fields, or through the Vineyards,*  
 ‘ *neither will we drink of the Water of the Wells,*  
 ‘ *we will go by the King’s High-way, we will not*  
 ‘ *turn to the Right hand, nor to the left, until we*  
 ‘ *have passed thy Borders.*

‘ May we thus far prevail under the pro-  
 ‘ tection of God’s Providence, his Majesty’s  
 Favour,



Favour, and our own Innocency, we shall have no reason further to trouble our selves or others, if it be denied unto us, and we must yet be scatter'd over the face of the Earth, we shall still pray for the Prosperity of his Majesty in the Land of our Nativity, patiently bearing the Indignation of the Lord, against whom we have Sinned, and waiting for his Salvation.

The Charge against the Nonconformists, is in effect the same that hath been against the Professors of Christianity in all times, where ever any way in Religion hath been indulged by the most rightly or otherwise to be contrary to the Mind of God, as by them apprehended, it hath been immediately charged with the guilt of all the Evils that fell out in the days of its Profession, tho' evidently they had other Causes and Occasions. Such was the condition of Christianity in general of Old, as is manifest from the Apostolical Writings of divers ancient Doctors of the Church upon every occasion of Trouble, the common cry was *Christiani ad Leones*: Such was also the condition of the professors of the Protestant Religion upon the first Reformation throughout the World, under which Prejudice and Imputation, they are yet forced to suffer the Wrath of Men.

Thus the Abomination of the *Gnosticks* of old was charged upon the whole Body of Christianity, and the unwarrantable Zeal of one Man, in firing a Temple in the Kingdom of *Persia*, reflected an imputation of Sedition on all the Professors of the Gospel, to their Extirpation out of that Empire.

*Just. Martyr.*

*Tertullian.*

*Annobius.*

*Cyprian.*

*Lactantius.*

*Minutius*

*Felix.*

*Augustin.*

*Peace-Offering, p. 657.*

No Society can give Security for the Reportment of all individually belonging to it; and if to Accuse, be enough to render Men Nocent, none can be long Innocent. The *Thieftian* promiscuous Banquets, Lusts and Incests, must on that ground be thought to be the ends of the Primitive Assemblies of Christians.

*Thieftian Banquets.*  
*Ibid.* p. 32.

*Ibid.* p. 32.

The Case is the same now as it was; no new Pretences made use of, no Arguments pleaded for the Introduction of Severity, but such as have been pretended at all Times, by those who were in possession of Power, when they had a mind to Ruine any that Dissented from them; That the end of their Conventicles was for Sin and Uncleaness; That the permission of them, was against the Rules of Policy, and Laws of the Empire; That they were Seminaries of Sedition; That God was displeas'd with the Confusions in Religions Introduced by them; That Errors and Misapprehensions of God, were nourished in them; That they disturb'd the Union, Peace and Love, that ought to be maintained among Mankind; That they proceeded upon Principles of Pride, Singularity, Faction and Disobedience unto Superiors, was from the first entrance of Christianity into the World, charged on the Professors of it.

The same Arguments and Considerations are constantly still made use of and insisted on by all Men that intend Severity towards them that differ from them, and they are such as will serve alike any Party or Persuasion, that in any Place at any time shall be accompany'd with Power, and so have oftne been manag'd in the hands of Error, Superstition,

stitution, and Heresy, than of Truth and Sobriety.

That which is principally urged to the prejudice of Nonconformists, is their disobedience to the Law, to whose Authority they owe Subjection when all others submit to it as they ought to do; these Men only oppose it, and will not conform their Judgments to the determinations of the Wisdom of the King and his Parliament. *ibid. p. 9.*

These and many other Charges and Accusations are propounded against the Nonconformists, and most of them are but Surmises and Imaginations of Men, perhaps for some private Ends of their own, and they take these surmises for things granted, when no Examination hath been ever had of them, nor Proof appearing of any certainty or Truth of them.

The Defence properly falling into these Charges, is usually this; That if Men will take to themselves the liberty of entertaining evil and groundless Surmises, it is impossible for any living, to set Bounds to their Imaginations: It is not an unreasonable consideration, that before Men be Condemned, they and their Opinions may be fully Examined, and if they be convinced of any thing therein not agreeable to the Scriptures, and not Taught and Revealed to them, I suppose they will have the Ingenuity to reject them.

Touching the charge of Disobedience in them to the Establish'd Law, it is insisted on as tho' that were grown a Civil Difference by the interposition of Law, which before was purely Religious; and if so, why then should

it be pressed upon a Civil account, especially when the Scruple is meerly for the satisfaction of Mens Consciences, the Peace whereof cannot be broken without Sin ?

*Paul* himself found this Charge of the breach of Law, one of the most difficult Cases he had to contend withal; It was charged upon him, That he taught Customs which it was not lawful for to do, among the *Romans*, all that Doctrine which he had to declare, was before in general forbidden by Law, it being determined by the *Romans*, that no Worship of God should be admitted among them, not established by publick Authority: And had not the Light and Truth of Christianity broken through that Opposition, it might have lain shut up in Darknes, and not shined forth to this day.

There seems to me no Reason to urge this as a peculiar Charge against the Nonconformists, it being the only Foundation of all others, and only occasion of the Nonconformity, had not a Law enjoined the Practice of some things in the Worship of God, which according to their Light they cannot assent unto, without ceasing to Worship him; and to Worship him in their own Thoughts against his Mind and Will, is to prophane his Name and Worship.

Had not the Law forbidden the exercise and discharge of some Duties, which they account themselves obliged unto, by the Authority of God himself, they had no need to implore the Clemency of their Governors, to relieve them against that Severity which they fear.

It is not therefore the breach of a Civil Law, and the Disobedience thereunto, which ought to be charged upon them; but in truth, their Crime is, because they will not act contrary unto their Conscience, and do that commanded by the Law, which their Light and Judgment informs them to be contrary to the Will of God, and Constitution of Jesus Christ, and to be punished for this, will not be accounted just by him who will judge us all.

It seems not to be from any unwarrantable Obstinacy, nor from any disaffection unto, or dissatisfaction in the Government that God hath set over them, that they do not Conform, but meerly from a sense of that Account, which they have one day to make, before Jesus Christ the Judge of all, that they cannot yield that compliance to the Law which it requireth of them.

The Law notwithstanding this Prejudice is still the same; Conscience towards God in the things of his own Worship, is still and alone concerned, whatever other Pretences and Reasonings, may in this case be made use of; the whole real cause of the Severity, against which they desire Indulgence, and the only Reason against it, is their Profession and Practice, in the things that are not of this World, but purely relating to the revelation of the Mind and Worship of God.

It is all meerly for believing in God, and Worshipping of him according to what he hath been pleased to reveal of his Mind to them: And as in this case, it is not in the power of any of the Sons of Men to deprive them

them of that Consolation, which apprehension of the Truth will afford to them that sincerely and conscientiously embrace it; so whether any Man can commend his Conscience to God according to the Rules of the blessed Gospel of our Lord Jesus Christ, in the trouble of them, is left to all unprejudiced Men to judge.

It is in vain pretended, That it is not the apprehensions of Men's Minds, and their Consciences unto God upon them, but only their outward Actings, that fall under the Penalties, desired by some to be indispensably imposed on Dissenters from the Established Form, seeing those Penalties are not only annexed unto actions, which such apprehensions require as Duties unto God, but also unto a not acting contrary unto them, which directly and immediately reflect on the Mind and Conscience itself, and otherwise to reach the Consciences of their Brethren, it is utterly impossible to find out.

For the charge of Faction, we see no late Fruits of any such thing, but the contrary thereof; and for that of Singularity, it were to be wished, that more would profess and practise the Truths of the Gospel; and Pride is unjustly imputed to those, who content themselves with their worship of God in their private Meetings, not desiring Church Preferments and Dignities, nor any Powerful or Honourable Offices in the State.

As to the General Charge of all Evils and Mischiefs they would pretend to arise if the Indulgence desired should be granted, the Arguments for the same, are meerly Conjectures, Jealousies, and Suppositions of what  
may

may come to pass, none knows when or where ; it is easie for any to dilate upon them at their Pleasure ; nor is it possible for any to give Satisfaction to all that Men may conjecture or pretend to fear.

Suppose all things that are Evil, Horrid, pernicious to Truth and Mankind, and when they are sufficiently aggravated, then affirm, That they will ensue upon the granting of Indulgence; which that all or any of them will so do, no man can tell, and this Design is satisfied ; but it is sufficiently evident, that they are all false or mistaken Suppositions, that can give countenance to these Pretences.

For either it must be pretended, that Truth and Order, which they suppose themselves possess of, have lost the power and efficacy of preserving themselves, and of preventing the Evils summoned up to be represented as the consequences of Indulgence, and that they indeed have all actually followed upon such Indulgence in all Times and Places.

The latter of these is so notoriously contradicted by the Experience of the whole World, especially of sundry Kingdoms and Dominions in *Europe*, as *Germany*, *France*, *Poland*, *Bohemia*, the *Netherlands*, and others, that it may not hope for admittance with the most obnoxious Credulity : For the former, it is most certain that the truth of the Gospel did never so prevail in the World, as when there was a full liberty unto Civil Punishments granted unto Persons to dissent in it and about it.

And if that which is now so called, continueth

tinueth not to have the same Effect, it may justly be feared that it is not indeed what it is called, or that it is not managed in a due manner; it is then altogether uncertain, That upon the Indulgences desired, such Evils will ensue as is pretended, and unquestionably certain, That all such as produce Practices contrary to Civil Society, Moral Honesty, and the Light of Nature, in all Instances of them are to be restrained.

For the Conscience of a Man can dictate no such thing unto him, there being an inconsistency in them, with that Supream Light which Rules in Conscience, whilst it may be so called, and therefore for such, no Defence is offered; but it would be a hard thing to Ruine Multitudes, at present Sober and Honest, lest by not doing so, some one or other might prove Brain-sick, Frantick, or Vicious, who also may be easily restrained when they appear so to be.

Moderate Liberty will certainly appear to be Religious Security; and it is the Interest of them who plead for Indulgence, to watch and contend against Error and Heresie, no less than theirs by whom it is Opposed; for professing all material Truths with them, they are not to be supposed to value or esteem them less than they, and it may be it will appear, that they have endeavoured as much their Suppression in the way warranted by the Gospel, as those who profess such fears of their Increase.

They are Protestants only of whom I speak, and so suppose that they will not do their utmost for the opposing of the rise, growth, or progress, of whatever is contrary to that  
Religion



Religion which they profess, or that their Interest therein is of less concernment to them, than that of others from whom they differ, is but a groundless Surmise and Pretence only.

I shall set down the Principles of the Non-conformists in the same words as they are expressed in their Name, in a rational Treatise, where it is thus affirmed.

‘ For the Faith which we profess, and  
‘ which we desire to walk according unto,  
‘ we need not to insist upon the particular  
‘ Heads of it, having some Years since in  
‘ our Confessions, publickly declared it, with  
‘ the joint consent of all our Churches; nei-  
‘ ther do we own or avow any Doctrine, but  
‘ what therein is asserted and declared.

‘ Nor do we decline the Judgment of the  
‘ Primitive Church, being fully satisfied,  
‘ that what we Teach and adhere unto is  
‘ as consonant unto the Doctrine thereof,  
‘ as that of any Church this day in the  
‘ World.

‘ The four first General Councils, as to  
‘ what was determined in them in matters  
‘ of Faith, are confirmed by Law in this  
‘ Nation, which is all that from Antiquity  
‘ hath any peculiar stamp of Authority put  
‘ upon it among us; this also we wittingly  
‘ admit of, and fully assert in our Confession.

‘ Neither doth the addition of ours, disturb  
‘ the Harmony that is in the Confessions of  
‘ the Reformed Churches, being in all ma-  
‘ terial Points the same with them, and no  
‘ otherwise differing from any of them in  
‘ things of less Importance, than as they do  
‘ one from another, and as also Confessions  
‘ have

‘ have done, since the first Introduction of  
 ‘ their use into the Churches of God.

‘ That which among them is of most spe-  
 ‘ cial Regard and Consideration unto us, is  
 ‘ that of the Church of *England* declared in  
 ‘ the Articles of Religion, and herein in  
 ‘ particular, what is purely Doctrinal we  
 ‘ fully embrace and constantly adhere unto;  
 ‘ and tho’ we shall not compare our selves  
 ‘ with others, to assert Truth and maintain  
 ‘ it, yet we cannot, whilst we are conscious  
 ‘ to our selves of our Integrity, in our cor-  
 ‘ dial Adherence unto it, but bear with re-  
 ‘ gret, the clamorous Accusations of some  
 ‘ against us, for departing from the Church  
 ‘ of *England*, who have not given that Te-  
 ‘ stimony of their adherence to its Doctrines  
 ‘ which we have done, and by the help of  
 ‘ God, shall continue to do.

‘ It is true indeed, there are some In-  
 ‘ largements in our Confession, of the things  
 ‘ delivered in the Thirty Nine Articles,  
 ‘ some additions of things not expressly  
 ‘ contained in them, which we were ne-  
 ‘ cessitated unto for the full declaration of  
 ‘ our Minds, and to obviate that Obloquy,  
 ‘ which otherwise we might have been ex-  
 ‘ pos’d unto, as reserving our Judgment in  
 ‘ matters that had received great publick  
 ‘ Debate, since the composure of those Ar-  
 ‘ ticles; But yet we are fully perswaded,  
 ‘ that there is not any Proposition in our  
 ‘ whole Confession, which is repugnant to  
 ‘ any thing contained in the Thirty Nine Ar-  
 ‘ ticles, or is not by just Consequence redu-  
 ‘ cible from them; neither were we the Au-  
 ‘ thors of the Explanations or Inlargements  
 mentioned,

' mentioned, there being nothing contained  
 ' in them but what we have Learned, and  
 ' been instructed in from the Writings of  
 ' the most famous Divines of this Nation,  
 ' Bishops and others, ever since the Refor-  
 ' mation, which being published by legal  
 ' Authority, have been always esteemed both  
 ' at Home and Abroad, faithfully to repre-  
 ' sent the Doctrine of the Church of *Eng-  
 ' land*: We have no new Faith to declare,  
 ' no new Doctrine to teach, no private Opi-  
 ' nions to divulge; no Point or Truth do  
 ' we profess, no not one, which hath not  
 ' been Declared, Taught, Divulged and E-  
 ' steemed as the common Doctrines of the  
 ' Church of *England* ever since the Refor-  
 ' mation.

' If this be the condition of our Professi-  
 ' on, as it is, we can hardly think that they  
 ' give up themselves to the conduct of the  
 ' meek and holy Spirit of Christ, who are  
 ' ready to breath out Extirpation against  
 ' us, as to our Interest in this World, for  
 ' the profession of those Principles in the  
 ' things of God, which they pretend to build  
 ' their own Interest upon for another.

' Would it not seem strange, That a Man  
 ' might at as easie and cheap a rate, re-  
 ' nounce the Protestant Profession, and the  
 ' fundamental Doctrines of the Church of  
 ' *England*, in things indispensably necessary  
 ' to Salvation, as to be mistaken, or suspend  
 ' his Assent, about things Dark and Dispu-  
 ' table in their own Nature, and of very  
 ' small Importance, which way soever they  
 ' are determined? So that Men in the em-  
 ' bracing or refusal of them, rebel not a-  
 ' gainst

' gainst that commanding Light of God set  
 ' up in their Hearts, to rule them in his  
 ' Name, in that apprehension which they  
 ' have of the revelation of his Will, which  
 ' is unto them of great and eternal Mo-  
 ' ment, in respect of their Souls : And that  
 ' it may the better appear what is both our  
 ' Judgment and Practice in and about these  
 ' things, unto what we have declared in the  
 ' close of our Confession, we shall now add  
 ' the general Principles, whereunto all that  
 ' we profess or practise in these things is  
 ' Resolved.

' As Religion is publickly Received and  
 ' Established in this Nation, there are ma-  
 ' ny outward Concernments of it, relating  
 ' unto Persons and Things, that are disposed  
 ' and regulated by and according to the  
 ' Laws thereof; such is that which is called  
 ' Power Ecclesiastical, or Authority to dis-  
 ' pose of those Affairs of the Church, with  
 ' coercive Jurisdiction, which relates to the  
 ' outward publick Concernments of it, and  
 ' no legal Interests of Men in them.

' We have no Principle in the least seducing  
 ' us to transgress against any of those Laws  
 ' which in former days were looked on as  
 ' safe Preservations of the Protestant Reli-  
 ' gion and Interest in this Nation. Did we  
 ' assert a Foreign Power over his Majesty's  
 ' Subjects, and claim an Obedience from  
 ' them, or by Virtue of any Office in the  
 ' Church; Did we claim and exercise a Ju-  
 ' risdiction over them in Form or course of  
 ' Law; or did we pretend to the exercise  
 ' of any Spiritual Power, that should pro-  
 ' duce Effects on the outward Man, we might  
 ' well

well fear lest just Offence should be taken  
against us. But whereas, the way wherein  
we Worship God, is utterly unconcerned  
in these things, we cannot but say with  
confidence, that it will be utterly impos-  
sible to convince us, that on this account  
we are Offenders. For the Worship of God  
and Order therein, (which is purely Spirit-  
ual and Evangelical) we acknowledge in-  
deed the Lord Jesus Christ to be the Insti-  
tutor, or Author of it, and the holy Scrip-  
ture the only Rule to judge of it, and to  
square it by: It is not our design to plead  
the truth of this Principle, nor yet to clear  
it from Mistakes, or vindicate it from Op-  
position, all which are done elsewhere.

Let it be supposed to be an Error or Mi-  
stake, which is the utmost that can be sup-  
posed of it; we must needs say, that it is  
an Error which hath so much seeming  
Countenance given to it by innumerable  
places of Scripture, and by the many Te-  
stimonies of the ancient and modern Do-  
ctors of the Church, and is every way so  
free from the production of any Conse-  
quent of evil Importance, that we may  
claim a share and Interest in the forbear-  
ance and pardon of Errors among them.

Nor are we able as yet to discern how  
any acceptable Account can be given  
to the Lord Jesus, at the last day, of Seve-  
rity against this Principle, or those other-  
wise inoffensive, that walk according to  
the Light of it.

Moreover, whereas, Principles true in  
themselves, may, in their application unto  
Practice, be Pressed to give countenance

‘ unto that which directly they lead not un-  
 ‘ to, we have the advantage yet further par-  
 ‘ ticularly to declare, that in the pursuit  
 ‘ of it, in the Worship of God, we have no  
 ‘ other Ordinances, or Administrations, but  
 ‘ what are owned by the Law and Church  
 ‘ of *England*, at this day.

‘ I come to those things wherein they Dis-  
 ‘ sent, and which are the matter of their  
 ‘ Nonconformity, and that will appear to  
 ‘ be very small, being compared with their  
 ‘ Principles wherein they agree with the  
 ‘ rest of the Protestant Brethren, and that  
 ‘ fully in the fundamental Points of Christi-  
 ‘ anity; and herein likewise I shall follow  
 ‘ their own Acknowledgment.

‘ They are then only things relating un-  
 ‘ to outward Order and Worship, wherein  
 ‘ our dissent from the present establishment  
 ‘ of Religion doth consist, things which there  
 ‘ hath been variety of Judgments, and dif-  
 ‘ ference in Practice, from the days of the  
 ‘ Apostles, and probably will be so until the  
 ‘ end of the World.

For we find by Experience, that the late  
 ‘ Expedient for the ending of Differences  
 ‘ about them, by vindicating of them into  
 ‘ the arbitrary disposals of every Church, or  
 ‘ those that preside therein, in whose De-  
 ‘ terminations all Persons are to acquiesce,  
 ‘ is so far from accomplishing the Work  
 ‘ whereunto it is designed, that it contri-  
 ‘ butes largely to their Increase and Per-  
 ‘ petuation.

‘ Our only Guilt then is, our not agreeing  
 ‘ with others in those things wherein there  
 ‘ never yet was an Argument among Chri-  
 ‘ stians

‘ftians, nor perhaps had they all that frame  
 ‘of Spirit in Moderation and mutual for-  
 ‘bearance, which the Gospel requireth in  
 ‘them, would it ever be any way needful  
 ‘that there should fo be.

‘For our parts, about thefe things we  
 ‘judge not other Men, nor do or ever did  
 ‘feek to impofe our Apprehenfions on their  
 ‘Judgments or Practice: What in them is a-  
 ‘greeable to Truth, God knows, and will  
 ‘one day declare; unto our prefent Light  
 ‘in the revelation of his Will muft our Pra-  
 ‘tice be conformed, unlefs to pleafe Men  
 ‘and fecure our tranfitory perifhing Con-  
 ‘cernments, we intend to break his Bounds  
 ‘and caft away his Cords from us.

‘Now whatever other Occafion may be  
 ‘fought againft us, which we pray God not  
 ‘to lay to their Charge, who delight in  
 ‘fuch Practices, we know full well, that we  
 ‘differ in nothing from the whole form of  
 ‘Religion eftablifhed in *England*, but only  
 ‘in fome few things in outward Worfhip,  
 ‘wherein we cannot Conform, without re-  
 ‘nunciation of thofe Principles of whofe fal-  
 ‘fhood we are not convinced.

‘This being our only Crime, if it be a  
 ‘Crime, this the only Miftake that we are  
 ‘charged with in the things of God, we yet  
 ‘hope, that fober Men will not judge it of  
 ‘fo high a Demerit, as to be offended with  
 ‘our humble defire of Indulgence.

We confefs, that often times when fuch  
 ‘Difffents are made a Crime, they are quickly  
 ‘efteemed the greateft, and almoft all that is  
 ‘Criminal; but whether fuch Judgment be  
 ‘agreeable to the Meeknefs and Tendernefs

‘ of our Lord Christ, and whether it be agreeable to Justice and Reason, all impartial Men will soon determin.

‘ Concerning the Liturgy, the Cross in Baptism, the Kneeling in receiving the Sacrament, the use of the Surplice, the having of Pictures or Images in Churches, and several other things in the outward Worship of God; these have been, and are, and ever will be differences of Opinion among Christians, and the Reasons and Arguments of each Opinion are sufficiently known, and not necessary to be here dilated upon.

‘ If both these Opinions seem to the owners of them, to carry Testimony, Reason and Authority for them, and that the Persons holding either of them, think themselves obliged in Conscience and Duty to God, to Worship him according to their own Judgment, why should not each freely be equally permitted to enjoy the freedom of their own Judgments in these Matters, wherein they esteem their eternal State to be concerned?

‘ Especially when the holding of these differing Opinions really causeth no damage to the Dissenters, nor any Prejudice to the Publick, why should either of them impose upon the Consciences of the other, and take the immediate Concernments of our Lord Christ out of his Hands, into their own? Why should any because they are in Authority, seek the Ruine of others for Dissenting from them in matters of outward Worship in Religion? The Dissenters in these matters, cannot help their Dissent without Treachery to their own  
Souls,



' Souls, and contending against God ; and  
 ' their Dissent being of so small Importance  
 ' to others, and so great unto themselves, it  
 ' would be hard to destroy them and their  
 ' Families, for what they cannot help with-  
 ' out Sinning against God, and betraying  
 ' their Immortal Souls.

' And likewise upon a vain endeavour to  
 ' bring that to pass which never yet was ef-  
 ' fected, nor never will be, until the second  
 ' coming of our Lord Christ, till when we  
 ' shall not be of one Mind. It is good Ad- *Indecorum*  
 ' vice which the great *Roman* Historian gives *Principi ad*  
 ' to Princes ; That it is no way Honourable *tractare quod*  
 ' unto a Sovereign Prince to attempt that *non obtineat.*  
 ' which will never be accomplished.

' It is much more sutable to the Honour  
 ' and Clemency of a State, to Indulge such  
 ' Dissenters as we treat of, especially confi-  
 ' dering the Multitudes of them, according *Pliny to Tra-*  
 ' to the Counsel of *Pliny to Trajan* the Em- *jan.*  
 ' peror, about the Christians, who were then  
 ' the Objects of the publick Hatred of the  
 ' World ; *Pliny* desires the Emperor's Dire-  
 ' ction touching their Numbers, not that  
 ' they were to be Feared, but unmeet to be  
 ' Punished, unless he intended to lay the  
 ' Empire Waste.

' It will be an act of Clemency and like  
 ' to the Work of God himself, to free at  
 ' once so great multitudes of all Ages, Sex-  
 ' es and Conditions from the Fears and Dan-  
 ' gers of those Evils which they are fully fa-  
 ' tisfied they do not deserve.

' And if the course begun in Severity a-  
 ' gainst them be pursued, what Generous  
 ' Spirits employed in the Execution of it,  
 ' can but be weary at last with undoing and  
 ' ruining

*Of the Worship of God*

‘ruining of Families, of those Persons whom  
 ‘they find to live peaceably in subjection to  
 ‘the Government of the Nation, and use-  
 ‘fully among their Neighbours, meerly be-  
 ‘cause they do not Sin against God, in trans-  
 ‘gressing against that Persuasion concerning  
 ‘his Will and Worship which he hath given  
 ‘unto them ?

‘They cannot but at last consider, that  
 ‘no Man Erreth willingly, or that any  
 ‘Duty is accepted of God, which springs  
 ‘from Compulsion; how much more Noble  
 ‘and Honourable will Princes and all in Au-  
 ‘thority, discern the Work of relieving Men  
 ‘sober and peaceable in Distress to be, than  
 ‘to have the Complaints and Tears, and  
 ‘Ruin of Innocent Men and their Families,  
 ‘continually reflecting themselves on their  
 ‘Minds.

*The Petition and desire of the Nonconformists, in the Indulgence for which they are humble Suitors.*

Their Words are these.

‘**T**hey are not great Things which we  
 ‘desire for our selves, the utmost of  
 ‘our Aim being to pass the remainder of the  
 ‘few days of our Pilgrimage in the Land of  
 ‘our Nativity, serving the Lord according  
 ‘to what he hath been pleased to reveal of  
 ‘his Mind and Will unto us ; and we sup-  
 ‘pose that those who are forward in sugge-  
 ‘sting Counsels to the contrary, know not  
 ‘well how to countervail the King’s Da-  
 ‘mage.

That

' That this our Desire is neither Unrea-  
 ' sonable, nor Unjust; that it containeth  
 ' nothing contrary to the Will of God, the  
 ' Practice of the Church of Old, or to the  
 ' disadvantage of the publick Tranquility of  
 ' the Nations, but that all outward Violence  
 ' and Severity on the account of our Dissent,  
 ' is destitute of any firm Foundation in Scri-  
 ' pture, Reason, or the present juncture of  
 ' Affairs among us, we humbly crave leave  
 ' to declare.

' Force never yet attained, or long kept  
 ' that in Religion which it aimed at; and the  
 ' way pretended for the promotion of its  
 ' Interest, by Severity in External Penalties,  
 ' on the account of such Differences as we  
 ' are concerned in, is both opposite to the  
 ' Spirit of its Author, and contrary to the  
 ' Rules of it, with the Practice of those who  
 ' have walked according to them.

' Upon the Grounds herein before menti-  
 ' oned, The humble Petition and Desire of  
 ' the Nonconformists is, That they may not  
 ' be punished for that, which in the Judg-  
 ' ment of every unconcerned Person, is no  
 ' Crime: That they be Pardoned for that  
 ' which causeth not the least Damage to the  
 ' King, or to any of his Subjects; that Indul-  
 ' gence may be granted to them against the  
 ' Penalties, to comply with which in every  
 ' particular of them, would be for them to  
 ' Sin against God and the Light of their own  
 ' Consciences, revealed by the Lord Christ  
 ' to them.

The Christians suffered much during the  
 ' Reign of the Emperor *Valens*, who was at  
 ' last dissuaded from Cruelty against them,

‘ by *Themistius* a Pagan Philosopher, on the  
 ‘ Principles of common Reason and Honesty,  
 ‘ plainly telling him, that by the way that  
 ‘ he used, he might force some to venerate  
 ‘ his Imperial Robes, but never any one to  
 ‘ Worship God aright.

*Hillary.*

‘ The Christians suffered much in the days  
 ‘ of the Emperor *Constantius*, unto whom the  
 ‘ words of *Hillary* in this Case may be hum-  
 ‘ bly remembered.

‘ Let (saith he) your Clemency take care  
 ‘ and order that the Presidents of the Pro-  
 ‘ vinces look to Publick Civil Affairs, which  
 ‘ alone are committed to them, but not  
 ‘ meddle in things of Religion. And again,  
 ‘ Let your Gentleness suffer the People to  
 ‘ hear them Teaching whom they desire;  
 ‘ whom they think well of; whom they chuse.

‘ God teacheth, rather than by force ex-  
 ‘ acteth, the Knowledge of himself, and a-  
 ‘ scertaining the Authority of his Commands  
 ‘ by works of Power, despiseth all compel-  
 ‘ led Confession of him: If force be used to  
 ‘ compell Men unto the true Faith, the Bi-  
 ‘ shops that professed it would interpose and  
 ‘ say, God is the God of the whole World,  
 ‘ he needs no compelled Obedience, nor re-  
 ‘ quires any such Confession of him; he is  
 ‘ not to be Deceived, but to be well-plea-  
 ‘ sed; and whence is it then that Persons  
 ‘ are taught how to Worship God by Bonds  
 ‘ and Perils?

‘ Upon the whole Matter it seems to me  
 ‘ (with submission to better Judgments) that  
 ‘ from the ground of Policy, of Law and of  
 ‘ Piety, it is the Interest of the State of this  
 ‘ Realm, to grant Indulgence in matters of  
 ‘ Religion.

Bishop

Bishop Taylor in the conclusion of his *Liberty of Prophecy*, doth thus state the Point in Discourse, 'All such Opinions (saith he) 'in which the publick Interests of the Commonwealth, and the foundation of Faith, 'and a good Life, are not concerned, are to 'be permitted freely.

Every one abounds in his Conscience, was the Doctrine of St. Paul, and that is Argument and Conclusion too. And they were excellent Words which St. Ambrose said in *St. Ambrose*, attestation of this great Truth, *Nec imperiale est Libertatem dicendi negare, nec sacerdotale id quod sentias non dicere*: It is not becoming Imperial Majesty to deny freedom of Speaking, nor becoming a Priest not to speak what he thinks.

I end with a Story which I find in the *Jews Books*, Jews Books, 'When Abraham sat at his 'Tent door, according to his Custom, waiting to entertain Strangers, he espied an 'Old Man stooping and leaning on his Staff, 'weary with Age and Travel, coming towards him, who was an Hundred Years of 'Age; he receiv'd him kindly, wash'd his 'Feet, provided Supper, caused him to sit 'down; but observing that the Old Man Eat 'and Prayed not nor begged for a Blessing 'upon his Meat, asked him why he did not 'Worship the God of Heaven.

The Old Man told him, that he worshipped the Fire only, and acknowledged no other God; at which Answer, Abraham grew so zealously Angry, that he thrust the Old Man out of his Tent, and exposed him to all the evils of the Night, and an Unguarded condition. When the Old Man was

‘ was gone, God called to *Abraham*, and ask-  
 ‘ ed him where the Stranger was ; he replied,  
 ‘ I thrust him away, because he did not Wor-  
 ‘ ship thee.

‘ God unswered him, I have suffer’d him  
 ‘ these Hundred Years, although he Disho-  
 ‘ nour’d me, and could’st not thou endure  
 ‘ him one Night, when he gave thee no  
 ‘ Trouble? Upon this faith the Story, *Abra-  
 ‘ ham* fetcht him back again, and gave him  
 ‘ hospitable Entertainment and wise Instru-  
 ‘ ction.

And it is not improper to say to all those  
 who endeavour Severity against their Dissent-  
 ing Brethren, Cannot ye suffer them a little  
 time, when they give you no Trouble?

God hath suffered you long, and the best  
 of us Dishonour him, and yet he bears with  
 us: Go and do as *Abraham* did, and your  
 Tendernefs and Charity will be Rewarded  
 by the God of *Abraham*.

## Fifth H E A D.

*Of the Duty of the Priest in  
God's Worship.*

**B**UT shall the prophane Laity be Inquirers and Judges, (especially of the Priestly Actions) of the Sacred Clergy? Shall those who are Holy in their Profession, in their Orders, in their Habit, in their Doctrine, and in their Conversation, or at least who ought to be so! Shall they be liable to the Enquiries and Judgments of the Unholy Laicks? Is the great Objection against the Proceedings on this point. It is most proper for them to be exempt from the Secular Jurisdiction, and to be proceeded against if there be cause, by the Judges Ecclesiastical.

To this is answered, That the Judges Ecclesiastical, the Officials, Commissaries, and Ordinaries, Civil Lawyers by Profession, are as much Lay-men as Gentlemen who are of the Grand Inquest, or Justices of Peace, or Common Lawyers are.

That it is to be feared, there is and will be too much cause of Enquiry into their Actions, who are Men of the same Mould, Temper, Passions, Corruptions, Infirmities, and Vices, notwithstanding their Holiness, as Sinful Lay-Men are, else our Stories are most Unfaithful, and they are exceedingly Wronged and Abused by them.

But

*Gemarins.*

But Experience manifests them to be but Men, subject to Errors as well as Laicks, of whom some are as eminent for Vertue, Piety and Learning, as any *Gemarins* whatsoever: And it were not Reason, that those of the Clergy should be as a distinct Nation within the English Nation, they being Subjects Born and under the same Laws with the rest of their Countrymen.

If a Clergy-man disobey an Act of Parliament, it is as much a Civil Thing, and the Offence in him as much a Lay Matter, as the like Disobedience in any other Person, and ought in Justice and Reason to be liable to the same Enquiry and Punishment, as the same Offence is by the same Law in any other Man.

It is true, that their Profession is Holy, and truly Holy Men of that Profession deserve double Honour; but it is their Life and Doctrine, not their Profession or Orders, that will make them Holy; and as their Holy Vestments are made of the same Stuffs with Lay-Garments, so are their Bodies of the same corrupt Flesh and Blood as other Mens are, and their Souls have as much need of a Redeemer and his Merits, as the Souls of other poor Sinners have, and without those Merits, will suffer equal Torments in Hell-fire, with any the most wicked Laicks.

As for their Holy Doctrine, we take not upon us to Enquire into it, nor to be Judges of it, whether it be Orthodox or not: It pertains to other Judges: But if they preach Sedition, or say or do any thing which is forbidden by Acts of Parliament, this Offence of Disobedience to the Law of  
this



this Land, is a Civil Matter, and that only which is properly Enquirable and Punishable in the Court of the Sessions of the Peace, and otherwise they meddle not.

But I may be censured to have struck too hard upon this String; I shall therefore come to some particular Instances both abroad and at home, which will testify that the highest of their Priests, Bishops, and even Popes themselves, have undergone the Punishment which Lay Princes, or Acts made by Lay-men, have inflicted on them.

King *Edgar* in his Charter to the Monastery of *Winchester*, saith of the Clergy his Subjects, *De quorum omnium moribus ad nos spectat Examen.* Seld. Not. in Eadmer. fol. 155. a. 161.

*William* the First, made the division of the Bishops Court from the Hundred. William I. Seld. Not. in Eadmer. fol. 167.

*William Rufus* forbade *Anselm* to ask his leave to go to *Rome*, or to appeal thither, upon pain of Banishment; which Sentence and Penalty he put in Execution against him. Will. Rufus. Anselm.

*Hen. I.* in his Charter to the Abbey of *Reading*, saith, *We Ordain as well in regard of Ecclesiastical as Royal Power.* Hen. 1. Coke Eccles. c. 5. Rep. fol. 10. B.

It is true, that *H. II.* yielded to the Exemption of Clerks, but it was when the Pope had Armed divers of his Neighbour Princes, and three of his own Children against him. Hen. 2. Matt. Paris, Anno 1173.

King *John* submitted in his Streights to the like Exemptions of the Clergy, but the same was neither Approved nor observed by the Nation. King John.

Though *H. III.* was also near driven by his Priests, yet Prohibitions were frequent in his time, and other Legal Rights of Sovereignty over the Clergy. Hen. 3. Coke Eccles. Case 5. Rep. 94. a B. Edw.

Edw. 1.

Sir John Davys, Rep. fol. 95.

Coke Eccles. c. 5. fol. 12.

19 Edw. 1. quare non admittit.

9 Edw. 2.

Articuli cleri c. 16.

Coke Eccles. c. 5. Rep. fol.

14. 15, 16.

25. c. 3. Stat. de Provisions.

Stat. 27. Ed.

3.

13 R. 2.

26 R. 2. c. 5.

2 H. 4. c. 3.

3 H. 5. c. 4.

*Edward* the First seized the Temporalities of his Clergy, for refusing to pay a Tenth.

And his Judges determined it to be High-Treason for a Priest or other Subject, to bring a Bull of Excommunication against another, and seizure of Lands for Contempts.

In *Edward* the Second's time, the Clergy thought themselves not safe till the King in Parliament had granted them Jurisdiction in cases Ecclesiastical.

Priests and others, who in *Edward* the Third's time brought Bulls from *Rome*, or obtained Provisions from thence of Benefices, and the Offenders, incurr'd a Premunire, though Priests, and then every Man might Kill them.

The like Penalty is by another Statute for drawing any Man in Plea out of the Realm, whereof the King's Courts had Cognizance.

It is made Death for a Priest, or other, to bring any Summons, Excommunications &c. against those that execute the Statute of Provisors.

It is made a Præmunire to purchase or pursue any Translations, Processes and Sentences of Excommunication, Bulls or Instruments, or any other things whatsoever which touched the King, his Crown and Regalitie, or his Realm, and yet these are matters Ecclesiastical.

The like for any Person of Religion to obtain of the Bishop of *Rome*, to be exempt from Obedience, Regular or Ordinary; or for any Person Religious or Secular, to put in Execution Bulls of Discharge of Tithes.

The like for any Person by colour of Provisions, or Licenses from the Pope, to molest an Incumbent.

By

By the Statute of *Edw. IV.* If one Spiritual Person sue another in the Court of *Rome*, when he might have Remedy before his Ordinary, he incurs a Præmunire. 9 Ed. 4. 3. Fitz N. B. fol. 44.

*H. 8.* makes it a Præmunire to sue an Appeal to *Rome*, or to execute any Process from thence. 35 H. 8. c. 16.

And which is express in the Point no win Hand, It is Enacted, that Persons in Holy Orders, shall be under the same Points for their Offences as others. 28. H. 8. c. 4.

And it is made a Præmunire to extol or defend the Authority of the See of *Rome*; and the refusal of an Oath then Enacted, is made High-Treason. ibid. c. 10.

I come now to those Acts of Parliament which Injoyn particularly the Duty of the Priest in God's Worship, and Offences against the Statutes are Enquirable by the Grand Inquest at the Sessions of the Peace. By Acts which Injoyn the Duty of the Priest in God's Worship.

In *Edward* the Sixth's time, it was enacted, That the Minister shall not deny the Sacrament without Lawful cause, to any that devoutly desire it. 1 Ed. 6. c. 1.

In the 2d and 3d of *Ed. VI.* is Enacted, The Book of Common-Prayer, and all Ministers are to use it; and in that Statute is a Proviso, that in the Universities of *Oxford* and *Cambridge*, they may use those Prayers (except the Communion) in Greek, Latin or Hebrew. 2 and 3 Ed. 6. c. 1.

Again, the Common-Prayer Book is used and made perfect, and Enacted to be used by all Ministers in all Places in the King's Dominions. 5 and 6 Ed. 6. c. 1.

Though these Statutes were Repealed by *Queen Mary*, yet *Queen Elizabeth* revives them. 1 M. ch. 2.

1 *Eliz. c. 2.* them again, and Confirms the Book of Common-Prayer, with Alterations, and all Ministers are to use it.

8 *Eliz. c. 1.* Again, Queen *Elizabeth* confirms it, and Enacts it to be used by all Ministers throughout all her Dominions; and if any Minister refuse, or neglect to use it, this Offence is Enquirable at the Sessions of the Peace.

2 and 3 *Ed.* The Statutes of *Edward VI.* and Queen  
6. c. 1. *Eliz.* do Enact, That Ministers in all Churches and Chappels, ought to use the Book of

1 *Eliz. c. 2.* Common-Prayer, and none other. And if any Minister refuse to use it, or to administer the Sacraments in such order as is set forth in that Book, or use any other Form or Order, or Preach, Declare, or speak any thing in derogation of it, For the first Offence he forfeits to the King, the Profits of his Spiritual Promotions for one Year, and shall be Imprisoned without Bail. For the second Offence he shall be deprived of all his Spiritual Promotions, and Imprisoned a Year. For the third Offence he shall be Imprisoned during Life, and be deprived of all his Spiritual Promotions; and if he have no Spiritual Promotion, the second Offence is Imprisonment during Life; and first Offence is Imprisonment for a Year, without Bail.

*Dyer, fol. 203.*

1 *Eliz. c. 1.* In the Third Year of Queen *Elizabeth*, the Judges resolved, That a Priest saying Mass, and those that hear him, are within the Penalty of the Statute of 1 *Eliz.* which also forbids Preaching or Teaching in maintenance of any Foreign Jurisdiction in Ecclesiastical Matters, upon forfeiture of Goods, Spiritual Promotions, Imprisonment, Premunire, and High-Treason.

5 *Eliz. c. 1.*

Offences

Offences likewise against the Statute of <sup>5</sup> *Eliz. c. 1.* the Fifth of *Elizabeth*; As if any by Preaching or Teaching, extol and maintain the Authority of the See of Rome, these are Enquirable, tho' not Determinable at the Sessions of the Peace; but the Presentment must be certified to the King's-Bench, and the Party Convicted, for the first Offence incurs a Præmunire, and for the second Offence, it is High-Treason.

In the 13th of *Eliz.* another Statute was <sup>13</sup> *Eliz. c. 1.* made, That if any by Preaching or Teaching, do promise Reconciliation to the See of *Rome*, or Absolution thence, it is Treason, and a Justice of Peace, to whom such Preaching is declared, if he do not within 14 days after, acquaint one of the Privy Council with it, he incurs a Præmunire.

In the same Year, another Statute was <sup>13</sup> *Eliz. c. 12.* made for the Reformation of Disorders in the Ministers of the Church.

After the Statute of the 13th of *Eliz.* had forbid the bringing in of Bulls, &c. from the Pope, in the place of them, Jesuits and Romish Priests were sent over hither, who Preach'd and taught the People, That the Pope having Excommunicated the Queen, her Subjects were not to Obey her; thereupon the Lay Judges gave Judgment upon many of those Priests, and they were Executed according to that Law. *Coke Eccl. Case 5. Rep. fol. 38.*

Then came the Stat. <sup>23</sup> *Eliz. c. 1.* which makes it Treason for any, by Preaching, or otherwise, to withdraw any from the Religion Established, or to be reconciled to the Church of *Rome*, and the aiding of such Offenders to be Misprision of Treason.

27 Eliz<sup>e</sup>

And by this Statute, if any say or sing Mass, he Forfeits 100 *l.* and the Offences of Ministers refusing to use the Book of Common-Prayer, and of Preaching in derogation of it, or in maintenance of a Foreign Jurisdiction here, is made Enquirable at the Sessions of the Peace.

In 27 *Eliz.* the Statute was made, That Priests made out of the Realm, should depart out of the Kingdom, and that none could come in hither to remain here, that were born in the Queen's Dominions, and Professed beyond Sea, by Authority from the See of *Rome*, on pain of High-Treason.

Some Romish Priests were Indicted upon this Statute; and it was objected on their part, That it was hard to take away Men's Lives for their Opinion in Religion; and because they were not of the same Judgment with the makers of the Law.

But it was answered by *Whitlock* and *Dodderidge*, Judges, That they did not meddle with the matter of Religion, nor was any Man put to Death by our Law, for his Conscience or Religion, but for his disobedience to the Civil Laws of the Nation; and that if the Dean of *Pauls*, or any other English Man, should be forbidden by an Act of Parliament, to come into the Kingdom upon pain of Death, if nevertheless he would come into the Kingdom contrary to that Law, he was to suffer Death for his Disobedience to the Law, and not because he was Dean of *Pauls*, and so it was in the case of the Romish Priests, they were not put to Death for being Priests, but for disobeying the Law, for coming into this Realm when the Law had forbid them. By

By the Statute 35 *Eliz.*, If any Minister 35 *Eliz. c. 1.*  
or others, perswade any to withstand the  
Queen's Authority in Ecclesiastical Matters;  
he shall be Imprisoned, and if he Conform  
not, he must abjure the Kingdom.

In the first *Jacobi* it is Enacted, That all 1 *Jac. c. 4.*  
Statutes made against Jesuits and Priests,  
shall be put in Execution.

In 3 *Jac.* He that discovers any Priest say- 3 *Jac. c. 5.*  
ing Mass, shall have the third part of the  
Forfeiture.

By these Acts of Parliament, and what hath  
been before noted on this Head, it is evi-  
dent, that in Foreign Nations as well as  
*England*, , and in all times here, the Civil  
State, the King and Parliament have thought  
it agreeable and their Duty, and consonant  
to their Trust, and the Authority vested in  
them, upon all Occasions, where they did  
judge it requisite for the Peace and well-or-  
dering of the People of this Nation, to Enact  
Laws whereby to enjoin the Priests as well  
as Lay-Men, their Duties in God's Worship,  
and inflict such Punishments as they thought  
reasonable, upon Priests as well as others,  
who did not give Obedience unto those Laws;  
and Offences against those Acts of Parlia-  
ment, are Properly and Legally enquirable  
by the Grand Inquest.

## Sixth HEAD.

*Of the Duty of the People in God's  
Worship.*

Certainly the Duty of all People, both Clerks and Laicks, is to Worship God in Sincerity and Truth: But this is a Work of the Heart, whereof neither the Grand Inquest can Enquire, nor the Justices judge, but only he who is the searcher of Hearts. The Court of the Sessions of the Peace, have only to do with the outward Man, what appears by Words or Actions, to be done or spoken, contrary to fundry Laws made, concerning the Duty of the People in God's Worship, That is Enquirable at the Sessions.

Yet the Objectors will hardly allow of these Proceedings before Lay-Men, though touching Lay People only, because it is of Matters concerning the Worship of God, which they assume ought only to be proceeded in before their Ecclesiastical Judges, tho' they be Lay-Men also. Yet herein the Law allows a concurrent Jurisdiction to those Ecclesiastical Courts, wherein there may be Proceedings likewise, as well as in Lay Courts against Offenders, who do not obey the Laws made concerning the Duty of the People in God's Worship; and this Disobedience to the Law, is that which the Court of the Sessions of the Peace is to meddle with, and not with the Spiritual matter of God's Worship.

The



The Law enjoyns all People to resort to Church to hear Divine Service and Preaching, as their Duty in God's Worship.

By the Statute of 2 *Edw.* VI. which En-<sup>2, 3 Edw. 6.</sup>  
acts the Book of Common-Prayer, all Per-<sup>c. 1.</sup>  
sons are enjoyned to make use of it: But  
more expressly the Stat. of 5 *Edw.* 6. ordains, 5, 6 *Edw.* 6.  
That every Person shall resort to Church<sup>c. 1.</sup>  
upon Sundays and Holy days, on pain of  
Punishment by the Censures of the Church.

What Days shall be kept as Holy Days, is 5 and 6 *Ed.* 6.  
afterwards Enacted by the same Parliament,<sup>c. 3.</sup>  
with a *proviso*, That in Harvest, and other  
times of Necessity, Men may Work on those  
Holy Days.

By a Statute 1 *Eliz.* all Persons are enjoyn- 1 *Eliz.* c. 2.  
ed to repair to Church to hear Divine Ser-  
vice, and those who are absent without a  
Lawful Cause, are to pay 12*d.* for every of-  
fence.

From this time until the 11th Year of *Q.*  
*Elizabeth*, no Person of what Persuasion soe-  
ver he were, of Christian Religion, did refuse  
to come to our Church, notwithstanding  
the very great Alteration, nor were any no-  
ted to scruple the resorting to our Church in  
point of Conscience. But the *Bull* of *Pius Pius Quintus.*  
*Quintus* in 11 *Eliz.* frightened the Papists from  
our Church, and then and since, have been  
observed Three sorts of People who absent  
themselves from our Churches, the *Negligent*,  
the *Schismatical*, and the *Popish Recusants*.

These and the following Statutes concern-  
ing the Duty of the People in God's Wor-  
ship, seem to have been made only in rela-  
tion to the Popish Recusants, it being then  
the time of the beginning of the Reforma-  
tion of Religion: But they were further extended

tended afterwards then was perhaps at first the Meaning of the Makers of them, which was done upon the general words of them.

After the Bull of *Pius Quintus*, the number of Popish Recufants being very great, the  
 23 *Eliz. c. 1.* Statute 23 *Eliz.* was made, by which was inflicted on them the Penalty of 20 *l.* a Month for their absence from Church, and on those that hear Mass, 100 Marks Penalty, and one Year's Imprisonment; and for a Year's Absence, they are to be Bound to their good Behaviour; and the Penalty of 10 *l.* a Month is laid on him that keeps a Schoolmaster in his House and repairs not to his Church, and these Offences are Enquirable here; yet by this Statute, he that hath Divine Service for the Worship of God in his own House, and comes to Church four times a Year, he is discharg'd of these Penalties.

29 *Eliz.* The next Statute touching this Matter, is in 29 *Eliz.* which appoints the Forfeitures, and the manner of Conviction of the Recufants.

35 *Eliz.* But after these comes a more severe Law, 35 *Eliz.* which provides, That if one absent himself from Church for a Month together, and perswade others to forbear coming to Church, and frequent Factious and Unlawful Conventicles under pretence of Religious Worship, he is to be Imprisoned till Conformity, which must be within three Months or they must abjure the Realm; and if they do not abjure within three Months, or being abjured, do return again into the Kingdom without License, in those Cases he shall suffer Death as a Felon.

This and other Sanguinary Laws in matters of Conscience and Opinion in Religion,  
 were

were much objected against, and held unwarrantable, by many in those times, and since, that the Parliament Men in that Age should make a Law to Banish and put to Death those of their Fellow Subjects and Countrymen born to equal Freedom with themselves, because they differed from them in some Forms, or Ceremonies, or Opinions in Religion.

Both Popish Recufants, and some Nonconforming Protestants, were within the danger of these Laws, but the Wisdom of ensuing Ages, was such, and their Charity more than that of their Trustees and Law Makers, that this severe Law of 35 *Eliz.* hath not been 35 *Eliz.* thought fit to be put in Execution, except once or twice only, since the making of it, this harsh imposing upon the Liberty of Men's Consciences being generally distastd.

But by the Statute of 1 *Jac.* is a milder 1 *Jac. c. 4.* Law, by which, a Recufant conforming and coming to Church, shall be discharged of the Penalties; but he must receive the Communion with us once every Year after, on forfeiture of 20 *l.* the first Default. And that is to be doubled after.

The Statute 1 *Car.* recites, That Divine 1 *Car. c. 12.* Service is neglected, by Peoples resorting to unlawful Pastimes on the Lord's day; and it Enacts, That on that day none shall meet out of their Parishes, for any Sports whatsoever, nor in their Parishes have any *Bullbaitings*, *Bear-baitings*, *Plays*, or other unlawful Pastimes, on the forfeiture of 3*s.* 4*d.* for every Offence, or to be set in the Stocks 3 Hours.

The Statute 3 *Car.* forbids Carriers from 3 *Car. c. 1.* Travelling on the Lord's day, on Penalty of 20*s.* for every Offence; and forbids Butchers

from killing or selling of Victual upon that day, on forfeiture of 6*s.* 8*d.* for every Offence; and to reform Abuses on the Lord's Day.

Thus we see how careful the Law is to remove all occasions which might any ways hinder the People's resort to Church, to perform their Duties in God's Worship.

In all Nations and Ages, they had publick Places for the common Assemblies of People for the Worship of their Gods, and had Times set apart for those Assemblies.

At these Times and Places I do not read of the least Backwardness in the *Jews*, nor in the very Heathen People, to Meet and to Rejoice on them, to perform their Sacred Rites, though it were to the diminishing of their Flocks, as to bring a Sheep, or a Goat, or an Ox, along with them, to Offer for a Sacrifice; nay, we read that the Heathen People resorted to their Meetings, tho' it were to Offer up their dear Children, their Sons and Daughters, unto Devils.

The Primitive Christians adventured their Lives in times of Persecution, to be at Meetings in upper Chambers, and at the Mines, rather than to be absent at the Assemblies for God's Worship.

How far from this are some among us, who out of Laziness or Debauchery, will adventure their Estates and Liberty, and the health of their Souls, in their Absence from them. These Offences are Enquirable by the Grand Inquest at the Sessions of the Peace.

Seventh

## Seventh H E A D.

### *Of the Government of the Church.*

I Shall mention such Particulars as I can remember, which are Offences against divers Laws and Statutes made concerning the Government of the Church, and these are to prevent Foreign Usurpation and domestical Sedition.

Government is taken from *Gubernare*, which properly signifies the Steering of a Ship, by him who sits at the Helm, and he or they who are Governors of Territories, Places and Kingdoms, are as Steers-men, to direct the Course of those under their Government, and to keep them in a right and orderly way, and from the dangers of Violence or Injustice, or which is worse, of Impiety. The Ground and Cunning of the distinction of Church and State, Ecclesiastical and Temporal, Clergy and Laity, and the like, have brought it to pass, That by the word Church is usually to be understood the Bishops, Priests, Deacons, and all Officers, and Business more immediately relating to God's Worship.

But it seems hard to some, that by assuming this Term to themselves, they should in a manner Excommunicate all Lay People whatsoever, as if they were not part of the  
Church

*Of the Government of the Church.*

Church and Members of it, as much as any who call themselves Ecclesiastical Persons.

All true Believers, whether in Black or Grey, in Orders, or not in Orders, if they be true Believers, they will be found to be Members of the Church of Christ, when all Formalities and Ceremonies, when all Orders and Distinctions and Titles, will be laid aside.

Let them enjoy theirs of Church-men and Clergy, and the Appellation of the Church for the Ministers and Officers that belong to Churches, yet they will not deny, but they must be under a Government, and surely all Government is a Civil thing, and may be exercised by such Persons either of the Laity or Clergy, to whom the King and State shall think fit to delegate any part of it, and over any Persons who are Subjects of this Kingdom.

It is true, that sometimes during the Pope's height in this Nation, and when perhaps the Non-age, or Weakness, or Troubles of the Prince, were a disadvantage to him; that the Clergy of *England*, as in some other Countries, would acknowledge the Pope for their Sovereign, even above their King, and insisted upon an Exemption for themselves from the Secular Power.

But as our Stories and Records do shew this, so they likewise manifest the constant Opposition to it, the many Contests about it, and the Judgment of our Judges and Parliaments, That the Government of the Church was in the King, as well as of his other Subjects, and that from as ancient a Date as the Government itself bears, and the Customs  
and

and Laws of this Nation Warrant this Government to be settled ; whereof some Instances are before remembred upon another Head, and more will be mentioned upon the Head which follows.

The Statute 24 *H. VIII.* and 1 *Eliz.* and <sup>24 *H.8. c. 12.*</sup> other Acts of Parliament, and the Common-Law, do fully evince this Truth, and I shall so leave it ; That the Government of the Church, is as the Government of all other the King's Subjects, in the King and in the Parliament ; and that they have made from time to time, and may make Laws to bind the Clergy, as well as any others, and to give an Enquiry and determination of Offences contrary to those Laws, to such Jurors and Judges, though Lay-men, as they think best.

## Eighth H E A D.

### *Of Supremacy in Ecclesiastical Matters.*

**I**F Government be a Civil thing, and belongeth to the Civil Magistrate even of the Church, as some term it, and hath been in part shewed, then the Supremacy in Ecclesiastical Matters, must needs be in the same Civil Power, the King and the Parliament.

This hath some Affinity with the next precedent Head, and with much of that which hath been before mentioned upon the Subject  
of

of Ecclesiastical Matters: Something will be added thereunto upon this Head; and to shew, that in this and other Countries of *Christendom*, it appears by sundry Instances and Laws, That the Supremacy in Ecclesiastical Matters, hath been in the Civil Magistrate, in the Natural Prince of the Country, and not in any Foreign Potentate.

The Great Question hath been, and yet is with some, Whether this Supremacy in Ecclesiastical Matters in *England*, be in the King of *England*, or in the Pope of *Rome*; and there be divers of our Country-men, as well as others, who seek to advance the Supremacy of the Pope, and oppose that of the King.

These Men against all Reason and Nature, forget their Allegiance to their Natural Born Sovereign, and give it to a Foreign Potentate, on whom they bestow a larger Privilege than himself claimed, or was acknowledged to him by us, or by other Nations of *Christendom*, or by his own Country-men in Moral Ancient Times, and that which we find not practised among God's own People.

The Levitical Priests in the old Law, never arrogated to themselves any Temporal or Coeue Power, nor advanced their Matters against the Crown of *Israel*. And sure it is, that the Sons of *Aaron* were always obedient to the Sons of *David*, and acknowledged them their Lords. The first we read of, that used the advantage of Religion towards the getting of Temporal Power, was (if not *Mahomet* himself) *Abubacher* his Successor, who despoiled poor *Alyffe*, the Nephew of *Mahomet*, and Heir of his great Riches, by  
this

Sir Walter  
Raleigh in  
his Treatise of  
War, fol. 29.  
30.

*Mahomet.*  
*Abubacher.*  
*Alyffe.*



this Pretence, that to whom belonged the Succession in Wisdom, to him also belonged the Succession in Wealth and in Sovereignty.

And though at this day the *Musti* among <sup>Musti.</sup> the Turks, holds all he hath at the Discretion of the Great Sultan, yet by *Abubacher's* Example in all Sarazen Lands, many Prophets or Deceivers, which got that Name, never ceased till they became Kings.

The *Seriffe* in *Barbary*, was one of the last <sup>Seriffe.</sup> and Greatest, and among others, won the Kingdom of *Fesse* from his own Sovereign <sup>King of Fesse</sup> Prince.

Whether the Claim which the Popes lay to their Supremacy, had not Affinity with the Doctrine of *Abubacher*, let others judge; That their practices to maintain it, have been sutable to those of the *Seriffe*, all Historians Testify,

Those of our Church do clearly shew, <sup>Bishop of</sup> That the Bishop of *Rome*, for 850 Years together after Christ, claimed no Superiority over the Prince in his own Country, but all the Submission and Obedience, which a Subject owes to his Prince was acknowledged by the Pope unto the Emperor, and taken upon him by the Prince. <sup>Rome.</sup>

All this while, his new incroached Supremacy was not thought on, but it is evident how it sprang up and grew to the present Height and Power, under pretence of Holiness, raging Contentions among Princes, and taking part with the Stronger, making use of their Arms for their own Gain.

All this while, his new incroached Supremacy was not thought on; but it is evident how it sprang up and grew to the present Height and Power. By

Sir Walter  
Raleigh's  
Mf. Treatise  
of War, fol.  
35, 36.

By Excommunicating *Leo III.* for casting down of Images, and *Frederick* and *H. IV.* by *Hildebrand*, for refusing to yield to the Pope. The Investiture of Bishops and Collocation of Ecclesiastical Benefices.

*Hildebrand.*

*Bish. of Spire.*

And though he submitted, waiting himself, his Queen, and young Prince, in extream Frost and Snow, Bare-footed, and in Woollen at the Pope's Gates three days together; yet *Hildebrand* never left Persecuting him, by raising one Rebellion after another, and his own Children against him, till being deposed of his Crown, he begged Food of the Bishop of *Spire*, and being denied it, pined away and Died.

*Ibid.* Sir Walter  
Raleigh's  
Mf. Treatise  
of War.

By Cursing and Excommunicating many other Princes, who opposed, or assisted not his Supremacy, but Blessing *Charles Martel*, *Pepin*, *Charlemaine*, and other Princes, that assisted their Supremacy, giving them Countries not lawfully gained from the right Lords.

By absolving Subjects from their Oaths to their Sovereign Princes; as to King *Fohn* of *England*, *Chilperick* of *France*, and others; and doing the like for those Kings who submitted to him against their Subjects, whichsoever made most for the advantage of his Ambition; by raising great Sums of Money under pretence of holy Wars, and by presumptuous Indulgences, and pardons of Sins; but all for Money, which they employed to the pious use of raising their own Supremacy.

By

By these and many other the like Subtilties and Deceits, and Wickednesses, they have of later Times purchased an unlawful Supremacy in most Nations of *Christendom*; tho' in the progress thereof, it hath always met with stout Contradictions and just Oppositions.

The Council of *Ephesus* threatned the Legates of *Rome*, if they omitted any thing which the Council appointed.

The Council of *Calcedon* Overruled the Pope, and as to his claimed Supremacy, over all other Bishops, they denied, and equalled the Bishop of *Constantinople* with him.

The like was done by the Sixth General Council at *Constantinople*.

The Council of *Africk* did prohibit Appeals to him.

The Germans Deposed them in their own Councils; that of *Pisa* and of *Constance*, proceeded against them and Deposed some of them, which was confirmed by the Council of *Basil*, where many things were solemnly decreed against the Pope's Supremacy.

By the 10th of *H. 8.* all the Statutes made in *England* against Provisors, are confirmed.

The like Laws were made in *Edm. III's* time, in the famous Parliament of *Kilkeny*, and in the times of *H. VI.* and *Ed. IV.* the most severe amongst them, was the Statute of 16 *Ed. 4.* which makes the publishing of Bulls of Provision from *Rome* to be Treason.

And that the Bishop of *Rome* was of no Estimation there; and that they took themselves to be of the *Eastern Church*, appears in the Discourse between *Coleman* the Irish Saint, and *Wilfred* a Saxon Priest, in the

*Bilson Differ.*  
P. 78.

*In Apolog.*  
*Cyril Mand.*  
*Syn. Ephes.*

*Council Cal-*  
*cedon.*

*Council 6. c.*  
*36.*

*Council Afric.*  
*c. 92.*

*Luitprand.*  
*lib. 6.*  
*Chron Abbot*  
*Ausperg.*  
*Platina in*  
*Greg.*

*c. 1, 11. 5.*  
*Basil Council*  
*Sessio 33.*  
*10 H. 8.*

*28 H. 6. c. 3.*  
*32 H. 6. c. 4.*  
*7 Ed. 4. c. 2.*  
*16 Ed. 4. c. 4.*

*Sir Jo. Davys*  
*Rep. fol. 88. B.*

*Coleman.*  
*Wilfred.*

Con-

*Oswif, King.* Convocation call'd by King *Oswif*. But to come to our *English* Story, by the Writers of it, and by Records and Acts of Parliament it appears, that in all times, the Supremacy of the Pope hath been both oppos'd and refused to be submitted to among us; nor was it by himself more Anciently claim'd by this Nation.

*Selden Not. in Eadmer. fol. 155. a.*

The Title of *Vicarius Christi*, King *Edgar* afterwards assumes to himself in his Charter of the Abby of *Winchester*. The same Title King *Edward* the Confessor takes to himself in his Laws; and the Vicar of Christ cannot be subordinate to St. *Peter's* Successor, if the Pope were so.

*Vic. of Christ.*

*Augst. Epist. 95, 96.*

Four Hundred Years after Christ, Pope *Innocentius* confessed to the Bishops of *Africa*, That he had not sufficient Authority, to send for *Pelagius* the Briton, who had spoken Lewd Words in derogation of God's Grace, and that he was to be summoned by others who were nearer to him.

*Bede lib. 2. Galfrid. Monemuth. lib. 8. c. 4.*

When the Monks of *Bangor* were come into the Kingdom, they refused to obey *Augustin*, because they thought him not sent from God, in regard he was Proud and did not rise from his Seat to Salute them when they came to him, and they thought he would make little account of them, if they became Subject to him.

*Coke Eccles. Case 5. Rep. fol. 10.*

King *Kenulph* as Supream in these Affairs, by his Charter in Parliament, exempts the Abbot of *Abbington* from Episcopal Jurisdiction, and grants him Ecclesiastical Jurisdiction, and this without the Pope's Approbation.

The

The Reason why King *Ina* paid *Peter* Sir John Davys, Rep. fol. 88. a. 89. Pence to *Rome*, was by reason, That a House was there built for English Pilgrims, and partly of Alms.

But it was most usual before the *Normans* came hither, and afterwards, for the Kings to give the Bishopricks *per Annulum & Baculum* a proof of their Supremacy. Selden Not. in Eadmer. fol. 142.

*H. I.* forced the Elect of *York* to keep out of the Kingdom, because he received his Consecration at the Pope's Hands. And tho' he winked at the Decree made by *Anselm* and the Clergy, to take away his right of the Donation of Bishopricks, yet he did not stick to break it afterwards. Matt. Paris, in H. I. An. 1119.

In King *Stephen's* time, which was full of Trouble, the Pope gained Appeals to *Rome*, whereof a Monk saith, *Appellationes in usu non erant, donec Henricus Winton Episcopus, malo suo dum Legatus esset crudeliter Intrusit.* K. Stephen.

By this time, the Pope ascended here these four Steps to his Supremacy, 1. The sending of Legates. 2. The Donation of Bishopricks, and other Ecclesiastical Livings. 3. Appeals to *Rome*. 4. Exemption of the Clergy from Secular Power; but by what means we see, and with what Approbation.

The Barons Stormed at King *John's* resignation of his Crown into the hands of the Pope's Legate, and levied War against the King, and brought in Lewis of *France* to have the possession of this Crown: And the Kings which succeeded, never observed the Form or Matter of King *John's* Submission. King John. Polyd. Aug. Hist. lib. 15. in Joh.

His Son *H. III.* had great use of the Pope's Curses and Dispensations of Oaths, and returned him a large Recompence for it. The Sir Joh. Davys, Rep. fol. 94. B.

Pope in this King's time, gave the best Ecclesiastical Livings to *Italians*, who could not Officiate here, but had the profit of them returned to *Rome*.

*Matt. Paris*  
in *H. 3.*

He imposed Taxes, sometimes to the moiety of all the Goods, both of Clergy and Laity, to maintain his Holy Wars against the Christian Emperor, and had his *Lombards* here to return the Mony.

These took such penal Bonds and such excessive Usury, that the Religious Houses were fain to sell their Copes and Chalices, to raise Mony for his Holiness, tho' at that time, two third parts of the Land were in the hands of Churchmen. The Fryers perswaded the Nobility and Gentry to Vow themselves to the Holy Wars, and then for Mony, the Pope's Agents sold them Dispensations for their Vows again.

The Writers of that time affirm, That tho' the King had scarce Means to maintain his own Family, yet at *Rome* they received Yearly out of *England*, Two hundred and ten thousand Pounds.

*Stat. Merton*  
*5 Rep. Coke*  
*Eccles. Case.*

And 20 *H. 3.* when the Bishops required that such as were born before Matrimony, should be Legitimate, as well as those born within Matrimony, because the Church accepts them Legitimate as to Inheritance. The Lords answered, *Nolumus Leges Angliæ mutare, quæ huc usq; usitate sunt & approbate.*

*Sir Joh. Davys,* fol. 95.

This height of the Pope's Power lasted not long, but in the Reign of the next King *Ed. 1.* his Supremacy here was abated. This King would not License his Bishops to repair to the General Council, till they took an Oath, not to receive the Pope's Blessing.

He

He regarded not the Popes's Prohibition of his War against *Scotland*; he forbid the payment of First Fruits to *Rome*; he seiz'd the Temporalities of the Clergy, for refusing to pay a Tenth to him, tho' his Pope forbad them, and did many other Acts testifying his Supremacy, and denying the Popes.

His Judges resolved it to be Treason to bring in Bulls of Excommunication, and a Contempt to bring in Matters of Excommunication, Provision, or Citations.

In his time was made the Statute of *Bigamy*, wherein the Parliament expounded the Council of *Lyons*, and the Statute of *Mortmain* which curbed the Clergy's growth; and the Statute of *Carlisle*, which recites the Bishop of *Rome*'s usurping the Ecclesiastical Benefices, did give them to Aliens, and Enacts, That the said Oppressions, Grievances and Damage, should not be further suffer'd.

Upon *Edw. H.* the Pope again attempted to set up his Supremacy, but the Peers and People withstood it: And among the Articles framed against this King when he was Deposed, one was, That he had given allowance to the Pope's Bulls.

In this King's time, tho' the Ecclesiastical Courts held their Pleas by the Ordinance of *Circumspecte agatis*, and by general Allowance and Usage, yet they thought themselves not safe, till the King in Parliament, had granted to them Jurisdiction in those Cases; and by receiving of it from him, they acknowledged his Supremacy.

During the Minority of *Edw. 3.* and the heat of his Wars in *France*, the Pope sent many Briefs and Bulls into *England*, but both

5 Rep. Eccl.  
Case, fol. 12.  
30 Affi. fol. 19.  
Br. Premunire.  
10.

2 Ed. 1. c. 5.  
Stat de Biga-  
mis.

7 Ed. 1.  
Stat. Mortm.  
5 Rep. Eccles.  
Case fol. 13.  
Ejjonis 24.  
Sir Joh. Da-  
vys's Rep. fol.  
95. B.

5 Rep. fol. 13.  
B.  
13 Ed. 1.  
Stat. Circum-  
specte agatis.  
9 Ed. 2.  
Articuli Cleri  
c. 16.

Sir Joh. Da-  
vys's Rep. fol.  
95. B.

the King and Parliament were distast'd at them, and did wholly oppose them.

5 Rep. fol. 14, 15, 16, 17, &c. And by the Resolution of the Judges and Parliaments in his time they were so far from admitting the Pope's Supremacy, that they allowed no Jurisdiction of the Court of *Rome* here, but Punish'd such as brought in Bulls or Provisions from thence, and the King assumed fully his own Right in the Supremacy.

25 Ed. 3. By the Statute of *Provisors*, the Offenders incurred a Præmunire, and then any one might Kill them.

38 Ed. 3. c. 1, 2, 3. Another Statute forbids the Cursings, Reprovings, and Defamations, by such as maintained the Supremacy of the Bishop of *Rome*, against those that should execute the former good Laws.

Once again in the Nonage of *R. 2.* they began to inroach upon the Rights of the Crown, by sending hither Bulls and Briefs, and Legates, whereof the People were so impatient, that they offer'd to Live and Die with the King in withstanding the same.

16 R. 2. c. 5. Thereupon was the Statute of Præmunire made against such Offenders; yet against this King it was Objected, at the time of his Deprivation, that he had allowed the Pope's Bulls.

5 Rep. fol. 22, 23, 24. Some Resolutions of the Judges in this King's Reign, and more in the next. *H. 4.* is expressly against the Pope's Supremacy here claimed. It is made a Præmunire to purchase Bulls from *Rome*, or to obtain an Exemption from thence, or to execute Bulls of Discharge of Tithes; or for any Person of Religion to obtain of the Bishop of *Rome*, to be exempt from



from Obedience, Regular or Ordinary.

Another Statute forbids the horrible Mis- 6 H. 4. c. 2.  
chiefs and damnable Customs in the Court  
of *Rome*, about Compounding with the Pope's  
Chamber for his pretended Claim of the First  
Fruits.

In *Henry* the Fifth's time, a Statute makes 2 H. 5. c. 7.  
it a Præmunire by colour of Provisions from 2 H. 5. c. 1.  
*Rome*, and Licenses thereupon to molest any 3 H. 5. c. 4.  
Incumbent. Another gives power to enquire  
of Heresies, procured by the cruel Persecu-  
tor Arch-Bishop *Arundel*. And tho' the  
Clergy had such Favour with him and with  
his Father, yet they made these Acts against  
the Clergy.

Another impowers Ordinaries to enquire  
of Hospitals; All Acts testifying his Supre-  
macy. And it was moved in his time, tho'  
cunningly diverted by the Clergy, to Dis-  
solve all the Religious Houses.

In *Edward* the Fourth's time, the Judges 9 Ed. 4. 3.  
resolved, That the Pope could not grant *Fitz N. Br.*  
any Sanctuary within *England*; and that it *fol. 44.*  
was a Præmunire for one Spiritual Person to 1 H. 7. fol. 1.  
Sue another in the Court of *Rome*; and that  
the Pope's Excommunication was of no force  
in *England*: And when two Legates one af-  
ter another came into *England*, they could  
not be admitted, till they had first taken  
an Oath to attempt nothing against the King  
or his Crown.

In *Richard* the Third's time, it was adjudg- 5 Rep. Coke  
ed, That a Sentence or Excommunication *fol. 27.*  
in the Court of *Rome*, should not prejudice  
any Man in *England*.

The like Resolutions were in *H. VIIth's* 1 H. 7. fol.  
time. And a Statute 1 H. VII. gives power 10.

to Ordinaries to punish Priests; which testifies this King's taking upon him the Supremacy in Ecclesiastical Matters.

24. *H. 8. c. 12.* In *Henry* the Eighth's time began the utter Extinguishment of the Power of *Rome* in this Kingdom. The 24th Year of his Reign was the Statute, which Enacts, That all Causes Determinable by any spiritual Jurisdiction, shall be adjudged within the King's Authority, and against Appeals to *Rome* and Process from thence.

26 *H. 8. c. 1.*  
10. Then comes the Law declaring the Judgment of the Parliament, and Enacting, That the King shall be Supreme Head on Earth, of the Church of *England*, and may correct all Heresies and Offences; and that the first Fruits of all Spiritual Dignities shall be paid to the King, as the Pope had them formerly, and not to *Rome*.

28. *H. 8. c.*  
1 and 10. The Statute of 28 *H. VIII.* Enacts, That Persons in Holy Orders shall be Punished as others, forbids Extolling the Authority of the See of *Rome*, under the Penalty of a Premunire; orders Officers to take an Oath to renounce and resist it, and the refusal is made High-Treason.

2 *P. and M.*  
*c. 18.*  
13 *Eliz.* These Statutes were Repealed by 2 *Mary*. But in 13 *Eliz.* in effect they are Reviv'd again. And the Law in *H. VIII*'s time, when they professed the Popish Religion, was almost as severe against the Power of *Rome*, as it is at this day.

In the same Parliament it was also Enacted, That all Bulls and Dispensations from the Pope, should be void, and the effect of any allowable to be confirmed under the Great Seal.

In the 16th Year of this King, the Cardinal *Woolsey*, by License from the Pope, suppressed divers Abbies, Pories, and Monasteries, and took from them their Goods and Lands, and employed them for the building and endowing of a College at *Ipswich*, and of *Christ-Church* in *Oxford*, which was afterwards finished by the King, who followed this Precedent of the Cardinal so far, but without the Pope's License, and employed *Cromwell*, the Cardinal's Agent therein; That it was Enacted, That the King should have and Enjoy all Religious Houses which were under the Yearly Value of 200*l.* of our Kings, before *William* the Conqueror's time.

We find the ancient Title of our Kings to be God's Vicar. *Elutherius*, Bishop of *Rome*, as hath been before noted, in his Answer to the Letter of *Lucius*, supposed to be our first *British* King, styles him God's Vicar within his Kingdom. And the like Title of God's Vicar, is given to the *Saxon* King *Edgar*, and to many other of our Kings. He that was a Vicar, had the same Power as his Prince had, or the State that Employed him; this an Earthly Prince cannot have, as a Vicar unto God, but as far as Earthly Power may extend, he hath the Authority from Christ, whose Vicar our King is often stiled, and is to perform the Commands of Christ within his Kingdom. And it hath been shewed, that the Commands of Christ, and his ways are full of Meekness and Indulgence, he Scourged some unworthy Men out of the Temple, but he Scourged none into the Temple, and he bids his Servants and Vicars, *Learn of me, for I am meek and lowly.*

Grafton's  
Hist. of the  
Union of  
York and  
Lancafter.

fol. 137.  
ibid. fol. 191.  
B.

27 H. 8. c.

28.  
Sir J. Davys  
Rep. fol. 88.

Selden Not.  
in Eadmer.  
fol. 155, 165.

We find this Supreme Ecclesiastical Jurisdiction exercised by our *Saxon* and *Danish* Kings.

King *Ina* saith in his Laws, That he studied the Health of the Souls of his People, as the common Conservator of his Kingdom; then he makes a Law for the manner of Life of God's Ministers, and such Ecclesiastical Matters.

King *Alured* begins his Laws with the Decalogue and Judicial Laws and Acts, the Immunity of the Church as the Head of it, and grants Indulgences and Immunities to the Clergy themselves.

In the League between King *Edgar* and *Guthrine*, it begins, 'That before all things, they Worship God alone, laying aside all barbarous Worship.

*Athelstan* made also Ecclesiastical Laws: So did King *Edmond*, and declares, That he had consulted with his Council how the Christian Faith might be Promoted.

King *Edgar* made many Ecclesiastical Canons, and ordered the Demeanour and Duty of Priests; and that Parents do Instruct their Children in the Christian Faith, and to abstain from filthy and Blasphemous Words and Songs; That Priests shall Preach every Lord's Day; and against Swearing and Sabbath breaking; and divers other Matters purely Ecclesiastical.

King *Canute* commands all to Worship God and keep the Rules of Christian Religion; makes many Ecclesiastical Canons; forbids barbarous Worship and Superstition, but under no severe Penalties; and professeth to do all things for confirmation of Christian Piety.

King

King *Edward* the Confessor in his Laws, calls himself the Vicar of the most High God, and saith, ' That he was Instituted to that end, ' that he should Govern the Kingdom and ' the People of the Lord, and above all the ' Holy Church; and he that is invested with power of Government as these Kings were, hath in him this Supream Ecclesiastical Jurisdiction, as properly pertaining to the Temporal Prince.

If we look into the time from *W. I.* to *Ed. I.* we shall find this Supream Ecclesiastical Jurisdiction to be exercised by those Kings.

*William I.* tho' he Invaded *England* with the Clergies Benediction, and the Pope had sent him a Banner Hallowed with one of *St. Peter's* Hairs in it, yet when the Legate required him to do Fealty to the Pope, and acknowledge the Church's Superiority, he answered, ' Fealty I would not do, nor will ' I do it, because neither I have promised it ' nor do I find that my Ancestors have done ' it to your Ancestors.

He appointed Churches with Cure to Ecclesiastical Persons, and did many the like Acts; so that it is said of him, That all things both Divine and Humane, were at his Beck.

When *Anselm* asked leave of *William Rufus* to go to *Rome*, the King told him, That no Arch-Bishop, or Bishop of his Realm should go to the Pope or Court of *Rome*; and that if he asked this Leave any more, or Appealed to *Rome*, he should speedily depart out of his Realm; and because he went thither without License, all his Goods and Chattels were Seized to the King's Use, and he constrained to live in Banishment during this King's Life.

*Selden Not.*  
*in Eadmer.*  
*fol. 164.*  
*Davys Rep.*  
*fol. 89.*

*Matt. Paris*  
*An. 1094.*

In

In King *H. the Firſt's* time, he was permitted to return into *England*, but not without an Engagement that he would perform the Customs of *William I.* and of *William Rufus*. And when *H. I.* perceived that *Anſelm* combined with the Pope, to hinder the King's Donation of *Bishopricks*, the King wrote to the Pope challenging that Right: And his Proctor in *Rome*, told the Pope, 'That his Master would rather loſe his Kingdom, than loſe the Donation of *Bishopricks*.

Coke 5. Rep.  
Eccleſ. fol.  
106.

Davy's Rep.  
fol. 40.

In King *Stephen's* time a Monk Writes, 'That Appeals to *Rome*, were not in uſe till *Henry*, Biſhop of *Wincheſter* by his Craft, when he was Legate, did cruelly intrude them; by which means, ſome few of them came to have place here in this Kingdom.

Coke Epift.  
ad Rep. 6.

*H. II.* was a ſtrong oppoſer of the See of *Rome*, as appears by the Story of *Thomas Becket*, and by the Laws made at *Clarendon*, abridging the Pope's Authority, forbidding of Appeals, and payment of *Peter Pence*, and commanding that none ſhould bring Decrees from *Rome* to be Executed here, on pain of Imprifonment and Confifcation, nor Bulls of Interdicting the Realm, on pain of High-Treaſon; and he did the like to his Clergy of *Normandy* in the Privileges and Indulgences granted to them. And tho' this King relented a little, when the Pope had Armed his Sons and Neighbours againſt him, yet he conſtantly made what Oppoſition he was able againſt it; and to aſſert the Right of his Crown in theſe Eccleſiaſtical Matters, his Laws are at large cited in our Books.

King *R. I.* gave the *Bishopricks* by the Inveſtiture of the Ring and Staff, and this was a great aſſerting of his Eccleſiaſtical Jurisdiction;

tion; and he owned for Money the making of a Bishop an Earl, as he did the Bishop of *Dur-* Matt. Paris, *ham*, saying in *Drollery*, *That of an Old Bi-* P. 144. 50. *shop, he had made a Young Earl.*

He gave great Privileges and Exemptions to some of the Clergy in *Normandy*, by virtue of his Supream Ecclesiastical Jurisdiction there.

It must be acknowledged, That in King *John's* time, the Power of the Bishop of *Rome* Matt. Paris, did swell to a great height in this Kingdom, An. 1213. and 1216.

he neglecting no means to Enhance it; for which end, he scrupled not to Absolve the People of *England* from their Oaths and Allegiance to their Sovereign, and to Bless such as would undertake a Curfed Act, *To depose a rightful King*. Then turning the Tables, He Interdicted the Kingdom for opposing his Pleasure. By these Courses, he brought the poor Prince to surrender his Crown to the Legate, and to take it from him as the Pope's Farmer. But the Barons told the Legate, 'That the Kingdom of *England* never was nor should be *St. Peter's* Patrimony: And they spoke homely of the Clergy, crying out upon the shrivel'd Ribaulds. And none of this King's Successors Polyd. Virg. lib. 15. in John. ever observed any thing of this Submission to the Pope.

Also in this King's time are some Records 45 H. 3. Rot. yet Extant, which forbid to draw any Man Claus. m. 14. in Plea out of the Realm. Dorf.

We may now take a View of the Time from *Ed. I.* to *H. IV.* and we shall find the like Jurisdiction Exercised.

*Edw. I.* a Stout and Wise Prince, did very much recover the Right of the Crown in matters

1 Edw. 1. matters Ecclesiastical. He would not suffer those of the Clergy to go to *Rome* without his License.

7 Ed. 1. In his time, the Statute of *Mortmain* was made, which did much enquire the growth of the Clergy. He forbid the Pope's Provisions without his Knowledge and Leave.

18 Ed. 1. He denied *William* of *Nottingham* to prosecute his Appeal to *Rome*, because it would Infringe his Privilege and Right, but bid him to Enter it here if he would, and set a Penalty upon the provisions of Appropriations.

28 Ed. 3. This King being Cited by the Pope to appear before him, the great Council were much Offended at it, and wrote back to the Pope, 'That it was notorious, that the King of *England* was not to appear before the Pope, or any other; and they said, altho' the King would, yet he could not do it.

He denied the Pope's Bulls and *Peter Pence*, and other Exactions of *Rome*. And he would not License his Bishops to repair to the General Council, till they took an Oath not to receive the Pope's Blessing.

He regarded not the Pope's prohibition of his War against *Scotland*, but justified his Superiority over that Kingdom, even from the time of *Brute*, as his Letters, in which the Lords and Commons joined with him and sent to the Pope, may appear. An Authentick Instrument whereof is to be seen in that rare Collection of Antiquities by Sir *Robert Cotton*, and continued by his Posterity. He forbid the Payment of first Fruits to the Pope, and Seized the Temporalities of the Clergy, for refusing to pay him a Tenth, tho' the Pope forbid them.



In his time it was adjudged Treason for one Subject to bring in a Bull of Excommunication against another, and an high Contempt against the Crown, to bring in Bulls of Provilion, or Briefs of Citation from *Rome*.

In *Edward* the Second's time, somewhat more Favour was shewed to the Clergy, as appears by the Statute Intituled, *Articles for the Clergy*; yet in them the right of the Crown and Parliament as to those Matters, is likewise manifested. Stat. 9. Ed. 2. p. Lent.

The King by his Letters Patents Civilly and Filially Intreated the Pope and Cardinals, not to hold Plea at *Rome*, of things done in *England*. And when at the Council of *Vienna*, the Pope out of the fulness of his Power, dissolved the Order of the *Templars*, and gave their Lands to the Hospitallers, a Resolution was here given in point of Law and Conscience, 'That the Lords of the Fees might enter into those Lands, notwithstanding the Acts of the Council and Gift of them by the Pope to the Hospitallers. 14 Ed. 2. lib. apud Turrim, fol. 85.

And to prevent this, the Statute of *Templars* was made in our Parliament: And tho' in his time the Ecclesiastical Courts held their Pleas by the Statute *de Circumspecte agatis*, and by General Allowance and Usage, yet they thought themselves not safe, till the Parliament had granted them Jurisdiction in those Cases, as by the Statute of the *Articles of the Clergy*, before Cited: And it was Ob- 4 Ed. 2. 1611.

jected against this King, as one of his great Defaults, That he had given Allowance to the Pope's Bulls and Authority. 17 Ed. 2. Stat. Templars. Sir Jo. Davys, Rep. fol. 95. Coke 5 Rep. 1 Eccl. Case fol. 13.

In the time of *Ed. III.* a Wise and Powerful Prince, scarce a Parliament was held, wherein

wherein somthing doth not appear of his Ecclesiastical Authority, to Recite which, would be Tedious; I shall mention only some of the most Principal of them in his Minority, and in the heat of his Wars in *France*, the Pope sent many Briefs into *England*, at which both the King and his Subjects were much offended, and did smarly oppose them, and by the Resolution of the Judges and of the Parliament in his time, they admitted no Jurisdiction of the Court of *Rome* here, but punish'd those who did bring any Bulls from thence, or obtained any Provisions of Benefices, and the like.

Coke 5. *Rep.*  
*Eccles. Case,*  
fol. 15, 16, 17.

That this King entirely resumed his Right in the Supremacy Ecclesiastical, appears by many Statutes and Judgments in his Reign.

25 Ed. 3.  
*Stat. de Prov.*

The Statute of Provisors recites the Stat. of *Carlisle*, and asserts, That the Church of *England* was founded in the Estate of the Prelacy, by the Kings and their Predecessors, and the Nobles and their Ancestors.

27 Ed. 3.  
*Stat. Provis.*  
c. 1.

And this Statute and another two Years after it, forbidding Provisions of the Benefices by the Pope, do fully testify the King's Authority to be Supream in Matters Ecclesiastical: so doth another Statute, forbidding those to be Curst who shall execute the former Laws.

33 Ed. 3. c.  
1, 2, 3.

In the Annals of the Law, we also find Resolutions to the same effect; As that the King may exempt any Ecclesiastical Person from the Jurisdiction of the Ordinary, and may grant to him Episcopal Jurisdiction and Exemption.

17 Ed. 3. fol.  
23.

In the Nonage of R. II. the power of *Rome* again began to bud, or sought to Incroach,  
by

by sending hither Bulls, Briefs, and Legates, whereof the People were so impatient, that they offer'd to Live and Die with the King, in withstanding this Foreign Usurpation.

This Act declares, That the Crown of *England* hath been so free at all times, That it hath been in no Earthly Subjection, but immediately subject to God in all things. 16 R. 2. c. 10.

This King had also the Unhappiness to have it objected against him in Parliament, That he had allowed of some Bulls from *Rome*.

In the time of *H. V.* the Lands of Religious Houses were in danger to be taken away by Authority of Parliament, the King being Petitioned to suppress them, because they were Nurseries of Idleness, Gluttony, Lechery and Pride, and that their Revenues would bring Yearly to the King 200000 *l.* and also maintain 15 Earls, 150 Knights, and above 6000 Men at Arms; but by the Policy and Liberal Offer of the Clergy to supply the King's Occasions, and to further his Title to *France*, they got this Business to be Diverted. Martin Chron. p. 142.

In the Minority of *H. VI.* when the Commons had denied the King a Subsidy, the Prelates offered the King a large Supply of his Wants, if he would Repeal the Act of Provisions. But *Humphry* Duke of *Gloucester*, who not long before had cast the Pope's Bull into the Fire, caused this Motion to be denied, as derogatory to the King's Right and Supremacy. Sir Jo: Davys, Rep. fol. 96.

In *Henry* the Sixth's Reign, it was adjudged, That the Pope's Excommunication is of no force in *England* by the Common-Law, and 1 H. 6. fol. 10.  
8 H. 6. fol. 17.  
9 H. 6. fol. 16.

and that the King only may grant and give a License to found a Spiritual Incorporation.

In *Ed.* the Fourth's time, the Troubles at Home gave him the less Opportunity to assert these Rights of his Crown. But we find a Resolution of his Judges, That the Pope could not grant any Sanctuary in *England*.

1 H. 7. fol. 20.

12 Ed. 4. f. 46.

1 H. 7. f. 10.

It was in *Ed.* the Fourth's time adjudged likewise, That the Pope's Excommunication is of no force in *England*. And when two Legates one after another came into *England*, they could not be admitted till they had first taken an Oath, to attempt nothing against the King and his Crown.

2 R. 3. f. 22.

*Rich.* III. had a short and unhappy Reign, after his wicked and Bloody Usurpation, and was careful to please the Clergy; yet in his time it was Resolved, That a Judgment or Excommunication in the Court of *Rome* does not prejudice any Man in *England*.

*H.* VII. was a prudent and wary Man, and not forward to displease or disoblige any Party, especially so great a one as the Clergy, yet in his Reign divers of the like Resolutions were made by the Judges, as were before in the times of his Predecessors.

We are now come to the great turn of Ecclesiastical Affairs in this Kingdom, by *K.* *H.* VIII. who not only resumed absolutely the whole Ecclesiastical Jurisdiction, but totally abolish'd the Pope's Supremacy here.

The ground whereof some would attribute to his Covetousness; but he was rather a Prodigal; and tho' none are more Covetous than some prodigal Men, yet that Humour of Covetousness was spent in his Father, and his own Education and Practice was otherwise.

His

His displeasure against the Pope, about the business of Queen *Katherine*, and the Precedent of *Wolsey's* Dissolution of some lesser Abbeyes, with his private Grudges, and haughtiness of Mind, rather than other Motives, might put him upon what he did.

It chiefly began in the 24th year of his <sup>24</sup> H. 8. c. 12. Reign, when an Act was made, reciting, *That by divers old Authentick Histories and Chronicles, it is manifestly declared, That this Realm of England is an Empire, and so hath been accepted in the World; Govern'd by one supreme Head and King, having the Dignity and Royal Estate of the Imperial Crown of the same; unto whom the Spirituality and Temporality bin bounden and owen, to bear next under God, a natural and humble Obedience.*

He being also furnished with plenary, whole, and entire Power, Prebeminence, Authority, Prerogative, and Jurisdiction, to render Justice and final Determination, to all manner of Folk, Resistant or Subjects within his Realm, in all Causes, without restraint or provocation to any Foreign Princes or Potentates.

It Enacts, *That all Causes determinable by any Spiritual Jurisdiction, shall be adjudged within the King's Authority; and that whosoever shall procure from Rome any Appeals, Process, &c. shall incur a Præmunire.*

The next year an Act was made, wherein <sup>25</sup> H. 8. c. 19. the Clergy acknowledge the King's Right, *That they are Convened by his Writ, and that no Laws are valid without his Consent, which is Enacted; and that the King may assign thirty two Persons to examine the Canons, and to continue such of them as they think fit; and to restrain the rest; and that no*

Appeals be made to *Rome*, that Appeals from Places exempt, which was to the See of *Rome*, shall be to the King in *Chancery*.

25 H. 8. c. 20. The same Parliament enacts, That no *First Fruits* be paid to *Rome*; That the King shall grant his *Conge D'Eslier* for the Election of Bishops, and in default of Election of a Bishop, the King shall nominate the Bishop by his Letters Patents; and that Bishops shall be Consecrated here.

25 H. 8. c. 21. Another Act in the same Parliament, complains of the Pope's *Exactions*, for *Dispensations*, *Licenses*, *Faculties*, &c. and that his *usurped Power therein*, was to the *Derogation* of the *Imperial Crown and Authority Royal*: It prays, in regard your Majesty is *Supreme Head of the Church*, which the *Convocation* hath *Recognized*, That it may be *Enacted*, That no *Dispensations*, *Licenses*, &c. may be had from *Rome*, and that the *Archbishops here* may grant them; and none to be good, except the King under the *Great Seal* confirm them, if the Tax of them be above *Four-pence*; and that the *Confirmation* shall be *Inrolled in Chancery*.

That the King by *Commission* may visit *Colleges*, *Hospitals*, and *Places exempt*, and by advice of his *Council* may order *Redress* and *Reformation*, of all manner of *Indulgences* and *Privileges* thereof, and of the *Abuse* thereof, he may make *Orders* for *Reformation*, which shall be observed.

In the next Parliament, an Act recites,  
 26 H. 8. c. 1: " That altho' the King rightfully is, and  
 " ought to be *Supreme Head of the Church*  
 " of *England*, and so is *Recognized* by the  
 " *Clergy*, in their *Convocation*, yet for  
 " con-

“ confirmation thereof, and increase of  
 “ Virtue, and to extirpe Errors and He-  
 “ resies, it enacts, That the King shall be  
 “ taken and reputed the only Supreme  
 “ Head on Earth, of the Church of Eng-  
 “ land, and shall have and enjoy, annexed  
 “ and united to the Imperial Crown of  
 “ this Realm, as well the Title and Stile  
 “ thereof, as the Honours, Dignities Pre-  
 “ heminences, Jurisdictions, Privileges,  
 “ Authorities, Immunities, Profits, and  
 “ Commodities to the said Dignity of Su-  
 “ preme Head of the Church belong-  
 “ ing.

“ And shall have full Power and Au-  
 “ thority, to him, his Heirs and Successors,  
 “ to Visit, Repress, Redress, Correct, and  
 “ Restrain, all such Errors, Heresies, A-  
 “ buses, Offences, Contempts, and Enor-  
 “ mities, which by any Spiritual Autho-  
 “ rity or Jurisdiction ought or may law-  
 “ fully be Ordered, &c.

In the Act of the 28th of H. 8. c. 7. there <sup>28 H. 8. c. 7.</sup>  
 is a Clause against Appeals to Rome: By <sup>28 H. 8. c. 10.</sup>  
 another Act, to Extol or Defend the Au-  
 thority of Rome, is made a *Præmunire*, and  
 every Ecclesiastical and Lay Officer, to be  
 sworn to Renounce the Bishop of Rome,  
 and his Authority, and to resist them.

Another Act recites, That the Bishops of <sup>28 H. 8. c. 10</sup>  
 Rome, to enrich themselves, usurped Juris-  
 dictions and Powers, to grant to the King's  
 Subjects for Money, divers Faculties, Li-  
 censes, and Indulgences; they are all ena-  
 cted to be void; and the effect of Briefs,  
 Bulls, and Faculties, which be allowable,  
 shall

shall be confirmed under the Great Seal.  
 31 H. 8. c. 9. In his 31 Year, an Act of Parliament gives him Power to nominate such a number of Bishops, Bishops Sees, and Churches, and to endow them with such Possessions as he will.

31 H. 8. c. 13. In the same Parliament an Act was passed, whereby all the rest of the Monasteries in *England*, were dissolved, and their Lands given to the King: An Act of as much neglect of the Romish Power, and of as much Supremacy in the King, in matters of the Church, as may be imagined; which was further practised by this King, in the Laws by him made, for confirmation of the Romish Doctrine, and the 39 Articles, upon which great Cruelty was exercised; some were put to Death, for affirming the Supremacy of the Pope, and others, for denying of his Doctrine.

Thus you have this *awful King* in the highest Exercise of his Supreme Ecclesiastical Jurisdiction, and in the full Possession of all the Lands and Estates of all the Religious Houses in his Kingdom, and of whatsoever lawful Power the Pope had; all this vested in him, by consent of all his People represented in Parliament.

We are now come to the Reigns of *Edward* the Sixth, and *Queen Mary*; *Edward* the Sixth proceeded in the Ecclesiastical Matters, in the enjoyment of what his Father had thus settled.

And as to the Doctrinal Part, he first imposed a Penalty upon those who spake irreverently of the Sacrament, or against the Receiving of it under both kinds. The next

1 Ed. 6. c. 1.

1 Ed. 6. c. 2.

1 Ed. 6. c. 9.



next was touching Bishops, and some Ecclesiastical Matters: Then about the Lands of Religious Houses come to the Crown, and for uniting of Churches in *York*; all former Acts concerning the six Articles, as Doctrine, or matters of Religion are repealed, and it is made High-Treason to affirm; That the King is not, or ought not to be Supreme Head of the Church of *England* in Earth, immediately under God; or that the Bishop of *Rome*, or any other than the King of *England*, is, or ought to be, by the Laws of God, supreme Head of the same Church. By the same Parliament, all Chanteries are given to the King. 1 Ed. 6. c. 12.

The next Parliament ordains, the Book of Common-prayer, recited to be made by the Aid of the *Holy Ghost*, and the *Travail of the Bishops, and other Learned Men*. 2 & 3 Ed. 6. c. 1.

Other Acts are for the manner of Payment of Tythes; prohibiting to eat Flesh on *Fridays* and *Saturdays*, *Ember-Days*, and in *Lent*; and for payment of Tenths to the King, and for the Repeal of the Laws against the Marriage of Priests. 2 & 3 Ed. 6. c. 19.

By the next Parliament, Books of Popery are abolished, Images to be taken away, and Power is given to the King and Council, to name thirty two Persons to examine the Ecclesiastical Laws, and to set forth such as they shall think fit, not contrary to the Common Laws and Statutes. 3 & 4 Ed. 6. c. 10, 11.

The manner of making and consecrating Bishops and Ministers.

In the next Parliament the People are required to come to Church; and the Book 5 & 6 Ed. 6. c. 1.

5 & 6 Ed. 6. of Common-Prayer, with some alterations;  
c. 3. is again enacted.

Cap. 12. Holy-days and Fasting-days appointed, and abstinence from Flesh in *Lent*, and the Marriage of Priests, is made lawful.

1 M. c. 1. But all the good Laws of this King, were Repealed by his Sister, Queen *Mary*, and by a new Act it is declared, That she was born in lawful Matrimony, and all Divorces to the contrary are Repealed.

Cap. 2. All the Acts of *Edward 6.* touching the Sacrament, Bishops, Ministers, Uniformity of Service, Marriage of Priests, Popish Books, Images, Common-prayer, Holy-days, and Fasting Days, are all Repealed; and such Service and Administration of the Sacraments as was in the last year of *Hen. 8.* and no other, to be used, especially for Disturbing of Preachers.

Cap. 3. The Bishoprick of *Durham* was dissolved, and the Lands thereof given to the King, *Not printed.* — An Act of the 5th of *Rich. 2.* for Arresting of Heretical Preachers, and another of the 2d of *Hen. 4. c. 15.* for Repressing thereof, and of the 2d of *Hen. 5. c. 7.* for suppressing Heresie and Lollardy, are renew'd; but this Act was again Repealed by the First of *Eliz. c. 1.*

Cap. 6. All Acts made against the See of *Rome* are Repealed by this Queen; and tho' by this Act it was thought fit to be done, yet the Clergy held it prudent to Petition the King and Queen, that the Lands and Goods of the Clergy, late disposed amongst the Temporality, might remain with the Possessors of them. The Clergy preferring the Publick Peace, before the Private Commodity,

dity, with the which Cardinal *Pool* thought fit in Wisdom to dispense; and the same was so confirmed by the Parliament, and Acts made for the Assurance of them: And <sup>2 & 3 P. & M</sup> that the first Fruits should cease, as to the <sup>c. 4.</sup> Queen, and she renounceth Ecclesiastical Livings.

I come to a more settled, and, I hope, <sup>1 Eliz. c. 1.</sup> durable Change: Queen *Elizabeth* in her first Parliament recites the Act of *Henry* 8. for extinguishing all former Powers and Jurisdictions, and for restoring and uniting to the Temporal Crown of this Realm, the antient Jurisdictions and Authorities thereunto belonging, and the Repeal thereof by Queen *Mary*. Now this Act Repeals the Statute of the 1 & 2 of *Philip* and *Mary*, c. 5 and Revives the Statutes of her Father, for abolishing the Power of the See of *Rome*, and Revives the Statute of her Brother, 1 *Eaw.* 6. c. 1. and Repeals the Statutes of 1 and 2 *Phil.* & *Mary*, c. 6. and Enacts, *That no Foreign Prince, Person, Prelate, &c. shall use or exercise any Jurisdiction, Spiritual or Ecclesiastical, in this Realm, but that the same shall be abolished by this Act.*

And that such Jurisdictions, Privileges, &c. Spiritual or Ecclesiastical, as by any Spiritual or Ecclesiastical Power or Authority, hath heretofore been, or may lawfully be Exercised, for the Visitation of the Ecclesiastical State and Persons, and for Reformation, Order, and Correction of the same, and of all manner of Errors, Heresies, Schisms, Abuses, Offences, Contempts, and Enormities, shall be united and annexed to the Imperial Crown of this Realm:

And it gives Power to the Queen to assign Commissioners to exercise Ecclesiastical Jurisdiction, and enacts the Oath of Supremacy, and the Præmunire, to continue in force; and that no matter of Religion, declared by this Parliament, shall be judged Heresie and Schism.

The Act of 1 M. c. 1. is Repealed, and the Book of *Common-Prayer*, 5 and 6 of Ed. 6. c. 1. is Established.

1 Eliz. c. 4.  
5 Eliz. c. 1.

All Persons are to resort to Church; first Fruits and Tenths are restored, and the Advowson of Vicaridges.

#### Belonging to Abbeyes.

5 Eliz. c. 5.  
5 Eliz. c. 28.

Maintaining the Authority of the See of Rome. Persons to take the Oath of Supremacy. Fasting Days to be observed. The Bible and Common-Prayer to be Translated into *English*. Consecration of Bishops; Confirmation of the Book of Common-Prayer, according to the Act of 1 of *Eliz.*

And here seems to me to be a very strong Argument for Indulgence, in matters of Religion, when in the space of less than 20 years, the same Opinions and Doctrine of the highest Consequence, was twice Established for Orthodox, and twice condemned as Heretical.

*Henry 8.* and *Q. Mary*, condemned the Hereticks, who denied the real Presence in the Sacrament; but *Edw. 6.* and *Q. Elizabeth*, accounted the same Opinion *Orthodox*; and the like in several other Opinions.

Queen

Queen *Elizabeth* prohibited Bulls from *Rome*, and Absolving and Reconciling any Person to that See, and the bringing in of *Agnus Dei*, Pictures, &c. 13 *Eliz.* c. 2.

Ministers to subscribe the Articles agreed on, for Confession of Faith, and Reformation of Disorders in Ministers. c. 12.

Made Treason to withdraw any from the Religion Established, to the *Roman* Religion, or to be Reconciled or withdrawn; and against hearing of Mass; a Penalty for not coming to Church: Divine Service permitted in a House, as it is Established, and so as the Parties be at their Parish-Churches four times a year. 23 *Eliz.* c. 1.

Jesuits and *Romish* Priests to depart the Realm, and not to return on pain of Treason, and to receive them is Felony; and if one knowing it, do not discover it, he forfeits 200 *l.* 27 *Eliz.* c. 1.

*Wednesday* no Fasting Day.

Victuallers not to utter Flesh in *Lent*, nor on *Fridays*, and *Saturdays*, Exp. c. 11.

For avoiding Perils by wicked, dangerous Practices of seditious Sectaries, and disloyal Persons. 35 *Eliz.* c. 1.

None are to persuade others from coming to Church, nor to be present at any unlawful Assemblies, Conventicles, or Meetings, on colour or pretence of any Exercise of Religion, contrary to the Queens Laws.

Or if any Person for a Month, shall forbear to hear Divine Service, and repair to any such Conventicles, they shall be Impsoned till Conformity, which if they do

do not in three Months after Conviction, they shall abjure this Realm.

This Statute is said to be continued, 1 *Fac. c. 10.* but there is no Act of the same Title continued.

Convicted Popish Recufants, are confined to their Dwellings, and five Miles about.

1 *Fac. 4.*

King *James* proceeded in the course of *Q. Elizabeth*: In his first Parliament, all Acts of *Q. Elizabeth*, against Priests and Recufants, and Convicting them, and Penalties on them, and who shall take the Oath of Obedience, are confirmed.

Treason, to practise to Absolve or withdraw any from their Obedience, and to Reconcile them to the Church of *Rome*. Twelve pence a default for not coming to Church.

Two Clauses of the Act of 35 *Eliz.* Repealed, and no more, and that under another Title than the Act hath.

In lieu thereof, the Penalty of 40s. a Month is imposed on those, who keep in their Houses any Servant or Stranger, that comes not to Church; and provision is made against Priests, and saying of Mass, for confirming Recufants, disabling them from Offices: Of their Wives, their Marriages, Baptizing their Children, and sending them beyond Sea, disabling of such; and against Popish Books and Crucifixes; of Receiving the Sacrament, and taking the Oaths, &c.

21 *Fac. c. 7.*

An Act against Drunkeness, and another to reform profane Cursing and Swearing.

In the time of K. Charles 1. an Act pass<sup>d</sup> 3 Car. 1. c. 4<sup>th</sup> fed, to reform Abuses on the Lord's Day ; another to restrain sending any abroad to be Popishly brought up.

A Repeal of part of the Statute of 1 Eliz. 7 Car. 1. c. 18. touching Commissioners Ecclesiastical.

By this brief Historical Collection, it is evident, That all our Kings have claimed and exercised a right of Supremacy, and in matters Ecclesiastical ; which hath been Confirmed and Established, especially in Hen. 8 and since by the Judgment and Consent of all the People of England, Lords and Commons, *Spirituality* and *Temporality*, by their Representatives in our Parliaments.

The Book-Case in Hen. 7. is Judge Brian there saith, " That the King is a mixt Person, and united with the Priests of the holy Church : And so it is and hath been with other Temporal Princes. And therefore we read of divers of them who have performed the Office of Preaching to their People. Moses was actually a King in *Jeshurun* ; the *Chaldee*, *Syriack*, and *Persick* Versions, for *Jeshurun*, do read *Israel* ; so doth the old *English*, and the *Spanish* Translations, and he was King in *Israel* ; and that this was so, appears from the *Hebrew* which expresseth it thus ;

And he was King in *Jeshurun*, that is, in *Israel* : The *Hebrew* word here used, is the only word in that Language which doth signifie a King.

And this King *Moses*, commanded *Aaron* the Chief Priest ; and so the Text warrants: *Exod. 4. 16.* When God directed *Moses* to make use of *Aaron* to speak for him, he saith, *He shall be*

to thee instead of a mouth, and thou shalt be to him instead of a God: The Chaldee Version is, Thou shalt be to him a Prince: The Arabick is, a Lord. He commanded Aaron, and over all the Spiritual Persons and Matters, he exercised a full Supremacy; and, to shew that he was a mixt Person, he was also preached to the Congregation: Joshua did the same; so did Solomon; and other Kings of the Israelites.

Deut. 29.  
Josh. 2. 4.

It is related of *Lucius*, the first British Christian King, that whilst his Soldiers were fighting in France, he went about preaching the Faith and Gospel of Christ.

Lib. de Antiq.  
Brit. Leg.

*Oswold*, one of our Saxon Kings, being highly disposed to set forth and promote the Doctrine of Christ, sent into Scotland for a Bishop there called *Aidanes*, a famous Preacher, who came and preached to the Saxons; but his Scottish Tone not being understood, the King himself did interpret that which the Bishop said, and disdained not to preach and expound the same unto his Nobles and Subjects, in the English Tongue.

Fox Martyrd.  
f. 137.

The like is related of King *H 3.* and I have heard King *James* speak publicly, like an excellent and learned Divine.

Coronations.

The King is Crowned by the Archbishop of Canterbury; so the Emperors when they were Crowned Kings of France, began to be Anointed, and were Crowned by the Archbishops of *Mentz*, *Cologn*, and *Triers*, as they were Emperors, and by the Archbishop of *Rhemes*, as they were Kings of France: But the Kings of France of the first Line, were not anointed, nor is there any mention of it in their Antiquities. And tho



tho' the Kings of *Spain* are Crowned by the Archbishop of *Toledo*, the Kings of *Sweedland* by the Archbishop of *Upsale*; the Kings of *Poland* by the Archbishop of *Guesne*; the Kings of *Hungary* by the Archbishop of *Strigon*; the Kings of *Navarre* by the Bishop of *Pampelune*, yet none of them were antiently anointed.

It cannot be denied, but as this real Relation doth more peculiarly appropriate the State Ecclesiastick to our King; so it makes him not only the Supreme Head and Governour, but also the chief Guide and Guardian; for by it he is more than a *Lay-man*, he is a *mixt Person*, having supreme Ecclesiastical, as well as Civil Government. Leg. St. Edwardi  
Downing. f. 58.

Kings anointed with holy Oyl, are capable of Spiritual Jurisdiction, was a Sentence apply'd to our King, in the time of *Ed. 3.* as our Book case attests; and it is noted by *Guisner*, in his Comment on the *Pragmatical Sanction of France*, that *Anointed Kings are not meerly Lay-Persons*; and he adds, *That from thence it is, that the Kings of England do bestow Benefices*; and so do their Deputies for this matter, the *Chancellors*, and *Keepers of the Great Seal of England*.

This gives some addition to the Right of our Kings, in their Supremacy in matters Ecclesiastical.

The Kings of *Israel* took themselves to be mixt Persons, and capable of Ecclesiastical Jurisdiction, as the Judgments and Actions, the pious and excellent Sermons and Exhortations of *Moses*, *Joshua*, *Samuel*, *David*, *Solomon*, *Hezekiah*, *Jehosaphat*, and others, do testify. Something hath been instanced

instanced of the same nature, in our *English* Kings, and the last *Saxon* King, *Edward*, obtained the Title of *Confessor*.

The Bishop of *Rome* challeng'd and exercis'd this Supremacy over all Christendom, and as much in *England* as elsewhere; but *Henry 8.* was willing to resume it to himself and his Successors; and the *English* Parliaments were willing to acknowledge and settle this Right upon them: Therefore in the 34th Year of his Reign, as hath been remembred, the Parliament declared *England* to be an Empire, govern'd by one Supreme Head, and King, whom both the Spirituality and Temporality ought to obey, next to God; and that he hath sufficient Jurisdiction in all Causes, and that all Spiritual Matters shall be judged within his Authority.

Then the next Parliament recites, that tho' the King be rightfully Supreme Head of the Church, and is so Recognized by the Clergy, yet for Confirmation thereof, it is Enacted, "That he shall be taken  
" and reputed the only Supreme Head in  
" Earth of the Church of *England*, and all  
" Jurisdiction belonging to the Supreme  
" Head of the Church, are granted to him.

It is certain, that the Pope did grant Indulgence in greater matters, than any upon Earth; for as *Luther* observed, he granted Indulgence for Sin, and set free Souls from Purgatory.

The King is as much Head of the Church, or supreme Governor, as the Pope ever was, and certainly of much more Right; and

and all the Clergy in their Convocation, acknowledged *Hen. 8.* to be so.

The Statute of 24 *H. 8.* before remembered, doth recite, That by authentick Histories and Chronicles, this is an Empire, and hath Spirituality and Temporality subject to it, in all Causes, govern'd by one supreme Head, a King.

This appears to be so likewise by the Common-Law of *England.* It was the Resolution of all the Judges of *England,* in the second Year of *K. James,* that the King upon any cause moving him, in respect of Time, Place, Person, &c. may grant a non obstante, to dispense with any particular Person, that he shall not incur the penalty of a Statute; and this agreeth with other Books.

Another Resolution was at the Sessions, by the Chief Justice *Richardson,* Judge *Barlet,* and *Littleton.*

Co. 7 Rep.  
Case de penal  
Leys. f. 16, 37.

10 Apr. 1 Car.  
1. apud Newgate.

First, " That the King may Pardon an  
" Indictment, against the Statute of 5 *El.*  
" 2. That he may give a License to one  
" to Exercise a Trade, for all his life-  
" time, tho' he have not been an Ap-  
" prentice to it; because it is not *malum*  
" *in se,* but *malum prohibitum.*

It is agreed, that the Law hath given Power to the Queen, to dispense with particular Persons, because of the impossibility of foreseeing all particulars; and that a *Dispensation* is a provident *Relaxation* or Indulgence of a prohibited Evil, upon consideration of Profit or Necessity.

No

*Britton*, f. 280,  
282, 283.  
*Fleta*, l. 6. c. 8.  
*Co. Lit.*, f. 131

No Lord or Knight could go beyond Sea, because thereby the Realm might be disfurnished of a valiant Man; and therefore it was against Law, yet in that case, the King might grant License to any Man to go beyond Sea, and dispense with that Law.

It is a Ground of the Common-Law, that Acts of Grace and Favour, are in the Right of the King, to be done by him, for the more obliging of his Subjects, and the gaining of their Affections to him; and hence it is, that the granting of *Exemptions, Dispensations, Licenses, Indulgences, and all such Acts of Grace*, are left to the King, and in his right to grant or deny them, as he shall judge fit.

If a Man be convict of Felony, or Treason, and hath Judgment of Death passed upon him, by the Law he is to suffer Death; yet by the Law also the King may Indulge him his Life, and give him a Pardon; which is every day's Experience.

Sir J. Davis  
*Rep. Case of  
Præmun.* f. 88.

It is to be observed, that as under the Temporal Monarchy of *Rome, Brittain* was one of the last Provinces that was subdu'd, and one of the first that was lost again; so under the Spiritual Monarchy of the Pope, *England* was one of the last Countries in Christendom, that received his Yoak, and one of the first that cast it off.

*Pelagius.*

That before the time of *W. I.* the Bishops of *Rome* had no Jurisdiction in *England*; neither in the time of the *Brittains*, nor of the *Saxons*, appears by the Passages of *Pelagius*,

*Pelagius*, and of *Coleman*, an *Irish* Saint, and of divers others in our Story.

But the Kings in these Times, exercised supreme Jurisdiction in matters Ecclesiastical, as by the Stories of King *Edgar*, *Edward* the Confessor, and several others before remembered, may appear.

In the Laws of King *Allured*, he grants Indulgences and Immunities to the Clergy themselves.

And when *Gregory* sent *Austin* the Monk and his Fellows hither, to convert the *Saxons*, they stayed in the Isle of *Thanet* till they understood the King's pleasure, acknowledging his right to hinder their coming, or to grant them Indulgence to preach here, and to instruct others in their Religion, which was sufficiently differing from the Religion then professed by the *Heathen Saxons*.

In *Hen. 7.* adjudged, That the King might dispense with the Ecclesiastical Law for *Pluralities*, and for a *Bastard* to be made a Priest. 11 Hen. 7.  
fo. 12.

The Records in the times before-mentioned, are full of Indulgences granted by our Kings, in case of Matrimony, of Observation of Fasts, and of divers Ecclesiastical Matters, which by those Laws People were enjoined to observe; but by the King's Indulgence they were dispensed with, and from any penalty which the Laws inflicted for not conforming thereunto.

In the beginning of King *James's* Reign, it was resolved, That all Proceedings in the Ecclesiastical Courts, *ex Officio*, are for Trin. 2 Jac. in  
C. B. Hall's  
Case, Co. 5.  
Rep. 51.

King; upon which reason, whatsoever the Suit there be, the King may pardon it; for those Suits are only to correct or punish the Party for the offence or fault, which the King may pardon or indulge, and it is not for the particular Interest of the Party.

It pleased King *James*, and his Son King *Charles I.* in their Clemency and Wisdom, by their Letters Patents under the Great Seal of *England*, to grant unto divers Persons, *French* and *Dutch* Protestants, residing in *England*, a liberty and indulgence, that in distinct Congregations by themselves, and in publick Churches or other Places, they may exercise the Reformed Religion, in such order, and according to such Forms and Usages as were or should be agreed upon among themselves, and after the Rites of their particular Churches and Congregations.

This Indulgence and Liberty was enjoyed by them at the time of King *James*, and of his Son King *Charles*, and they were not compelled to come to any Parish-Church, or other place, than to their own particular Congregations and Assemblies, nor were they questioned for the Breach of any Law of Conformity, but this Indulgence of the King did wholly free them from it, and from any Penalty of Law, or molestation in this exercise of their Religion. Only Archbishop *Laud* he endeavour'd to disturb these Dissenters in the enjoyment of this Indulgence, and to have it taken away from them, which was ob-  
jected

ected against him among the crimes whereof he was accused.

He answered, " That the reason of his  
 " so doing was, because the first Indul-  
 " gence being granted to *Foreigners* and  
 " *Strangers*, who fled hither as to a *Sanctuary*,  
 " from *Persecution*, and to preserve the *Li-*  
 " *berthy of their Consciences* in the *Reformed*  
 " *Protestant Religion*; it was therefore  
 " *fit and charitable*, to afford them such  
 " Protection and Indulgence: But that  
 " those who enjoyed it at present, were  
 " not such persecuted People who fled  
 " hither for their Religion, but were the  
 " *Sons and Posterity of those*, and such as were  
 " now *Natives* and *Denizens* of *England*, and  
 " therefore ought to yield the same con-  
 " formity to the Laws, as other the King's  
 " Subjects did; and for that reason, in re-  
 " gard of their Nonconformity, he moved  
 " his Majesty to take away that Indulgence  
 " from them.

But this answer was not approved. The King thought fit to continue this Grace and Indulgence to the Sons of Strangers, whereof he found no ill Effects, but good to them.

I have been credibly informed by a Gentleman in *Oxfordshire*, That when his Father, was Sheriff of that County, presently after the Reformation of *Q. Elizabeth* was begun, the High Sheriff had a *License* from the Queen to *Preach*, and did accordingly preach at the *Affizes*.

Nor do I know any reason why the King, as well as the Pope, or any Bishop, may not give *License* to whom they think fit.

to preach; which was frequently done by the Prelates heretofore, to Fryars Preachers, and to others, and may by the same Jurisdiction and Right of Supremacy in Ecclesiasticals in our Kings, be granted by them to such as they judge fitly qualified for that work.

When a sudden Tumult or Infurrection hath broke forth into a dangerous Rebellion, the King hath in that Exigency granted some Temporal Indulgences, Manumissions, or other Immunities and Pardons, the which perhaps, in a time of high Peace, he might not, by ordinary Rules of Law, or would not do; yet such Indulgences in Reason and Consequence have been approved, because a violent Storm hath been thereby appeased, and danger both to the King and Kingdom hath been prevented.

Bishop Taylor hath a Rational Discourse on this Subject: *It is, saith he, a great fault, that Men will call the several Sects of Christians by the names of several Religions: All the Sects, and all the pretences of Christians, are but several pieces and minutes of Christianity; if they do serves the great End, as every Man for his own Sect and Interest believes for his share it does.*

In the Toleration of a different Opinion, Religion is not properly and immediatly concerned, so as in any degree to be endangered; for it may be safe in diversity of Perswasions, and it is also a part of Christian Religion, that the Liberty of Men's Consciences should be preserved in all things, where God hath not set a limit, and

Bp. Taylor's  
Lib. of Proph.  
p. 536, 537.

Tertul. ad Scap.



and made a restraint, that the Soul of Man should be free, and acknowledge no Master but Christ Jesus; that matters Spiritual should not be restrained, by punishments Corporal.

*Ibuanus* wisely observes, That if Hereticks or Discrepant be persecuted, they unite themselves as to common Defence; but if they be permitted and indulged, they divide themselves. Upon private Interest, it concerns the Duty of a Prince and State, because it concerns the Honour of God, that all Vices, and every part of Ill-life, be discountenanced and restrained. And therefore in relation to that, Opinions are to be dealt with; if either themselves or their Doctrine do really and without colour, or feigned pretext, disturb the publick Peace and just Interest, they are not to be suffered.

In all other Cases, it is not only lawful to permit them, but it is also necessary, that Princes, and all in Authority, should not persecute discrepant Opinions.

The Statute 1 *Eliz.* Recites, That in *Hen. 8.* his time, *divers good Laws were made, for the extinguishment of all usurped and foreign Powers and Authorities, and for the restoring and uniting to the Imperial Crown of this Realm, the ancient Jurisdiction, &c.* thereto belonging; by reason whereof, the Subjects ever since enjoyed good order, and were disburthened of the intolerable Charges and Exactions so usurped.

That Act abolisheth all Foreign Jurisdiction, Spiritual or Ecclesiastical within the Realm, and Enacts, That such Juris-

dictions, &c. Spiritual and Ecclesiastical, as by Spiritual or Ecclesiastical Power or Authority, had heretofore been, or lawfully might be exercised or used, should for ever, by Authority of that Parliament of Q. *Eliz.* be united to the Imperial Crown of this Realm; and this was but a restoring of what was the antient Right of this Crown.

It will not be denied, but that the Pope usurped and practised here, the granting of Indulgences to whom he pleased, in any matter of Religion; and as the Law was then taken and submitted unto, those Indulgences were of force, and he frequently exercised that Jurisdiction.

28 H. 8. c. 16. An Act of H. 8. recites, That the Bishop of *Rome* for profit, used to grant to the King's Subjects, divers Authorities, Faculties, Licenses, Indulgences, and Preheminences, which tho' they proceeded by an Act which usurped Authority, yet were ignorantly received and used; but now the People know them to be void, yet if they should be interrupted of them, it would be their undoing.

It enacts, That all Dispensations from the Bishop of *Rome*, to any of the Subjects of the Realm, shall be void, and that Bishops may enjoy their Bishopricks by this Act, and not by a foreign Dispensation; and may exercise what belongs to their Order; and that the effect of Bulls, Faculties, &c. purchased of the See of *Rome*, which shall be allowable, shall be confirmed under the Great Seal.

The Statute 25 H. 8. has this Clause, That <sup>25 H. 8. c. 21.</sup> the Archbishop and his Commissary, shall not grant any other License, Dispensation, Faculty, &c. in Causes *unusual*, and not accustomed to be had at *Rome*, nor by Authority thereof, nor by any Prelate of this Realm, until your Highness, your Heirs or Successors, or your or their Council, shall be first advertised thereof, and determine the same, whether such Licenses, Dispensations, &c. in such Causes *unwont* and not accustomed to be dispensed withal, or allowed, shall commonly pass as other Dispensations shall or no.

And if it be thought fit and determined by your Grace, your Heirs or Successors, or your or their Council, that Dispensations, Licenses, or other Writings in any such Cause *unwont*, shall pass, then the Archbishop, or his Commissary, having License of your Highness, your Heirs or Successors, for the same, by your or their Bill assigned, shall dispense with them accordingly.

Provided, That no Dispensations, Licenses, &c. hereafter to be granted, being of such importance, that the Tax for their Expedition at *Rome*, extended to 4 *d.* or above, shall be put in Execution, till it be first confirmed by your Highness, your Heirs or Successors, Kings of this Realm, under the Great Seal, and a part of the Taxes for Dispensations, is given to the King.

It is further Enacted, That where the Archbishop, or the Guardian of the Spiritualities, deny to grant a Dispensation or License, which ought to be granted, the

Chancellor shall send the King's Writ of Injunction, commanding it to be done, under a pain; which being refused, and no just cause certified why it should not be granted, and the King after due Examination, that such Licenses, Faculties, or Dispensations, may be granted without offending the holy Scriptures and Laws of God, the Bishop or Guardian of the Spiritualities, shall forfeit to the King, the Penalty limited in the Writ of *Injunction*, and for every such default, the King may by Commission under the Great Seal, to two such Spiritual Prelates or Persons, to be named by the King, his Heirs or Successors, as he will, grant such Licenses, Dispensations, &c.

Lastly, it is Enacted, That the King by the advice of his Council, shall have Power from time to time, for the Ordering, Redress, and Reformation, of all manner of Indulgences and Privileges thereof, heretofore obtained at *Rome*, or by Authority thereof, and of the Abuses of such Indulgences and Privileges thereof, as shall seem good, wholsom, and reasonable, for the Honour of God, and Weal of his People, and such Order and Redress shall be observed.

This Statute, in plain words, gives and confirms unto the King, the supreme Power of granting Indulgences, and ordering of them, in these Three Cases especially: 1. *Where it is a Cause of Importance.* 2. *Where the Cause is unwont, and unaccustomed.* 3. *Upon a denial by the Bishop.* In other Cases the Spiritual Officers may grant them; in these three

three Cases the King may grant them, and by his Authority, they may grant them likewise.

It is objected, That the Kings of *England*, as all other King; and Emperors of the Christian World, are Temporal Princes and Lay-men, not having Knowledge or Capacity of ordering Spiritual Matters, in which they have constantly submitted to the Judgment and Power of the Bishop of *Rome*, and acknowledged him to be Supreme in all Spiritual and Ecclesiastical Matters; and therefore to abolish his Power, and to assume it into the hands of Laymen, of Temporal Princes, is contrary to the nature of the thing, derogatory to the Right of the *Apostolick See*, and unjust in it self. The *Canonists* are full of this Opinion, and affirm, That a King is not Supreme in Spiritual Matters, as he is in Temporal; and they labour much, for their own Interest, to make it good; and divers Doctors have positively declared their Judgments upon this Point, to please their great Patron the Bishop of *Rome*, whose Power they advance, and their own Profit, while they can suppress that of Princes.

In order to which, they affirm, That a King is a *meer Lay-Person*, and not an *Ecclesiastical* or *mixt Person*; and tho' he be *Anointed*, yet he ought not to meddle with matters either Spiritual or Temporal, as to the Church,

The *Pope* hath the Title of *Holiness*, of *Univeral Bishop*, hath Power to pardon Sins, and to give Laws to Mens Consciences.

And

*Ab. & Gloss.*  
*c. de decimis*  
*Rex non præesse*  
*debet in Spiritu-*  
*alibus ut in*  
*Temporal.*  
*Ab. c. ult. de*  
*Sacra Sanct.*  
*Unct.*

*King not a*  
*mixt Person.*

Council at  
Rome, An.  
1076.

And in a Council at Rome under Pope Gregory VII, these Articles were concluded, *That there was no other Name under Heaven, but that of the Pope; That no Book was Canonical, without the Pope's Authority: That all Kings ought to kiss the Pope's Feet: That the Pope ought to judge all the World, and to be judged of none. That he had Power to Depose Kings, Emperors, &c.*

But that which is more horrid, is the Blasphemy of Bellarmine, who affirms of the Pope's Supremacy, *That he may make that which is sin, to become no sin, and that which is no sin, to become sin; and some would go yet higher in advancing his Supremacy, if it could be.*

Therefore in the *Decretals* of Pope Innocent the Third, is found this Exposition of the Text of *Moses*, speaking of the two great Lights which God created, to Rule over the Day, and over the Night, and to divide the light from the darkness: The Decree saith thus:

*The greater Light is to Rule over the Day, the lesser Light is to Rule over the Night; but the greater Light is the Pontifical Power; the lesser Light is the Regal Authority.* Therefore the Pope ought not to be subject to Princes, but to be above them; and as much as the day excels the night, so much ought the Pope to be above the Emperor.

We find as high a Declaration of the Pope's Supremacy, made by Pope Boniface the Eighth, who after the example of his Predecessors, did not only exempt himself, and his Clergy, from all Powers, and erected

cted his Tyranny over Kings and Emperors, but dared to pronounce, that it was of necessity for Salvation, that Emperors, Kings, and all Men, should be subject to the Bishops of *Rome*, who hath both Swords, and judgeth all, and is judged of none; his words are, *We declare, say, define, and pronounce, to every humane Creature, That they be Subject to the Bishop of Rome, as of necessity for Salvation.*

*Paræus* calls this, in plain Terms, an *impudent Lye*; and doubtless *Moses* here speaks not Allegorically of the *Pope*, who was not then known, nor of Kings and Emperors, but properly of the *Sun and Moon, and Stars*, and of their Rule and Offices to the World.

But some have gone yet higher, even to the highest of all, as *Pope John 22.* who assumed the Title of *Dominus & Deus noster*, the Lord our God.

*Sir Sam. Moreland's Preface to Hist. of Piemont.*

And indeed, if it were so, then all Kings and Emperors, and all Creatures both in Heaven and Earth, ought to fall down before him, and worship him, and submit to his Almighty Power.

And indeed he is adored, Kings and Emperors fall down before him, and receive their Crowns from him; and he Pardons and Curses whom he pleases.

One Emperor falling down before him, he trod upon his Neck, saying that Scripture, *Thou shalt tread upon the Basilisk, the young Lyon, and the Dragon, thou shalt trample under thy Feet.*

Which Text *David*, I presume, never intended that it should be applied to his Holiness the *Pope*.

Another

Another Emperor falling down before him to be Crowned; the Pope *with his Feet set the Crown upon the Emperor's Head, and presently kick'd it off again*, to shew him, that if he did not obey his Holiness, he could take his Crown from him, as he had set it upon him.

Another Emperor was chidden by him, because he held his *Holiness's Stirrup on the wrong side*, when he alighted; wherein the Emperor excused himself, as not being accustomed to such Employments.

But the greatest height, was that of Pope *Hildebrand*, who deprived the Emperor *Henry* of his Empire, and absolved his Subjects of their Fidelity; and the Emperor before he could obtain Pardon, was fain with his *Empress*, and their *young Son*, to wait Bare-foot in the depth of Winter, three Days together, at the Gate of the Castle where his Holiness was then with his Mistress: And the answer after all this was, *That the Pope was not at leisure to speak with him.*

These and the like Passages with King *John of England*, and several other Princes, could hardly be believed for truth, were they not Authentickly Transmitted to us by the Stories of those Times, and they are all, and many more, made use of, as Arguments of the Pope's Supremacy over all Temporal Princes; and that therefore neither in the King of *England*, nor in any other of the Kings or Emperors, is there any Right of Supremacy in Ecclesiastical Matters, but the same remains only and entirely in the Pope.

One



One of their own Authors, *Baronius*, speaking of the Popes, and of the Wickedness of those times, gives the reason thereof, lest any of the weak ones should be troubled, when he should see the abomination of Desolation sitting in the holy Places: And again he saith, Now adays there are thrust into the Chair of *Peter*, the Seat of Christ himself, even monstrous Men, of a most base Life and corrupt Manners, and altogether filthy.

Another saith of them, This Age hath been unhappy, that for the space of 150 years, about 50 of the Popes had Degenerated from their Ancestors, being rather *Apostates*, than *Apostolicks*. *Genebr. and Chron. An. 907.*

Indeed in the Primitive Times, and when the Church was under Persecution by the Heathens, there were many pious, humble, and learned Bishops of the See of *Rome*, as of other Sees; but when they were freed from their Troubles, and began by the bounty and goodness of Princes, to grow in Honour and Riches, and deserved Power, then they declined from the ways of Christ and his Apostles, and exalted themselves above all that is called *Holy*. Then they endeavoured more their own Promotion in Power and Riches, than the Propagation of the Gospel in Truth and Sincerity.

I should not have said this of so great Persons as the Popes are, in honour of their Quality, but finding it Registered by their own Party, we may infer from hence, what *Atbanasius* Notes, That the then Church being *Atban. Ep. ad li. i. p. 661.*

being so degenerate, became utterly a Stranger to Godliness, and knew not what she ought to do. Besides, such things as are contrary to our Saviour, being as a fighter against Christ, and a King leader of Impiety.

*Hillary* likewise speaking of this different State of the Church, from what it was in the purer Times of it, saith, Now alas! Faith in things Divine, is carry'd by most Voices in the World, and Christ is reproached, as if he had no Power of his own, while his name is supported by Ambition.

The Church terrifieth Men with Exiles and Imprisonments, and so she compelleth Men to believe in her, who her self was left exposed to the danger of Banishments and Bonds; she who was Founded under the Terror of Persecutors, subsisteth now by the Dignity and greatness of those that hold Communion with her; she who was Propagated by Priests, in Banishment, now banisheth Priests; she glorieth in being loved by the World, who could not have belonged to Christ, if the World had not hated her.

Antiently the Bishops of *Rome* stiled themselves *The Emperors humble and obedient Servants*, and submitted to his Laws, as formerly hath been shewed: And *Tertullian* Professeth, in the name of the Christians, we Reverence the *Emperor as a Man next to God; and only less than God, he is greater than all others, whilst he is less than God only.*

And *Optatus* to the same effect, saith,  
 " That there is none above the Emperor,  
 " but

*Tertul. ad  
 Scap. c. 2.*

“ but only God, who made the Empe-  
 “ ror.

And Pope *Gregory* himself declared openly, “ I confidently say, That whosoever  
 “ calls himself, or desires to be called *Uni-*  
 “ *versal Bishop*, in his Election, he fore-  
 “ runs Antichrist; because by his Pride he  
 “ sets himself before all others. And in ano-  
 “ ther place he saith, “ To consent to that  
 “ wicked Word, is nothing else but to lose  
 “ the Faith.

How then came the pretended Empire of the Pope, to arise to such a height over all the Kings and Emperors of the Earth?

The Foundation of this Tyranny, was laid in the eighth and ninth Century, and it brake forth by the fury of the Sorcerer Pope *Hildebrand*, who deprived *Henry* the Emperor of his Imperial Dignity, cursed him to Hell, absolved his Subjects of their Fidelity, and set up *Rodolphus* against him, with his Blessing, and Pardon of all his Sins, if he would destroy his lawful Sovereign. And indeed the Original and Ground of all the Pope's Greatness and Wealth, the great Wheel upon which the Engine of all his Tyranny did turn, was the pretended Power of the Keys to be in the Bishops of *Rome*, That they could admit into, and open the Gates of Heaven to whom they pleased, and exclude from thence, and condemn to Hell whom they thought fit.

With this Delusion the whole Christian World was for a long time infatuated, and many are so still in the Belief of it, tho' most Men suppose, that few of their own Party,  
 who

who are Men of judgment, do consent to the truth of it, but let it alone in the deceit of it, for their own Interest, knowing, that Ignorance is the Mother of Devotion, and of the Clergy's greatness; and therefore for their own Wordly Advantage, they make no opposition to it, nor trouble themselves to enquire into the Grounds of it.

From the Belief hereof it was, that all, both Princes and Inferiors, took this to be the highest Concernment to them, (as certainly it were, if true) of any thing in the World; and by consequence, to gain his Favour, upon which depended all their future Happiness or Misery; and for this cause they dreaded the Pope's Curses, as sending them to Hell, and laboured to get his Pardons, which opened the Gates of Heaven to them; they cared not at how dear a rate they purchased them: And of this Power the Popes made use, to compass their Designs, tho never so wicked, and to fill their Coffers.

If any Prince or other did oppose his Greatness, or question his Power, or the Determinations of his Infallibility, or disobey his Precepts or Canons, presently Curses were thundered out against them, and so they were sent to Hell, unless absolved again by his Holiness, and that at no cheap Price; and in case of obstinacy, Subjects were discharged of their Allegiance to their rightful Princes.

Yet this was not all, for Children of the Contemptuous Prince, are set up against their natural Parents, and Neighbours at variance with one another, and his own People

People are animated and assisted to War gainst him, and promised Pardon of all their Sins, even of Rebellion, and Parricide it self, if they will destroy the Pope's Adversary, and they shall be let into Heaven for it.

And tho' the use of the Keys were never intended, nor these to be the ways to enter into Heaven Gate, yet by these means did the Pope's subjugate all Persons to that See, and heaped up Treasures in their Chambers.

The Pope's Champions to maintain this Power of the Keys, to be in their Lord and Master, knowing and finding it to be of no small Concernment both to him and them; they urge for it the words of our Saviour to St. Peter; *Thou art Peter, and upon this Rock Mat. 16. 18, will I build my Church, and the Gates of Hell 19. shall not prevail against it; And I will give unto thee the Keys of the Kingdom of Heaven, and whatsoever thou shalt bind on Earth, shall be bound in Heaven, and whatsoever thou shalt loose on Earth, shall be loosed in Heaven.*

Upon this Scripture the Romish Doctor say, That Peter was Bishop of Rome, and had that Power given to him by Christ; and that all the Popes are Bishops of Rome, and Successors to St. Peter, and have the same Power of the Keys derived to them by Succession, as Peter had; and that his Name Peter, and the signification of a Rock, to which it alludes, give some confirmation to this Truth. And from hence they claim this Sovereign Power of the Keys, and thereby

thereby to damn or pardon, and to do whatsoever pleaseth them

If this Argument be examined, it will be found to warrant no such thing, as they infer from it: Christ conferred with his Apostles in the *Hebrew* Language, and their word from a Rock is  $\text{צור}$

Which hath no Affinity with the word *Peter*. They also call a Rock  $\text{ספד}$ ; which indeed hath some allusion to *Cephas*; but this hath little of Argument in it.

Some do hold, that *Peter* himself never was at *Rome*, nor Bishop there; and if it be so, (which I shall not now dispute) then the Title of his Successors from him, will fall to the ground, there can be no Successors to him, as Bishop of *Rome*, if he himself was never Bishop there.

But if we admit him to have been Bishop of *Rome*, and this Power of the Keys to have been given to him by Christ; which cannot be denied; yet how comes this Power to be devolved from him, to the succeeding Bishops of *Rome*? He was an Apostle of our Saviour, and inspired by him with an Infallible Spirit; and it will be granted, that this Spirit did not succeed to all the Bishops of *Rome*, after *St. Peter*; some of them the Stories of the Church shew to have been far from it; and indeed, none of them, being but Men, could possibly attain unto it.

*If.* 8. 14. and  
28. 16.  
*Pf.* 118. 22.  
*As.* 4. 11.  
*Ro.* 9. 33.  
*As.* 11. 12.

It seems plain to me, That by the words in the Text, *upon this Rock will I build my Church*, is intended our Lord Christ, whom the Prophets call a Rock and a Stone; and that is cited by the Apostles, and applied to Christ, whom St. Paul calls a stumbling Stone

Stone, and a Rock of Offence; and whosoever <sup>2</sup> *Per. 2. 6, 7,* believes on him, shall not be ashamed; and <sup>8.</sup> this is the Rock on which Christ saith, *I will build my Church.*

The Apostle explains this fully, where speaking of the Saints, the Household of God, and Church of Christ, he saith, *they* <sup>*Eph. 2. 20, 21,*</sup> *are built upon the foundation of the Apostles and Prophets, Jesus Christ himself being the chief corner stone; in whom, (not in Peter) all the building fitly framed together, groweth unto an holy Temple in the Lord; and of this Foundation Apostles and Prophets, the holy and eminent Apostle Peter was one and a part of this Foundation.*

But to say, that the Church was only upon him, were to contradict this Scripture, and to lay aside all the rest of the Apostles and Prophets who had their share in this Foundation with St. Peter; nay, it were to exclude Christ himself from this Foundation, who is the chief corner Stone.

For the next words of Christ to Peter *And I will give unto thee the Keys of Heaven, and whatsoever thou shalt bind on Earth, shall be bound in Heaven, and whatsoever thou shalt loose on Earth, shall be loosed in Heaven.*

These were not said to Peter only, but to all the rest of the Apostles, and the Keys of the Kingdom of Heaven, the Power of binding and loosing, was given to every one of them, as it was to Peter.

And this is evident in the Gospel by St. <sup>*Joh. 20. 21, 22,*</sup> *John*, where Christ after his Resurrection <sup>23.</sup> appeared to all his Apostles, and said to them, *As my Father hath sent me, so send I you.* He sent them all to preach his Gospel: And when he had said this, *he breathed*

on them, and faith to them, *Receive ye the Holy Ghost.*

This breathing the infallible Spirit, was given to all of them, and to none but them; neither to the Successors of *Peter*, nor of any other of the Apostles, but expired with them, and could not go in Succession to any after them.

And when Christ had breathed on them, he said to them, *whosoever sins ye remit, they are remitted unto them; and whosoever sins ye retain, they are retained.*

This is the Plural Number, and said by Christ to his Discip'les, then met together; and to them only, and not to the Bishops of *Rome*, or any other Men, but to those Disciples only to whom Christ then appeared; and this Power of the Keys ceased with them. And the Keys of the Kingdom of Heaven are kept by Christ only; of whom the Prophet saith, *And the key of the house of David, will I lay upon his shoulder; so he shall open, and none shall shut, and he shall shut, and none shall open;* not the Bishop of *Rome*, nor any of his Clergy, or any Creature.

*Isa. 22. 22.*

*Rev. 3. 7.*

The Evangelist *John* is to the same effect, in the *Revelation*, speaking of Christ, *These things, saith he that is holy, he that is true, he that hath the key of David, he that openeth, and no Man shutteth, and shutteth, and no man openeth, no man but the Son of God, God and Man.*

Therefore it is a strange Presumption, for any sinful Man to assume to himself this Power, which belongs to Christ alone.

By



By this colour of the Power of the Keys it was, that the Popes so reproachfully and insolently trampled upon Kings and Emperors.

These were the Artifices to deceive blind and ignorant Men, and to attain Power and Wealth to the Papal See. This was the Ground and Foundation of the usurped Supremacy of the Bishop of Rome: And tho' Pope *Gregory* declared against the Supremacy of that See, yet his next Successor Pope *Boniface*, assumed the Title of Universal Bishop, and having done some favour to the Emperor *Phocas*, and assisted him in his wicked Enterprizes, that *Parricide* again, to requite the Pope, permitted him to have that Title of Primacy, and, by Virtue of his Commission, to pardon Sins, and to give Laws to Mens Consciences.

If you would know from whence came the Adoration of the Pope, and the kissing his Foot, and his being carried upon Mens shoulders, it was from the Pagans, who after the Election of their Sovereign Pontifex, clothed him with their *Pomificalibus*, and put a Mitre upon his Head, and worshipped him.

For the Ceremony of Kissing his Feet, the very same was done to the Pontifex of the Pagans; and some Emperors caused the same Honours to be done them, as *Caligula* thrust out his left Foot to *Pompeius Perennis*, a Person of the Consular Dignity, and made him kiss his Foot: And *Dioclesian* set forth a solemn Edict, whereby he commanded all Men, of what Quality or De-

P. *Gregory*.P. *Boniface*.

Anno 606.

W. du Choul.  
Discourse of the  
Religion of the  
Romans. p. 337Polydore Vir-  
gil. l. 4. de  
Invent. Rer.  
c. 10.  
Caligula.

gree soever, that they should fall down before him, and kiss his Feet.

Sueton.

As for the Blasphemous Title assumed by Pope *John* 22. it was from *Domitian*, who was stiled in the very same terms, *Dominus Deus noster*, the Lord our God.

But I can scarce, without abhorrence, recite these things; the question only is, whether a Supremacy both in Ecclesiastical and Temporal Things, obtained and usurped by the Bishop of *Rome*, in such ways, and by such means as are before mentioned, be sufficient to divest all the Princes of *Christendom*, of their Right of Supremacy in those matters, especially the Kings of *England*, whose Right therein is more antient and full than others, and to place the Right in a Bishop; this is left to all indifferent Persons to determine.

1 & 2 Pb. &  
M. c. 8.

And altho' the Statutes of *H. 8.* and *Ed. 6.* against the Pope's Supremacy, were Repealed by *Queen Mary*, and she again gave way to the Power of *Rome*; yet by Parliament she had confirmed to her the Lands of the Religious Houses dissolved; and she kept them.

After her short Reign, *Q. Elizabeth* again revived the Statutes against the power of the See of *Rome*, in the first year of her Reign.

3 El. c. 1.

The Parliament by an Act, abolisheth all Foreign Power in Ecclesiastical Causes, and annexeth it to the Crown, as a Right thereof; and ordains the Oath of Supremacy to be taken, and great punishments on any that maintain any Foreign Authority.

The Statute of 5 *Eliz.* comes nearer to particulars, forbidding the maintenance of the Authority of the See of *Rome*, and appoints others to take the Oath of Supremacy to the Queen.

3 *James*, c. 1. Enacts the Oath of Allegiance to be taken, and makes it Treason for any, to seek to withdraw, or to be withdrawn from their Obedience to the King, and to be reconciled to the See of *Rome*.

Another Statute the same year, forbids sending Children beyond Sea, or bringing *Popish* Books from thence.

By 7 *Ja.* c. 2. It is Enacted, That those that be Naturalized or restored in Blood, shall take the Oaths of Supremacy and Allegiance.

3 *Car.* c. 2. forbids sending beyond Seas to be *Popishly* bred.

There is a course of Proceeding in the King's Courts, which hath been very antient, and continues to this day, and is a great Testimony amongst the rest, of the King's Supremacy in Ecclesiastical Affairs.

In Courts of Record, where Felonies are determin'd, the Bishop of the Diocese where the Tryal is, or his Deputy, are to give their attendance in Court, to inform of the sufficiency or insufficiency of Clerks, of those who pray their Clergy, and are admitted to Read, as a trial, whether they be Clerks or not; and when they do Read, the *Ordinary* is demanded, *Legit ut Clericus Ordinary. vel non*, and he answers, *Legit*, or *non Legit*, as he thinks fit.

Yet notwithstanding, the *Ordinary* is not to be Judge of it, but only to give his Opinion, as a Minister to the King's Court; and the Judges of the Court, are to judge of the sufficiency or insufficiency of the Party, whatsoever the *Ordinary* doth inform them: And sometimes the Judge will cause the Prisoner to come up to him, and read before him, without the *Ordinary*; and upon due Examination, the Judge will give his Judgment, tho' against the Information of the *Ordinary* then present.

By all the Instances before-mentioned, and, by many others which are omitted, it may most fully be Evinced, that the Supremacy in Ecclesiastical Affairs in *England*, is and ever hath been in the King of Right, and not in the Pope, nor any Foreign Potentate.

Ninth

## Ninth H E A D.

## Of Ecclesiastical Offences tending to Foreign Usurpation.

OUR Law hath been justly severe in punishing those, who seek to advance a Foreign Usurpation of the Pope, or of any other Foreign Prince or Potentate, in Ecclesiastical Affairs within this Kingdom; we may find instances hereof as antient as H. 2. time, and from thence to our times.

By the Statutes of *Clarendon*, made in this King's time, all are forbidden to bring any Decrees from *Rome*, to be Executed here, on pain of Imprisonment, and confiscation of Goods; nor Bulls of Interdicting the Realm, on pain of High Treason. *Stat. Clarendon.*

In *Ed. 1.* time, it was adjudged Treason, for any Subject to bring in a Bull of Excommunication against another, and a high Contempt against the Crown, to bring in Bulls of Provision, or Briefs of Citation. *5 Rep. Coke, f. 12. 30 Affis. p 19. Br. Premunire 10.*

Priests and others, who in *Ed. 3.* time brought Bulls from *Rome*, or obtained Provisions from thence of Benefices, and the offenders, incurred a *Premunire*, tho' Priests; and every Man might kill them. *Coke Eccl. c. 5. R. f. 15. 16. 17.*

The like Penalty is by another Statute, for drawing of any Man in Plea out of the Realm, whereof the King's Courts had Cognizance. *25 Ed. 3. Stat. de Provisions. Stat. 27 Ed. 3.*

In R. 2ds. Nonage, they began again to inroach upon the Liberties of the Crown, by sending hither Bulls and Briefs, and Legates, whereof the People were so impatient, that they in Parliament protested, *That they would live and dye with the King, in withstanding Foreign Usurpation.*

13 R. 2.

Thereupon by a Statute it was made Death, to bring in from *Rome* any *Summons*, *Excommunications*, &c. against those who executed the Statute of *Provisors*.

16 R. 2. c. 5.

Presently followed the Statute of *Præmunire*, which inflicts that pain on any who purchase or pursue in the Court of *Rome*, or elsewhere, any *Translations*, *Processes*, and *Sentences* of *Excommunication*, *Bulls*, *Instruments*, or any other things which touched the King, against him, his Crown and Regality, or his Realm.

9 Ed. 4. f. 3.  
F. N. B. f. 44.

In *Ed. 4th's* time, the Judges resolved, That if one *Spiritual Person* sue another, in the Court of *Rome*, where he might have had remedy before his *Ordinary*, that he incurs a *Præmunire*.

By these, and divers other antient Laws and Statutes, and by what hath been noted upon former Heads, it is evident, That in all times our Ancestors were careful to oppose the *Usurpations* of the Pope. In *H. 8.* time, it began to be more quickly and stoutly withstood, than before.

In the 24 *H. 8. c. 12.* it was enacted, That whosoever procures from *Rome*, or any other Foreign Court, any *Appeals*, *Processes*, *Sentences*, &c. shall incur a *Præmunire*.

25 *H. 8.* makes it a *Præmunire* to sue an Appeal to *Rome*, or to execute any Process from

from thence; and forbids to sue there for any *Dispensation*.

In the Parliament of 28 H. 8. all *Bulls* and *Dispensations* from the Pope, are to be void: And the Laws in this King's time, when the Popish Religion was professed, were as severe against the Pope's Usurpations, as after the Reformation of Religion.

1 Eliz. c. 1. All Foreign Power usurped here in Ecclesiastical Causes, is abolished; the Oath of Supremacy is ordained to be taken, and to maintain any Foreign Authority heretofore usurped in the Realm, the first offence, is loss of Goods and Imprisonment; the second offence incurs a *Præmunire*, and the third offence, is High Treason; and this is inquirable by the Grand Inquest at the Sessions of the Peace.

After *Pius Quintus* had Excommunicated Queen *Elizabeth*, the Parliament enacted, 13 Eliz. c. 2. *Pius Quintus*. That to put in ure any *Bull of Absolution*, or *Reconciliation*, or to absolve any Person from their Allegiance to the Queen, and to Reconcile them to the See of *Rome*, or to receive any such Absolution or Reconciliation, or to get any Bull from *Rome*, for any matter whatsoever, or to publish it, shall be High Treason in them; their Procurers, and Abettors, and Maintainers of them, after the offence, incur a *Præmunire*: To conceal such Bulls, is made Misprision of Treason; and to bring in or receive any *Agnus Dei*, Crosses, Pictures, Beads, or such like things, hallowed by the Pope, or his Authority, incurs a *Præmunire*. Those that seek to apprehend them that bring in such things,

things; or if when they have received them, they bring them to some Justice of Peace, they are not within the danger of the Statute.

But if a Justice of Peace, to whom an offence is declared, do not within 14 days after signifie the same to one of the Privy-Council, he incurs a *Præmunire*.

Yet this Act concludes with mildness of pardon, to them that bring in the *Bulls* they have received, to be cancel'd, and to such as confess their Reconciliation, and submit themselves for it.

By 27 *Eliz.* c. 2. Jesuits and Priests made out of *England*, are to depart the Kingdom; and none to come into it, that shall remain here, who were born in the Queens Dominions, and professed beyond Sea, by Authority from the See of *Rome*, on pain of High-Treason; and to relieve such a one, being out of hold, is Felony.

And those that be in Seminaries beyond Seas, are to return, and take the Oath before the Bishop, or two Justices of the Peace; or else, if they return, and do not submit, it is Treason. And to send Relief to Jesuits, Seminary Priests, or Colleges beyond Sea, incurs a *Præmunire*.

These Offences are inquirable in the *King-Bench*, or in any Country where they are committed: But a Jesuit or a Priest, submitting and taking the Oath, shall not be within these Penalties.

If one know of any Jesuit or Priest being within the Kingdom, and do not within 12 Days discover it to some Justice of the Peace, or higher Officer, he shall be fined



fined and imprisoned, at the Queens pleasure.

And if the Justice of Peace, or other Officer to whom it shall be discovered, do not within 28 Days, inform some of the Privy-Council, or the President or Vice-President of the Council in the North, or in *Wales*, if it be in those Parts, he forfeits 200 Marks; and none submitting, are to come within 10 Miles of the Queen.

By 35 *El.* c. 1. If a *Recusant* perswade others to withstand the Queens Authority in Ecclesiastical Matters, he shall be Imprisoned till conformity, which if it be not within 3 Months, he must abjure the Kingdom; otherwise it is Felony.

1 *Fac.* c. 4. It is Enacted, That all Statutes made against *Jesuits*, *Priests*, and *Recusants*. shall be put in Execution; and if any send a Child to a Seminary to be Instructed in the Popish Religion, he forfeits 100 *l.* and they that go, or be sent over so, are disabled to Inherit: If any be in Seminaries, and do not return, they are made incapable to Inherit; otherwise of those that conform: And no Woman nor Child under 21 years of Age, except Ship-Boys, &c. shall pass beyond Sea, on forfeitures by those that suffer them.

By the Statute 3 *Ja.* c. 4. the Bishop or two Justices of the Peace, have Power to tender the Oath of Allegiance to certain Persons, and to commit them to Prison, without Bail, if they refuse it, till the next Affizes or Sessions, when, if they refuse it the second time, they incur a *Præmunire*.

If

If any Person upon the Sea, or beyond Seas, or in the Kingdom, seek to withdraw People from their Obedience to the King, and to Reconcile them to the See of *Rome*, it is High Treason; and those that be withdrawn, and their *Aiders*, are *Traitors*.

But if they submit and take the Oaths of Supremacy and Allegiance, they are Pardoned. The Tryal of these Offences is before the Justices of *Affise*, and of the *Kings Bench*.

3 Jac. c. 5.

By another Statute the same year, Children that go beyond Seas without License, shall take no benefit of any gift of Lands to them, unless they conform and take the Oaths, and receive the Sacrament with us.

And those that send such Children beyond the Sea, forfeit 100 *l.* To bring any Popish Books from beyond Seas, or to print or sell them here, is the forfeiture of 40 *l.* for every Book; and two Justices of the Peace may search for such Popish Books or Relicks, and deface them, or burn them.

By 7 Jac. c. 2. It is Enacted, That those which be Naturalized, or restored in Blood, shall take the Oaths of Supremacy and Allegiance.

By a Statute 3 Car. c. 2. he that goes, or sends any beyond Sea, to be Popishly Bred, is disabled to sue, loses all his Goods, and forfeits his Lands; but those that conform, avoid the Penalties.

All these are Ecclesiastical Offences, tending to Foreign Usurpation, and are inquirable by the Grand Inquest at the Sessions of the Peace.

## Tenth HEAD.

*Of Ecclesiastical Offences tending to Domestical Sedition.*

THE other sort of Ecclesiastical Offences against the Government of the Church, are such as tend to Domestical Sedition, and are by Sectaries, Schismatics, and Hereticks, which trouble the quiet, unity, and peace of the Church.

The first Sectaries I read of, among Gods *Josephus* Art-  
People, were the *Pharisees*, the *Sadlucees*, and *tiquties*, p 329  
the *Essenians*, with others of less note succeeding them

After Christ's Ascension, in the time of his Apostles, yet there was then Dissen- *1 Cor. 11. 18,*  
tion among them in the Church; and St. *19.*  
*Paul* tells them, *That there must be Sects, that they which are approved might be known.*

The same Apostle exhorts, *to avoid foolish Questions, and Contentions about the Law, and Tit. 3. 9. 10.*  
*Authors of Sects; knowing, that he that is such, 1 Tim. 1. 4,*  
*is subverted, and sinneth, being damned of him- 5, 6, 7.*  
*self.*

And in another place, he calleth them, *2 Tim 2. 16.*  
*prophane Voices of vanity; and saith, their word shall fret as doth a Canker.*

From these Times, in all Ages to the present, there have sprung up a very great number of Heresies and Sects, to the dis- *Eusebius,*  
*Socrates,*  
quiet *Eugenius,*

quiet of the Church; as may be seen throughout the Ecclesiastical Stories.

*Codid. l. 1.*

*Tit. 11.*

*Manicheus.*

*Ibid. S. cuncti*

*Bilson diff.*

*p. 28.*

Against whom were sharp Edicts made, restraining such as did forbear to communicate with the Church of Christ, from buying, selling, disposing, or bequeathing Goods or Lands, by Will or otherwise, yea from receiving any Legacies, or injoying their Fathers Inheritance.

The place where Schismatical Service was said, Chappel or House, was to be forfeited, and the Bishop or Clergy-man to pay 10 Pound weight in Gold, or to be Bannished; and no Man was to harbour those *Schismatics*, or to relieve them.

*Math. West,*

*p. 144.*

*Anno 404.*

*Ibid. p. 155.*

*Anno 450.*

*Bilson diff. p. 40.*

But to apply my self to the Stories of our own Nation: The first Heresie which I find mentioned to have risen among us, was by *Pelagius* the *Brittain*, 400 years after Christ, which sprang again 50 years after that, and was appeased in a mild and gentle way, in Debates, by *Germanus* and *Lupus*, two *French* Bishops, intreated hither for that purpose: About the same time *Arrianism* took hold here likewise, and many others after, that I find a Definition of *Heresie*, by *Robert* Bishop of *Lincoln*, in *H. 3.* time; thus:

*Math. West.*

*p. 257.*

*Anno 1253.*

*Heresis est sententia humano sensu electa, scripturae sacrae contraria putam edocta, pertinaciter defensa, Heresis enim Græca, Electio est Latina.*

The same Bishop chides the Fryars Predicators and Minors. *in hoc, quod ipsi peccata magnatum audacter non Redarguunt, eosdem Hereticos dixit esse manifestos.* But this were hard to be so applied in our times.

*Hypodigma*

*Neustr. p. 446.*

In the same King's Reign, I find a Judgment given in *Oxford*, before the King and Bishops,

Bishops, against some Sowers of false Doctrine, That their Faces should be scarred with a hot Iron, and they banished the Kingdom.

But it appears by Britton, an antient Writer of our Law, that Hereticks were to be Burnt; and by the Writ de Heretico Comburendo, is recited the being Condemned in a Provincial Synod, and Abjured; and his Relapse, and being Relinquished to the Secular Power, to be burned for an Heretick.

In the end of Ed. 3. Reign, Wickliff's Opinions being liked by the Duke of Lancaster, and other great Ones, troubled the Prelates, and those Opinions were again revived, 3. R. 2. At length the Parliament made a Law against them.

That Commissions should be directed to Sheriffs and others, to apprehend Preachers of Heresie, and to hold them in strong Prison, till they will justifie themselves; but this Law is since Repealed.

In the same year the Judges resolved, that a Miscreant, or Schismatick, being inducted in a Living, it is a good cause of Deprivation.

Wickliff's Doctrine was the same which we profess at this day, tho' then so severely Persecuted; and it is supposed, that the name of Lollards given to his Disciples, was meant from Lolium, taking them for Tares among the Corn; the Sheriff's Oath had a Clause in it, to extirpate Lollards, which of late, upon Exception of my Lord Coke, when he was made Sheriff, was left out.

Britton. l. c. 17.

Fitz. N. B. fo. 269. Coke 5 Rep. f. 23.

Hypodigma. Neustr. Wal-singham, p 531, 534. Daniel Hist. p. 257.

5 R. 2. c. 5.

5 R. 2. Trial 54.

Wickliff.

Coke 5 Rep. f. 25. B.

Lollards.

The Statute 2 *H. 4.* which is since Repealed, did forbid any Conventicles of Sects, and wicked Doctrins, and Enact, That every *Ordinary* might Convent before him, and Imprison any Person suspected of Heresie; and that an obstinate Heretick should be burnt.

Before which Act, some are of Opinion, That they were not to be burned before the People; and that upon this Act, and not before the Writ *de Heretico Comburendo*, was framed by the discretion of *Arundel* Archbishop of *Canterbury*, and Chancellor, who was a great Persecutor of the *Lollards*; and that this Writ was by him put into the Register.

*Brook Tit. Heresie*

However, this Statute lessened the trouble of calling Provincial Synods, for the conviction of Hereticks, and gave Power therein to the *Ordinary*.

10 *H. 7. f. 17.* One brought an Action of false Imprisonment, and by the Defendants Plea it appeared, That the Plaintiff was Arrested upon the Statute of *H. 4.* for Heresie; because he said, that he would not pay his Tythes to his Curate, a grievous Point of Heresie, as to the Clergy; but the *Lay Judges* presumed to determine it to be no Heresie, and consequently no sufficient cause of Arrest; and so the Plaintiff recovered.

In the Statute 23 *H. 8. c. 9.* yet in force, is a Proviso, That the Archbishop may cite any, dwelling in any Diocese within his Province, for causes of *Heresie*, if the Bishop or other *Ordinary* do consent, or do not their Duty in punishing the same.

By

By the 25 *H. 8. c. 14.* since Repealed, it was Enacted, That in *Turns* and *Leets*, they might enquire of *Hereticks*, and the Presentments to be certified to the Ordinary; and that an Heretick Convict refusing to Abjure, or Relapsing, shall be burnt.

27 *H. 8. f. 14.* It was resolved, That an Action upon the Case did not lie, for calling one *Heretick*; for that the Court cannot Discuss if it be Heresie or not; and if one be Indicted of Heresie before the Justices, they shall do nothing thereupon, but certifie it to the Ordinary; and the Indictment shall be Evidence against the Party.

By the Statute 31 *H. 8. c. 14.* Many offences there made Heresie, are punishable by burning, and loss of Lands and Goods; and inquirable in Sessions and Leets

34 *H. 8. c. 1.* An Act was made for punishing of Hereticks, who maintain any thing contrary to the King's Instructions; and against reading the Bible in *English*, and ill Books

The Statute of 1 *Ed. 6. c. 12.* Repeals all these former Statutes concerning Heresies; but many are again Revived, by the Statute 1 & 2 *P. & M. c. 6.* But afterwards all are Repealed by 1 *Eliz. c. 1.* which Statute ordains Commissioners for Ecclesiastical Causes, and that they shall not adjudge any matters to be Heresie, but such as have been so adjudged by the Authority of the Canonical Scriptures, or by the first 4 General Councils or by any other General Council, wherein the same was declared Heresie by the express words of the Canonical Scriptures, or

shall be hereafter adjudged Heresie by Parliament.

13 Eliz. c. 1. Enacted, That to say the Queen is an Heretick, shall be High-Treason.

25 Eliz. c. 23. A Significavit for matter of Heresie, is allowed to be good.

Coke on Littleton, f. 381. a of Blood, nor Forfeiture of Lands.

Coke 4 Rep. f. 17. 35 Eliz. It was Resolved, That if a Divine be to be presented to a Benefice, and one tells the Patron, that the Clerk is an Heretick, whereupon he is refused, he may bring his Action of Slander.

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**Eleventh**



## Eleventh HEAD.

### *Of External Honour and Re- verence of the Church.*

**T**His is Two-fold, either in respect of the Ministration, or of the Place.

I. For the External Honour and Reverence of the Church, in respect of the Ministration, we are excellently Taught by the *Wise Man*, how our carriage ought to be in this respect: *When thou entrest into the House of God, take heed to thy Feet; draw near, that thou may'st hear; speak nothing rashly there, &c.* *Eccles* 4.

St. Paul teacheth us, to glorifie God with one Spirit and mouth; and rebuketh such as did irreverently behave themselves at the Ministry of the Sacraments. *1 Cor.* 14. *1b.* 11.

I find two antient Statutes, that no Persons of holy Church, no Collusion being in them, shall be Arrested in Churches or Church-yards, whilst they attend to Divine Service. *50 Ed.* 3. c. 5. *1 R.* 2. c. 15.

And at this day it is punishable, to Arrest them, or any others, at that time.

The Statute of *1 Ed.* 6. lays the penalty of Imprisonment and Fine, on any that contemn, despise, or revile the Blessed Sacrament. *1 Ed.* 6. c. 1.

By

2 Ed. 6. c. 1. By 2 Ed. 6. and 1 El. If any one deprave  
 1 El. c. 2. the Book of *Common-Prayer*, by Plays, or  
 Songs, or any open Words; or if any com-  
 pel or cause a Minister to say other Pray-  
 ers than in that Book, or interrupt him in  
 the Celebration of that Book, the first of-  
 fence is 100 Marks forfeiture; the second,  
 400 Marks, and the third Offence is loss of  
 all his Goods, and Imprisonment during  
 Life.

5 6 Ed. 6.  
 c. 3.  
 1 El. c. 2. The same Statutes which are before-  
 mentioned, That require People to repair  
 to Church, do likewise ordain, That they  
 must abide there orderly and soberly, du-  
 ring the Ministration of Divine Service.

1 M. c. 3. By the Statute of 1 M. If any Person in-  
 terrupt or misuse a Licensed Preacher in  
 his preaching, or any Priest in the Admini-  
 stration of Divine Service; or abuse and  
 irreverently handle the Sacrament, they,  
 and their abettors shall be Imprisoned,  
 without Bail, till penitence and reconcilia-  
 tion at the Sessions, and then be bound to  
 the good Behaviour.

2. For the Peoples Reverence, in respect  
 of the Place: We find it now much less than  
 what we read of in other Times. The  
 Jews accused Christ as worthy of Death,  
 for saying, *He could destroy the Temple, and  
 build it again in three days.* And St. Paul, for  
 Teaching against the Law, and that Place;  
 and as a matter worthy of Death, that he  
 went about to Pollute the Temple.

Acts 21.  
 16. 24.

They might go too far in honouring Su-  
 perstitiously their Temple; and perhaps  
 some now may go too far the other way.

The example of our Saviour is Recorded *Matth. 21.*  
 by all the four *Evangelists*; that he who was *Mark 11.*  
 Mildness it self, yet when he saw the Tem- *Luke 19.*  
 ple prophaned, he used severity, overthrew *Jo. 11.*  
 the Tables of the Exchangers, and the Seats  
 of them that sold Doves; made a Whip of  
 Cords, and scourged them out of the  
 Temple.

The Primitive Christians would not suf- *Lib. 2. Hom.*  
 fer open Offenders to enter into the House *p. 9.*  
 of God; the Emperor *Theodosius* himself was *Theodosius.*  
 excluded, till by Penitence he might be bet-  
 ter prepared. But tho' such offenders were  
 not admitted into the Congregation, yet  
 if one who had committed a capital Crime,  
 fled to some Consecrated Place, such was  
 the Reverence to it, that it was a Sanctua-  
 ry to him, and saved his Life, tho' in case  
 of Treason. Till the Statute of *H. 8.* took *26 H. 8. c. 13.*  
 it away; in whose time sundry Statutes  
 were made concerning *Sanctuaries*; but by  
 the *1 Jac.* all are Repealed. *1 Jac. c. 25.*

The Statute of *Winton* enacts, That nei- *13 Ed. 1. c. 6.*  
 ther Fairs nor Markets shall be kept in  
 Church-yards, for the honour of the Church.

The Statutes of *Ed. 3.* and *1 R. 2.* pro- *50 Ed. 3. c. 5.*  
 vide, That no Persons of holy Church, shall *1 R. 2. c. 25.*  
 be Arrested in Churches, or Church-yards.

Lastly, The Statute of *E. 6.* forbids chid- *5 & 6 E. 6. c.*  
 ing, and smiting, and laying violent hands *4.*  
 on any in Churches, or Church-yards; and  
 if he be Convicted at the Sessions for strik-  
 ing with any Weapon, or drawing any  
 Weapon to strike, in any Church or Church-  
 yard, he shall lose one of his Ears; and if  
 he have none, he shall be burned in the  
 Cheek with the Letter *F.*

## Twelfth HEAD.

### *Of the Goods of the Church.*

**T**HIS Head brings to our Consideration *rem familiarem Ecclesie*, those things which belong unto the Church, as it were by way of Property; as if any one take away Goods or Ornaments out of any Church or Chappel, he is guilty of *Sacrilege*; which I find to be in three Respects:

1. *Ratione Loci, cum ex loco Sacra restollitur, sive Sacra sive non, hoc inquirendum tantum.*

2. *Ratione Rei, cum res Sacra tollitur ubicunque.*

3. *Ratione Personæ, ut violatio Clerici.*

These things are Inquirable by the Grand Inquest at the Sessions of the Peace, and do concern the Ecclesiastical State; the unity and good whereof, is the care of her Children.

And thus I have finished, tho' with omission of many material Things, what concerns Ecclesiastical Matters: My method now brings me to the Lay-Matters.

## PART II.

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# PART II.

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First HEAD.

O F

## High-Treasons

**H**IGH TREASONS are of two sorts, Treasons at Common-Law, and Treasons by Act of Parliament.

All such Acts as are Treason by the antient Common-Law of *England*, were declared, and particularly expressed in Parliament 25 E. 3. and this Declaration was then made at the special Petition of the Lords and Commons, that they might know what was High Treason, and in what Cases they should incur the danger of High-Treason.

For that in the time of the Barons Wars, when every Man was subject to Danger and Suspicion, and during the Minority of E. 3. many Men were accused and condemned of High-Treasons, when (as it was conceived) their Offences were not of so High Treason by the antient Law of the Land: Therefore in the Statute of 25 E. 3. such Acts as the Law did then adjudge High-Treason,

O

are

25 E. 3. c. 2.

are declared and expressed, and do consist in these few Points.

1. To compass or imagine the Death of the King, Queen, or Prince, the King's eldest Son and Heir, and this appearing by overt Act.

2. To violate the King's Wife, or the King's eldest Daughter unmarried, or the Wife of the Prince the King's eldest Son and Heir.

3. To levy War against the King, or to adhere to the King's Enemies, within the Realm or without.

4. To Counterfeit the King's Great Seal or Privy-Seal, or his Money Current within the Realm.

5. To kill the King's Chancellor, or Treasurer, or any of the Justices of the one Bench or other, of the Justices of Assize, or *Oier* and *Terminer*, sitting in their Places, and doing their Offices.

All these Acts are High-Treason against the King's Persons, and his Majesty Royal, by the Judgment of the antient Common-Law of *England*.

Besides these Treasons at Common-Law, diverse other Acts tending to the diminution of the Crown, and ruin of the Commonwealth, and which were unheard of, and unknown in the time of E. 3. have been made and adjudged by sundry Acts of Parliament of later times

As concerning Falsities of Moneys, or to Forge the Sign Manuel, Privy-Signet, or Privy-Seal, with sundry others, many whereof are expired or repealed.

But

3 H. 7. 10.

1 M. c. 6.

14 El. c. 2.

18 El. c. 1.

But there are several new Treasons, by fundry Statutes now in force, which were unknown to our Ancestors for the space of above 400 years after the *Norman* Invasion, which have been invented and practised since the great Change made in the State Ecclesiastical, by King *Henry* 8.

For the Pope's usurped Supremacy being abolished, and the King's Supremacy; in Causes Ecclesiastical, Established by Act of Parliament, in 28 *H.* 8. the which was a year of Jubilee to the Subjects of *England*; for that they were then manumitted and set free from the base Slavery of the Court of *Rome*, whereunto they had been subject for diverse Ages before.

Yet some there were who would not be free, but desired to continue Slaves to the Pope still; and therefore deserved to have their Ears boared and nailed to the Gates of *Rome*, as a mark of perpetual Servitude.

But because it lyeth not in the Subject's Power to renounce their Allegiance, or to choose a new Sovereign in any case, the Wisdom of the Parliament did then set down an Oath, to be ministred to all the Subjects of *England*, whereby they should acknowledge the King's Supremacy in all Causes, and over all Persons in his Dominions.

And they made it High-Treason to refuse that Oath; and so the refusal of the Oath of Supremacy, was the first Treason by Act of Parliament added to the Treasons at Common-Law, which were before expressed.

This Act continued in force till the first of *Q. Mary*, who receiving the Yoak of *Rome*

again, did, by an Act of Repeal, abolish the Oath of Supremacy, and declared such Acts only to be High-Treason, as were holden to be Treason in 25 E. 3.

But when Queen *Elizabeth* came to the Crown, tho' she removed the Foreign Power again, restored the antient Jurisdiction of the Crown, and received the Oath of Supremacy, yet she did not make it High-Treason at first to refuse the Oath; but by the Statute of 1 Ed. 1. the first refusal of that Oath of Supremacy, was made but a Contempt, and punished with Imprisonment: The second refusal was made Premunire, and the third refusal was made High-Treason.

With this Moderation Queen *Elizabeth* began her Reign, without addition of any other Treason, to the Treasons at Common-Law: But then indeed the disloyalty of some of her own Subjects, and the Malice of the Bp. of *Rome*, by setting abroad new Treasons, never heard of before, did inforce her to make new Laws, to meet with those traitorous Conspiracies against her Person and Crown. For the Pope, by the Sollicitation of some of her own disloyal Subjects, had sent over a Bull of Excommunication against the Queen herself, and therein declared her to be no lawful Queen, but deposed and deprived her of her Crown and Kingdom.

Withal he sent over other Bulls by the hands of *English* Priests and Jesuits, authorising them to discharge and absolve all the Queens Subjects from their Allegiance and Obedience unto her, and to reconcile them to the See of *Rome*.

Where-



Whereupon followed a dangerous Rebellion, raised by two great Earls in the Northern Parts, and diverse other perilous Practices were discovered in other Parts of this Kingdom, which did forcibly move the Parliament, 13 *El.* to make it High-Treason to bring in and to publish any such Bulls of Absolving, or Reconciling the Queens Subjects, as also to be Absolved or Reconciled by virtue of those Bulls.

But this Law of 13 *El.* did only restrain the bringing in of Bulls, and not the coming in of Priests and Jesuits; and therefore about 20 *El.* *Campion*, with other Jesuits and Seminary Priests, came boldly into *England*, to strengthen the Catholick Party, as themselves professed, and here they practised, by Preaching, private Instructions, Perswasions, and by spreading of Books and Pamphlets, to withdraw the Subjects from their Obedience, and to Reconcile them to the see of *Rome*.

Therefore in 23 *El.* another Act was made, 23 *El.* c. 2. whereby it was made High-Treason to endeavour by any other means (besides Bulls and Instruments sent from *Rome*) so to withdraw or to reconcile the Subjects; and it was likewise made Treason in every Subject that should be so withdrawn or reconciled.

After this again, because this wicked Work of stealing the Hearts of Subjects from their Sovereign, was *opus tenebrarum*, and wrought by secret Means, impossible to be proved, for that it was done by Jesuits and Seminary Priests, who distilled their Poison into the Ears of the People in cor-

ners, as the envious Man sowed his Tares in the Night.

27 *El. c. 2.*

Therefore by 28 *El.* all Jesuits, Seminary Priests, and other Priests ordained by Foreign Authority, were banished out of this Realm, by Act of Parliament; and by the same Act, it was made High-Treason for any such Priest or Jesuit, being born in *England*, to come into *England*, or to remain in *England*, after 40 days next after that Session of Parliament.

The makers of that Law knew their Errand to be Treason, and therefore they have set a Mark or Character of Treason upon their very Persons, tho' no Overt Act of Treason be proved against them. An *English* Jesuit doth no sooner set his Foot upon the *English* Shore, but the Law doth adjudge him a Traitor *ipso Facto*, justly and worthily I doubt not, in the Judgment of every one that bears a loyal *English* Heart, and is a Lover of his Country, as an honest Man ought to be, and of his Sovereign.

For the Schools and Seminaries beyond the Seas, where these *English* Priests and Jesuits are nourished and brought up, are nothing else but the Seed-plots and Nurseries of Treason, against the Crown of *England*; those Colleges were Founded and Erected to no other End, but to undermine and ruin the State of *England*; those Scholars with every Lecture that is read unto them in Philosophy or Divinity, do learn a Lesson of Treason against their own Country.

They are taught from their Childhood to hate their native Country, to abhor the Religion, to scorn the Civil Government, to  
repine

repine at the Peace, Plenty, and Prosperity of their Country. So as the very instinct of Nature, which moveth every honest Man to love his Country, and which the very Heathen did prefer before all other respects, *Omnes omnium Charitates, Patria una complectitur. pro qua, quis bonus dubitet mortem appetere?*

This natural Instinct doth seem to be quite extinguished in these Priests and Jesuits, insomuch as they do not only seek the disturbance of the Publick Peace, but the utter overthrow and desolation of their Country, be it by Intestine Rebellion, or Foreign Invasion, they care not how, they care not by whom, so it be done; for as they have made themselves Slaves and Villains to the Enemies of their Country, so do they desire, out of a devilish Malice and Envy, to bring both our Prince and People into the like Slavery and Servitude.

Is it not then a just and an honorable Law which doth banish the Jesuits out of *England*, which doth make it High-Treason for these unnatural Vipers to live in the Bowels of their Country, and which being in it, do endeavour nothing else but to fret and gnaw, like Vipers, the very Bowels thereof?

And of like Nature and Quality, this Order of Jesuits is found to be in all other Countrys of Christendom; for who are that teach the Doctrine of Deposing and Murdering of Kings, but the Jesuits? Of Massacring and Butchering of Christian People, but the Jesuits? The firing of States, under pretence of Zeal and Devotion, but the Jesuits?

Did not they procure two *French Kings* to be Murdered, one after another? Did not they plot and prosecute the *Gunpowder-Treason* in *England*? Are not they busy at this day to make combustion in all *Europe*? Therefore I hope that God will put it into the Hearts of all Christian Princes to root them out, as they did the *Templars*, who are the less hurtful Order.

There be no *Accessaries*, but all *Principals* in Treason; as such who relieve or receive a Traitor, knowing him to be so, and such as Rescue a Traitor, and a Traitor escaping, are all Traitors.

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Second

## Second H E A D.

O F

### PETTY-TREASONS.

**P**etty-Treason is an inferiour Degree of Treason, and is committed against a Subject; between whom and the Offender the Law presumeth that there is a special Trust, and to whom the Offender doth owe a special Obedience and Subjection.

Therefore if the Wife do murder her Husband, or the Servant his Master, or an inferiour Clerk his Bishop, or Diocesan; these three Cases are Petty-Treason by the Common-Law, and so declared by the Statute 25 E. 3.

And it is taken within the Equity of this Statute, if the Servant kill his Mistres, or the Wife of his Master.

25 E. 3. c. 2.

19 H. 6. f. 47.

13 Assis. 30.

If the Servant let one in to rob his Master, who kills his Master, the Servant holding the Candle, this is Petty-Treason in him.

Dyer, f. 128.

Crompton f 20.

If the Servant after he is gone out of Service, kill his Master or Mistres, upon malice in the time of his Service, this is Petty-Treason.

35 Assis. p. 7.

39 H. 6. f. 47.

1. 2 Coke f. 40.

99.

If

If the Servant procure another to kill his Master, who doth it in the Servant's presence, it is Petty-Treason in the Servant, and Murder in the other.

If the Servant, upon malice, shoot an Arrow at another, and miss him, but kills his Master, this is Petty-Treason.

There are other Cases of Petty-Treason in the Wife; as if she poyson an Apple, and lay it in a place for another, and he gives it to her Husband, who eats it and dyes, this is Petty-Treason in the Wife against the Husband.

So if she conspire with a Servant to kill her Husband, and he doth it in her absence, he is guilty of Petty-Treason.

It is adjudged, that if the Child kill the Father or Mother, it is Petty-Treason, tho' in *Doddington's Case*, 3 *Car.* he was only hang'd for killing his Mother.

If a Bastard kill his Mother, it is Petty-Treason, but not if he kill his reputed Father.

Third H E A D.

# Third H E A D.

## Of Felonies.

Felonies are of two Sorts, *respectu Publico*, & *respectu Privato*, Publick Felonies, and Private Felonies.

Publick Felonies are of several Kinds :

1. Such as tend to the disturbance of the Publick Peace.
2. Or to the hindrance of the Publick Profit.
3. Or to the Destruction of a multitude of Subjects in their Persons.
4. Concerning the Course of Justice.
5. Concerning Military Service.

1. To relieve or receive a Jesuit or Seminary Priest, which come to trouble the Peace of the Realm in a most dangerous manner, if the reliever or receiver know him to be a Priest or Jesuit, it is Felony. 28 El. c. 3.

If an obstinate Sectary, in Point of Religion, or Ecclesiastical Government, refuse to Abjure the Realm, or after Abjuration do remain or return into the Realm, without submitting himself to Conformity, he is a Felon. 35 El. c. 3.

If any Man goe beyond Seas, to serve any Foreign Prince, without taking the Oath

Oath of Allegiance before his departure, this is Felony.

If a Multitude of Subjects be Assembled, in a rebellious Manner, and do refuse to disperse themselves, after Proclamation made by a Justice of Peace, commanding them to disperse and depart in a peaceable manner, they are Felons; but some are of opinion, that this Act is discontinued.

1 El. c. 6.

3 El. c. 5.  
1 & 2 P. M.  
c. 4.  
3 Fa. c. 2.

Counterfeit Rogues, calling themselves *Egyptians*, if they be found wandering in any part of the Realm, are Felons.

Incorrigible Rogues, branded with an Iron, if they be found wandering, and such as wander under the name of Soldiers and Marriners, with counterfeit Passes, are Felons.

32 El.  
1 Fa.

5 H. 4. c. 4.

2. Publick Felonies, which hinder the publick Profit, are multiplication of Gold and Silver, which tends to the prejudice of the King and his People, in point of profit.

8 El. c. 3.

Transporting of Sheep beyond Seas, being Wool is the principal Commodity, for the profit of the Kingdom, is likewise Felony.

28 E. 1. c. 2.  
18 E. 2. c. ult.  
5 E. 3. c. 2.  
2 & 3 P. M.  
c. 6.

*Purveyors*, if they take the Subjects without Warrant, or without just Apprising, and giving of ready Money, and Tallies for the Goods taken, or converting them to their own use, do become Felons.

8 H. 6. c. 12.

Imbezling and Razing of *Records*, which may greatly prejudice the Subjects in their Estates, is Felony.

3 H. 6. c. 1.

Causing *Masons* to Congregate in Chapters, to raise Wages, is Felony.

3. Pub-



3. Publick Felonies, tending to the destruction of a multitude of Subjects in their Persons; are these,

If any Person afflicted with the *Plague*, and having the Soar upon him uncured, do wilfully walk abroad, and converse in Company, this is Felony; because it may tend to the destruction of many of the King's Subjects. 1 J. c. 13.

The mischief being likewise found of the unnatural Destruction of many Infants, who if they had lived might have done the King Service, it was enacted, That the Drowning, or secret Burning, or concealing the Death of a Bastard Child, so that it cannot be known, whether it were born dead or alive, shall be Felony in the Mother, that doth or procures the same, unless she can prove by one Witness at the least, that the Child was born dead. 21 J. c. 27.

Another mischief to a multitude of the King's Subjects, being found to be done by those who used Diabolical Arts, Conjurati<sup>o</sup>n, Witchcraft, and Invocation of Evil Spirits, by which Wickedness many Persons were killed or wasted; therefore the same was made Felony. 1 J. c. 12.

And by the same Statute, double Marriage is made Felony; because thereby many mischiefs, and quarrels, and destruction of Infants did arise, as well as for the unlawfulness of the thing.

4. Publick Felonies, concerning the Course of Justice, are by Goalers who compel their Prisoners to become Approvers, those Goalers are guilty of Felony. 14 E 3 c. 16.

Con-

3 H. 7.

Conspiring to kill any of the Privy-Counsel, whereby the Government and Justice of the Kingdom may be hindered, is Felony.

21 J. c. 26.

To acknowledge, or procure to be acknowledged, Fines, Recoveries, Recognizances, Statutes, or Judgments, in the name of any Man, not privy or consenting thereunto; this Personating Men, to prevent Justice, and incumber Mens Estates, is Felony without Clergy.

1 E. 2.

1 H. 7.

10 Ed. 4. 17.

Stam. f. 32.

Camb. f. 20.

Breakers of Prison, contrary to the Statute *de Frangentibus Prisonam*, and Rescuers of Felons, and such as Relieve a Felon, knowing him to be so, are Felons.

And Escapes of Felons, with the consent of the Goaler, makes him a Felon.

5. Publick Felonies, concerning Military Service, are,

3 J. c. 4.

If any Man go beyond Seas to serve any Foreign Prince, without taking the Oath of Allegiance; or if any Man that hath served as an Officer in the Wars, do go to serve any Foreign Prince, before he be bound with Sureties not to be reconciled to the See of *Rome*; nor to consent to any Conspiracy against the King: This is Felony.

31 El. c. 4.

If any convey away Munition, or Victual in the King's Service, contrary to the Act of Parliament of Queen *Elizabeth*, this is Felony.

5 El. c. 1.

If any Soldiers or Mariners, having receiv'd Prest-Money, or Pay from the King, and afterwards leave their Colours, and depart from the King's Service; without due License, this is made Felony; and all these

are

are publick Felonies, and inquirable by you.

Private Felonies are such as concern the Person: 2. Such as concern the Goods: 3. Such as concern Person and Goods.

1. Such as concern the Person, are Bug-gery with Man or Beast.

Knowledge of a Woman, being under 12 years of age. 18 El. c. 2.

To hurt a Woman quick with Child, whereby the Child dyeth, was by *Bracton* held Felony, but now is not. *Bracton*, f. 121.

Rape was made Felony by the Statute of *Westmint.* 2. which before that was but a Trespass.

Stealing a Woman Heir, or other Woman, against their wills, is made Felony. *L. Afff.* p. 2.

So is cutting out of Tongues, or pulling out of Eyes, and Dures in Goalers to make their Prisoners impeach. *Homicides*, which are Felonies, be of either upon Malice, which is Murder, or without malice, which is Man-slaughter. 1 E. 3. c. 4. 3 H. 7. c. 1. 2. *Fitz Coron.* 303

Wilful Murder is always grounded upon Malice, either expressed or implied. 5 H. 4. c. 5. 14 E. c. 17. *Lamb.* f. 238. 239.

Malice expressed will appear in the Evidence, by the Words or Actions, or Circumstances of the Case.

In Poysoning, Stabbing, and Witchcraft, malice is implied. 1 E. 6. c. 12. 1 Fa. c. 8.

Where the Robber kills the true Man resisting him, the Law implies Malice, and it is Murder. *Plowd. Com.* f. 474. *Coke* 9 Rep. f. 67.

To kill a Magistrate or Minister of Justice, in executing his Office, as a Justice

*Lamb.* 242, 243. *Coke* 4 Rep. f. 40. & 9 R. f. 68

of Peace, a Serjeant at Mace, a Constable, or Watchman, is Murder.

*Plowd. Com.* Tho' the Malice determine in another  
*f. 101. & 464.* than the Parties Malice extended to, it is  
*Fitz Coron. 262* Murder; as if two fight together, and the  
*S:ampf. f. 16.* one killeth the Servant of the other, or a  
*Crompt. f. 23.* Stranger that comes in to part them, it is Murder.

*Plowd. Com. f.* Where one goes about an unlawful Act,  
 474. and therein kills a Man, it is Murder, and the Law supposeth Malice.

*Plowd. Com. f.* If a Man's Servant, by his command, beat  
 475. another in his presence, so that he dyes, it is Murder in both.

4 & 5 P. & M. One stealing of Pears, the owner rebuk-  
 Dalt. ing of him, was killed by him, it was held Murder.

*Plowd. Com. f.* Where the Robber kills the true Man re-  
 474. sisting him, it is Murder.

*Coke 9 Rep. f.* If a Harlot lay her Child Abroad, and  
 67. cover it with Leaves, and Vermin destroy  
*Fitz IndiAm. 3* it; or if a Son carry his sick Father into  
 35 H. 6. f. 58. the cold, against his will, whereof he dyeth,  
*27 Affis. pl. 41.* it is Murder.  
*Britton. f. 28.*

In cases of sudden Stabbing, Clergy is taken away:

*Plow. Com. f.* Antiently when a Murderer was con-  
 306. victed, all of the Blood of the Party killed, drew the Murderer to Execution, by a long Cord; to shew that all had loss, and sought revenge for the Blood of their Kinsman slain.

*Plow. Com. f.* Homicide, which is without Malice pre-  
 261. sented, is commonly called *Manslaughter*; as when two fight together upon sudden Passion, and one killeth the other, this is Man-slaughter, but not Murder.

If two fight together upon the words of a *Stamf. f. 7.*  
Woman, and one is killed, this is Man-  
slaughter in the Woman.

Two fighting together, one breaketh his *Crompt. f. 28.*  
Sword, and a stranger standing by, lend  
him his Sword, wherewith he killeth the  
other, this is Man-slaughter in the Stran-  
ger.

If a Beast kill a Man, the owner may be *Stamf. f. 18.*  
guilty of Felony. (*Lambert* thinks of Mur-  
der) thereby, if he knew that the Beast *3 E. 3. Fitz*  
used to do harm, and did not tye him up. *Coroh. 311.*  
*Lamb. p. 240.*

If one who is not a Physician or Chirur- *Britton. f. 14.*  
gion, takes upon him to cure one, who *43 E. 3. f. 33.*  
dyes under his hand, this is Felony and *Se. 34 H. 8.*  
Man-slaughter; and these Felonies and *C. 8.*  
Man-slaughters are punishable by Death.

But if it be done in a Man's own defence;  
or by misfortune or mischance, as where a *Kelloway, f.*  
Man, without any evil intent, casting a *136.*  
Stone, or shooting an Arrow, or doing any *Stamf. f. 10.*  
thing lawful, and doth kill in doing it, *Lamb. 250,*  
*251, 252, 253,*  
*Kelloway* holds this to be no Felony: But *254.*  
the Offender, tho' he forfeit his Goods, yet  
he hath his Pardon of course.

So if a Man do kill himself, he is *felo de*  
*se*, and his Goods are forfeited, tho' his  
Lands descend to his Heir, because he is  
not attainted.

In some Cases the killing of a Man is no  
offence, but may be justified as a lawful  
Act, as if a Sheriff, or other Officer that  
hath a lawful Warrant, do Execute a Per-  
son attainted of High-Treason or Felony,  
or if such Officer, endeavouring to Arrest  
a Traitor or Felon, who doth resist the Ar-  
rest, and is killed by the Officer; this be-

ing done for the advancement of Justice, is justifiable, as lawfully done.

He that resisteth a Justice of Peace suppressing of Riots, or unlawful Assemblies, contrary to the Statute 1 M. or a Warrant to Arrest him for Felony or Debt, or when he that resists a Keeper, and is killed, in these Cases it is justifiable; but a query is made, if the Arrest be for Debt.

It is justifiable to kill a Felon followed by Hue and Cry, that will not yield.

And a Goaler may kill his unruly Prisoner that assaults him.

If one do enter or attempt to break another Man's House, with an intent to rob or kill the owner, or any of his Servants in the attempt, it is no offence, but is justifiable by the Law; for a Man's House is his Castle, for the safety of his Person, and his Goods, wherein if he be assailed, the Law doth allow him to make his defence by all means possible.

If a Man be assaulted in the King's Highway, (which by the antient Law of this Land had the priviledge of a Sanctuary,) if the assault be made with a purpose to rob or kill, the Party that is assaulted may justify the killing of him that doth assault him.

If Hunters come into a Forest or Park, and there do hunt without a Warrant, if the Keepers, endeavouring to Arrest them, be resisted by them, and upon that resistance any of the Hunters be killed, this killing is justifiable.

*Fitz. Coron. p. 26.*

*2 Affis. p. 55.*

*Stamf. f. 15.*

*46 E. 1.*

*Cromp. f. 23.*

*Fitz. Coron. 261.*

*22 Affis. p. 85.*

*Lamb. S. 326.*

*Stat. 24 H. 8.*

*c. 5.*

*Judge Dodderidge's Charge.*

*Stat. 21 E. 3.*

*1 E. 3. Stat. de*

*malefactoribus*

*in parciis.*

Divers came to an House to have burnt it, and the owner of the House being within, went out and killed one of them, and it was adjudged no Felony: And as the Master May kill, in defence of his House, Goods, or Person, so may any of his Servants

26 Affis. p. 32.  
Fitz. Coron.  
261. 305.  
Stamf. f. 146

Private Felony, touching Goods only, is *Larceny*; which word is derived from *Latrocinium*. *Latro* in Latin being a Thief, it is called by *Bracton*, *Furtum*, from *Fur*, which some derive from *furro*, that is, dark, or from the *Greek* φῶς, which signifies a Thief, or Stealer.

Lamb. f. 271.

The definition of *Larceny* is, that it is a Felonious and Fraudulent taking of another Man's Personal Goods, removed from his Person without his will, to the end to steal them.

Lamb. f. 272.

The Division of *Larceny*, is into great and petty *Larceny*, both are Felonious and Fraudulent Taking: The Indictment for Petty-*Larceny*, must be *Felonice cepit*. There is no difference but in the value of the thing taken. It is Great-*Larceny*, where it exceeds the value of 12 *d.* and Petty-*Larceny*, where it is under that value. *Bracton* saith, *Est furtum de re minima, & de re magna*

Ibid.

27 H. 8. 22.  
Stat. West. 1.  
c. 15.  
Britton. f. 21.  
Stamf. f. 24.  
Lamb. f. 273.

If the value of the Goods taken do amount unto 12 *d.* or above, the Thief shall be hanged.

f. 404. 406. 415  
22 Affis. p. 39.  
Br. Coron. 85.  
f. 176.

*Larceny* may be committed of things Animate, or Inanimate. Of things Animate, as Horses, Mares, Colts, Oxen, Kine, Sheep, Lambs, Swine, Pigs, Hens, Geese, Ducks, Peacocks, Turkeys, and other

Lamb. f. 273.  
18 H. 8. 2.

Birds and Beasts, Domestical or tame in Nature.

18 E. 4. 14. B. Of wild by Nature, as young Pigeons out  
15. of Nests, young Hawks out of their Ayres be-  
18 Ed. 4. 8. fore they can fly, or Fishes kept in a Trunk,  
4 Affis. 22. p. 98. Stew, or Pond: In the Domestical the owner  
18 H. 8. 21. hath a Property; in those of wild Nature,  
Lamb. f. 274. that cannot go from him, he hath a Pos-  
22 Affis. 98. session.

Stam. f. 25. If a Man find a Hawk that was lost, and  
Crompt. f. 36. do not bring it to the Sheriff to be Pro-  
34 E. 3. c. 22. claimed, but steal and carry it away, this  
37 E. 3. c. 19. is Felony.

10 Ed. 4. 15. To steal a tame Deer is Felony, if at  
Sta. f. 25. least the taker know it to be so.

Dalt. f. 233. To steal Swans marked, tho' at large,  
P. R. 131. p. 7. tame Beasts in a Park, &c. is Felony.

176. *Larceny* may be also committed of things  
Wist. 1. c. 20. Inanimate, as Money, Plate, Apparel,  
Lamb. f. 273. Household-stuff, Corn, Hay, or Fruit, severed from the ground.

Stam. f. 25. Or of the Flesh of any tame or wild Fowl  
or Beast that is dead, out of another's possession.

Lamb. f. 275. To take Wool from the Sheep's Back, or  
Rep. to take the Skin and leave the Body behind,  
Dalt. Crompt. is Felony.  
f. 36.

Apples gathered by me, or a Tree cut  
Stamf. f. 25. down by me, and another takes it away,  
Lamb. 276. m. or if a Tree be cut down by one to day,  
and he fetch it away to morrow, this is Felony, because they are severed from the ground.

13 Affis. p. 5. If a Man take the Wife of another against  
Br. Coron. 77. her will, with the Goods of her Husband,  
this is Felony.



So it is to steal Records in the Courts of *Westminster.* 8 H. 6. c. 12.  
Lamb. f. 274.  
18 E. 4. 2.  
Fitz Coron.  
185.  
22 Assil. p. 95.

There be likewise things Animate and Inanimate whereof *Larceny* may not be committed: Of Animate, as of things wild, as Doves, Hawks that can fly at liberty, Fishes in Rivers or Streams, Pheasants, Partridges, Hares, Coneys, Hens, Swans, and Deer which are abroad. Lamb. f. 275.  
18 H. 8. 2.  
Co. 7. Rep. f. 18.  
12 H. 8. 3.  
Br. Trial. 407.  
10 E. 4. 15.  
T. 12. H. 8.

Of things Animate of Pleasure, as Dogs, Apes, Parrots, Singing-Birds, and the like, tho' in a House, except the House be broken, is not Felony. Lamb. f. 275.  
7 E. 6. Hale s.  
1b. & 10 E. 4.  
15.

Nor to take an Infant in Ward, because it is real; nor to take an Horse or a Cow in the Isle of Man. Lamb. f. 276.  
Fitz Coron.  
119. 256.  
Coke 7 Rep.  
Crompt. f. 37.

Things Inanimate, whereof *Larceny* is not committed, are Diamonds, Ruby's, and such other Stones not set in Gold, or otherwise. Lamb. f. 276.  
Fitz Coron.  
119. 256.  
Coke 7 Rep.  
Crompt. f. 37.

Chattels real, as Charters of a man's Land, in or out of a Box. Lamb. f. 276.  
Fitz Coron.  
119. 256.  
Coke 7 Rep.  
Crompt. f. 37.

So to take Fruit hanging on the Tree, or to cut and carry away the Tree it self, or Lead from an House, or Church, is not Felony, because they are part of the Freehold till severed. Lamb. f. 276.  
Fitz Coron.  
119. 256.  
Coke 7 Rep.  
Crompt. f. 37.

To take Treasure Trove, or Waifs, or Strays, or Wrecks, or the like, is not Felony. Dalt. f. 236.

One digg'd up a dead Body out of his Grave, and took away his Winding-sheet, this was no Felony.

In the next place, *Larceny* may be committed in this manner.

By taking things without any delivery, with a mind to steal them, and in some case where there is a delivery.

13 E. 4. c. 9. With delivery, as where a Taverner delivers a Goblet to one to drink his Wine, and he carries it away.

If Bales of Wood, or a Tun of Wine be deliver'd to one to carry to *London*, and  
St. mf. f. 25. Money to pay for the Carriage, and he  
13 E. 4. 10 Br. carries them to *York*, and there breaks up the Vessels, and converts part of the Wood, or Wine, to his own use, this is Felony.

If Goods be delivered to one to carry to a place in *London*, and he carries them thither, and then conveys them away, and steals them, it is *Larceny*; for the privity of the delivery was determined.

So if the Key of a Chamber be given to one, and he opens the Door and takes the Goods therein, it is Felony.  
1b. & 13 E. 4. 9.

If any Servant above the age of 18 years, other than an Apprentice, (*viz.* by Indenture within that name,) shall go away with, or convert to his own use, any Money, Jewels, Goods, or Chattels of his Master or Mistress, and of his or her delivery to keep, of the value of forty Shillings, to the intent to steal the same, it is Felony by Statute.  
21 H. 8. c. 7.  
5 El. c. 10.

If a Servant receive twenty Pound in Gold, and he change it into Silver, and then runneth away with that; or if one Servant deliver to his Fellow-Servant Goods of their Master to keep, and he goes away with them, it is within the Statute of 21 H. 8.  
Collect. Dy. 15  
27. & Cromp.  
Lamb. f. 280.

One stole Stuff that was in his keeping, and was hanged for it; yet some are of a contrary Opinion.  
Fitz Coron. 52  
Stamf. f. 25.

Money in a Bag delivered to a Servant, and he goes away with it, it is Felony; for tho'  
21 H. 7. 14.

tho' it was delivered to him, yet it was in my Possession within my House.

A Servant making himself a Garment of Cloth, which was deliver'd to him by his Master to keep, it is Felony if he run away with it. 21 H. 8. c. 7.  
5 H. 7. 16.  
Br. Property 23  
Crompt. f. 50.

The manner of committing *Larceny* without delivery, is, If a Cook, Butler, or Housekeeper, go away with any Vessel, Plate, or Horses in their keeping, it is Felony; but some are of a contrary Opinion. Lamb. f. 279.  
13 Ed. 4. 10.  
21 H. 7. 14.  
3 H. 7. 12.  
Stamf. f. 25.

The intent to steal ought to be when he comes to the Possession of the Goods.

If a Shepherd hired by the Owner, do steal the Sheep that are in his Custody, it is Felony. 21 H. 7. 15.  
Fitz Coron. 52.  
3 H. 7.  
Stamf. 25.

If the owner of Goods delivers them, or lends them to another, and afterwards the owner Feloniously takes them away again; or if he lay them to pledge, and afterwards imbezzel them; or if he lend his Plate to another, who melteth it, and the owner take that Metal feloniously, it is *Larceny*. 7 H. 6. 43. H.  
5 H. 7. p. 18.  
Lamb. f. 277.  
Crompt. f. 37.  
Stamf. f. 25.  
Institut. l. 4.  
Lectur. March.

The taking of another Man's Goods from him, is Felony. p. 12.  
Crompt. f. 37.  
M. 2. R. 3. 53.

The taking away of another Man's Wife against her will, with the Husband's Goods, is Felony; so if the Wife be taken away against the Husbonds will, with the Goods of the Husband, it is Felony. 55.  
13 Assif. p. 5  
or 6.  
Br. Coron. 77.  
13 Ed. 4. 9.  
18 Ed. 3. 32.

For the manner of committing *Larceny*, in the carrying away of the Goods, it is not necessary that the things be clean carry'd out of the place where it was; but it sufficeth, if it be so far removed or stirr'd, that the Will and Mind of the taker appears. Westm. 2. c. 34.  
Crompt. f. 35.  
P. R. f. 130.  
27 Assif. p. 39.

Fitz. Coron.  
204.

As if a Guest takes the Sheets out of the Chamber where he lies, and goes towards the Stable to his Horse, with a mind to steal them, and is taken with the Sheets in the House, it is Felony.

Stamf. f. 26. Q.

Lamb. f. 281.  
Rep. Dallison.  
Crompt. f. 36.

So if a Man take a Horse in another's Close, with a Felonious Intent, and be apprehended before he have led him out of the Close, it is Felony.

Lamb. f. 278.  
Stamf. f. 25.

The manner whereby *Larceny* is not committed, may be by taking with Delivery; as if Goods be delivered to one to keep, and he consume them, or convert them to his own profit, this is not *Larceny*.

13 E. 4. 9.  
Crompt. f. 36.

Nor where a Bale of Wood, or a Tun of Wine is delivered to one, to carry to London, and he converts it all to his own use, it is not *Larceny*.

Glanvil l. 10.  
c. 13.  
Lamb. f. 279.

Antiently it was not Felony, where one came to the Possession of the Goods by the hand of the Owner.

Lamb. f. 280.  
Dyer, f. 5.  
Crompt. 27 El.

If an Obligation be delivered to a Servant to keep, and he takes up the Money due upon it, and goes away with it; or if Wares be delivered to a Servant, to be sold at a Fair or Market, and he sells them and goes away with the Money, this is not within the Statute of the 21 H. 8.

Stamf. f. 25.

If Money in a Bag be delivered to a Servant to carry to London, and to pay to a Man, or to buy any thing, and he goes away with it, this is not Felony; because it was out of the Master's Possession.

21 H. 7. 14.

Ibid.

Fitz. Tresp.  
240.

If a Horse be delivered to a Servant to go to Market, and he goes away with it, it is no Felony.

If

If one upon a false Message receive ten 33 H. 8. c. 4.  
Shillings of anothers Wife, and go away  
with it, it is no Felony.

A. Lends his Horse to B. who rides away *Dalt. f. 231.*  
with him ; it is no Felony.

If Workmen to Clothiers imbezzel Yarn  
delivered to them to dress, it is no Felony. 7 *Fa. c. 7.*

If Barley be delivered to a Servant, and 21 H. 8. c. 7.  
he turns it into Malt ; or if Money be de- 5 H. 7. 16.  
livered to him, and he melts it, or turns it *Br. Property*  
into a Wedge, this is not within the Sta- 23.  
tute. *Crompt. f. 50.*

The manner how *Larceny* is not commit-  
ted, by taking without delivery, is, If a  
Man take his own Goods from a Felon, that  
had stoln them, this is not Felony, if not 42 *Aff. p. 5.*  
done to favour him.

If a Man find a Purse in the High-way, 22 *Aff. 99.*  
and being demanded it, denies it ; or if  
the Receiver of ones Rents, receive 10 *d. Crompt. f. 50.*  
of the Tenants, and runs away with it, *Dalt. f. 352.*  
these are no Felonies.

Persons exempt from committing *Larceny*, *Fitz Coron.*  
are the Wife joyning with her Husband ; 106 or 160.  
for if they commit *Larceny* together, it shall *Brañon.*  
be imputed to the Husband only, and not *Stamf. f. 26.*  
to the Wife. *Britton f. 47.*

The Wife is not chargable, if the Hus- 27 *Aff. p. 40.*  
band compel her to commit it. *Fitz Coron.*

The Wife is not a Felon for stealing of 129.  
her Husband's Goods, nor he that know- 5 H. 7. 18.  
ing it, takes the Goods of her which she *Fitz Coron.*  
stole from her Husband. 455.

The Husband shall not be charged for his *Stam. f. 27.*  
Wives Offence ; she being a Felon by her 16 *Aff. f. 21.*  
own Act, and he not knowing it, but for- *Br. Coron. 242*  
faking her Company. *Fitz. Cor. 383.*  
*Leg. Canut. 74*

An *P. 3. 130.*

*Lamb.* f. 282. An Infant, a Deaf and Dumb-man, a Lunatick, a Mad-man, are chargeable in Larceny, as in Homicide.

*Mar.* l. 12.  
*Crompt.* f. 37. A Wife stealing Goods from her Husband, which were delivered him to keep, is no Felon.

29 *H.* 6. 2.  
*Br. Coron.* 116. A Lord taking his Villains Goods secretly, is no Felon.

*Fitz.* N.B. 202. An Infant under the age of 12 Years, an  
35 *H.* 6. 11. Idiot, or Lunatick, cannot commit Felony.  
*Co.* 4 *Rep.* f. 124.

Persons who are not exempt from committing *Larceny*, are,

*Br. Affirm.*  
*Stamf. Dubitavit.*  
*Lamb.* f. 282. The Wife, if she commit *Larceny*, by her Husband's command only, without further constraint, it is Felony in her; so it is if she take feloniously Goods from a Stranger, to whom the Husband delivered them.

*Mar.* l. 12.  
*Crompt.* f. 37.  
*Ibid.* A Servant is compell'd by his Master to steal another Man's Goods; this is Felony in them both.

*Fitz.* N. B. f. 202.  
*Br.* 35 *H.* 6. 11. An Infant above 12 years of Age, and under that age, if the Justices think he did it with a felonious Intent, may commit *Larceny*.

*Ins Lex.* 7. By *Ina's* Law, a Child of 10 years old, was condemned for Felony.

The Prosecution against those that commit *Larceny*, is by Jury, by Indictment; and the Indictment for *Petty-Larceny*, must be *Felonicè Cepit*; the Goods may be said to be, 18 *Ed.* 4. 23. *Bona Capellæ Parochianorum cujusdam mortui Ignoti, Domus aut Ecclesiæ.*

*Fitz.* Indict. 15. It must be *Cepit & asportavit*, or *Cepit & abduxit*.  
*Lamb.* f. 277.

Tho'

Tho' a Man be Indicted for stealing Goods of the value of 12 d. ob. the Jury may find, that the Goods stolen, were worth but 8 d. or 10 d.

Stamf. f. 24.

Fitz Coron.

177. 430. 471.

18 Affil. p. 14.

13 Ed. 4. 10.

An Indictment *quia Equum Felonice abduxit*, is bad; *sed quia cepit*, is good.

Crompt. f. 37.

It is Felony, and may be tryed in every Countrey, where the Goods feloniously taken are brought; for Felony committed in the time of one King, a Man may be arraigned in another King's time.

7 Ed. 4. 38.

Stamf. f. 182.

Br. Coron. 177.

140.

1 E. 3. 3.

Br. Coron. 178.

A. steals ones Goods, and B. steals them from A. the owner may Indict B.

13 E. 4. 3.

4 H. 7. 5.

An Infant found guilty of *Larceny*, the Judgment to be respited.

Stamf. f. 27.

3 H. 7. 1. 12.

Cloth delivered to a Taylor to make a Garment, is stolen from him; the Offender may be Indicted at the Owners or Taylors Suit.

P. R. 130.

*Barones & alii Libertates habentes possunt Judicare in curia sua, eum qui inventus fuerit infra Libertatem suam, sic de aliquo Latrocinio manifesto, sicut Handhabende & Backberende, & eum Insecutus fuerit sathaber.*

Bracton.

Britton. f. 22.

Stamf. f. 29.

Within such Liberties, the Thief taken with the manner, upon hearing of the Prosecutor and his Witnesses, was presently judged to Death, without answer for themselves, or further Tryal.

Britton. f. 22.

Felons ought to be pursued with Hue and Cry, and to be Arrested and brought before the Justices.

Stat. Winton.

Westm. 1. c. 9.

Fitz Coron.

237.

A Man may Arrest one upon suspicion of Felony committed in another County.

T. 11. E. 4.

M. 5. H. 7. 10.

*Common Fame* is a sufficient Cause to Arrest one for Felony.

T. 14. H. 8. 3 No Arrest ought to be without a Suspicion, which must be with Allegation that something is stoln.  
T. 27. H. 8. 22

Fitz Praescript. 65. One taken with the manner, or by fresh Suit upon Hue and Cry, shall be *Beheaded* in the presence of four Townsmen, by Custom, without further Tryal.

Bracton c. 32. For Felony committed, the Owner of the Goods may prosecute the Felon by Action, f. 180.  
Crompt. f. 37. or by Indictment

13 Ed. 4. One may justifie the breaking of a House  
13 Ed. 4. 9. to apprehend a Felon.

36 E. 3. c. 7. Process of Felony is to be as at the Common-Law.

Lamb. Sax. By the Saxons Law it was ordained, *qui*  
Leg. 7. *furvem comprehendit 10 s. habeto.*

Ibid. 9. To let a Felon escape was Death; punishable by the Danes Law, not to prosecute Felons upon Hue and Cry.  
Ibid. 111.

Bracton Felons may be prosecuted by Appeal.  
Stamf. f. 28. Antiently where an Appeal was brought, the Appellor might have waged Battle.

Fitz Coron. 62. An Appeal lies by me against a Felon of  
13 Ed. 4. 3. my Felon, who stole the Goods from him,  
Lamb. f. 273. that stole them from me; the punishment  
Br. Coron. 84. for *Larceny* is, that if the Jury find the value  
85. of the thing stoln to exceed 12 *d.* the Offender shall suffer Death for the Fact; and  
Westm. I. c. 15 of if the Goods stoln shall be of the value of  
Britton f. 21. 12 *d.* or under that value, the Offender shall  
Fitz Coron. be corrected by the discretion of the Ju-  
178. 404. 406. stices.  
430. 451.

Crompt. f. 36. The Law was antiently agreeable here-  
Br. Cron. 133 unto, as *Bracton* thus Reports it.  
L. B 515.

Bracton  
Stamf. f. 24.

*Pro parvo Latrocinio, vel parva Re, nullus Christianus morti Tradetur, sed alio modo Castigabitur,*



*gabitur, secundum qualitatem rei furtivæ, & Valorem si Convictus fuerit, aut Morti Tradatur, aut Regnum abjuret, aut Patriam, Comitatum, Civitatem, Burgum vel Villam, vel Fustigatur, & sic Castigatus dimittatur.*

*Si quis Indictatus fuerit de minori, quam de eo de quo debet fieri Judicium, licet non veniat, non debet utlagari.* Fitz Coron. 408.

For Petty Larceny, a Man shall forfeit his Goods: And antiently, upon Conviction for Petty-Larceny, the Offender did forfeit Lands also. Lamb. 272. 27 H. 8. 22. Stauf. f. 24. Crompt. f. 36.

Divers Petty-Larcenys committed by one, in all exceeding the value of 12 d. may be put into one Indictment, and the Party shall suffer Death for it. Lamb. 272. Cambd. 273. Fitz Coron. 415.

If two or more join in stealing of Goods above the value of 12 d. all of them shall dye for it. Fitz Coron. 404.

Any Man may inform against them that commit Larceny. Dyer f. 99. 35 E. 6. f. 15 Fitz Coron. 454

*S. Captus cum quadam pecia de canvas, deliberatur, eo quod parvum valet, & postea captus in London cum quadam Bursa, quam sciderat, & 3 s. & hoc non potuit dedicere, Ideo amittat pollicem dextram.*

Antiently it was lawful for any Man to kill a Felon attaint. M. 21. E. 4. 604.

The Judgment is, that he must hang till he be Dead; and if he be hanged, and receive, it is no Execution. M. 6 E. 4. c. 11.

One found guilty to the value of 10 d. was awarded to Prison till next Sessions, to have 18 Aff. p. 14. Fitz Coron. 177

have his Pennance, and then to be delivered.

35 *Affis.* p. 39. If the value of the thing stoln do amount  
*Br. Coron.* 85. to 12 *d.* the Offender shall suffer Death.

*Fitz Coron.* In *Hallifax*, the Felon being taken in  
 178. the manner, or by fresh Suit, shall be Be-  
*Fitz Præscript.* headed.  
 65.

9 *E.* 3. Antiently Writs went out to the Bishops,  
*Raft.* 148. B. to accurse the Felons.

*Westm.* 1. c. 12. Notorious Felons that will not put them-  
 selves in Inquests, shall be sent back to  
 strong and hard Imprisonment.

*Lamb. Sax.* By the Saxon Law, *Paganus sæpius furti po-*  
*Leg.* 9. *stulatus, si culpæ manifestus deprehendatur, ei*  
*manus aut pes præsciduntur.*

*Ibid.* 30. And he that committed Felony upon a  
 Festival-Day, *Duplo noxiam sarcito.*

*Ibid.* 105. It was punishable with Death in the Sa-  
*Hoveden* f. 47<sup>l</sup>. xons time; and the punishment of Hanging  
 45. for *Larceny*, is as antient as *Hen.* 1. time.

In *Burglary* four Things are to be ob-  
 served,

*Fitz. Coron.* 1. The Time must be in the Night; for  
 185. the Indictment must be *Noctanter fregit*; and  
*Stamf.* f. 30. the Night is taken after Sun-setting, to Sun-  
*Lamb.* f. 259. rising.

*Fitz. Coron.* 264 2. The Place must be a Mansion-House,  
*Dyer,* f. 27. or Church, or Tower Walls, or Ports, or  
*Fitz. Coron.* Gates, or Chambers in the Inns of Court,  
 261. or Colleges.

The manner of the Breaking; it must be  
 by Entry; for the Indictment must be *fregit*  
*Dyer* f. 99. & *Intravit*: And to break a Glafs-window,  
*Crompt.* f. 31. and

and hook out Goods ; or to draw a Latch, *Ibid.* f. 33.  
or to come in at an open Door ; these are *Ibid.* f. 32.  
Burglaries.

Upon an Attempt, if they within for fear,  
cast out their Money, and the Thieves take *Lamb.* f. 261.  
it, this is Burglary.

So to turn a Key, or to turn the leaf of *Ibid.* 262.  
a Window.

So to break a hole in a Wall, and to shoot *Ibid.*  
into the House, tho' they hurt no body ; or  
to shove at a Chamber Door, is Felony.

4. The Intent for which the Offender *22 Affis.* 95.  
cometh, must be to commit some Felony *Stamf.* f. 30.  
Robbing in an House, Booth, or Tent, is *23 H. 8. c. 1.*  
also Felony. *5 & 6 E. 6. c. 9.*

Breaking an House by Day, and taking *29 El. c. 15.*  
out of it Goods to the value of 5 s. is made  
Felony without Clergy.

Burning of Houses, Barns, or Stacks of  
Corn, adjoining to a Mansion-House, is *Stamf.* f. 36.  
Felony. Antiently such an Offender was to *Britton.* f. 16.  
have been burnt.

Robbery from the Person by open Vio-  
lence, is, where a Man taketh away any *Dyer* f. 224.  
of my Chattels openly from any place  
where I am present, against my will ; but  
he must put me in fear, else his taking from  
me is no Robbery.

If the Party drop his Purse for fear in a *Lamb.* f. 263.  
Bush, and the Thieves take it, this is Rob-  
bery.

It was adjudged Robbery in two, where  
one of the Thieves was not in sight, nor  
consented to the Robbery. *Lamb.* f. 270.

Two Thieves set upon a Man, and made  
him swear, on pain of Death, to bring *44 E. 3. 14. B.*  
them

them a hundred Pounds, at such a time and place as the Thieves directed; and the true Man did it accordingly; this was adjudged Robbery.

*Crompt. f. 14.*  
34. A Thief with his Sword drawn, bid one to deliver his Purse, and he did it; and the Thief perceiving that there was but little Money in it, gave the Purse again to the true Man, and afterwards begg'd a Penny of him, and the true Man gave it to the Thief; these, and many other the like cases, are adjudged Robbery.

*Crompt. f. 34.*  
*Fitz. Coron.*  
434.  
*Stamf. f. 24.* Cutting of Purfes, and picking of Pockets, is likewise Felony; for which a Man shall suffer Death: But antiently he was to lose his right Thumb for it, and no more.

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#### Fourth HEAD.

# Fourth H E A D.

O F

## Contempts against the Crown.

THE Contempts immediate against the Crown, are of an high Nature, and are known by the names of *Misprifion* and *Præmunire*.

*Misprifion* is either of Treason, or of Felony, and consisteth in Concealment of Treason or Felony, and not revealing it to the King, or his Council, or to some Magistrate, that the Offender may be brought to Justice.

This Concealment is not Treason or Felony, as is declared by fundry Acts of Parliament, but it is *Misprifion* only; for which the Offender shall forfeit his Goods, and the Profits of his Lands, and suffer Imprifionment during his Life. 1 E. 6.  
3 E. 6.  
1 & 2 P & M.  
c. 10.

This Concealment of Treason, is *Misprifion* of Treason at the Common-Law; but there are some other Acts which are declared to be *Misprifion* of Treason, by Act of Parliament.

To Counterfeit any Foreign Coin, not permitted to be Current within this Realm, is made *Misprifion of Treason*. 14 El. c. 3.

If any Bull of Reconcilement to the See of Rome, hath been offered to any Subject, if the Subject to whom it hath been offered,

Q

do

do not reveal this offer made unto him, within six Weeks after the offer made, either to some of the King's Privy-Council, or to one of the Presidents in the *North*, or *Wales*, respectively; this is *Misprision* of High-Treason.

*Præmunire* is properly and originally a Writ of Process or Summons, awarded against such as did bring in Bulls or Citations from the Court of *Rome*, either to obtain Ecclesiastical Benefices, by way of provision, before the same fell, or became void, or to draw the King's Subjects, by way of Appeal, from the Justice of this Realm, to answer Suits in the Court of *Rome*. These Acts were adjudged High Contempts against the Crown in sundry Parliaments, and a grievous Penalty inflicted upon the Offenders in this kind, namely, That they should forfeit all their Lands and Goods, and be put out of the King's Protection; so that every Man might do with them as with the Enemies of the King and of his Realm.

And this was the proper Case wherein the Process of *Præmunire* (which in good *Latin* should be *Præmonere*) was awarded in antient time.

But of later years, the same heavy Penalty hath been imposed by sundry Acts of Parliament, in other cases of Contempts against the Crown

As if any Man do wilfully and advisedly, extol the Authority and Jurisdiction of any Foreign Prelate, or Prince within this Realm.

IF

E. 1.  
E. 3.  
R. 2.

§ El.c. 1.

If any Man do wilfully and advisedly refuse the Oath of Supremacy. *Ibid.*

If any Man do bring from *Rome* any <sup>13</sup> *El. c. 2.* *Agnus Dei*, Crosses, hallowed Beads, or such <sup>23</sup> *El. c. 1.* superstitious Trifles, and deliver the same to any of the King's Subjects; and if any Subject do receive the same, and do not apprehend the bringer thereof, and within three days disclose the same to the Bishop of the Diocese, or to some Justice of the Peace.

If any Man do send any Money or other <sup>28</sup> *El. c. 2.* Relief out of this Realm, unto any Jesuit or Popish-Priest, in these cases, by these Acts of Parliament in *Q. Elizabeth's* time, the offenders are subject to the Penalty of *Præmunire*.

The like is by several Statutes in King <sup>3</sup> *Ja. c. 4.* *James's* time; as if any Man being above <sup>7</sup> *Ja. c. 6.* the age of 18 Years, shall refuse to take the Oath of Allegiance.

To stay, or procure the staying, by any Authority whatsoever, any Action upon <sup>21</sup> *Ja. c. 3.* the Statute of *Monopolies*, when it appears *St. of Mono-* to be an Action upon that Statute; for *polies.* seizing Men's Goods, by virtue of any Monopoly, or of Execution, (save of the Court where it depends) the Offenders incur a *Præmunire*.

It was conceived, that a Man attainted upon a *Præmunire*, might be kill'd by any one; because by the Law he was out of the King's Protection.

Therefore the Statute provided, that it shall not be lawful to slay or kill any Person attainted upon a *Præmunire*.

## Fifth H E A D.

## Of Offences against the Commonwealth in general.

THESE Offences are in *Alehouses*, where they are kept without License, or the Conditions of their License not observed: These are great Nurseries of Idleness and Wickedness.

My *Lord Keeper*, in a Speech of his in the *Star-Chamber*, concerning the Disorder and Abuse of *Alehouses*, term'd them the Sore and Ulcer of the Commonwealth.

For as in Natural Bodys, the ill Humours *confluent ad locum male affectum*, and there cause a Sore or Ulcer, so in the Politick Body, all ill-disposed, disorderly People, the worst of ill humours do flock to these *Alehouses*, and there grow to be a very Sore and Ulcer in the Commonwealth, to send out Rapines, Bloodsheds, Contentions and Spoys among the People.

1 *Fa. c. 9.*  
4 *Fa. c. 5.*  
7 *Fa. c. 10.*

If an *Alehouse-keeper* suffer any dwelling in the Town, to lie Tippling in his House, he loseth 10 *s.* and is disabled to keep an *Alehouse* for three Years.

4 *Fa. c. 5.*  
7 *Fa. c. 10.*

And he that sits Tippling in an *Alehouse* or Inn, or Victualing-House, shall pay ten Groats; and if he be Drunk, for the first time he shall pay 5 *s.* and for the second time, be bound to his good Behaviour.

*Inmates,*



*Inmates*, a cause of Poverty and Idleness, <sup>31 El. c. 7.</sup> and the receiving them an offence against the Commonwealth, redressed by the Statute of <sup>31 Elizabeth.</sup>

Of *Rogues* and *Vagabonds*, and sturdy *Beggars*, who are to be punished with Whipping, according to several Acts of Parliament. <sup>39 El. c. 4. 1 Ja. c. 9. 7 Ja. c. 4.</sup>

The Law is so careful to prevent the mischiefs which grow by this kind of People, that it hath imposed a Penalty on such as receive them, and upon Constables and other Officers, who are appointed to punish them, if they be negligent therein.

These heathenish Kind of People, if I may so term them, because, I doubt, some of them are scarce Christians, are (as opportunity fits) of two Conditions, in Towns, and where they are not strong enough, they are sturdy or earnest Beggars; or in the High-way, or at poor Houses, where they are strong enough, they are valiant Beggars, and prove too often to be sturdy Robbers.

*Lambert* describes who are to be taken for Rogues; and among them are such as run out of their Parishes, or threaten to do so, and to leave their Wives and Children a charge upon their Neighbours. <sup>Lamb. f. 142.</sup>

Wood-stealers, Hedge-breakers, and Corn-cutters, are punishable by Restitution, or Whipping, at the discretion of the Justice of the Peace. <sup>43 El. c. 7.</sup>

Such kind of People as these, who have no Trade to settle themselves to, do wander and pilfer up and down, living as it were upon the spoyle, out of any honest and

lawful Course; and the mischiefs which grow hereby, being now very frequent, require the more care for their Reformation.

The Law hath so excellently settled a provision for these, as well as others, that no Man ought to wander, or need to beg, but all be provided for, either by their Work, if they be able, or by Contribution, if they be impotent.

All Breaches of the Peace, Riots, Affrays, and Bloodsheds, and Rebellious Assemblies, contrary to several Acts of Parliament; and all Rescusses, and Entries, and holding of Possession by force, are offences against the Commonwealth.

So are Offences in Retainer, or putting away of Servants, contrary to the Statute of *Q. Elizabeth*, or in Servants refusing to serve, or departing without License, or assaulting their Master; and in Workmen and Servants not labouring as they ought, or refusing to serve, being compellable thereunto.

Of the same sort are Nufances to the Countrey, for want of Repairing the Bridges and High-ways, which are of necessity to be made and maintained for the common Profit and Commerce of the Kingdom.

The Common-Law was so careful in this matter, that we find in an old Book-case of our Law, that a Grant to be free *ab omni Exactione seculari*, was held to be no discharge of Reparation of Bridges and Causeys; for that the keeping of them in good Repair, doth necessarily tend to the advancement

2 H. 4. c. 3.

1 El. c. 17.

1 M. c. 12.

8 H. 6. c. 9.

3 El. c. 4.

Lamb. f. 473.

474.

22 H. 8. c. 5.

2 & 3 P. & M.

c. 8.

5 El. c. 13.

3 Ass. P. 6.

of the Trade of the Kingdom, and is a Publick Benefit to the Commonwealth in general.

There are other Nufances to the ease and profit of the Countrey, in Water-courses, and Locks, and Wears, which being stoped or turn'd, or any way granting, offensive to the Neighbours, or to the Trade of the Country, or to their convenience, are Presentable by the Grand Inquest at the Sessions of the Peace.

And these, and many others which I have omitted, are Offences against the Commonwealth in general.

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**Sixth HEAD.**

## Sixth H E A D.

*Of Offences against the particular Duties of Officers.*

3 *Fa. c. 4.*  
 4 *Fa. c. 4.*  
 1 *Fa. c. 9.*

*Stat. Winton.*

39 *El. c. 4.*

5 *El. c. 4.*  
*Lamb. 473.*  
 474.

*Lamb. f. 430.*  
 431.

*Lamb. Ibid.*  
 & 432, 434,  
 435.

*Ibid. 436, 437*

**I**F *Constables* do not present *Recusants*, or do not levy *Forfeitures* for *Tipling*, or selling *Beer* or *Ale* under the measure, or above the price appointed by *Law*: If they do not punish *Drunkards*, and take their *Forfeitures*; If they do not pursue *Hue and Cry*, and set *Watch and Ward*: If they do not punish *Rogues*, according to the *Statute*, the *Law* imposeth *Penalties* on them for these neglects of their *Duty*, as *Publick Officers*.

If the *Constable* or *head Officer*, have not put in the *Stocks* two days and a night, any *Artificer* or other *Person*, meet to labour, that being appointed to work in *Hay-time* and *Harvest*, hath refused it; these *Officers* are punishable for it.

If an *Escheator* have not 20 *l. per Annum*, and if he take above his due *Fee*, it is punishable; so are *Offences* against the particular *Duties*, of *Ordinaries*, *Scribes*, *Registers*, *Coroners*, *Stewards of Courts*, and, in some *Cases*, of *Parsons*, *Vicars*, and *Cu-rates*.

So are *offences* of *Clerks of the Peace*, of *Clerks of the Market*, of *Clerks of the Ju- stices*

stices, and, in some cases, of Mayors and Head Officers.

Offences in Clerks are, if they take Rewards, or excessive Fees, or otherwise misbehave themselves in their Offices, contrary to several Statutes in *R. 2. H. 8. Q. El.* and in *K. James's* time.

Offences in Church-Wardens, and Overseers of the Poor, are, in not Executing the Statutes of the Poor, and not imploying on the Poor the forfeiture of 6 s. 8 d. for every Barrel of Beer delivered to unlicensed Alehouse-keepers. *39 El. c. 3.*

Offences in *Goalers*, for not receiving of Felons, or forcing them to Impeach, or suffering them to go Abroad, and the like. *4 E. 3. 10.*

Offences in *Purveyors*, are, if they take to the value of 40 s. or under, without ready Money, or take Timber but in Barking time, or take Rewards to spare any, these, and divers other Misdemeanors, too frequent with Purveyors, which was formerly a heinous Name, and I wish it be not so still, are redressed by several Statutes in *E. 3. H. 5. H. 6. H. 8.* and *K. James's* time. *E. 3. H. 5. H. 6. H. 8. K. James's time.*

If a Sheriff take above 20 s. for an Arrest, or any excessive Fees, it is Presentable by the Grand Inquest. *Lamb. 430. 431.*

If the Sheriffs and Bayliffs do not pursue Hue and Cry, with Horse and Arms, and suppress Insurrections, Tumults, and all Breaches of the Peace within his County where he hath the Custody, he is finable for it. *Ibid. 439.*

Abuses in Sheriffs; If they gain more in not doing Execution, than if they did it, are Presentable.

In

29 El.

3 E. 1.

Old Inquisit:  
in Com. Salop.  
in Recept.  
scaccarii.

In old Inquisitions in the Exchequer, one Article is, *De Vicecommitibus, & Ballivis Capientibus munera, &c. ut pro Returnand' Recognit' &c. de Vice-comitibus qui Tradiderint Ballivatus Extorsoribus Populi, &c. De hiis qui ceperunt munera pro Officio exequendo, &c.*

It is one of the ordinary Articles in the Eyre :

Old Statutes,  
part 2. f. 73.  
B. 74.

The several Oaths of Sheriffs, Bayliffs, and other Ministers, tho' they are not now in some Points of them in use, yet do shew what the Duty of those Officers was, and Offences against, that Duty of Officers, are inquirable at the Sessions.

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Seventh HEAD.

# Seventh H E A D.

## Of Offences against Commerce and Trade.

**I**F any buy and sell by unlawful <sup>15 R. 2. c. 4.</sup>  
*Weights and Measures*, for the first time <sup>11 H. 7. c. 5.</sup>  
he loseth 6s. 8d. and for the second time <sup>11 H. 4. c. 4.</sup> 13s.  
4d. for the third time, 20 s. and to be set  
on the Pillory.

If any Artificers conspire together to set <sup>Lab. f. 461.</sup>  
a Price upon their Work, it is punishable  
by Fine, Imprisonment, Pillory, and in-  
famous Punishment.

If the Vessels for all liquid Things, be <sup>2 H. 6. c. 11.</sup>  
not according to the Proportion set down <sup>1 R. 3. c. 13.</sup>  
in several Statutes, forfeitures are incurred <sup>23 H. 8. c. 4.</sup>  
by the Offenders. <sup>28 H. 8. c. 4.</sup>

So for breaking the Assize of Bread and  
Ale. <sup>13 R. 2.</sup>

All Receipts in Trade, are inquirable at  
the Quarter Sessions; as concerning Hides, <sup>1 Fa. c. 22.</sup>  
by Butchers, Tanners, Curriers, Shoema-  
kers, and Forestalling of them.

In *Tile-makers*, not making good Tiles, <sup>17 E. 4. c. 4.</sup>  
in Matter and Stuff.

In *Millers*; taking exce ffive Toll. <sup>31 E. 3.</sup>

But especially in *Clothing*, the antient and <sup>4 H. 8. c. 7.</sup>  
best Trade of the Kingdom. All Abuses in <sup>3 & 4 Ed. 6.</sup>  
making of it, contrary to several Statutes, <sup>c. 2.</sup>  
are punishable. <sup>1 El. 2. 12.</sup>

So

5 *El. c. 4.*

So it is, if any one do use a Trade, not having been bound Apprentice to it for 7 Years.

5 *H. 4. c. 13.**Lamb. f. 467.*

A Statute of *H. 4.* recites, that Goldsmiths used to sell other Metal gilt, for Silver gilt; therefore it enacts, That if any Goldsmith guild any Metal but Silver, he shall forfeit ten times the value, and be Imprisoned; and this Statute is still in force.

8 *H. 5. c. 3.*

Afterwards another Statute in *Henry* the Fifth's time, makes an Exception, that they may guild other Metal, for the Spurs of Knights, and the Apparel of a Baron, or one above that Degree.

11 *H. 7. c. 27.*1 *Fac. c. 17.*2 *H. 6. c. 14.*19 *H. 7. c. 6.*11 *H. 7. c. 19.*5 *Ed. 6. c. 23.*11 *H. 6. c. 12.*

Fraudulent making of *Fustians*, and of *Felts*, is inquirable.

So are *Receipts* in the Trade of Goldsmiths, and of Pewterers, and Brasiers, and Upholsterers, contrary to several Acts of Parliament: So of Wax-Chandlers in their Trade, and of Colliers, and Woodmongers, against the Statute of *Edw. 6.*

7. *Ed. 6. c. 7.*

All these, and divers other Offences of the same nature, are inquirable and punishable at the Sessions.

## Eighth HEAD.



## Eighth H E A D.

### *Of Offences against matters of Charity.*

**I**N this matter of Charity, the Law of *England* hath taken care, that no Person whatsoever shall be in Want, if the Law be duly Executed as it ought to be.

All Persons who are, or may be in Want, are but of two sorts; either such as are of Bodies able to Work, or such as are Impotent. Those who are of able Bodies to Work, and have not Means to maintain themselves, the Law hath ordered shall be set to Work by the Overseers of the Poor in each Parish, hereby they may be able to relieve themselves and their Families, and gain a competent Livelyhood.

If such Persons, being required by the Officers to Work, shall refuse it, they are punishable by those Laws; and if they will Work and Labour diligently, they may well maintain themselves, their Wives and Children.

The Law hath likewise provided for those Persons who are Impotent, and not able to Work; if they be Sick or Lame, or Aged, and by any other Infirmary disabled to work and labour, then they are to be maintained by Contribution of the Parish where they inhabit.

Where

Where Children who are unable to Labour, or are Fatherless, or so many that their Parents cannot well undergo the charge of their Maintenance, the Officers of the Parish, with the approbation and allowance of the Justice of Peace, are to bind forth such Children to be Apprentices.

Thus, by the Charity of our Laws, all sorts of Persons who are in want, are provided for, and all Neglects and Offences of the Officers whom the Law appoints to take care of this Charity, are punishable.

39 *El. c. 2.*

43 *El. c. 2.*

14 *El. c. 3.*

1 *74. c. 2.*

If the Church-wardens and Overseers of the Poor in every Parish, do not cause the Statute to be Executed for the Poor, and the Money for the Common Goal, and maimed Soldiers to be gathered, and Quarterly paid to the High-Constables, and by them at the Quarter-Sessions, to the Collector, to be disbursed accordingly.

*Lamb. f. 434.*

438. 444. 471

Offences in not Levying the Forfeitures of Alehouses, and of Tiplers, and of such as break the Affize of Bread and Ale, and divers others, and which being offences against matters of Charity, are punishable by you; and if these Laws for the Poor were put in Execution, there would be no Beggar in *Israel*.

For the Execution of these Laws for the Poor, the makers thereof did principally trust the Justices of the Peace of every County, who every year, within a Month after *Easter*, are to appoint Overseers for the Poor in every Parish.

These Overseers are to Tax the Inhabitants of their several Parishes with competent

tent Sums of Money, for the daily Relief of the Old, Blind, Lame, and Impotent, who are not able to work, and for buying of a convenient Stock of Flax, Hemp, Wool, Thred, Iron, and other necessary Ware and Stuff, to set on work such as are able, and to bind poor Children to be Apprentices in some honest Trade. They are to meet once every Month for this Service, and to give an account thereof to the Justices of the Peace.

*Inmates* and *Cottages* are Nurseries of Poverty, and accounted offences against Charity. 31 El. c. 7.  
35 El, c. 6.

## Ninth HEAD.

## Ninth H E A D.

## Of Offences concerning our Provisions and Food.

Offences which are against the Plenty of them. As those who convert Tillage into Pasture, or Transport Corn, Malt, Beef, Butter or Cheese, contrary to several Statutes, they are punishable for it; and these offences tend to the lessening of that Plenty which God giveth us of Provisions and Food.

39 E. c. 2.  
1 & 2 P. &  
M. c. 5.  
15 El. c. 5.

5 El. 6. c. 14.  
5 El. c. 12.  
13 El. c. 25.  
8 El. c. 3.

So do the offences of Forestallers, Ingrossers, and Regrators, a wicked greedy sort of People, who contribute very much to turn God's Plenty into Scarcity.

Touching Provision of Flesh; If any do carry a live Sheep to be transported beyond Sea, he forfeits his Goods, and is to lose his left Hand.

34 H. 8. c. 9.  
2 & 3 P. &  
M. c. 3.

If any kill Beef under two years old, or Calves under three weeks old, they incur Penalties.

Lamb. f. 456,  
457, 458.

For Fish, our Law encourageth Sea-Fishing, insomuch, as no Tax is to be set upon Sea Fish, and no Flesh is to be uttered in Lent, or on Fish Days, for the increase of Flesh.

Stat. West. 2.  
c. 8.  
3 E. c. 7.

The taking of Salmon unseasonably, and the taking of other Fish at unseasonable times,

times, and destroying their Fry, and tak-<sup>14</sup> *El. c. 11.*  
 ing Fish with Nets too small, and taking<sup>27</sup> *El. c. 11.*  
 Fish under the affize, are offences against<sup>1</sup> *Fa. c. 29.*  
 our Provisions and Food, and punishable  
 by several Acts of Parliament.

For the Cheapness of Provisions and Food,  
 is inquirable at the Sessions; if Alehouses<sup>1</sup> *Fa. c. 9.*  
 do sell one Quart of strong Beer, and two<sup>4</sup> *Fa. c. 5.*  
 Quarts of small Drink, for a Penny, ac-  
 cording to the Statute.

So if Butchers, Bakers, Brewers, Victu-<sup>*Lamb. f. 456.*</sup>  
 allers, Fishmongers, conspire for Prices,<sup>2</sup> *E. 6. c. 15.*  
 or sell at unreasonable Prices, they incur<sup>23</sup> *E. 3. c. 6.*  
 Forfeitures by several Acts of Parliament,<sup>13</sup> *R. 2. c. 8.*  
 and are punishable by Pillory, and infa-  
 mous Punishment. For the Wholsomness of  
 our Provisions, is inquirable at the Ses-<sup>3</sup> *E. 6. c. 10.*  
 sions; if any Maltsters do make Malt de-<sup>27</sup> *El. c. 14.*  
 ceitfully and unwholsomly, or if any<sup>1</sup> *Fa. c. 25.*  
 Butchers, or Victualers, do sell or utter<sup>51</sup> *H. 3. c.*  
 corrupt Flesh, or unwholsom Victual, in  
 any sort whatsoever, they are punishable  
 for it, both by the Common-Law and by  
 sundry Acts of Parliament, some whereof  
 are before-mentioned; and all offences a-  
 gainst the Plenty, Cheapness, or Whol-  
 somness of Provisions and Food, whereby  
 our lives are maintained.

R

Tenth

## Tenth H E A D.

*Of Offences which are private Injuries.*

**P**erjury, and Subornation of Perjury, in any Criminal Cause, wherein a Man's Life is concerned, or in any Title or Suit touching matter of Property, is an Offence against the Publick Justice, and a private Injury to the Party concern'd. So is unlawful Maintenance of a Cause, or *Champer*, which is a kind of Maintenance, to gain part of that which shall be recovered, and entertaining or taking of Retainers, and giving of Liveries to others than a Man's Household Servants, whereby great Men do sway and bear out Business in the Country, to the injuring of their private Neighbours.

If any do Bribe *Jurors* to make favourable Presentments, or in Malice to prosecute and trouble any private Persons; or if any be a Barretor to stir up Suits against them, upon penal Statutes, and then Compound with the Parties against whom they have Informed, without the leave of the Court in which the Information is preferred.

§ H. 6. c. If the Sheriff refuse to Bayl them who are Baylable by Law, or to suppress forcible Entries,

Entries or Detainers of Possession of particular Persons; or if any do meet Riotously, or in unlawful Assemblies, to take away or detain from any Man his lawful Possession and Right, in any Houses, Lands or Tenements; these are Offences which are private Injuries.

Of the same sort are all Assaults, Batteries, Woundings, and Maihm's, in which Cases, by the Laws of other Nations, *Lex Talionis* is inflicted on the Offenders, *an Eye for an Eye, and a Tooth for a Tooth, &c.* as was prescribed to God's peculiar People.

All Extortions, Exactions, and grinding the Faces of the People, rich as well as poor, and all manner of Corruptions in Officers, whereby particular Persons do suffer wrong or damage, in their Bodies, Estates, or good Name.

So are all Trespasses in Lands or Goods; for which, altho' any one who is wronged by the Trespass, hath his remedy by Action at Law, yet he may also Indict the Party of the Trespass, and inform of it, as a Breach of the Publick Peace, and as an offence which is a private Injury; the same is inquirable at the Sessions, and all others of that nature.

## Eleventh H E A D.

*Of Offences contra Bonos mores.*

**O**ffences in the ill Behaviour of People, and which are *contra bonos mores*, and such are *Drunkenness*, a Vice of such ill Behaviour in Men, that thereby they make themselves as Beasts, nay worse than Beasts, who will not drink so much as to deprive themselves of that Sence which God hath bestowed on them, but Drunkards will part with their Sence and Reason for a little drink, and become for the time much worse than Ideots, the loss of whose Reason and intellectual Faculties, is not of themselves, as the Drunkards is: What wit or pleasure can there be, in pouring a little Liquor down the Throat?

What gains a Man by making himself sick with strong Drink? Be they poor or rich, Drunkards are all losers, they lose their time, their Money, their Health, their Reason, and the Favour of God, by sinning against him.

The poor Man is inticed to Drunkenness, before he gets from his wicked Company, parts with all his little Store gathered by his hard Labour, and in the mean time his Wife and Children pine, and tast not so  
much



much Beer as he throws away in snuffs; and is not such a one worse than an Infidel?

He brings home nothing but Shame for his Money; and when he should have been at his work, to increase his Stock, he lingers in the House of Idleness, to increase his poverty. It is a strange Sottishness, upon such Terms, for a little drink, when one hath no thirst, to yield to be robbed of that which he might so well keep, and was wholly in his own power, and the most precious of all things, his Understanding, the Faculties of the Soul, the Essential Part of Man, his Reason.

And when that is gone, Religion, Manhood, Honesty, have no Governor.

From the Root of this Sin and Disorder, spring all other Mischiefs and Wickednesses, as the wise Man informs you *They have woe, they have sorrow, they have contentions, they have babling, they have wounds without cause, they have redness of Eyes who tarry long at the Wine; they that go to seek mixt Wine.* He tells you, that this Sin biteth like a Serpent, and stingeth like an Adder. Prov. 23. 29, 30.  
Ib. v. 32.

Perhaps I may incur the Censure of some who call themselves Good-Fellows, to have written so severely upon this Subject, but they can hardly challenge the Title of Good-Fellows, when they have no Sence, and can afford no Society at all to any Persons, but to Beasts only.

I have the more enlarged my Discourse upon this matter, because I find a very great Increase of these brutish People.

34 E. 3. c. 1.  
 31 El. c. 8.  
 7 Ja. c. 4.  
 33 H. 8. c. 9.  
 5 El. c. 9.  
 33 H. 8. c. 1.  
 3 Ja. c. 21.  
 21 Ja. c. 20.

Offences of the like Nature, are common *Barretry*, *Bastardy*, unlawful *Gaming*, a profuse and sinful Expence of ones Time and Fortune; *Perjury*, and Subornation of *Perjury*; Counterfeiting of Letters, and false Tokens; Swearing and Cursing, and Profaning the Name of God, and his Sabbath: All these, and many other Offences, which are *contra bonos mores*, in the ill Behaviour, Vitioufness, and Sinfulness of the People, are inquirable at the Sessions, and being presented to the Court, I doubt not but there will be a just Zeal and Care in the Justices, to perform the Duty and Trust which the Law hath laid upon them, in the Executive part thereof.

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Twelfth

## Twelfth H E A D.

### *Of Offences touching matter of Pleasure.*

**T**HE fit Pleasures and Recreations of the better sort of the King's Subjects, of Noblemen and Gentlemen, and Freeholders of good Estates, are permitted and encouraged by our Law, that those Persons may be the better inured to Travel and Hardship, in being abroad in the Field and open Air, and thereby the more inabled, if occasion be, to serve their King and Country. And these Pleasures and Recreations do chiefly consist in Hawking, Hunting, Fishing, and Fowling.

1. For *Hawking*: The taking up and stealing away of any Faulcon, Tarcelet, or Lanner, without carrying the same to the Sheriff of the County to be proclaimed, is made Felony: But the owner of the Hawk may take a milder prosecution against the Offender if he please. <sup>1 H. 7. c. 27.</sup>  
<sup>24 Ed. 3. c. 22.</sup>

To take away young Hawks, or the Eggs <sup>11 H. 7. c. 17.</sup> of Hawks out of the Nest, or drive away the old Hawks from their Ayres, is punishable.

Likewise for the preservation of the Breed <sup>5 El. c. 21.</sup> of Hawks, Swans, and other Game, it is <sup>3 Jac. c. 13.</sup>

25 H. 8. c. 11. provided by several Acts of Parliament,  
 3 Ed. 6. c. 3. that none shall spoyl or destroy the Eggs  
 5 El. c. 21. of any Wild-Fowl, or Hawks, or of Phea-  
 3 Fa. c. 13. sants, Partridges, or Swans, on great Pe-  
 Lamb. f. 446. nalties.

7 Fa. c. 11. And that none shall take or kill Partridges,  
 1 Fa. c. 27. Pheasants, or House-Doves, with Nets,  
 Setting-Dogs, or shall shoot or kill with  
 Guns, any Partridges, Pheasants, Fowl,  
 or Hare, on the penalties set down in those  
 Statutes; yet to prevent the damage to  
 23 El. c. 1. private Persons, and to the Commonwealth,  
 7 Fa. c. 11. by destruction of Corn, it is prohibited,  
 Lamb. f. 447. that no Person shall Hunt or Hawk with  
 Spaniels, in any Corn-ground, before the  
 Corn-ground be cut or chocked.

To sell or to buy any Partridge or Phea-  
 1 Fa. c. 27. sant, is likewise prohibited by Acts of Par-  
 7 Fa. c. 11. liament, and those who do it are puni-  
 shable.

1 H. 7. c. 11. 2. For *Hunting*: If any Man do Hunt  
 unlawfully by Night, in any Forest, Park,  
 Warren, and do deny and conceal the same,  
 upon examination before a Justice of the  
 Peace, this is made Felony: But the owner  
 of the Ground may, if he please, proceed  
 in a milder way of Prosecution.

All Trespassers in Parks, Warrens, and  
 Inclosed Grounds, by Hunting or Killing,  
 are punishable.

14 H. 8. c. 10. To trace Hares in the Snow, and to kill  
 1 Fa. c. 27. them contrary to the Statutes which are  
 7 Fa. c. 11. still in force concerning them, is punishable  
 31 H. 7. c. 17. by those Acts of Parliament: So are all Of-  
 23 El. c. 10. fences of those who do hunt or kill any  
 3 Fa. c. 13. Deer or Coneys in any Park or Warren,  
 7 Fa. c. 13. with-

without license of the owner of the ground; or to buy or sell any Deers Flesh, contrary to the Statute of King *James*: To the end <sup>1 *Ja.* c. 27.</sup> that by hindering the sale of the stohn Meat, the stealing and destroying of the Game may be prevented.

And for the better preservation of the Game, Artificers, Labouring Men, and others not allowed by the Statute, are prohibited to keep any Hounds, or Greyhounds, or to use any Nets, or Ferrets, or the like. <sup>13 *R.* 2. c. 13. *Lamb.* t. 447.</sup>

3. For *Fishing* sundry Acts of Parliament have been made, and are still in force, against the taking of Fish unseasonably, and the destroying of the Fry of Fish, and using Nets of too small a meash for the taking of them <sup>Stat. *W.* 2. c. 48. *1 El.* c. 17. *14 El.* c. 11. *27 El.* c. 11. *1 Ja.* c. 29.</sup>

To Fish in any several Pond, Water, or Stew, against the will of the Owner, or to break or destroy the Head or Dam of any such Pond or Stew, and all Trespasses in Ponds, Stews, or Fishings, are Offences against the Laws made for maintenance of the Pleasures and Recreations of the better sort of his Majesties Subjects.

Thus we see how the Wisdom of the Common-Law from the beginning, and the Wisdom of our Parliaments from time to time, have provided a Salve for every Sore, and a Remedy for every Mischief.

And so the Law descends, from the highest Treasons, the foulest Felonies, and the greatest Contempts, to take order for matters of Pleasure, for Cottages, Alehouses, Rogues,

*Of Offences touching Pleasure.*

Rogues, and for Labourers, and for the Poor.

Which seem in some Men's Opinions small things, and of small Consideration, whereas indeed they are matters of great Consequence and Importance; for they touch and concern great Multitudes of People, and not only the Glory of a King, but the Flourishing of a Nation consisteth in the multitude of well governed Subjects.

Therefore those Laws which do provide for the common Good of the Common People, are most carefully to be put in Execution; for if by the diligence and faithful Performance of the Duties of the Justices and Jurors at the Sessions, Offenders shall be discovered, brought to Justice, and Punished, then there will be no place for Treasons, for Bloodsheds, for Extortion, Oppression, Force, or Fraud, no Lewd nor Disorderly Persons will abide among us.

The Spiritual Men began in these days to swell higher than ordinary, and to take it as an injury to the Church, that any thing favouring of the Spirituality, should be within the cognizance of ignorant Laymen: So that I have, as is before noted, enlarged my self upon the Point of Jurisdiction of the Temporal Courts, in matters Ecclesiastical, and the Antiquity thereof.

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## P A R T III.

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O F T H E

### *Sessions of the P E A C E.*

**T**H E same Form which we now use, except in some particulars, is as antient as the Common-Law, and is indeed part of the Common-Law it self.

It is very clear, that before any Statute made concerning *Justices of the Peace*, there were Tryals of Matters of the Peace, by Juries, before *Justices of Over and Terminer*, *Justices of* and *Justices in Eyre*, and before certain *Wardens or Conservators of the Peace*; the same in effect as Justices of the Peace are at this day, in their Sessions held in several Counties, for Conservation of the Peace. *Oyer and Terminer, Justices in Eyre. Wardens or Conservators of the Peace.*

The Grand Jury is the Representative Body of the whole Shire, and herein it is worthy the taking notice, of the excellent Mixture of the Government of this Kingdom, both in the higher and lower Ministeries thereof.

It will be granted, that a *Monarchical State*, with some indifferent mixture of *Aristocracy*, and *Democracy*, as attending the other, is surest, and best settled, so is the Form of our High Court of *Parliament*: And this is the nature

nature of the Sessions of the Peace, and of all other of that kind.

For the whole Action is supported by the *King's Regal Monarchical Power*, out of which it hath pleased him, for his own necessary ease, to grant a derivative Stream, by Commission to his Justices of Peace, as being the *Aristocracy* of the County.

The Grand Jury represent the *Democracy*; the whole People and Commonalty of the Shire.

And thus in the Court of the Sessions of the Peace, there is in effect the same Form and Nature of Government, as the whole Kingdom hath in the highest Court thereof, the *Parliament*.

And the difference of the *Sheriff's* Choosing and Returning the *Grand Juries*, some suppose to have been antiently in another way.

The Act of Parliament appoints the Sessions of the Peace to be kept Quarterly in every County, as they now are; and it is likewise so in Corporations, by direction of their respective Charters where they have this Privilege. And it is a Privilege indeed worth the acknowledging, and great in the enjoying of it; that by the King's Favour and Grace, and by the Act of Parliament, Justice is brought home.

The same was antiently in the like Sessions held by the Justices in *Eyre*, or Justices *Itinerant*, and Justices of *Oyer and Terminer*, and is the same in the Assizes held twice a year: And in the Court of the Quarter Sessions, it was the antient Form, that *Quidam major & discretior Justiciariorum, publice coram,*



*Coram omnibus proponit, quæ sit causa adventus eorum, quæ sit utilitas Itinerationis, & quæ Commoditas si pax observetur.*

Braeton 1. 3.  
f. 115.

And this is testified by an antient writer of our Law, that lived in the time of *Henry the Third*. And after this manner was the Sessions for the Peace in every County then held.

There are *Quatuor Cardines Justitiæ*, which make up both the Business and the Court of the Sessions of the Peace.

1. The particular Justices of the Peace in the several Parts of the County, who by their Commission, and by sundry Acts of Parliament, have a Power of Examination of Malefactors brought before them: And if they find sufficient cause, they have a Power of Cohersion, to bind them over with Sureties, to appear at the Sessions, to undergo their Tryal; or if they find them more notorious Offenders, they may commit them to the Common Goal, *ad Custodiam*; that they may be forthcoming for their Tryal.

The Second Pillar of Justice, is the Acting of the *Grand Jury*; for without their Inquiry and Presentment, the Justices can do nothing in the matter.

Third Pillar, are the *Jury's of Deliverance*, who give the *Verdictum* upon the Matter of Fact, whether the Party indicted be guilty, or not guilty of the Offence for which he is tried.

Fourth

Fourth Pillar, is the Court of Sessions, the Body of the Justices of Peace as they sit together, and have Power of giving Judgment upon the Verdicts of the Juries, and of these four *Cardines* is the Court of the Sessions composed, and by them supported.

The Government of any County in the Sessions of the Peace, follows the pattern of the General Government of the whole Kingdom, and the admirable Mixture thereof.

Here is first the Monarchical Power in the King's Commission, who is the Fountain of Justice, from whence *Justice runs down like a Stream, and Judgment like a mighty Torrent*, in all parts of the Kingdom.

The Justices of the Peace are, or ought to be, the *Aristocracy* of the County.

The Grand Jury are the *Democracy*; the Representative Body of all their Neighbours and Inhabitants in the County.

This respecteth, as much as may be, the ease of the People, with their conveniency, to prevent the loss both of Time and Expence; and there it bringeth four times a year, the Execution of Justice home; and that Matters of Fact in Criminal Offences, may be Try'd and Clear'd.

Neighbours and Country-men, who by all presumption, are best enabled to perform and accomplish the same. Not perhaps much unlike unto those antient Customs, and *Conventus Juridici*, frequented in the several Provinces of the *Roman Empire*, or else they are come in lieu and stead; necessity so requiring of that antient Jurisdiction

isdiction used in this Realm, by the Judges, whereof for the Journeys taken thro' every County were stiled and called *Iustitarii Itinerantes*.

## Of the Work of the Sessions of the Peace.

THE Work of the Sessions of the Peace brings credit and respect to the Persons employed in it; so it is of Necessity, for the Preservation of the People in their Estates and Persons; for if Malefactors were not found out, and cut off, no Man's Life or Fortune would be out of their power, or free from their Cruelty.

The meeting at the Sessions of the Peace, is to perform that great and necessary Work, the Administration of Justice, the Foundation of all Commonwealths, and the Essence of our Well-being. Justice is called *Pax Populi, Tutamen, Patriæ, Immunitas Plebis, Munimentum Genis*: Which Expressions, the People, the Countrey, the Commons, the Nation, do shew her Limits to be as large, as theirs.

*Commutative* Justice, is that which guideth private Rights, and the Object of it is, *Meum & Tuum*; the End of it is, to give every Man his own in Property.

*Distributive* Justice, is that which guideth the Commonwealth; the Object of it is,

is, *Bonum & Malum*, and the End of it is, to give every Man that which he deserveth.

*Commutative* Justice, is not the Work of the Sessions, that Court hath nothing to do with that; it is the Work belonging to the Courts of *Civil Pleas*, as being *Potestas Juris dicandi*, a Power to determine the Law, for the benefit of private Men.

The Work of the Sessions is *Distributive* Justice, which concerneth the *Pleas of the Crown*, and is *Potestas Gladii in facinerosos*, a Power of the Sword, to suppress and take order with Malefactors; that good Men may be Protected, and bad Men may be Punished.

*Commutative* Justice, decides the Controversies arising out of the *Commutation* of Things, and Contracts of Parties, and the Rights of Property, determining the Contentions *de meo & tuo*; and the appendants thereunto, whereby it is rightly resembled to the Balance; the Duty thereof being *Reddere suum cuiq;* in Weight and Measure, *Proportione Arithmetica*.

The other, *Distributive* Justice, is to cherish and encourage the Good and Well disposed, and punish the Evil and Wicked Malefactors, *Tribuens unicuique secundum merita Proportione Geometrica*: And therefore the true Emblem or Ensign thereof, is resembled to the Sword, which is delivered by God into the Magistrate's hands, not for nought, not to be idle, or make a vain Shew, but to be drawn and brandished, to strike, to wound, to kill and cut off those *putrida Membra, ne pars sincera Trahatur*.

No Community, no Society, no Commonwealth can subsist, without the due Administration of Justice, a Virtue not only rectifying the Mind and Conscience of the Possessor of it, but the same, as a Schoolman terms it, is *Diffusiva sui*, spreading her Beams over all; and as the Philosopher notes, *The Morning or Evening Stars are not more Glorious.*

Such is Man's depraved Nature, declining with the dotage of the World daily to the worse, that it is, *Tanquam Amnis exundans cito Lutum colligit*, an overflowing Land Flood, which leaveth nothing but Filth behind it.

To enquire out, by Care and diligent Search, the Offences which evil Men continually fall into, and to give condign Punishment where it is requisite, is and ever will be in the judgment of all sober Men, a work of much Worth and Estimation, ever acceptable both to God and Man; and that is the Work of the Court of the Sessions of the Peace.

St. Ambrose's  
Offices.

The Punishment of Vice, and the Incouragement of Virtue, are those two principal Incitations whereby the Commonwealth is quickened, and continueth in Tranquility and Peace.

It is a great Work indeed, to meet with the Corruptions of the Time, to prevent Mischiefs before they fall, and to punish Offences being committed, to deter others from the like.

Justice is painted without Hands, as free from Bribes and Corruption; and without Eyes, as having no respect of Persons, yet

S

Beautiful;

Beautiful, and having Truth hanging about her Neck; so is the Work of Justice beautiful, for it bringeth Peace; and how Beautiful upon the Mountains, are the feet of them that bring Peace!

Isaiab.

Of the Attendants at the Sessions of the Peace.

Lamberts

Archion.

John de Plessset

Cambden's

Courts.

Hoveden H. 2.

Antiently at the Sessions of the Peace, there did attend certain Wardens, or Conservators of the Peace, which were sometimes upon great occasions, of Invasion, or Infurrection, appointed by the King, by special Letters Patents, as the Patent to one *John de Plessset* in *H. 2.* time; and in the same King's Reign, *Cambden*, and *Hoveden* affirm, that the Justices in *Eyre* were first Ordained, who kept their Sessions of the Peace, and constantly attended them, being the Judges in those Sessions.

Mirroure of Justice.

Coke Epist.  
10 Rep.

But those Justices in *Eyre* are mentioned in the old Manuscript, call'd the *Mirroure of Justices*, which Book my Lord *Coke* saith, for the most part was written before the Conquest.

Those Justices in *Eyre* had Cognizance of all Pleas, especially Matters of the Crown, which concern the Peace, and they proceeded by way of Indictment, as the Justices now do.

Some others at the Common-Law were *Conservators* of the Peace, and might and did attend at the Sessions of the Peace; some of these were by reason of their Offices, as the Lord Chancellor, and Lord Steward of *England*, every Justice of the King's Bench, the Master of the Rolls, and other great Officers of *England*, throughout the whole Kingdom: And they continue so at this time, and are commonly named in all Commissions of the Peace, and may, when they

they think fit, attend the Sessions of the Peace: And as usually the Judges of the *Kings Bench* do sit at the Sessions for *London* and *Middlesex*.

Every Judge of *Affize*, and every Commissioner of *Oyer and Terminer*, is also put in Commission in every County in the respective Circuits, and may when they have leisure, attend at the Sessions of the Peace in each County.

Others were *Conservators* of the Peace within certain Precincts, as the Officers of the King's House, within the Verge; Sheriffs in their Counties, Stewards of Torns and Leets, and the Constables and Tythingmen within their Limits; and these are to be attendants at their respective Sessions.

Some others were *Conservators* of the Peace by *Prescription*, both for the Power of it, and for the Manner, and Exercise of the same. And so by *Tenure*, some held Lands of the King, by *Knight's Service*, and to be *Conservators* of the Peace; and a very antient way, and acceptable to the People, was, that the *Conservators* of the Peace were Elect-ed by the Freeholders, in full County; for which purpose a Writ went out to the Sheriff, to chuse in his full County *unum hominem de probioribus & propentioribus Comitatus sui in Custodem Pacis*.

All these *Conservators* of the Peace, were to be present and attendant at the respective Sessions where they were *Conservators*; and their Office and Power was the same in effect, as the Justices of Peace now have, only the name is altered from *Conservators* to *Justices of the Peace*, and that Power which

the *Conservators* of the Peace had at the Common-Law, before the Statute of 1 *Ed.* 2. is by that Statute, and by divers Acts of Parliament since, given, and the Power much enlarged to the Justices of the Peace at this day; and the sole appointment of them is now in the King, since the Statute of *Henry* 8. and the King trusts the Lord Keeper therewith.

27 H. 8. c. 24

The Ground of the Statutes, and Provisions made by *E.* 3. for preservation of the Peace, was upon his doubts of the Peoples unruliness at that time, and their readiness to be in Tumults, upon the Imprisonment of his Father, *E.* 2. and his forced surrender of the Crown, by the designs of his Wife, *Queen Isabel*, with *Roger Mortimer*, and others.

*Queen Isabel.*  
*Roger Mortimer,*  
*&c.*

And presently after *E.* 3. had assumed the Crown and Government, he, to keep the People quiet and in good order, was advised to have a Statute made, which was accordingly Enacted, in the first year of his Reign, *That in every Shire good Men and lawful should be assigned, to keep the Peace.*

1 E. 3. c. 15.

These were called Justices of the Peace, who have their Authority by those Statutes, being assigned by the King's Commission, or Letters Patents, to receive Presentments, and to Exercise the Authority of Justices of the Peace.

Justices of the Peace attending the Sessions, and in Executing their Office, must expect Calumnies and Scandals to be cast upon them by evil Men, whom they punish for their Offences, whose *Tongues are as sharp Swords*; And the Apostle says, that the *Tongue*

*Psal.* 51. 4.  
*Psal.* 139. 4.



*Tongue no man can tame it ; it is an unruly Evil, James 3. 8.  
full of deadly Poyson.*

Yet this ought not to be any discouragement to Justices of the Peace, in doing their Duties.

Unto the Exercise of Publick Justice, many are admitted, and are to attend the Sessions ; the *Higb Sheriff* of the County, or his *Deputy*, the *Jurors*, *Constables of Hundreds*, and of *Townships*, *Bayliffs*, those who are Bound-over to appear, or to Prosecute, or give in Evidence, *Goalers*, *Masters of Workhouses*, and *Houses of Correction*, and divers others.

It is a certain Rule in Government, that *Præmio & Pæna stat Respublica*, in Rewarding good Men, and in Punishing bad.

*Præmium* belongeth only to the King, as being the Product of *Favour* and *Grace*, and it is Illimited, without Stint or Rule, for it is at the King's Pleasure.

Punishment of Offenders is delegated to his Justices, as the Product of Justice, which is directed and regulated by the Law.

And in the distribution thereof, is the Care and Assistance required of divers others, distinct and several Ministers of Justice ; and if any of these stand still, or move Irregularly, the whole Sphere goeth out of order.

The two Powers of *Coercion* and *Examination*, are Judicial, not Ministerial, and are *Imperii* not *Jurisdictionis*, and of Necessity are first to be put in Execution, before any Pleas of the Crown can be brought to Tryal. For if a Malefactor be not speedily

1 & 2 Pb. &  
Mar. c. 13.

taken hold of, upon the first notice of his Offence, he will likely escape the hands of Justice ; for no further Proceeding can be had against him, than *Indictment* and *Utlary*, which being Matters of Record, are safely laid up by the Pronotary in Parchment Rolls, but the Party is never heard of more. Then when he is taken, the Malefactor is to be Examined upon the Offence and Information of Witnesses ; and this is that which is called *Inquisitio*, and is the Ground of all the Proceedings at the Sessions ; and without these Two, *nec Causa in Judicium deduci potest*, neither will *pars Rea sistere Judicio*.

So the Justices of the Peace prepare the Person of the Delinquent to stand to his Tryal; and his own Examination, and Testimony of Witnesses, are Evidence against him.

The Business of the great Inquest who are to attend the Sessions, is grounded upon the precedent Act of the Justices of Peace, that is, Evidence prepared by them, in Examining the Party and Witnesses ; by which the Grand Jury are instructed to lay a Charge upon the Offender, to which he shall Answer.

For that is the Nature of an Indictment, it is *Denuciatio*, which is *Crimen in Judicium ad Publicum vindictum deducere, ut Judex de illo Crimine cognoscat* ; and as it is more briefly contracted, it is *Delatio Criminis ad presentiam*. This is the very true Nature and Definition of an Indictment ; so that the Grand Jury must take heed of being too scrupulous in Indicting, as if it were their Charge, to enquire whether the Party be Guilty or  
not

not Guilty ; for it is only to enquire whether they find probable Matter to call the Party to his Answer, and to clear himself of the charge laid upon him.

The Duty of the Juries of Deliverance attending the Sessions, are to try whether the Indictment be true or false ; and upon their Verdict the Party accused must stand or fall : And this is the difference between the Act of the Great Inquest, and the Act of the Jury of Deliverance.

Of the one it is called the Inquiry ; of the other, the Tryal ; of the one the Presentment, of the other, the Verdict ; the Great Inquest, *Versatur circa præsumptivum & verisimile* ; the Jury of Deliverance, *circa Probatum & Verum*.

The Great Inquest, or Grand Jury, are a select number, representing the whole Body of the County, to avoid Confusion, that is ever bred by Multitudes ; and therefore in all Actions of Civil Government, that concern all in general, the Law and Custom of this Realm hath induced it, that the Care and Execution should be laid on a few ; so it is in Leets, and in the Parliament.

They are the Watchmen and Centinels of the County, the *Probi & Legales Homines*, spoken of in the Commission, *per quos rei veritas melius sciri poterit & inquire*.

They must find out and reveal the Disorders and Enormities of their County, and Present them, that they may be brought to the Censure of Justice, *deferre ad præsentiam judicis*.

The Trust reposed in them is so great, that nothing can be done without them: By Indictment they are to present the Fact, and the Justices to judge of it: Their knowledge must be by the Jury; a private Knowledge will not support their Proceedings, but a Regular; for they are limited by their Commission to inquire *per Sacramentum p. oborum & legal' Hominum*.

41 Ed. 3. 31. This Tryal by Juries, is as antient as the  
 Fortescue de Foundation of our Commonwealth, as is  
 Laud. Leg. clearly Testified, not only by the Opinions  
 Angl. of the Judges in our Books, and of Histo-  
 Coke Pref. 3 R. rians, but by Authentick Records of our  
 Cambd. Brit. Nation, sufficient to convince the Opinion  
 Saltern. f. 29. of one *Italian*, who taking upon him to  
 Fitz. N. B. f. 6. write the History of *England*, affirms other-  
 Polydore Virgil wise: But this is not the only Point wherein  
 he is mistaken.

Saleern. f. 34. I know that the *Saxons* used the Tryal by  
 Fire and Water, called *Ordeil*, but brought  
 Spelman Gloss. in by their Superstition in a few difficult  
 verbo Ordeil. Cases only; yet Tryals by Juries were in  
 use with them likewise, and long before,  
 and in all times to this day; and *Ordeil* was  
 by a Canon utterly taken away.

So were the unjust Liberties taken away which were exercised in some Places of this Land, where within a Precinct, if a Felon were taken in the Manner (as they called it) *Hand Habend*, or *Back Berond*, that is, having the stoln Goods in his hand, or bearing them on his back, he was presently Executed, without any Jury or other Proceedings, or being heard to answer for himself.

But

But these also are long since Abrogated, and the Tryal now in use is by Juries, the most antient and equal Course of Tryal of any in the World; wherein, first, the Grand Jury Presents, whether there be probable Matter to bring the Party accused, to his Answer? Then the Jury of Deliverance pass upon him their Verdict, whether he be guilty of the Fact or not: And both these consist of Freeholders, and Peers of the Party brought unto his Tryal.

In a Charter of King *Edgar*, upon his increase of the Monks, and his Orders for them, is this Expression. *Selden Not. in Eadmer. f. 154, 155.*

*Scriptum quippe per Hieremiam memini Prophetam, ecce Constitui te super Gentes, & desuper Regna, ut Evellas & Destruas, & Disperdas & Dissipes, & Edifices, et Plantes.*

Judges have this Authority, both on good and bad, to Prune, Lop, open the Roots, to pull up the Weeds, Nettles, Thorns and Bryars, and to plant the good Trees.

The Presentments and Indictments of the Grand Jury, are prized as matters of Record, and reserved to perpetual Memory.

The Publick Justice of *England*, doth observe the like Course, as the Divine Justice did, in proceeding against those sinful Cities of *Sodom* and *Gomorrhah*; for tho' *Gen. 18.* their sins were crying Sins, and most notorious to the World, and most perfectly known to God himself, for *omnia nuda & opera sunt Oculis ejus*, yet was the Divine Majesty pleased

pleased to make an inquiry thereof, before he would give any Judgment against them. *Descendebo et videbo utrum Clamorem, qui venit ad me, opere compleverit, ut sciam an ita sit vel non.* Not that God was ignorant of their most secret Offences, but for that it was his Divine Pleasure to give an Example or Precedent to the Judges of the Earth how they should proceed in Causes brought before them, not to ground their Judgments upon their own private Knowledge, but upon Solemn and Publick Inquisition and Tryal.

The Jury are to Inquire and Present, to enable the Justices to know and take notice, which is Denuntiation, or Publick Exhibition; the Legists define it to be *delatio Criminalis ad presentiam Judicis, ut de eo cognoscat.*

Erisonius.

The Presentment which the Jury make, is called *Indictamentum*, which in its proper and genuine Signification, is to Denounce or Proclaim; and that which we call *Indictamentum*, is the same with *Judicium*, and that signifies the same that *Indictamentum* doth, that is, *Criminalis Nuntiatio Magistratui*; a Declaring of an Offence to the Magistrate.

This Denuntiation or Intimation, altho' it be made upon Oath, yet against the Party it is but a Charge, to which he must Answer, in the nature of an Accusation.

And it is an error in those of the Grand Inquest, that conceive they must not Indict, but upon a plain proof that the Party is guilty; for they may ground their Indictment upon *Verisimile*, and *Probabile*, as well as upon *Verum* and *Probatum*.

If

If the Grand Jury think there is matter fit to put the Party to his Answer, that is ground enough for an Indictment ; for it is afterwards to be tryed, whether their Indictment be true or false.

Nothing is forfeited by a Man's being Indicted, neither is he disabled of any Legal Right, only he stands suspected, until he be cleared upon his Tryal.

And by the antient Common-Law, he that was an *Indictor*, might be a *Tryer* upon the Jury of Deliverance ; because that was a new Charge, and grounded upon better Evidence ; and so we have Authority in our Cases of Law, altho' at this day the Practice be otherwise. <sup>27 Affij. Pl. 13.</sup>

The Grand Jury are no Tryers of the Fact, but rather Judges what is fit to be Tryed, and what not. Their Verdict is no Conviction, but an Accusation.

And such is the antient and great Care and Favour of our Law, that Men in Criminal Causes may have the more indifferent Tryal, where their Persons, and Estates, Liberties, Lives, and Posterities are concerned.

Therefore these Causes pass two Juries, before any Condemnation ; but in Causes between Party and Party, for Property, the less Solemnity of only one Jury, is allowed.

Several antient Statutes are become useless, by reason of the Changes and Revolutions since they were made, as particularly the Statutes of *Caps*, of *silk Partlets*, and the like, which have not been worn these 100 years. The Statutes that forbid the having <sup>1 H. 4. c. 7.</sup>  
of

of many Retainers, or giving of many Liveries, to have multitudes of Servants; the great Men of our time keep themselves safe enough out of the danger of these Laws; the Laws touching the *Worsted Weavers* of *Lyn* and *Yarmouth*, and of the *Wages in the Weld of Kent*; the Statute forbidding to ride in *Harness*, or with *Launce-gayes*.

Those made for the payment of *Wages of Knights of the Shire*: Those concerning *Archery, Husbandry, and Tillage*, and many of the like sort, which are in force, tho' obsolete

23 H. 6. c. 11.  
35 H. 8. c. 9.  
29 El. c. 2.

There is no offence against the Law, as *Treasons, Felonies, Trespasses, Misdemeanors*, or any *Breaches of the Peace, or Publick Nuisances*, but are within the Grand Juries Inquiry and Presentment

And if they present any matter beyond the Justices Power of determining, their labour is not lost, for the Justices are to transmit it to a higher Court, where it will be Proceeded in.

Whatsoever Offences come within the Grand Juries Notice or Information, which tend to the disturbance of the Publick Peace of their County, or to the Grievance and Oppression, or Nuisance of their Neighbours, and are contrary to the Law; Exactions of Publick Officers, Conspiracies of Workmen, unreasonableness of Servants and Labourers Wages, wandering of Rogues and Vagabonds, Disorders in Inns and Alehouses, and an infinite number of other particulars. Generally whatsoever Crime is committed, whereby the Peace is broken, or Estates prejudiced, is fit for their Inquiry and Presentment; but with Matters of *Civil Right, of Meum and Tuum*, they have nothing to do.

Justice



Justice is painted without Eyes, that is, having no respect to Persons; and without Ears, that is, giving no ear to malicious or false Informations or Scandals; and without hands, as taking no Rewards. *Deut. 16. 19.*

God himself commands, *Thou shalt not wrest Judgment, nor respect Persons, neither take a Gift; for a gift doth blind the Eyes of the wise, and pervert the words of the Righteous. Justitia non novit Patrem nec Matrem.*

The Heathens observed this Impartiality in doing Justice; insomuch as a young Roman being made a Judge, invited all his Friends and Kindred to a great Feast, and there took a solemn Leave of them, never to know any of them more, but to be as a Stranger to them, and as if he had never seen their Faces.

The Grand Jury are put in Trust, to Inquire after, and to Present such Offences as within their County are committed, contrary to divers Statutes of the Realm, concerning the *Service of God in his Church*, and the *Government of his Church*, and the *Reverence of his Church*.

The Publick Peace is, *Tranquilitas Ordinis in Republica*, saith the Schoolman, when things are stated and settled in a calm and quiet Order, without Tumult, and without Trouble, like that in Musick, which is call'd Harmony, when the strings of an Instrument are all in Tune, without Jarring, and without Discord; and this Tranquility or Harmony is this quiet Estate in a *Commonwealth*, and also is the most precious Jewel, the sweetest Benefit and Blessing that Man can enjoy under the Sun.

The

The Publick Peace is the cause that our fruitful Fields are so well Manured, our Barren Wastes converted, our Herds and Flocks increased, and our Cities and Towns enlarged; Trade and Traffick by Sea and Land freely entertained, and all the Commodities of the Earth improv'd.

In these *Halcyon* Days of Peace, all Arts and Sciences, Liberal and Mechanical, are brought to perfection, and have produced, and daily do produce, innumerable Commodities, as well for Pleasure and Ornament, as for the necessary Use of the Life of Man.

The *Commonwealth*, and in the *Commonwealth*, the *Church of God* doth Flourish, the *Gospel* hath a more free Passage, and *Religion* taketh a deeper Root.

Justice maketh a Hedge about every Man's Field, tho' there be no other Inclosure; she keepeth watch and ward over every Man's Goods, and maketh a Cottage to be a Castle of Defence; nay, she herself is a Castle, and a Fortrefs for the weak to retire unto; she is a Sanctuary for the Oppressed to fly unto; and having the Virtue of *Orpheus's* Harp, she charmeth the fierceness of the Lyon and the Tyger, so as the poor Lamb, may lye down in safety by them.

St. Aug.

*Quid sunt Regna, nisi Latrocinia sine Justitia*, as the Father saith. Without Justice the Land would be full of Thieves, the Sea full of Pyrates; the Commons would rise against the Nobility, and the Nobility against the Crown.

We should not know what were our own, what were another Man's; what we should have from our Ancestors, what we should leave to our Children; there would be nothing certain, nothing sure, no contracting, no Commercing, no Conversing among Men, but all Kingdoms and States would be brought to Confusion, and all Humane Society would be dissolved.

The Oath taken by the Jury is called a *Num. 30. 13.*  
*Sacrament*, because thereby a Man doth vow *Quintil. l. 5.*  
up, and give up his own Safety and Prosperity to God, if willingly and wittingly he swear falsely. *C. de Fure Fur'*

Which *Perjury* or False-swearing was odious even to the Heathen which knew not God; for the Philosopher affirms, that *Aristot. l. 8.*  
no Man forswearth himself that feareth the *Shen. ad Alex.*  
Punishment of God, and shame amongst Men, considering, that altho' his Perjury may be hid from Men, yet it cannot be concealed from God.

And *Plutarch* writes of *Agessilaus*, when he *Plut. in Apoth.*  
heard that *Tisaphernes* had broke the League made between them upon Oath, he said,  
" he was beholden to *Tisaphernes* for so doing; for he doubted not but God and Men  
" would take vengeance on him that had  
" Perjured himself, and would prosper him  
" that kept his Oath.

The Commonwealth cannot Flourish, but on the Blessings which are enjoy'd by Private Men, whose Prosperity make up the Flourishing of a Commonwealth; and when the common Good is effected, every private Person is a sharer in it.

*Arnif. Cap. in Principio, f. 363, 364.* *Arnifæus* tells us the heinousness of Perjury, and that one ought to keep his Oath, tho' it be against himself.

The Heathen, tho' he knew he should be tormented, yet returned to the Enemy according as he was obliged by his Oath.

*Arnifæus, f. 374, 375. Oratio Epi. Trajectensis.* The Bishop in his Oration tells us, *Qui Juramentum contemnit, fœdus spernit, pactum solvit, Fidem frangit, illum despicit, per quem juravit, illi facit Injuriam cujus nomini Adversarius credit.*

*Pasquier Recherches, l. 4. c. 3.* Perjury is taking God's Name in Vain, and calling him to be a Witness to their Falsities: An Oath is the greatest Tye between Man and Man, and without it be sincerely kept, no Man is sure of what he hath. Perjury takes away unjustly, Life, Goods, Lands, Liberty, and what is dearer than all, ones good Name.

If then the discharge of the Grand Juries Allegiance to their Sovereign be an Obligation upon them; if the Peace and Welfare of their Neighbours, and Country, be an Obligation upon them; if enjoyment of the comfort of their Houses, Wives and Children, be an Obligation upon them; if the safety and preservation of their Estates and Lives, be an obligation upon them; if Obedience to the Institution and Command of God, be an Obligation upon them; if the Religion of their Oath and Conscience be an Obligation upon them, then they are obliged to a Careful, Impartial, and Conscientious Performance of their Services.



F I N I S.





