

1607

The Argument of Master Nicholas Fuller in the Case of Thomas Lad and Richard Maunsell, His Clients : Wherein It Is Plainely Proved, That the Ecclesiasticall Commissioners Have No Power, by Vertue of Their Commission, to Imprison, to Put to the Oath Ex Officio, or to Fine Any of His Majesties Subjects

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EX LIBRIS
WALLACE NOTESTEIN

First Edition of an interesting and
rare tract. (Reprinted 1641) Evidently
from the preface printed in Holland
as the printer was "on this side the Seas..
far from my Countrymen" - Neal's days
vol I, P. 242 - (N.Y. Ed. 1843) King James
proclamation July. 16. 1604 admonishes the
Puritans to conform to the Church, and
obey the same, or else to depart of themselves
and their families some other way, as being
men unfit, for their obstinacy and contempt
to occupy such places (as ministries of the
Church); and besides they are in the compass
of several laws. The Puritans who did
separate from the Church of England were
treated with great rigor - As in this instance
The Marquis, minister of State - proposed
England & the Sea, a merchant

of the same town were imprisoned by
the High Commisioner of Norwich for
a Supposed Conventicle; because on
the Lords Day, after sermon they joined
with Mr Jacklu - their late minister
in repeating the heads of the sermon
preached on that day in the Church.
For refusing to answer upon oath
to certain charges they had not seen
they were imprisoned. Mr Richard
Fuller Esq. a bencher of Gray's Inn
& a learned man in law was their
counsel. He for so doing was also cast
into prison & stayed there until death
(according to Pious vindication. P. 174 -

This light a bare of Church gave obliged
many learned ministers to leave for
Amsterdam & Holland where English
Churches were erected. The learning were
D^r W^m Ames, Robt. Parker - Mr Forbes
Mr Potts - Mr Paget & following them
the Puritans. Mr Johnson, Amos Axtell -
Smith & Robinson. Among de last of
whom fled the Puritans who
landed in New England. 1620 - "Real" -

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THE ARGV-

MENT OF MASTER NI-

CHOLAS FULLER, IN THE CASE OF
THOMAS LAD, AND RICHARD MAYN-

sell, his Clients. Wherein it is plainly proved, that the
Ecclesiasticall Commissioners *haue no power, by vertue
of their Commission, to Imprison, to put to the Oath
Ex Officio, or to fine any of his Maiesties
Subiects.*



Pfal. 2. 10.

*Be wise now therefore ye Kings : be learned ye Iudges of
the earth.*

2. Chron. 19. 6.

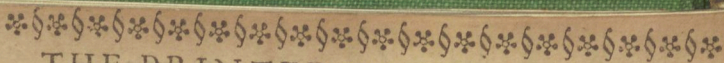
*Take heede what ye doe : for ye execute not the iudgments
of man, but of the Lord; and he will be with you, in the cause and
iudgment.*

Prov. 24. 11. 12.

*Deliver them that are drawne to death : and wilt thou not
preferue them that are led to be slayne?*

*If thou say, Behold, we knew not of it: he that pondereth the
heartes, doth not he understand it? and he that keepeth thy soule,
knoweth he it not? will not he also recompense every man accor-
ding to his workes?*

Imprinted. 1607.



THE PRINTER TO THE READER.

Christian Reader, there came to my hands, by the good providence of God, this Argument of M. Fullers, accompanied with some few lines, wherein, as it should seeme, it was sent inclosed to a Gentleman of good worth and worship on this side the Seas. Having read it over, & perceiving it to be of very necessarie use for my Countrimen (whose good I desire from my heart, and whose welfare I take my selfe bound to procure, as I may, though now I be in a part farre remote from them) I have adventured to publish it to the view of the world: the rather, because therein both the uniuert usurpation of the Prelates over his Maiesties Subiects is notably discovered, and the lawes and liberties of the land (the high Inheritance of the subiects) are worthily stood for and maintained, maugre the malice of the Prelates; who, as I heare studie, and strinc, even with might and maine, to beare downe all before them, to the ruine of that sometime-flourishing Church and Common-wealth. How the publishing of it wilbe liked I cannot tell; how ever, I send it abroad to thy view even as it came to my handes: which I doe (I professe in the presence of that great God) altogether without the privitie either of the Gentleman himselfe (whose bandes I would be loth any maner of way to increase) or of the silenced Ministers, who haue felt the weight of these lawles proceedings too too long in the handes of the Prelates. Reade it, and consider well of it: and if thou reape any benefite by it, giue all the glorie to God alone, who can, if it seeme so good unto him, by meake meanes bring great matters to passe. Farewell.

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To my worshipfull friend. W. W.

W Orshipfull Sir, I send you here- inclosed the thing which you sent for so long since. What the drift of it is I understand in part, as having read it over. How well it is performed, I am not able to iudge, because it is out of my *Element*. The *Gentleman* arguing the Case is knowne to many, but diversly both thought and reported of, upon occasion of his present troubles. His person and cause I leave to them, to whom it belongeth iustly, to determine of such great matters. But touching the poynt it selfe, I hope that as you (out of the depth of your iudgment & great experience) are able to speake much, both for the matter and manner of it, so you will not be unwilling to declare your minde, as occasion shalbe offered, either in the like or dislike of it. And so having no more at this time to trouble your

Worship withall, but patiently waiting for your opinion herein (if you so thinke it good) and wishing alwayes all maner of good unto you, I humblie take my leaue.

Gentle Reader, because the *French* (quoted in this *Argument*) is somewhat mis-printed, and the *Latine* (though it be not much) may yet notwithstanding stumble the simple and such as be unlearned: I haue thought it not amisse to english both the one and the other; referring thee every where to the page, and line, where either of them is.

Pag. 5. line 9. *Because the Kings power ought not to be wanting to holy Church.*

Ibid. line. 19. *but by the lawfull iudgment of his Peeres, or the law of the land.*

Pag. 7. line 7. as before, pag 5. line 9.

ibidem line 27. &c. *Supplication is made to the most excellent and gracious Prince, our Lord the King, on the behalfe of your humble Orators, the Prelats and Clergie of your kingdome of England, that whereas the Catholike faith founded upon Christ, and by his Apostles, and Church &c.*

Which petitions of the Prelates & Clergie before expressed, our Lord the King, with the consent of his Nobles and other Peeres of his Realme assembled in present Parliament, hath graunted: and in Every of them according to the forme &c.

Pag. 8. line 8. Also the Commons pray, that sith it is conteyned in the great Charter, that none should be arrested, or imprisoned, without answer, or due proceffe of law, which Charter is confirmed in every Parliament, &c. And besides they intreat, that if any be arrested or imprisoned contrary to the forme of the Charter aforesayd, that he may come and appeare to his answer, and take his iudgment, even as the law requireth: also that no such Arrest or Imprisonment may be drawne into custome, to the destruction of the law of the King.

Ibid. line 16. Let the Statutes, and the common law be kept.

Ibid. line 20. &c. Also the commons beseech, that whereas a statute was made in the last Parliament, in these words, It is ordeined in this Parliament, that the Kings Commissions be directed to the Sheriffes, and other officers of the King, or to other sufficient persons, after and according as the certificates of the Prelates were wont to be in the Chaucery, from time to time, and that such preachers, their favourers, abettours &c.

Which was never assented unto, nor granted by the commons, but that which was done therein was done without their assent, and so the statute is of no force. For it was never their meaning to iustifie it, nor to binde themselves, nor their successors, to the Prelates any more then their Auncestors had done in times past.

It pleaseth the King.

Pag. 10. line 31. Because no man is bound to betray himselfe.

Pag. 11. line 9. An Oath in a mans owne cause is the devise of the Devill, to throw the soules of poore men into Hell.

Pag. 12. line. 19. Nature is a preserver of it selfe.

Ibid. line. 27. Without a certaine Auther of the Bill exhibited no accusations ought to haue place, for it is both a thing of very evill example, and not the manner of these times.

Pag. 14. line. 26. &c. The King can doe nothing upon earth (seeing he is the servant and lieutenant of God) but that which he may lawfully doe: because that power belongeth onely to God, but the power of doing wrong belongeth to the Devill, and not to God, and the workes of which so ever of these the King shall doe, his servant he is.

Pag. 15. line 12. condemned for what cause so ever.

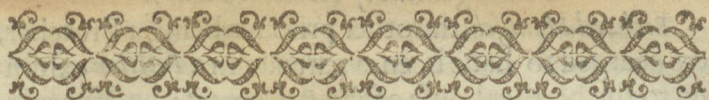
Pag. 18. line 2. We will not haue the lawes of England to be changed.

Errata.

Pag. 12. line 22. for nulli crimini reade nulla crimina. pag. 17. line 7. for exigent reade Exigenter. pa. 29. line 21. for pursued reade pursued.

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THE ARGVMENT OF MASTER NICHOLAS FYLLER, IN THE CASE OF THOMAS Lad, and Richard Maunfell, his clients. Wherein it is plainly proved, that the Ecclesiasticall Commissioners haue no power, by vertue of their Commission, to Imprison, to put to the oth Ex Officio, or to fine any of his Maiesties Subiects.

THE CASE.

Thomas Lad, a marchant of Yarmouth, in Norfolk, was brought before the Chauncellor of Norwich, for a supposed *Conventicle*; because that he, on the Sabbath dayes after the Sermons ended, sojourning in the house of M. Iackler in Yarmouth, who was late Preacher of Yarmouth, joyned with him in repeating of the substance and heads of the sermons that day made in the Church, at which *Thomas Lad* was usually present: and was forced upon his oath to answer certaine articles touching that meeting, which he could not see untill he was sworne; and having answered vpon his oath twice before the Chauncelor there, he was brought to Lambeth before the Ecclesiasticall Commissioners, to make a further answer, upon a newe oath, touching the supposed *Conventicle*: which he refused to doe, without sight of his former answers (because he was charged with perjury) and therefore was imprisoned by the Commissioners a long time, & could not be bayled; whereupon the writt of *Habeas Corpus* was granted out of the Kings bench, to bring the prisoner to the Barr.

The Argument of Nicholas Fuller.

Richard Maunsell, the other prisoner, being a Preacher, was charged to haue been a partaker in a *Petition* exhibited to the Nether house of the *Parliament*: and for refusing to take the *Oth ex officio*, to answer to certayne articles, which he could not be permitted to see, he was imprisoned by the *Cōmissioners* at *Lambeth*, where he remained very long, and could not be bayled, and was brought to the barr, upon the writt of *habeas Corpus*.

These imprisonments of *Thomas Lad*, and *Richard Maunsell* by the *Cōmissioners*, for the supposed contempts aforesayd, were unlawfull (as the said *Nicholas Fuller* said) and therefore he sayd that the prisoners ought to be discharged; And, before he began his *Argument*, he the sayd *Nicholas Fuller* did confesse, that it was a blessed thing, in all kingdomes, to haue the *Church*, and *Common wealth* to agree together as *Hippocrates twinnes*: And the meanes to continue a perfect agreement betweene them was (as he sayd) to giue to *Cesar* that which is *Cesars*, and to *God* that which is *Gods*. Which right distribution of the Iurisdiction of the *Church* in *England*, and Iurisdiction of the *Common lawes* in *England*, sett forth and proved upon good groundes of the auncient lawes and statutes of the *Realme*, would (as he thought) cōtinue a peace between the *Church* and *Common wealth* of *England* for ever; which he desired from his heart, and it was his labour to effect by this his *Argument*. Wherin, for the better understanding of his purpose and drift of his *Argument*, he did deuide the same into 5. partes.

1 And (first because the *Ecclesiasticall Cōmission* is grounded upon the Statute of Anno 1. *Eliz.* cap. 1. the title and intent of which statute is, *the restoring to the Crowne the*
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auncient Iurisdiction over the Ecclesiasticall & spirituall estate, and the abolishing of all forreyne Iurisdiction repugniant to the same) he declared what that auncient spirituall Iurisdiction was, which was ment in that Act to be restored, and by the Cómmissioners to be executed; and therein he proved, that the power to imprison subjects, to fine them, or to force them to accuse themselves upon their owne enforced oathes, there being no accuser knowne, was no parte of the auncient Ecclesiasticall jurisdiction, nor used in England by any spirituall Iurisdiction, before the Statute of 2. Hen. 4. cap. 15. which was procured by the Popish Prelats

2 That the Statute of 2. Hen. 4. cap. 15. which first gaue authority to the Bishopps to imprison subjects, fine them, and force them to accuse themselves, was procured by the Popish Prelates in the time of darknes (if not without a full consent of the Cómmons, yet to their great dislike) and that the sayd Statute, and every thing in the same conteyned, is revoked, as being against the rule of equitie and common justice, and against the lawes of the lād, and very hatefull to all the subjectes of the Realme: and in that 2. parte he proved, according to the words of the statute, that the Oath *ex officio* was against the law of England, and against the rule of equitie and Iustice.

3 That the lawes of England are the high inheritance of the Realme, by which both the King and the subjectes are directed; And that such grants, Charters, and Commissions, as tend to charge the body, lands, or goods of the subjectes, otherwise then according to the due course of the lawes of the Realme, are not lawfull, or of force, unles the same Charters and Commissions, doe receaue life and strength, from some Act of Parliament.

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4 4 That, in this Commission Ecclesiasticall, there are some things tending to charge the body, lands, & goods of the subjects, otherwise then according to the course of the lawes of the Realme; and especially in imprisoning them, syning them, and forcing thē to accuse themselues (upon their owne oath) without any accuser.

5. 33 That the *Act of Parliament* of Anno. 1. *Elizab. cap. 1.* whereupon the Ecclesiasticall Commission is founded, doth not giue life or strength to such partes of the Commission, as concerne imprisonment of subjectes, syning them, or forcing them to accuse themselues; but doth make voyd and abolish the same, as repugnant to the ancient Ecclesiasticall jurisdiction which by the Statute was to be restored. And so he sayd that the imprisonment of his clients was unlawfull & the proceeding of the Commissioners, upon the *Oath ex officio*, without an accuser, not warranted by law, but erroneous and voyd.

Touching the first parte of the division, which was to proue, that, before the statute of 2. *Hen. 4. cap. 15.* the Ordinaries had no power to imprison the subjects, or to fine them, it appeareth both by the preamble of that Statute, where it is declared, that, before that time, they could not by their spirituall Jurisdiction, without ayd of the Royal Majestie, sufficiently correct perverse people, who did contemne their spirituall jurisdiction and Keyes of the Church (which was, at the uttermost, to locke them out of the Church by *Excommunication*) and also by the booke case of 10. *Hen. 7.* arguing upon that poynt of the same statute, where it is set forth, that the Ordinaries, before the Statute of 2. *Hen. 4.* had no power to imprison subjects, but the Keyes of the Church: and the like is also confessed by the Statute of 1. and 2. of *Philip and Mary.* which

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which was made after the former Statute of 2. Hen. 4. was revoked by 25. Hen. 8. cap. 14. which doe shew as much, viz. that the Ordinaries had no power but the Keyes.

And by the Common law it is apparant, that when the Ordinary or Ecclesiasticall Iudge had proceeded so farr as they could, by Excommunicating the offendor to locke him out of the Church, then the Comon law, upon *significavit*, did assist them by the writt of *Excōmunicato Capiendo*: *Quia potestas regia sacro-sancta Ecclesia deesse non debet*, as is sayd in the Register. But in this case the Comō law still reteyned power to discharge the subjectes so imprisoned, (upon an *Excōmunicato capiendo*) without assent of the Ordinary, both by the writt of *Cautione admittenda*, and by the writt of *scire facias*, upon an *appeale*; where a *supersedeas* was usuallly awarded, to discharge the person imprisoned, against the will of the Ordinary. For the lawes of England did so much regard and preferue the liberty of the subjects, as that none should be imprisoned, *nisi per legale iudicium parium suorum aut legem terra*, as it is sayd in *Magna Charta cap. 29.* which Charter, by divers other statutes after, is confirmed, with such strong enforcements in some of them, as to make voyd such statutes, as should be contrary to *Magna Charta*.

Fitz H. f. 42.

42. E. dw. 3. cap. 3.

And, in the 15. Ed. 3. the first article of the Commons Petition in Parliament, was, that the great Charter may in all poynts be observed, so as such persons as are neither appealed, Indited, nor followed at the sute of the party, and haue their goodes, landes, or possessions taken away, may be restored thereunto agayne.

In the Tower amōgst the Parliament Rolls. 15. E. 3.

Wherunto the King answered thus.

The King granteth for him & his heires, that if any person comit an act against the forme of the great Charter,

Responsio Regis.

Fitzh. fo. 40
Ed. 3. fo. 36.

or any other good lawe, and he shall answer in Parliamēt or else where; he ought to answer according to law. And therefore if any free subject were wrongfully imprisoned, the Common law did not leaue him to an action of false imprisonment onely, but provided the writt *De homine replegiando*, to set him free of his imprisonment, vnles he were imprisoned for such particular cause, as is expressed in the same writt *de homine replegiando*: which writt is part of the subjectes inheritance, and should not be denyed them. And this freedome of the subjectes did make *Markham* the Iudge, in the 4. *Hen. 7. tit: prerog. 139. Brook:* declare that the King could not arrest a subject upon suspicion of felony, as a common person might doe; because that against the one an action of false imprisonment would lye, but not against the King (*for the subjects liberty must be preserved*) and by the Statute of *Win: 1. cap. 15.* whofoever shall deteyne subjects in prison, who are bayleable by law, shalbe grievously amerced.

And to shew that it was thought an unmeete thing to leave power in the Ordinaries to commit subjectes to prison, although they contemned their decrees never so much, appeareth partly by the statutes of 27. *Hen. 8. ca. 20.* and 32. *Hen. 8. ca. 7.* which were made after the revocation of the former statute of 2. *Hen. 4:* by which latter statutes power is given to two Iustices of peace, or to some of the Honorable privie Counsell, upon certificate of the Ordinary, to commit such offenders to prison, who should contemne the decrees of the Ordinary: denying to the Ordinary, that made the decree, that he should haue any such power to commit the subjects to prison: & in 5. *EliZ. ca. 23.* which statute, not allowing Excomunicate persons to be imprisoned by any Ecclesiastical Iurisdiction, limits
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by very speciall manner, how they shall be apprehended by the tēporall power. For although the Bishop of Rome useth two swordes, the spirituall and temporall; yet the common lawes of England, and the Parliament in divers ages, thought not so meete, for the Bishopps or Ecclesiasticall Iurisdiction in England to use two swordes, but according to the Register, *Regia potestas sacro-sanctæ Ecclesiæ deesse non debet.*

2 Touching the second part (wherin he was, to proue that the statute of 2. Hen. 4. cap: 15: which first gaue authority to the Ordinaries to imprison subjects, or to set fines on them, and force them to accuse themselves upon their owne oathes, was procured by the Popish Prelates in the time of darknes) he sayd that the very Act it selfe did very playnely shew it; it being thus; *And where it is shewed to the King, on the behalfe of the Prelates and Clergie of England etc.* And that the same was procured to suppress the gospel, which then began to spring or revive, both the body of the Act, and the booke of Acts and Monuments written by M. Fox, and other Chronicles doe shew it playnly; for that those persons, whom they tearmed heretickes, preached in those dayes against the Sacrament of the Church, which was their Masse. And that the sayd Statute of 2. Hen: 4. cap. 15. was procured by the Prelats, without assent of the Commons, thus much appeareth by the Records of the Parliament, remayning in the Tower.

Excellentissimo ac gratiosissimo Principi, Domino nostro Regi, supplicatur, ex parte vestrorū humilium oratorum, prelatorum et cleri regni vestri Angliæ, quod cū fides catholica super Christū fundata, et per Apostolos suos, et Ecclesiam etc. rehearsing all the words of the Act. Quas quidem petitiones prelatorum et cleri superius expressatas dominus voster Rex, de consensu mag-

*Ex rotulo
Parliamenti,
de an. 2. H. 4
Petitio cleri
contra here-
tices.
Resp Regis
natus,*

natum, et aliorū procerū regni sui in presenti pliameto existē-
tū concessit, et in singulis iuxta formā etc: wherin the Com-
mons are not mentioned. And it is the more likely that
the Cōmons gave no assent to this statute of 2. Hen: 4.
both for that in the Parliament rolls of the same yeare of
2. Hen. 4. in the Tower, there is to be seene the Petition of
the Commons to the King, thus.

The Petiti-
on of the
Commons.

Item prient les comens, depuis q' uill est contenu en la grande
chartre, quenul sera areste ne enprisonne sans responce, ou due pro-
cesse de la ley, quell chartre est conferme en charmi plement, et ore
ils supplient, que si aucun soit areste ou enprisonne encontre la for-
me del charte avant dict q' ill veigne, et appierge a sa responce, et
preigne son Jugement, sicome le ley demande, anssi q' null tiel a-
reste ne imprisouement soit trait en custome, en destruction de la
ley du Roy. Wherto the King answered.

The answer
of the King.

Soient les statutes et la comen ley tenus; As also for that the
Prelats had not long before procured an other act against
the Lolards, in Anno 5. Rich: 2. cap: 5. without assent of the
Commons, as appeareth by the Parliament Rolles, in the
Tower, of anno 6. R. 2. which is thus. Item supplient les
comens, q' comē vn estatute fuit fait en darrein plement, en ces
paroles: Ordone est en cest plement, q' Comissions du Roy soient
directes a viscountes et autres ministres du roy, ou autres suffi-
santz persons, apres et selon que les certificates des prelates eut
affaire in chancellerie, du temps en temps, tous tiels precheurs
e lour fautours mantenours etc.

La quel ne fuit unq' assente, ne grante p les Comens, mes
ce q' fuit parle de ce, fuit sans assent de lour q' celi estatue soit
anea ati car il nestoit mi lour entent instifiez ne obliger lour
ne lour successorers as Prelates plus q' lour auncestres nont este en
temps passez.

Resp: Il plest au Roy.

And

And it is also reported by *M. Fox* in the sayd booke of Acts and Monuments, that the same Act of *2. Hen. 4. ca. 15.* was procured without assent of the Commons; and that the Commons did greatly repyne at it frō time to time, many godly men writyng against it, some of them terming it a bloodie law, and a cruell law. And because the Prelats (out of the wordes of that law which gaue them power to imprison some suspected of heresie, untill they should canonically purg themselues) did streinedly force subjectes without any accuser to accuse themselues, therefore the title of that Act is sett downe in the booke of Acts & Mo. fol. 539. Acts & Monuments, the statute *Ex officio*; at which time fol. 481. it was not commonly used to giue titles to Acts of Parliament.

And, to shew how much the subjectes misliked that kind of proceeding, appeareth by severall Petitions of the subjectes to the Kings of the Realme, and to the houle of Parliament, by the statute of *25. Hen. 8. cap. 14.* by which statute it is sayd, that the proceeding by the oath *Ex officio*, to force a man to accuse himselfe, is contrary to the rule of right and good equity, and contrary to the lawes of England, and unreasonable that, upon suspition conceived upon the fantasie of the Ordinaries, men should be forced to answer &c. And therefore they then revoked, and made voyd the statute of *2. Hen. 4. cap. 15.*

And to proue, that, according to the opinion of that Parliament house, the oath *Ex officio* is against the lawes of England both Ecclesiasticall & temporall, and against the rule of Iustice and good equitie, he sayd; that by the lawes of England (if a subject had been cyted, by the Ordinary or Ecclesiasticall Iudge, *pro salute aīe*, which is the oath *Ex officio*, to accuse himselfe) a *Prohibition* did lye at

the cōmon law, and an attachment against the Ordinary, if he did proceed in that case contrary to that prohibition, as appeareth in *Fitz H. fol. 42.* and the statute of *2. H. 5.* which was made soone after the sayd statute of *2. Hen. 4.* (giving warrant to graunt a prohibition to the Ordinary for default of a libell) doth crosse the proceeding by oath *Ex officio*; where he is forced to a libell, as appeareth *4. Ed. 4. fol. 37.* and *Fitz H. fol. 43.* etc.

And by the words of the statute of *42. Edw. 3. cap. 3.* (which was made before those statutes procured by the Prelates, when Ordinaries had no power to imprison subjectes) it is expressed, in what manner the proceeding should be against subjectes upon accusations, thus viz. It is assented & accorded, for the good government of the Commons, that no man be put to answer, without presentment before Iustices, or thing of Record, by due proces, and writt originall, according to the ould law of the land; And if any thing be done from henceforth to the contrary, it shalbe voyd in law & holden for error; wherein it is worthy the noting, that it is sayd according to the old lawes of England.

And to proue the old law of England to be so, the ordinary case of dayly experience, touching the challenge of *Iurors*, doth sufficiently declare. For if the Iuror be challenged for kindred to either of the parties, or for wāt of freehold, the Iuror shall answer upon his oath, to cleare that matter; because it toucheth not the Iuror in **losse or credit: but if the challenge doe tend to touch the Iuror any way in his credit, or his losse, he shal not be forced, upon his oath, to answer, although his answer might tend to further Iustice; quia nemo tenetur prodere seipsum,** as is ruled *49. Edw. 3. fol. 2.* And the case of *wager of law*, which

49. Edw. 3.
fol. 2.

which is allowed to the defendant in no criminall case, which might bring imprisonment to the partie by the course of the common law as in trespass &c: but onely in debt and detinewe: and the statute of *Magna Charta* cap. 28. inacting, that no Bailife shall put a man to his open law, nor to an oath, upon his owne bare saying, without faithfull witnesses brought in for the same, tedeth to like effect: and *S. Edward Cooke*, in his argument made in *Slades Case*, sayd well, that in criminall causes (*iuramentū in propria causa est inventio diaboli ad detrudendum animas miserorum in infernum*) according to whose saying it appeareth, that when those oathes were used by the parties accused, by the border lawes between England & Scotland, those oathes did bring no furtherance to the truth, but manifest perjury every day; as was confessed by all that knewe the practise there: and therefore that manner of triall was soone rejected.

And to proue it against Iustice and good equity, he sayd that this oath *Ex officio*, to force a man in a criminall cause to accuse himselfe, was (he thought) directly against the rule of the law of God. For it is sayd in *Deut. cap. 19. 15.* that one witness shall not arise against a man for any trespass, or for any sin, or for any fault that he offendeth in; but at the mouth of two witnesses or . 3. witnesses shall the matter be established. Which rule is confirmed under the Gospell, as appeareth *Math: 18. 16. 2. Cor. 13. 1.* where it is sayd, In the mouth of two or three witnesses shall every word stand; and Christ sayd to the woman accused of adultery, *where be thine accusers? &c.* But without any witness or accuser to establish the matter, upon the inforced oath of the partie, hath no coherence with the rule of Gods law, which should be a direction to all Christian

Princes in making of their lawes, we being now the people of God the Iewes being cut of; the Iudgments being now the iudgments of God, and not of men alone.

But here may be objected, that by the lawes of England one witnes is sufficient: to which he answered, that the Iurors being all sworne to trie the particuler matter in *fact*, wherewith the party defendant is charged, may well supplie the want of one witnes, being 12 persons indifferent, without any affinitie to either partie, who better knowe the witnesses then the Iudge, and may perhaps know the cause in question, as well as the witnes: which kinde of triall is so behouefull for the subjectes, as it may prevent much wrong and oppression from high authoritie, if the Iurors be iust & faithfull persons, as they ought to be; and their verdict also may be redressed by attaint, if they should doe wrong therein: which writts of *attaint*, and *error*, are parte of the subjectes inheritance.

Also this path *Ex officio* hath no coherence with the law of nature. For, as *Aristotle* saith, *natura est conservatrix sui*, as is sayd in *49. Edw. 3. fol. 2*: but this tendeth to a mans owne overthrowe; & it hath no coherence with the lawes of Nations, as he gathered by the writing of *Traiane* the Emperour, being a very wise & iust man; who writing to *Plinie* the second, his lievetenant of some Provinces in *Asia minor*, for direction in his governement, against those, who at that time were opposite to his religion, saith thus (*Sine authore certo propositi libelli nulli crimini locū habere debent; nam et pessimi exempli, nec nostri seculi est*) According to which direction, *Felix* the governer of the Iewes under the Emperour, when *Paul* the Apostle was brought before him, sayd to *Paul*, that he would hear him, when his accusers were come; holding it as unjust, without an accuser, to charge him.

Acts 23. 35.

And it is much worse then auricular confession; because that is voluntary, this by constraint; that to be concealed, this to be revealed to the parties shame; that to induce pardon, this to induce punishment to himselfe. And where an oath should be the end of strife, this oath *Ex officio* is often times the beginning of strife; yea it hath been so hatefull as some *Martyrs* haue written against it, as a bloudie law; and therefore not without just cause, that the whole estate assembled in Parliament in an. 25. Hen. 8. held it not to be agreeing with the rule of right and equity, and to be contrary to the lawes of England, and therefore revoked the sayd statute of 2. Hen. 4. and did ther by limit another forme of proceeding against persons accused or suspected, thus, viz. upon *Inditement* or two *witnesses* at the least (according to Gods law) with wordes of restraint, *not to proceed otherwise:* since which time, no custome, or colour of prescription in the Ecclesiasticall Courts, can take place against that law, to uphold the oth *Ex officio* in case of heresie.

And touching fines, by the statute of *Articuli cleri cap. 1.* by the *Register* and by *Fitzh. Natura brev. fo. 51. & 52.* and by the statute of 15. *Edw. 3. cap. 6.* it is so shewed, that, by auncient Ecclesiasticall jurisdiction, they ought not to set fines of mony upon subjectes, unles it were upon commutation of penaunce; so as it need no further prooffe of that matter.

The third matter which he endeavored to proue, was, that the lawes of the kingdome of England, and the manner of proceeding in cases of law and justice, are settled in the Realme, as parte of the inheritance of the subjectes, and rightly termed by some Iudges in 19. *Hen. 6. fo. 62.* to be the most high inheritance of the Kingdome, by which

Bract. fol. 5. 14
cap. 8:

both King and subjects are guided: & that without lawes there would be nether King nor inheritance in England. Which lawes, by long continuance of time and good endeavor of many wise men, are so fitted to this people, and this people to them, as it doth make a sweete harmony in the goverment; all things being as readily obeyed on the one parte which are agreeing to law, as they are willingly commanded on the other parte according to law: every officer, by the rule of the law, knowing the duties of their places, as *Sheriffes, Bayliffes, (a) Constables, Coroners, Eschetors; & c.* the band of an oath, both for goverment and obedience, being mutually made on each parte.

a) Stamt. fol. 99.

For the lawes in a common wealth are like the sinewes in a naturall body, by which the hand, foote, and other partes of the body doe readily moue, by the direction of the head; but if the hand, or foote, be forced aboue the strength of the sinewe, it eyther taketh away the use of that parte, or els it maketh it a weake or halting member: so is it, if the lawes be streyned against any part of the common wealth, aboue it right, and naturall strength, it will make that parte weake, or halting: and therefore it is excellently sayd in *8. Hen. 4. fol 19. in the com. fol. 236.* and in the Case of *Alton woodes*, that the law admeasureth the Kings prerogatiue, so as it shall not extend to hurt the inheritance of the subjectes on the one parte: and as *Bracton* saith, *nihil aliud potest rex in terris, cum sit Dei minister et vicarius, quam quod de iure potest: quia illa potestas solius Dei est, potestas autem iniurie diaboli est, et non Dei; et cuius horum opera fecerit rex, eius minister est.*

8. Hen. 4. fo. 19. com. fol. 236.

And the law doth restrayne the liberall wordes of the Kings grant, for the benefit both of the King and the subjects, and to the great happines of the Realme; especially when
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when the Iudges are mē of courage, fearing God; as is to be proved by many Cases adjudged in these Courtes of *Kings Bench*, and *Common-Pleas*; which Courtes are the principall preservers of this high inheritance of the law: whereof he rehearsed some few Cases on the parte of the King, and on the part of the subjectes diverse Cases; as in *45. Ass. p. 15.* where the King did grant to *I. S.* & his heires, the manour of Dale, & all the woodes, and underwoods, and Mynes within the sayd mannor; yet Mynes of gold and silver did not passe: and in the *22. Ass. 49.* the King did grant to *I. S.* the goods and chattells of persons within Dale, *qualitercunque damnatorum*; yet the goodes of persons attainted of treason did not passe, for the benefit of the King: because the same are so annexed to the crowne, as by no generall words they may passe frō the Crowne, by the rule of law. And of late yeares what great benefite hath growne to the Kings and Queenes of this Realme, upon construction, according to the rules of law, of the Kings graunts, the case of *Alton* woods, the statute lately made for confirmation of Charters granted to the Citizens of *London*, and the many cases preferred by *Tipper* & his fellowes, doe sufficiently proue.

And, on the other side, if any graunt or Commission from the King doth tend to charge the body, landes, or goods of the subjects unlawfully, the Iudges will redresse the same. For if the King graunt the lands or goods of *I. S.*; that is so manifestly against law, as it needes no prooffe.

But (he said) he would put such Cases as, being grouded upon prerogatiue, haue a shew of good to the Common wealth, and yet are not allowable, because they tend to charge the subject, without the assent of the subject: as the Case, *13. Hen. 4.* where the King did graunt

an office of measuring of cloath in *London* to *I. S.* with a Fee to be received for the same measuring: and although the office tend to further commutative Justice, whereof the power is in the King for weight and measure; yet because this fee did tend to charge the subject, without his assent, it was adjudged, by the learned Judges, upon long debate, to be voyd: and the case of *Protection*, 39. *Hen. 6. fol. 39.* where the King did grant a protection to A. B. his servant, *quia profecturus*, for a voyage to *Rome*, for service of the King and Common wealth for weightie causes, to continue for three yeares; and yet it was disallowed by the Judges, because it was for three yeares, where, by the rules of the law, it should be but for one; & because there was no exceptiō of dower, Affise, and *quare impedit* which by law should haue been excepted: and that protection did not barr the subjects right, but only delayed his suite.

And in 3. *Edw. 3. 14. Nort. Assise. 445. com. fol. 48.* the King did pardon *I. S.* the making of a bridge: and because the subjectes had interest in the passage over that bridge, the Kings pardon was not sufficient, to discharge *I. S.* frō the making therof. In the case of 42. *Aff. 5.* a Commission from the King, under the great seale of England, was directed to A. and B. to take *I. S.* and him imprison in the Castle of P. and to take his goodes; which was done accordingly by the Cōmissioners: and because it was done without any inditment, or due course of law, the proceedings of the same Commissioners were adjudged voyd.

The like case was 42. *Aff. p. 12.* Where, upon the Kings writt directed to the Iustices of laborers, *I. S.* was indited for some thing not perteyning to the Iustices of laborers, and therefore adjudged voyd, they having no Cōmission so to doe. For although the Sheriffe, or officer, cannot judge

judge of the Kings writt, but must execute it: yet the Iudge may refuse to execute the same writt, when it is against law, or impossible to be done, according to 1. *Edw.* 3. fol. 26. and in the 1. & 2. *Eli.* *Scrogges* his Case; where a ^{1. Ed. 3. fol.} Cōmission was awarded to some Iudges, and persons of credit, to heare the cause concerning the Office of exi- gent of *London*, which *Scrogges* did challenge; & if *Scrogges* refused to submit himselfe to their order, to commit him to prison: upon which Commission *Scrogges* was cōmitted to prison; and he was discharged, by the Iudges, of his imprisonment, by writt of *habeas corpus*, because his impri- sonment was not lawfull: which writs of *habeas corpus* are usuallly graunted in the sayd Courts of *Kings bench*, and *Common pleas*, thereby to releue the subjectes, which are many times in other Courtes, and by some Commission- ners, unlawfully imprisoned: yea many times, although the Commissions be grounded upon Acts of Parliamēt, as the Commission of *Sewers*, the Commission of *Banck- rupts*, and the *Ecclesiasticall Commission*: and many times they graunt *Prohibitions* to the *Ecclesiasticall Court*, to the *Admirall Court*, and to the Court of *Requests*, and other in- ferior Courts, when they exceed their authority.

And many other Cases he would haue put to proue those poynts, but that in a former argumēt made by him in the court of *Kings bench*, against *Monopolie Patents* of *M. Darcie*, *Mich. 44. Eli.* all the Iudges then seemed to yeeld the same to the law, without any doubt, as he conceived; ^{Fitz H. f. 37.} which high inheritance of the law the Common wealth; ^{H. 8. prohib.} hath alwayes so preserved, as without Aēt of Parliament it cannot be changed, as appeareth by the answer of the *Barons*, when the *Bishops* sought to haue the law changed, touching children borne before mariage, although the

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mariage

mariage after ensued, to be held as bastards: the *LL.* sayd, *Nolumus leges Anglia mutari*; and as is apparant by booke cases, where it is adjudged, that the *King*, by a *non obstante* may dispence with a statute law, but not with the comon law, nor alter the same as is adjudged *49. Ass. p. 8.* and *Bosoms Case*; nor put the subjectes from their inheritance of the law, as is *8. Hen. 4. fol. 19.* which was alwayes accompted one of the great blessings of this land, to haue the law the *meat-yard*, & the Iudges the *measurers*. For, in all well governed Common wealthes, *Religion* and *Iustice* are the two principall pillars, wherein the power of God appeareth; and many times weake weomen doe rule, and command many thousand strong men, touching their liues, lands, and goods, without resistance; which the loue and regard of Iustice procureth.

Bosomes
Case Cooke
fol. 35.

- 4 For the better prooffe of the fourth part, he did reade *verbatim* the partes of the *Ecclesiasticall Commission*, which he thought to be against the lawes of England, and liberties of the subjectes; remembring first to marke and consider, how, whereas the whole drift of the Act of Parliament. *1. Eliz. cap. 1.* was, to restore to the Crowne the *ancient iurisdiction over the Ecclesiasticall & spirituall estate*, and, for that purpose, did giue power to the Ecclesiasticall Commissioners, *to execute the premisses in the sayd Act conteyned, for the correcting, and amending, and reforming of such heresies, errors, schismes, contempts, and enormities, as by the Ecclesiasticall lawes might lawfully be reformed, according to the renour and effect of the sayd Letters Patents*, this Commission is since enlarged, and how it giveth power to the Commissioners, to enquire not onely of the *permisses*, mentioned in the statute of *1. Eliz. cap. 1.* but also of all offences, and contemps: against the statute of *1. Eliz. cap. 2.* intituled

led, an Act for uniformitie of Common prayer, and service of the Church, and administration of the sacraments, and of all offences, and contempts against these statuts following, which were all made since anno 1. *Eliſ.* viz. the statute of 5. *Eliſ.*: ca: 1. intituled, an Act for the assurance of the Queenes Maiesties power, over all states and subiectes, within her dominions; the statute of 13: *Eliſ.*: cap: 12. intituled, an Act to reforme certayne disorders, touching the Ministers of the Church; the statute of 35. *Eliſ.*: cap: 1. intituled, an Act to reſtreine her maiesties subiects in their due obedience; the statute of 35. *Eliſ.*: cap: 2. intituled, an Act to reſtreine some Popish recusants to some certeyne places of aboad; the statute of anno . 1. *Iacobi.* intituled, an Act for the due execution of the statutes against Iesuits, Seminaries, priests, recusants &c.

Also power is given to the Cōmissioners, or any three or more of them, not only upon these penall lawes, and upon every offence therein conteyned, but also upon all *ſeditious bookes, contempts, conspiracies, private conventicles, false rumors or tales, ſeditious misbehaviours,* and many other civill offences particulerly named in the letters pattens, to call before them all and every offender in any of the premisses, and all such, as, by them or any three or more of them, shall seeme to be suspected persons in any of the premisses; and every of them to examine, upon their corporall oathes, touching every or any of the premisses, which they shall object against them; and to proceede against them and every of them, as the nature and quality of the offence or suspicion, in that behalfe, shall require; And to inquire of *adulteries, fornications, outragious misbehaviours, and disorders in mariages,* and of al other grievous and great crimes, and offences, within any parte of the Realme, which are punishable or reformable by the Ec-

clesiasticall lawes of this Realme, according to the tenor of the lawes on that behalfe, or according to their wisdomes, and discretions, or the discretions of any three of them.

The *Commissioners*, or any three of them, are further authorized, willed, and commaunded to use and devise all such good, lawfull, reasonable, and convenient wayes, for the triall and searching out of all the premisses and proceedings therein, as by any three or more of them shall be thought most expedient, and necessary.

They, or any .3. or more of them, haue authority to order & award such punishment to every such offender, by fine, imprisonment, censures of the Church, or other lawfull way, or by all or any of the sayd wayes; and to take such order for the redresse of the same, as to the wisdomes and discretions of any three or more of them shall be thought meete, and convenient.

For contempt in not appearance, or not obeying the decree of any three of them, they haue power to fine thē at their discretiōs, and to commit them to ward, there to remayne, untill, by any three of them, they shalbe enlarged, according to their discretions.

They haue power to take recognizance of every offender, and suspected person, aswell for their personall appearance, as for the performance of such orders & decrees, as to any three of them shall seeme reasonable, and convenient in that behelpe.

They haue also power to commaund all & every sheriffes, Iustices, and other officers, and subjects within this Realme, in all places, aswell exempt as not exempt, by their letters and other proces, to apprehend, or cause to be apprehended, any person or persons, which they shall thinke

thinke meete to be convented, and take such bonds for their appearance, as any three of them shall prescribe, &c. or to committ them to prison.

They haue power to execute the premisses, notwithstanding any appellation, provocation, priviledge, or exemption; any lawes, statutes, proclamations, other grants, priviledges, or other ordinances, which be or may seeme contrary to the premisses, notwithstanding.

Vpon which parts of the sayd Commission, being so indefinite without limitation or restraynt, he noted, that if the Commission should be executed according to the letter thereof; the subjects, notwithstanding any lawes or customes to the contrary, might be cited out of their owne Dioces, yea from the furthest parte of the Realme, for any cause, or suspicion conceived by the Commissioners, or any three of them, and forced to attend the Commissioners, where they will appoynt, in time of harvest, or time of plague, with the danger of a mans life: as he was forced to attend many weekes in daunger of his life; they refusing to delay the cause, untill the terme, upon any bayle or bond. And they may force any subject to appear, at what dayes and howers any three of them shall appoynt, for such matters sometimes, as are more proper to be heard in other Courts.

And although the penalties of the statuts be never so great, as *Premunire*, *Abiuration*, *forseiture of lands & goodes*, whereof some offences are by the same statute limited to be tryed onely in the *Kings bench*, yet the party suspected may be forced, by this Commission, to accuse himselfe upon his owne oath, upon such captious *Interrogatories*, as the witt of man can devise, when there is neyther accuser, nor libell of accusation: And that in many things
C3 they

they may inflict what punishment any three of them shall thinke meete in their discretions, and force men to performe such order as they shall make, by the parties bond, before any order made: and that their judgments, or decrees whatsoever, should not be subject to any writt of *Error, attaint, or appeale*: and that they may devise meanes, at their owne discretion, for the triall and finding out of any the sayd offences. Which kind of proceedinges how farr they doe differ from the common lawes of England, which is the inheritāce of the subjects, and what Iarres & harsh tunes they make in the sweete harmony therof, settled by so long continuance, with a most happy successe, any wiseman may see, without any inforcement frō him; and how much of this they doe dayly execute, he did leaue to see it.

Only so much as came under his owne viewe, he said, that, the last day of *Easter terme*, he moved at the *Exchequer barre*, for 20. persons, his *Clients*, dwelling in *Yorke-shyre*; wherof som, as they told him, were very poore, who were fined by the *Ecclesiasticall Cōmissioners* for not appearing at their dayes appoynted, many of them to 30. pounds a peece, one only at ten, and all the rest at twenty a peece, which was not *salvo contenenento*, according to the statute of *Magna Charta* cap. 14. And one client, being an houfholder in *Fleetestreete*, named *William Goulder*, prayed advise for his hard & close imprisonment many dayes, with great Irons on him, by the *Commissioners*, upon some suspicion conceived by some of the *Commissioners*, that some person was hid in his house; and was after freed without any conviction of his supposed offence. And because the sayd *Nicholas Fuller* did except against the *Commissioners*, as not competent Iudges, in their owne cause,
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of him and of his argument, made against them at the *Kings bench* barre, they threatned to sett 500. pounds fine on him, and to imprison him. And when (he finding their proceeding by the oath *Ex officio* to vary from the Common lawes, which he had long tyme practised) he said to them, it seemed to him, that he was in a new world, or other Common wealth: thereupon they threatned to imprison him, if he spake one word more to the disgrace of the *Commission*.

Wherefore he held it strong, in his opinion (because his Majesties Commission, which they terme *Hig*, is, by the true intent of the statute, only a *Commission executorie*, but for so long time onely as shall please the King, and is no settled court for continuance for ever, as they would haue it, comparing the authority thereof with the *Kings bench*, and preferring it aboue it) that, in all the partes and poynts aboue rehearsed, the *Commission* is not of force in law, nor warranted by law, except some Act of Parliamēt doe giue it life.

And now touching the last and principall parte of his division, viz, that no Act of Parliament doth giue life to the *Commission Ecclesiasticall*, in the parts aboue mentioned, it is to be noted, that the Commission is founded only upon the statute of an. *1. Eliz. cap. 1.* and that this Act of an. *1. Eliz.* neyther doth, nor can giue life to this Commission, by any right construction, in these partes aboue rehearsed, but contrarywise doth expressly abolish their Iurisdiction to imprison subjectes, fyne them, and force them to accuse themselues, as repugnant to the *Auncient Ecclesiasticall Iurisdiction*, which, by this Act, is restored to the Crowne: and he hoped to make that poynt so playne and apparant to all the hearers, that would atten-

tiuely regard it, as that they might be fully satisfied therein. For, besides the *Booke Cases*, which he ment to put, in that poynt, to proue his assertion, he sayd, that the title in the *Act* of *an. 1. Eliz.* the preamble of the *Act*, and the matter preceding the preamble in that *Act*, and the body of that *Act*, which giveth power to the Commissioners to execute the premisses (by colour wherof they challenge this great power to imprison subjectes etc.) doe all concurre, by their being rightly applyed, to condemne and overthrowe these poynts of the Commission Ecclesiasticall, before spoken of and rehearsed by him, as unlawfull, and unjust.

The title is, *an Act, restoring to the Crowne the auncient Iurisdiction over the Ecclesiasticall and spirituall estate, and abolishing all forren Iurisdiction, repugnant to the same.* What the auncient Iurisdiction over the Ecclesiasticall and spirituall estate is, he hath sufficiently before declared, and proved it to be that Ecclesiasticall iurisdiction (viz. *Keyes or censures of the Church*) which was lawfully vsed in Englād, before the statute of *2. Hen. 4.* the uttermost whereof was, to locke men out of the Church by *excommunication*, termed, *the keyes of the Church*. Which statute first gaue power to the Ordinaries, to imprison subjectes, to fine them, and force thē to accuse theselues by their owne oathes, which was ever hatefull to the subjectes of England.

And to proue plainly, that this Parliament of *an. 1. Eliz.* ment to abolish that power to imprison subjectes, & force them to accuse theselues, the matter precedent before the preamble doth fully proue; for that, in this very statute of *an. 1. Eliz.* the law makers, as wise framers of a Common wealth, before they goe about to annexe the auncient right Ecclesiasticall Iurisdiction to the Crowne,
do

doe by expresse words, at the request of the subjects, establish and enact, that the statute of *5. Rich: 2. cap. 5.* and *2. H. 4. cap. 15.* (which did giue authority to the Ordinaries to imprison, fine, and force the subjects to accuse themselves, as aboue) and all and every branches, articles, clauses, and sentences conteyned in the sayd severall statutes, and every of the, should, from the last day of that Parliament, be utterly repealed, voyd, and of none effect, any thing in the sayd severall Acts, or any of them, conteyned, or any other matter or cause to the contrary notwithstanding. So as the imprisonment of the subjects, finyng of them, and forcing of them to accuse themselves, being the matters, branches, and articles of those statuts, howsoever they came into the power of the Clergie of England, by these statutes or otherwise, being thought, by the Parliament, to be repugnant to the auncient Iurisdiction Ecclesiasticall (as *revera* they are being a temporall sword) were repealed, and made voyd by expresse words of this statute of *anno 1. Eliz.* as repugnant to the auncient *Spirituall Iurisdiction.*

And to make the meaning of the law-makers more apparant, that they allowed not, that any offences should be tried by the parties owne oath, but by witnesses; as in the beginning of this statute of *an. 1. Eliz. cap. 1.* it doth abolish the oath *Ex officio*, by making voyd the statute of *2. H. 4. cap. 15.* which first gaue life to that kind of proceeding; so in the end of the sayd statute it addeth this clause, *And be it further enacted by the authoritic aforesayd, that no person, or persons, shalbe hereafter indited, or arraigned for any the offences, made, ordeyned, revived, or adiudged by this Act, unlesse there be two sufficient witnesses, or more, to testifie and declare the sayd offence, whereof he shalbe indited, etc. and the same witnesses, or so many of the as shalbe living, and within the Realme,*

at the time of the arraignment of such persons so indited, shall be brought forth in person, face to face, before the partie so arraigned, and there shall testifie & declare what they can, against the party so arraigned, if he require the same.

By which words sith it is playne, that no offence, ordeyned or revived by that statute, should receave triall, but by two witnesses brought face to face, that they mēt not to giue power, by any *Commission* grounded upon that statute, to haue the offences of the subjectes (which touch so deepe as *Premunire*, *abiuration*, and *forfeiture of lands and goodes*) should be tried by the parties owne forced oath, against his will, without any witnes or accuser, as this *Commission* limitts; and yet it is pretended to be grounded upon this statute. And therefore it were a most violent construction, and absurd, that the generall words in this statute, viz. *to execute the premisses according to the tenor and effect of the letters patents*, should reviuue that by an intendment, which was, by so playne wordes of all the assemble in Parliament, revoked and abolished, as a most hatefull thing to the subjectes of England, and of which they ment to purge the Church and Ecclesiasticall government. For that were to make one parte of the statute contrary to the other, and to construe the wordes of the law, indefinitely sett downe, directly against the meaning of the law makers plainely expressed by wordes, which Iudges never did, nor, as he hoped, ever would doe.

And the title and preamble of the statute doe further restrayne the overlarge construction of those generall wordes, *to execute the premisses*: because the premisses, being the auncient jurisdiction Ecclesiasticall and spirituall, purged from that temporall Iurisdiction, as aboue, is mēt to be restored onely over the Ecclesiasticall and spirituall
estate

estate, and not over all the subjects of the Realme; and because, in the preamble, the Commissioners, who are to be named, are inabled, touching Ecclesiasticall or spirituall Iurisdiction only, to *reforme, correct, and amend all such heresies, errors, schisines, contempts, etc. which by any spirituall or Ecclesiasticall power, authoritie, or Iurisdiction, might lawfully be reformed,* and not all abuses of the common wealth mentioned in their Commisssion, or any abuse not proper to the Ecclesiasticall or spirituall Iurisdiction, whereof there are many named in their Commisssion, which are temporall Iuridictions, viz. to imprison and fine subjects, and to execute lawes upon the; for that the spirituall law should not meddle with that, for which there was remedye by common law, as is *22. Edw. 4. fol. 20.* and the statute of *24. Edw. 1. cap: 1.*

And to proue, that the titles and preambles of other statutes doe many times, in construction of statutes, restrayne the generall words of the same statuts following, he put the case upon the statute of perjurie, *anno. 5. Eliz.* where the wordes of the statute are, that *evcry person and persons who shall commit voluntarie and corrupt periurie, shall forfeit twentie poundes.* And because the preamble and matter precedent touched witnesses only, therefore that penaltie is restreyned, by construction, to charge witnesses onely therwith, and not such persons as shall commit voluntary and corrupt periurie, in their owne cases. And so upon the statute of *7. Edward. 6.* against *Receivers, Bayliffs,* etc. although the wordes of that statute extend generally, to lay a penaltie of *6. shillings 8. pence* for every penny that receivours shall take unlawfully; yet because the preamble of that statute touched only the Kings officers, It is, in construction, restrayned to take force against the

Kinges officers onely, and against none other receivers, or bayliffes.

And to conclude this poynt of the exposition of the wordes of the statute, he did demaund, why the exposition and construction of all statutes is left to the Iudges of the law, but for this cause, for that they are, and alwayes haue been thought the most carefull, iudicious, and jealous preservers of the lawes of England? And is it not apparant, that, to uphold the right of the lawes of England, the Iudges in ages past haue advisedly construed some wordes of diuers statutes contrary to the common sence of the words of the statute, to uphold the meaning of the common lawes of the Realme: as in the statute of *25. Ed. 3.* where it is sayd, that, *non tenure* of parcell shall abate the writt but for parcell; yet if by the writt an entier manour be demaunded, *non tenure* of parcell shall abate the whole writt. And where, by the statute of *Marlbridg ca. 4.* it is prohibited, that no distresse shalbe driven out of the County where it is taken, yet, if one manour extend into two Counties, there the distresse may be drivē from one County into another Countie. And, upon the statute of *Prerogative*, which toucheth the King, although the wordes be generall, that the King shall haue the custodie of all the landes of his tenaunt where parte is holden in *Capite*, yet if part of the landes of his tenaunt doe descend to severall heyres, on the parte of the Father, and on the parte of the Mother, there the King shall not haue all the landes of his tenaunt, during the minoritie of the heire; for that, in all these Cases, the great regard of the rule and right of the common lawes doth controll the generall or common sence of the wordes of those statutes.

And why then should this statute receiue construction,

tion, by the Iudges of the law, contrary to the rule of all other statutes, to this effect, that by an intendment gathered out of the generall wordes of the Act, according to the tenor of the sayd letters Patents, there might be erected, in this common wealthe of England, a course of an arbitrarie government at the discretion of the Commissioners, directly contrary to the happie long continued government and course of the common lawes of the Realme, and directly contrary to *Magna Charta*: which if the statute of 24. *Edw.* 3. did so highly regard, as to make voyd Acts of Parliament contrary to the same, it would, a *fortiori*, make voyd all construction of statuts contrary to *Magna Charta*, which haue no expresse wordes, but an intendement or construction of words, with much violence to be wrested to that end. And for such as would make such construction of the statute, as that whatsoever should be conteyned in the letters Pattents should be as a law; he would haue them remember, that the *King* may make new letters Patents for these matters (Ecclesiasticall causes every day altering the same in the penalties and manner of proceeding) and that, if the letter of the statute should be purused, the *King* may change the Commissioners every day, and make any persons Commissioners, being naturall borne subiectes to the *King*, although not borne in England: which were against the meaning of the Act; which meaning of the Act is the life of the Act, and not the letter of the Act.

And, besides those former errors of the Commission before remembred, he sayd, that he did not see, how, by colour of the statute of *1. Eliz.* which gaue power to the Commissioners to execute the premisses conteyned in that Act, they should inlarge their Patent to enquire of offen-

It is, in construction, refrayned to take force against the the ould Common lawes of England, expressed in the statute of 42. *Edw.* 3. *cap.* 3. and from the *auuncient Iurisdiction Ecclesiasticall*; for that no pretended custome, against those ståtutes which prohibite such kind of proceeding, can be of force; and especially for that the Act of Parliament of 1. *Eliz.* did not giue life or strength to the sayd Commisison, in those parts so varying, but the contrary: therefore he did hold the proceeding of the Ecclesiasticall Commisisoners against the subjectes, by force of the sayd Commisison, in these poyntes, to be voyd, and erroneous, according to the wordes of the sayd statute 42. *Edw.* 3. and did humblie pray, that his *Clients* may be discharged from their *Imprisonment*, and the subjectes freed from such *erroneous proceedings*, too too heauiue and burdensem to them.

FINIS.



Lev. 19. 15.

Ye shall not doe uniuistly in iudgment. Thou shalt not fauor the person of the poore, nor honor the person of the mightie; but thou shalt iudge thy neighbour iustly.

Deut. 1. 17.

Ye shall haue no respect of person in iudgment, but shall heare the small, as well as the great: ye shall not feare the face of man; for the iudgment is Gods.