

(a Man much besotted, and taken up with Plays, to which he likewise drew the Magistrates and People by his leud Examples) as Flavius and others conspired Nero's Murder for the self-same Cause, &c. Now, my Lords, that they should be called three worthy Persons that do conspire an Emperor's Death, (tho' a wicked Emperor) it is no Christian Expression.

If Subjects have an ill Prince, marry what is the Remedy? They must pray to God to forgive him, and not say they are worthy Subjects that do kill him: If they were worthy Acts, Mr. Pryn, I can tell what you are, (Mr. Pryn standing during the Censure behind the Lord Chief Justice Richardson, and Archbishop Neal.) No Man will conspire to murder a King that can be a worthy Actor; for the very Thought of it is High-Treason. He speaketh of these three, that they were three worthy Romans that did conspire to murder Nero. This is most horrible, and here can be no manner of Exposition, but in the worst Sense: for his Excuse, he hath made none at all, only it was not his Intention.

Good Mr. Pryn, you are a Lawyer. Intention! I know where the word standeth equal, as that you may take the Intention this way, or that way, with the Right-hand or Left-hand, there in that Case you may speak the Intention; but where the Words are plain and positive, as in your Books, here is no help of Intention in the World: your Words are plain and clear, therefore you can never make any Defence at all out of that. Not to hold your Lordships any longer, my Lords, it is a most wicked, infamous, scandalous, and seditious Libel. Mr. Pryn, I must now come to my Sentence, tho' I am very sorry, for I have known you long, yet now I must utterly forsake you; for I find that you have forsaken God, and his Religion, and your Allegiance, Obedience, and Honour, which you owe to both their excellent Majesties, the Rule of Charity to all noble Ladies, and Persons in the Kingdom, and forsaken all Goodness. Therefore, Mr. Pryn, I shall proceed to my Censure, wherein I agree with my Lord Cottington, as he began very well: First, for the burning of the Book in as disgraceful a manner as may be, whether in *Cheapside* or *Paul's Church-yard*; for tho' *Paul's Church-yard* be a consecrated place, yet Heretical Books have been burnt in that place. And because Mr. Pryn is of *Lincoln's-Inn*, and that his Profession may not sustain Disgrace by his Punishment, I do think it fit, with my Lord Cottington, that he be put from the Bar, and degraded in the University; and I leave to my Lords, the Lord Bishops, to see that done: and for the Pillory, I hold it just and equal, tho' there were no Statute for it. In the case of a high Crime it may be done by the Discretion of the Court, so I do agree to that too. I fine him 5000 *l.* and I know he is as well able to pay 5000 *l.* as one half of 1000 *l.* and perpetual Imprisonment I do think fit for him, and to be restrained from writing, neither to have Pen, Ink, nor Paper; yet let him have some pretty Prayer-Book, to pray to God to forgive him his Sins; but to write, in good faith I would never have him: For, Mr. Pryn, I do judge you by your Book to be an insolent Spirit, and one that did think by this Book to have got the name of a Reformer, to set up the Puritan or Separatist Faction. I would not have Mr. Pryn go without a Recognition of his Offence to the King and Queen's

Majesty. I agree to the Sentence on *Buckner* and *Sparkes*.

Secretary Cook. By this vast Book of Mr. Pryn's, it appeareth he hath read more than he hath studied, and studied more than he hath considered; whereas if he had read but one Sentence of *Solomon*, it had saved him from the Danger he is now like to fall into. The *Preacher* saith, *Be not over just, nor make thy self over-wise, for why wilt thou destroy thy self?* My Lords, it is a Sentence requirith much Study and Consideration. It is most certain, that Righteousness and Wisdom are such Virtues, as they help forward Justice; but when Wisdom is mixed with a Man's own Humours, as for the most part it is with Flesh and Blood, there is danger of straining it too far, and that will tend to the Destruction of him and others. Examples are too pregnant of this, and he may take it from a good Author, even from Christ himself. When his Apostles, out of Zeal to their Master, would have called for fire from Heaven against the *Samaritans* that refus'd to entertain him, the Answer was, *You know not of what Spirit you are.* I would Mr. Pryn would have considered this.

There is a good Spirit that is meek, tempered with Modesty and Humility, with Mildness and with Equity; and such a Spirit is always tender, not to destroy, root up, overthrow, but to bind, repair and preserve. But there is another fiery Spirit, which is always casting of Fire, nothing but Damnation and Destruction; certainly such a Spirit ever tends to his own Confusion. And if this be well observed, every Man shall find it true, that such a Spirit ever cometh before Destruction. I wish Mr. Pryn were not an ill Example of this. Certainly, my Lords, Vice and Corruption ought not only to be reprehended, but to be punished severely, and that sharply too where it is; but Mr. Pryn should have considered, every Man is not a fit Reprehender. He had no Invitation, nor Office, nor Interest to employ a Talent which doth not belong unto him. If Magistrates and Princes should inveigh against all things, and tolerate nothing, we must live no longer among Men; and certainly, if we will be thought to live with them that are wholly virtuous, we must go out of the World; we have a good Author for this. But, my Lords, a Toleration must be used, and that Mr. Pryn would have found, if he had consider'd his own Body: Shall a Man upon every slight Distemper and Disorder in his Body take Physick? Or shall ill Humours be purged 'till he purge all out? Certainly he will purge Spirit, Life and all away with it. And as it is in the Natural Body, so it is in the Politick, there must be a Toleration and Connivance; it cannot be govern'd without it, and we have a Warrant for it. Did not Christ himself forbid the cutting out of the Tares, lest they should pluck Corn, and destroy that too? I think, if Mr. Pryn should have been asked the Question that *Naaman* did to the Prophet, he would not at all have bid *go away in Peace*, he would have threaten'd Hell and Destruction. There is a Christian Wisdom, and there must be a Toleration in all States. And certainly the Faults that have been tolerated in all times were greater than modest Plays, or modest Dancing. It is not my Intention, neither do I think it is the Intention of any of your Lordships, to apologize for Stage-Plays, much less for the Abuse of them; I wish, and so

I think doth every good Man, that the Abuse of them were restrained; but, my Lords, not by Railing, Cursing, Damning, Inveighing, &c. not only against the Faults and Players themselves, but against all Spectators, and those that come to them, and that of all degrees, and with such Bitterness and Acrimony, that in all the Authors alledged, which are infinite, there is not to be found an Example. My Lords, I am very sorry he hath so carried himself, that a Man may justly fear he is the *Timon* that hath a Quarrel against Mankind. But I love not much to aggravate Offences, which of themselves are heavy enough.

He calleth his Book *Histrionastix*; but therein he sheweth himself like unto *Ajax*, *Anthropomastix*, as the *Grecians* called him, the Scourge of all Mankind, that is, the Whipper and the Whip. I cannot but concur with the Censure already begun by my Lord *Cottington*, given against Mr. *Prym*, *Buckner* and *Sparkes*.

Afterwards the Earl of *Dorset* spake to this effect:

Such Swarms of Murmurers as this day disclose themselves, are they not fearful Symptoms of this sick and diseased Time? Ought we not rather with more Justice and Fear apprehend those heavy Judgments which this minor Prophet, Prophet *Prym*, hath denounced against this Land, for tolerating indifferent things, to fall upon us for suffering them, like those Mutineers against *Moses* and *Aaron*, as not fit to breathe? My Lords, it is high time to make a Lustration to purge the Air. And when will Justice ever bring a more fit Oblation than this *Achan*? *Adam*, in the beginning, put Names on Creatures correspondent to their Natures: The Title he hath given this Book is *Histrionastix*, or rather, as Mr. Secretary *Cook* observed, *Anthropomastix*; but that comes not home, it deserves a far higher Title: *Damnation*, in plain *English*, of Prince, Prelacy, Peers and People. Never did Pope *in Cathedra*, assisted with the Spirit of Infallibility, more positively and more peremptorily condemn Hereticks and Heresy, than this doth Mankind. Lest any partial Auditor may think me transported with Passion, to judge of the base Liveries he bestoweth upon Court and Courtiers, I shall do that which a Judge ought to do, *viz.* assist the Prisoner at the Bar. Give me leave to remember what Mr. Attorney let fall the other day. I will take hold of it for the Gentleman's Advantage, That this Gentleman had no Mission; if he had had a Mission, it would have qualified the Offence. Our blessed Saviour, when he conversed in this World, chose Apostles, whom he sent after into the World, *Itz, predicate, &c.* to shew the way of Salvation to Mankind. Faith, Hope, and Charity, were the Steps of this *Jacob's* Ladder to ascend Heaven by. The Devil, who hates every Man upon Earth, play'd the Divine, cited Books, wrought Miracles; and he will have his Disciples too, as he had his Confessors and Martyrs. My Lords, this Contempt, Disloyalty, and Despair, are the Ropes which this Emissary lets down to his great Master's Kingdom for a general Service. My Lords, as the Tenour of their Commission was different, so are the Ways: These holy Men advanced their Cause in former times by Meekness, Humility, Patience to bear with the Weakness and Infirmities of their Brethren; they taught Obedience to Magistracy, even for Conscience-sake; they divided not their Estates

into Factions; they detracted from none, they fought the Salvation of Men's Souls, and guided their Bodies and Affections answerably; they gave to *Cæsar* the things that were *Cæsar's*; if Princes were bad, they prayed for them, if good, they praised God for them; however, they bore with them: This was the Doctrine of the Primitive Church, and this they did. I appeal to my Lords that have read this Book, if Mr. *Prym* has not with breach of Faith, discharged his great Master's End. My Lords, when God had made all his Works, he looked upon them and saw that they were good. This Gentleman, the Devil having put Spectacles on his Nose, says, that all is bad: No Recreation, Vocation, no Condition good; neither Sex, Magistrate, Ordinance, Custom, Divine and Human, things animate, inanimate, all, my Lords, wrapt up *in Massa Damnata*, all in the Ditch of Destruction. Here, my Lords, we may observe the great Prudence of this Prince of Darkness, a Soul so fraught of Malice, so void of Humanity, that it gorgeth out all the Filth, Impiety and Iniquity that the Discontent of this Age doth contract against the Church and State. But it may be some Follower of his will say, It was the Pride and Wickedness of the Times that prompted him to this Work, and set his Zeal, thro' Tenderness of Conscience, to write this Book. My Lords, you may know an unclean Bird by his Feathers; let him be unplum'd, unmask'd, pull off the deceitful Vizard, and see how he appeareth: this brittle Conscience Brother, that perhaps starts at the sight of the Corner-Cap, sweats at the Surplice, swoons at the Sign of the Cross, and will rather die than put on Woman's Apparel to save his Life; yet he is so zealous for the advancement of his *Babel*, that he invents Legions, coins new Statutes, corrupts, misapplies Texts with false Interpretations, dishonours all Men, defames all Women, equivocates, lyes; and yet this Man is a holy Man, a Pillar of the Church. Do you, Mr. *Prym*, find fault with the Court and Courtiers Habit, Silk and Sattin Divines? I may say of you, you are all Purple within, all Pride, Malice, and all Disloyalty; you are like a Tumbler, who is commonly squint-ey'd, you look one way, and run another way: tho' you seem'd by the Title of your Book to scourge Stage-Plays, yet it was to make People believe, that there was an Apostacy in the Magistrates. But, my Lords, admit all this to be venial and pardonable, this Pigmy groweth a Giant, and invades the Gods themselves; where we enjoy this Felicity under a gracious Prince with so much Advantage, as to have the Light of the Gospel, whilst others are kept in Darkness, the Happiness of the Recreations to the Health of the Body, the blessed Government we now have: When did ever Church so flourish, and State better prosper? And since the Plagues happen'd, none have been sent among us such as this Caterpillar is: What Vein hath opened his Anger? Or who hath let out his Fury? When did ever Man see such a *Quietus est* as in these Days? Yet in this Golden Age is there not a *Shimei* amongst us, that curseth the Anointed of the Lord? so puffed with Pride, nor can the Beams of the Sun thaw his frozen Heart, and this Man appeareth yet. And now, my Lords, pardon me, as he hath wounded his Majesty in his Head, Power and Government, and her Majesty, his Majesty's dear Consort, our Royal Queen, and my gracious Mistress; I can spare him no longer,

I am at his Heart. *Ob! quantum! &c.* If any cast infamous Aspersions and Censures on our Queen and her Innocency, Silence would prove Impiety rather than Ingratitude in me, that do daily contemplate her Virtues; I will praise her for that which is her own, she drinks at the Spring-Head, whilst others take up at the Stream. I shall not alter the great Truth that hath been said, with a Heart as full of Devotion, as a Tongue of Eloquence, the other day, as it came to his part, (meaning Sir *John Finch*.) My Lords, Her own Example to all Virtues, the Candor of her Life, is a more powerful Motive than all Precepts, than the severest Laws: no hand of Fortune nor of Power can hurt her; her Heart is full of Honour, her Soul of Chastity; Majesty, Mildness and Meekness are so married together, and so impaled in her, that where the one begetteth Admiration, the other Love; her Soul of that excellent Temper, so harmoniously composed, her Zeal in the ways of God unparallel'd; her Affections to her Lord so great, if she offend him, it is no Sunset in her Anger; in all her Actions and Affections so elective and judicious, and a Woman so constant for the Redemption of all her Sex from all Imputation, which Men (I know not how justly) sometimes lay on them; a Princess, for the Sweetness of her Disposition, and for Compassion, always relieving some oppressed Soul, or rewarding some deserving Subject: were all such Saints as she, I think the *Roman Church* were not to be condemned: on my Conscience she troubleth the Ghostly Father with nothing, but that she hath nothing to trouble him withal. And so when I have said all in her Praise, I can never say enough of her Excellency; in the relation whereof an Orator cannot flatter, nor Poet lye: yet is there not *Doeg* among us, notwithstanding all the Tergiversations his Counsel hath used at the Bar? I can better prove, that he meant the King and Queen by that infamous *Nero*, &c. than he proves Players go to Hell: but Mr. *Pryn*, your Iniquity is full, it runs over, and Judgment is come; it is not Mr. Attorney that calls for Judgment against you, but it is all Mankind, they are the Parties grieved, and they call for Judgment.

(1.) Mr. *Pryn*, I do declare you to be a Schism-Maker in the Church, a Seditious-Sower in the Common-wealth, a Wolf in Sheep's Clothing; in a word, *omnium malorum nequissimus*. I shall fine him Ten Thousand Pounds, which is more than he is worth, yet less than he deserveth; I will not set him at liberty no more than a plagued Man or a

mad Dog, who tho' he cannot bite, he will foam; he is so far from being a sociable Soul, that he is not a rational Soul; he is fit to live in Dens with such Beasts of Prey, as Wolves and Tygers, like himself: Therefore I do condemn him to perpetual Imprisonment, as those Monsters that are no longer fit to live among Men, nor to see Light. Now for Corporal Punishment, my Lords, whether I should burn him in the Forehead, or slit him in the Nose; for I find that it is confessed of all, that Doctor *Leighton's* Offence was less than Mr. *Pryn's*, then why should Mr. *Pryn* have a less Punishment? He that was guilty of Murder was marked in a place where he might be seen, as *Cain* was. I should be loth he should escape with his Ears, for he may get a Perriwig, which he now so much inveighs against, and so hide them, or force his Conscience to make use of his unlovely Love-Locks on both sides: Therefore I would have him branded in the Forehead, slit in the Nose, and his Ears cropt too. My Lord, I now come to this Ordure, I can give no better term to it, to burn it, as it is common in other Countries, or otherwise we shall bury Mr. *Pryn*, and suffer his Ghost to walk: I shall therefore concur to the burning of the Book; but let there be a Proclamation made, That whosoever shall keep any of the Books in his hands, and not bring them to some publick Magistrate to be burnt in the fire, let them fall under the Sentence of this Court: for if they fell into wise Men's hands, or good Men's hands, there were no fear; but if among the common sort, and into weak Men's hands, then Tenderness of Conscience will work something. Let this Sentence be recorded, and let it be sent to the Library of *Sion*, (meaning a College in *London*) whither a Woman, by her Will, will allow Mr. *Pryn's* Works to be sent.

(2.) For Mr. *Buckner*, I believe that he had no Intention at all this Work should come abroad; he is said to be a conformable Man to the Church of *England*: I shall hardly censure him, he deserveth Admonition.

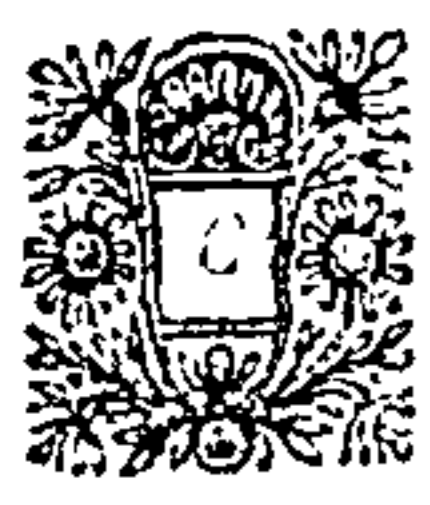
(3.) For *Sparkes*, I concur in all things: The Feodary had his Office taken away from him by this Court; I see therefore no reason but that he may be barred from printing and selling of Books, and kept wholly to binding of Books.

The * Sentence against Mr. *Pryn* was executed the seventh and tenth Days of *May* following.

* *Rush Col.*
Vol. 2.
p. 248.



XXXV. *The Trial of JOHN Lord BALMERINO* *, *in Scotland, for a Libel; the 3d of December, 1634. 10 Car. I.*



URIA Justiciaria S. D. N. Regis tenta in Prætorio de Edinburgh tertio die mensis Detembris, 1634. per nobilem & præpotentem Comitem, Willielmum Comitem Errolie, Dominum Hay, Magnum Constabularium Scotiæ, ac Justiciarium Generalem ejusdem, hac in parte ac in criminali processu subsequente. contra Joannem Dominum de Balmerino, virtute Commissionis S. D. N. Regis, sub Testimonio sui Magni Sigilli specialiter constitut. Curia legitime affirmat.

Assessors to my Lord Justice General, Sir Robert Spotswood of Dumypace Knight, President of the College of Justice; Sir John Hay of Barro Knight, Clerk Register; Sir James Learmouth of Balcomy Knight Baronet.

Intran. John Lord of Balmerino, delated of Airt and Part, (*i. e.* of his being Contriver and Partner) of the penning and setting down of a scandalous Libel, and divulging and dispersing it amongst his Majesty's Leiges; at the least of concealing and not revealing of Mr. William Haig, and not apprehending of him the said principal Author of the said infamous Libel, as is at length contained in his Dittay (*i. e.* Indictment) following.

Pursuer, Sir Thomas Hope of Craighall Knight, Advocate to our said Lord, for his Highness's Interest.

Procurators in Defence, Mr. Roger Mowat, Mr. Alexander Pearson, Mr. Robert Macgill, Mr. John Nisbet, Advocates.

My Lord Kildryame, Master of Elphinstoune.

The Master of Frazer.

Sir Thomas Ker of Cavers.

Michael Elphinstoune of Quarrel.

George Dundas Fiar of that Ilk, (*i. e.* of Dundas.)

Robert Drummond of Meidhope.

My Lord Advocate produced his Majesty's Letter, commanding him to pursue the Pannel (*i. e.* the Person indicted) for the Crimes contained in his Dittay (*i. e.* Indictment) following; together with an Act of Session, nominating the Assessors foresaid to be Assessors to my Lord Justice-General: and therewith produced the said Dittay or Indictment, with the Executions thereof, of the whilk the Tenour follows. And first the Tenour of his Majesty's Letter, directed to his Majesty's Advocate.

To our Right Trusty and Well-beloved Counsellor, Sir Thomas Hope of Craighall Knight and Baronet, our Advocate for our Kingdom of Scotland.

CHARLES Rex,

Trusty and Well-beloved Counsellor, we greet you well. After due Consideration having

resolved to cause the Lord Balmerino be put to the Trial of ane Assyse, (*i. e.* Jury) and to this purpose it being necessary that you inform yourself of such Particulars, as concern your Charge in the legal Prosecution of that Business; it is our Pleasure, that with all convenient diligence you insist therein, by preparing of ane Indictment fit for that purpose, and that you carefully go on in every other thing touching the Prosecution thereof, as you will answer to us upon your Trust: And that by the Advice of the Chief Justice you prefix a Day for the same, for which these Presents shall be your Warrant. Given at our Mannor of Hampton-Court, the 14th of October, 1634.

Follows the Act of Session, nominating the said Assessors, at Edinburgh, the second Day of December, the Year of God 1634. the which Day the Lords of Council and Session nominate, appoint, and elect Sir Robert Spotswood of Dumypace Knight, President of the College of Justice; Sir John Hay of Barro Knight, Clerk of our Sovereign Lord's Register Council and Rolls; and Sir James Learmouth of Balcomy Knight Baronet, Senator of the said College of Justice; to be Assessors to William Earl of Errol, Great Constable of Scotland, and having Commission from his Majesty to be Justice-General in the criminal Pursuit intentit and depending before the said Justice against John Lord of Balmerino.

Extractum de Libro Actorum per me Magistrum Alexandrum Hay, Scribam Consilii ac Deputatum honorabilis Domini Joannis Hay de Barro Militis, Clerici Registri ac Consilii S. D. N. Regis, sub meis Signo & Subscriptionem manualibus, sic subscribitur A. Hay.

Follows the Tenour of the Dittay:

CHARLES by the Grace of God King of Great Britain, France, and Ireland, Defender of the Faith; to our Lovit (*i. e.* Beloved) James Currie, Ormond Purfevant, Messenger, our Sheriff in that part conjunctly and severally, specially constitute, Greeting. Forsuameikle as it is complain'd and humbly meant to us by our Trusty and Well-beloved Counsellor Sir Thomas Hope of Craighall Knight Baronet, our Advocate for our Interest upon John Lord of Balmerino, That where albeit by the Common Law, as also by the Laws and Acts of Parliament of this Kingdom, and specially by that Act and Statute of Parliament made by our umqhile (*i. e.* late) dearest Father King James VI. of happy and blessed Memory, Par. 10. chap. 10. it is statute and ordained, That all our Subjects continue themselves in Quietness, and dutiful Obedience to Us and our Royal Authority, and that none of them presume or take upon hand publickly

* Burnet's *History of his own Times*, Vol. I. p. 22, &c. Rush. Col. Vol. II. p. 183.

to disclaim, or privately to speak or write any purpose of Reproach or Slander of our Person, Estate, or Government; or to deprave our Laws and Acts of Parliament, or misconstrue our Proceedings, whereby any Misking may be moved betwixt us and our Nobility and loving Subjects in time coming, under the pain of Death; certifying them that does in the contrair, they shall be reputed as seditious and wicked Instruments, Enemies to us and the Commonweal of this our Realm: And the said Pain of Death shall be execute upon them with all rigour, in example of others. Likeas by the 205th Act of the 14th Parliament of our said umqhile dearest Father, in the Month of *June*, 1594. the former Act of Parliament, with divers others, against Leasing-makers and Authors of Slanders and Calumnies, is ratified and approven, and ordained to be published of new again, and to be put to execution in all time coming; with this addition, That whosoever hears the said leasing Calumnies, or scandalous Speeches, or Writs to be made, and apprehends not the Authors thereof, if it be in his power, or reveals not the same to Us, or to any of our Privy-Council, or to our Sheriff, Steward, or Baillie of our Sherifffdom, Stewartry, or Bailliary, Stewarts in Regality or Royalty, or to the Provost, or one of the Baillies within our Burrows, by whom the same may come to our knowledge, or to the knowledge of our Privy-Council; whereby the saids Leasing-makers and Authors of scandalous Speeches, may be called, tryed, and punished, according to the said Acts: the Hearer and not Revealer, and not Apprehender, (if it lie in his power) and Concealer and not Revealer of the saids Leasing-makers, and Authors of the saids scandalous Speeches and Writs, shall incur the like Pain and Punishment as the principal Offender, as in our saids Acts of Parliament at length is contained. Notwithstanding whereof, it having come lately to our knowledge, in the Month of *March* last by-past, that there was a most scandalous, reproachful, odious and seditious Libel, found in the hands of one Mr. *John Dunmore*, Notary in *Dundee*, and divulged and dispersed in the hands of several of our Subjects; whilk scandalous, odious, infamous, and seditious Libel, did not only seditiously, reproachfully, and outrageously tax our Sacred Person in our Behaviour at Parliament; but also contains many Points and Purposes of false Calumnies, publick Scandals and Reproaches against Us, our Estate and Government, depraving our Laws and Acts of Parliament, and misconstruing our just and glorious Proceedings in our first Parliament, holden by us in Person in the Month of *June* of before, as doth manifestly appear in the hail Tenour of the saids infamous Libel; and particularly in the particular Passages hereof after following: Insuafar as albeit by the Law of God and Laws of all Nations, the Person of the supreme and sovereign Prince is and ought to be sacred and inviolable, and he ought to be revered, honoured, and feared, as God's Lieutenant on Earth; and that all Subjects are bound and tyed in Conscience to content themselves in humble Submission to obey and reverence the Person, Laws, and Authority of their supreme Sovereign: yet the said unhappy and infamous Libel, in the first entry thereof, begins with an outrageous upbraiding and taxing of our sovereign Lord's Majesty of a point of Injustice or Indiscretion in our Behaviour at Parliament, for putting of Notes (as the saids infamous Libel alledges) upon the Names

of a number of our Subjects, who did vote contrair to the Acts of our Church-Government, past in Parliament. Whilk is ane fearful thing in ane Subject to pry into the Gesture of his Sovereign in his supreme Court: And upon a Gesture, without Speech, to infer a ground of Exprobration and Reproach to the sovereign Prince. Next, the said infamous Libel reproaches Us for refusing to receive from some of our Subjects their Reasons for dis-assenting from the said Acts, before their publick Hearing in Parliament: whilk is a Point no ways compatible with the humble Obedience of a good, quiet, and peaceable Subject; but carries with it the Signal and Token of Discontentment, and rubs upon our Sacred Person and Proceedings Matter of Reproach and Scandal, tending, if it were possible, to diminish the glorious Opinion and Estimation of our Royal Person, Equity, and Justice, in the Hearts of our Subjects. Thirdly, the malicious Heart of the Penner, not content with the first Asperision laid upon us for putting Notes upon these who dis-assented, does ingeminat the same in ane most bitter Invective and viperous Style, in affirming that such a thing was never of before censured by a Prince of so much Justice as our Sacred Majesty: whilk in effect is to reproach us of manifest Injustice, for doing of that, the like whereof was never done by a just Prince. And the Libeller, not content with these Reproaches, most villanously and despitefully belcht and vomited furth against our Sacred Person, proceeds to a most fearful and dangerous undermining of our Honour, Credit, and greatest Happiness, in affirming that there is now a general Fear of some Innovation intended in Essential Points of Religion: albeit (blessed be God) it be certainly known to all our good Subjects, that We are, and in all our Actings have shoven Ourselves to be a most devote and religious Prince, hating and abhorring in Heart and Affection all Papistical Superstition and Idolatry. And the Libeller, (out of a devilish Humour) not content to restrain his Pen within the Limits of this our Kingdom of *Scotland*, as if it were too little for the compass of his curious and furious Brain, he enters to pry into our Estate of *England*, and assures that there is Reports of allowance of reprinting of Books of Popery and Arminianism in *England*, and of the restraint of Answers made to them: and then returning to *Scotland*, most falsly affirms, that Arminianism is preached there without Censure. After that, he goes to the Estates of the Parliament, and affirms most falsly and calumniously, that divers Papists were admitted to Parliament, and upon the Articles, who by the Law of the Realm can be no Member of any Judicatory. Albeit it be constant and nottour, that none of these who were admitted to Parliament and upon the Articles, was professed Papists, as will appear by the Roll of the Names of these who were upon the Articles. And farther, the unhappy Penner of that cursed Libel proceeding to ane higher Point of taxing and misconstruing of our Proceedings, he affirms that the Grievances allowed to be proponed in Convention in *Anno* 1625, were altogether slighted in this our first Parliament: which is a manifest Lye and Untruth, there being nothing concerning the Publick moved at Parliament, which was not either derermined by our Estates, or remitted to our Council. And thereafter it is as falsly affirm'd, that the Meetings of the Gentry, which were

appointed for representing the Grievances of the Country in the Matter of Coin and Increase of Theft, were interrupted in our Name: which is a manifest Lye and Calumny. Likeas thereafter it is most scandalously and seditiously affirmed, that we denied Liberty to our Nobility to meet and convene with the Lords of the Articles, against the Constitution of a free Parliament under such a just and lawful Prince: albeit it be notoriously known, that our Nobility did enjoy all the Privileges of a free Estate, which pertained to them and their Predecessors. And sicklike thereafter it is affirm'd ignorantly, foolishly, and falsely, That against the Custom of this our Kingdom, the Bishops did chuse the Articles of the Nobility; albeit before the Parliament in *Anno* 1609, the Nobility did ever chuse the Articles themselves: which is notoriously false, and contrair to the fundamental Laws and Practices of all preceding Parliaments, whereby it is constitute, that ever the Clergy did chuse the Articles of the Nobility. And thereafter he affirms, That the Bishops did chuse such of the Nobility on the Articles, as either were Popishly affected, or had small Knowledge of the Estate and Laws of this our Country: which is an impudent malicious Calumny and Falshood; these who were chosen on the Articles (as will appear by their Names) being of the most antient of the Nobility, and most expert in the Laws and Customs of this our Kingdom. Thereafter the cursed and unhappy Libeller returns to his nipping and checking Style; and most presumptuously challenges our Sacred Self upon our Speeches in Parliament, and upon our Proclamations made upon our Revocation; which was intended for Augmentation of our Patrimony, and for disburdening of our Subjects of Taxation; and that yet nevertheless huge and great Taxations were imposed, against the Counsel given by our umquhile dearest Father of blessed Memory, in his *Basilicon Doron*, and against the Practice of our dearest Predecessor King *James I.* who remitted to his Subjects a great part of the Taxation granted for his Ransom: which is a peart and mischievous Exprobration to our Sacred Person, who out of the Love and tender Affection which We bear to this our antient native Kingdom and Country, vouchsafed that Grace and Favour to visit it in our Royal Person, without sparing of Cost and Charges for our Journey, and other Necessaries belonging to our Coronation; which is well known far to exceed the Taxations voluntarily offered to Us by our Estates, in testimony of their humble and thankful Gratitude for so great a Blessing as the personal Presence of us their Sacred Lord and Sovereign, within this our native Soil and antient Kingdom. And as we did never enjoin nor urge any Taxation, so the same being voluntarily and humbly offer'd to us by our loving and faithful Subjects, as the Mite of their humble Affection, far within and beneath the Respect of so glorious a Benefit, yet we were pleas'd out of our Love to accept it graciously. And yet this so gracious Acceptance cannot pass the Pen of this unhappy Libeller, but must be casten up (*i. e.* reflected upon) with a false and despiteful Exprobration, as done against Promise, Proclamation, and the Practice of King *James I.* which is falsely and villanously affirm'd. And when the infamous Libeller has spent his unhappy Breath and Pen in reviling and maledicting the glorious Name of Us, his gracious Sovereign, in our Person and Proceedings, he there-

after challenges us for applying our former Taxations to a wrong use, in bestowing the sament upon Parties and Persons, whose Waitrie (*i. e.* Extravagance) and Wants, our Subjects are not oblig'd to supply. And with this besides, by the way, he upbraids our Servants and Counsellors for Malversation, in the guiding and imploying thereof: And is so peart and impudent in his devilish Style, that he spares not the Name of our ever-glorious dearest Father King *James* of blessed Memory; but most falsely casts up (*i. e.* mentions) a Promise alledg'd to be made by his Majesty or his Commissioner, in the Parliament holden in *Anno* 1621, for discontinuing of the extraordinary Taxation in all time to come. And then in the end, as a venomous Wasp, he closes with an impudent Reproach towards us, in that which is most commendable in a Sovereign Prince, by taxing us in our Beneficence and Liberality to the Lords of our Session, in providing honourable Maintenance to them, and in bestowing Pensions upon our Officers; and leaves nothing within this our Kingdom, which is not drawn in within the Scourge of his devilish and malicious Pen and Tongue: So that it is not to be wonder'd and admir'd, that any Person, living under such a gracious, pious, and just Prince, could degenerate into so monstrous a Contempt of our Government, as to dare and presume upon to think, let be (*i. e.* much less) to speak and write such devilish, reproachful, scandalous, and seditious Thoughts, which infest the very Air, and can have no other end but the breeding in the Hearts of our good and loving Subjects, a fearful Jealousy and Dislike, and in the end Contempt of our just Government. And albeit all our good Subjects be bound in Conscience, as also by the Laws of this our Kingdom, to crush this Cockatrice in the Egg, and to abhor it as a pestilentious Clout; yet the said devilish Libel was found in the hands of the said Mr. *John Dummure*, Notary in *Dundee*, and was divulg'd and dispers'd amongst our Subjects about the foresaid Month of *March* last past: which coming to our Notice and Knowledge, we then gave power for examining of the said Mr. *John Dummure* how the same came to his hands; who deponed, That he had the sament from the said *John* Lord of *Balmerino*. Which *John* Lord *Balmerino* being also examin'd, he granted the sament to be of Verity, and therewith affirm'd, that he had the said Libel from one Mr. *William Haig*, whom he thought also to be the Penner and Author thereof. Of the which scandalous Libel, the said *John* Lord *Balmerino* himself was, and is, Author, Deviser, Consulter, Adviser, Airt and Part (*i. e.* Contriver and Partner) in the penning, writing, and drawing up thereof; at the least is guilty of the hearing thereof, and of the concealing and not revealing of the said Mr. *William Haig*, whom he affirms to have been Author of the same; and also is most guilty of the not apprehending of the said Mr. *William Haig*, it being in the said *John* Lord *Balmerino* his power to have taken and apprehended the said Mr. *William*; and, lastly, is guilty and culpable of the divulging and dispersing of the said scandalous and seditious Libel amongst our Subjects, in so far as the said *John* Lord *Balmerino* knew of the penning of the said scandalous Libel by the said Mr. *William Haig*, and advised and gave his Opinion anent (*i. e.* about) the making of the sament; and in token thereof, interlin'd a part of the said infamous Libel in divers Parts thereof with his own hand, which is yet extant to be seen by ocu-

lar Inspection; and which interlining the said *John Lord Balmerino* has confess'd to be his own Handwriting. Likeas immediately after the forming of the said most infamous Libel, the said *John Lord Balmerino* receiv'd the same from the said *Mr. William Haig*, and deliver'd it to the Earl of *Rothes*, of purpose to have the same presented to us, and caus'd *Mr. Robert Dalgleish* his Servant copy the said infamous Libel; which Copy he deliver'd to the said *Mr. John Dummure*, in whose hands the same was found, by occasion whereof the said infamous Libel was divulg'd and dispers'd amongst our Subjects, and openly read and expos'd to their view; to the Prejudice and Derogation of our sacred and glorious Name, by the infamous, scandalous, and seditious Passages and Articles contain'd therein. Likeas the said Lord of *Balmerino* kept and detain'd the said infamous Libel in his hand continually, from the time of the closing of the Parliament about the end of *June*, 1633. until the 9th of *June* 1634. last past, at which time he was challeng'd for the same, and did exhibit the said infamous Libel, in presence of the Lords appointed by us for his Examination. Likeas the said *John Lord Balmerino* having conferred with the said *Mr. John Dummure*, after his first Examination, which was in *March* 1634. and avowing that which he had done concerning the delivering of the said infamous Libel to the said *Mr. John Dummure*, and dispersing thereof, desir'd the said *Mr. John Dummure* to go and tell the Earl of *Traquair*, one of the Examinators, that better Men than the said *John Lord Balmerino* himself would set their Faces to (*i. e.* justify) the said Libel, at the least knew of the same. And albeit the said *John Lord Balmerino* be a Nobleman of good Learning and Understanding, and so presum'd to have the knowledge of the Laws and Acts of Parliament of this our Kingdom, was bound in all Duty, after receiving of the said infamous Libel from the said *Mr. William Haig*, and reading thereof (which in the hail Strain and Tenour of the same was of the nature of a scandalous and seditious Libel, prohibited by our Acts of Parliament) as he would have eschewed the Danger of our Laws and Punishment therein contained, as Author thereof, to have revealed the same to us, or to some of our Privy Council: And also to have apprehended the said *Mr. William Haig*, whom he affirms himself to have been the Author and Penner thereof: yet the said Lord *Balmerino* did no ways apprehend the said *Mr. William Haig*, nor yet reveal the said scandalous Libel, it being in his power to have apprehended the said *Mr. William Haig*, who was but a single Person, and the said Lord *Balmerino* being a Nobleman of Power and Credit: But the said Lord, notwithstanding thereof, did still haunt and converse with the said *Mr. William Haig*, and did keep, detain, and retain the said infamous Libel in his hands. Likeas the said Lord *Balmerino*, after he was cited to compare before the Lords appointed for his Examination, which was upon the 7th of *June* last; he comparing before the said Lords Examinators upon the said 7th of *June*, being Saturday, he craved early of the said Lords to have his Examination anent (*i. e.* about) his Knowledge of the Authors of the said infamous Libel, to be continu'd (*i. e.* delay'd) till Monday next thereafter, which was the 9th of *June*; which being granted to him by the said Lords, and he thereupon being demitted from them upon the said 7th of *June*, Long Saturday about twelve a Clock, he immedi-

ately thereafter met with the said *Mr. William Haig*, and shew'd to him the Warrant of his Citation. At which time the said Lord of *Balmerino* having the said *Mr. William Haig* in his own House, and so in his power, did not apprehend him, whom he knew and affirmed to be the Author of the said scandalous Libel: but by his shewing to him of his said Warrant of Citation, which bore the said Lord *Balmerino* to have been convey'd before the said Lords Examinators, to make answer anent the said seditious Libel, found in the hands of the said *Mr. John Dummure*, he thereby gave occasion to the said *Mr. William Haig* to escape out of the Country, and become fugitive. Likeas the said *Mr. William Haig*, immediately after the sight of the said Warrant shewn to him upon the said 7th of *June*, being Saturday, escaped and fled out of the Country, and became fugitive, and remains out of the Country continually since syne, (*i. e.* since that time.) Likeas the said *John Lord Balmerino* being incarcerat (*i. e.* imprison'd) within the Castle of *Edinburgh*, after his first and second Examination, as Author, Airt, Part, or Accessory of the said infamous Libel, received several Letters from the said *Mr. William Haig* furth (*i. e.* out) of the *Low Countries*, and other Places to which he escaped; which Letters the said *John Lord Balmerino* kept by him, without acquainting the said Lords Examinators, until the time he was challeng'd. In the which Letters and in other Letters sent by the said *Mr. William*, and intercepted by the Lords, it is affirmed and avowed by the said *Mr. William*, that he had the Approbation and Allowance of the said *John Lord Balmerino* to the making and penning thereof. By the which particular Deeds, Circumstances, and other vehement Presumptions particularly above expressed, it is clearly evinced, that the said *John Lord Balmerino* was Author, Deviser, Outletter (*i. e.* Publisher) Adviser, Airt and Part of the penning and forming of the said infamous Libel, at the least Concealer and not Revealer thereof; and is also culpable of the not apprehending of the said *Mr. William Haig*, whom he affirm'd to be the Author of the said infamous Libel: As also of the dispersing and divulging of the said infamous Libel, in manner particularly above-declar'd; incurring thereby the Pain and Punishment of Death, specified and contained in our said Acts of Parliament, which ought and should be inflicted upon him with all Rigour, in example to others to attempt the like. Our Will is herefore, and we charge you straitly and command, that incontinent thir (these) our Letters seen, ye pass, and in our Name and Authority, lawfully summon, warn, and charge the said *John Lord Balmerino* presently in Ward, within the Castle of *Edinburgh*, to compare before our Justice and his Deputs within the Tolbooth of *Edinburgh*, the 3d Day of *December* next to come, in the hour of Cause (*i. e.* when the Court is met) and there to underly our Laws for the Crimes above-written: To the effect that upon his Trial and Conviction, as culpable thereof, Justice may be ministred upon him conform to the Laws of the Realm; and that ye summon an Assize (Jury) not exceeding the number of 45 Persons, whose Names ye shall receive in a Roll subscribed by our Advocate, ilk (each) Person under the pain of 200 Marks, according to Justice. Given under our Signet at *Edinburgh* the 11th Day of *November*, and of our Reign the 10th Year, 1634. *Ex deliberatione Dominorum Consilii, sic subscribitur John Lannatize.*

Follows the Execution of the said Summons.

UPON the 14th Day of *November* 1634, I *James Currie*, *Ormond Pursivant*, and one of the Sheriffs in that Part within constitute, past at Command of thir (these) our Sovereign Lord's Letters within written, and by virtue thereof charged the within written *John Lord Balmerino* personally apprehended in the Castle of *Edinburgh*, and delivered to him a just and authentick Copy of these his Majesty's saids Letters, to compare before his Majesty's Justice and his Deputs in the Tolbooth of *Edinburgh* the 3d Day of *December* next to come, in the Hour of Cause, and there to underly his Majesty's Laws for the Crimes within written; to the effect, that upon his Trial and Conviction as culpable thereof, Justice may be administred upon him, conform to the Laws of this Realm: And this I did after the form and tenor of our Sovereign Lord's Letters in all points, before these Witnesses, *Mr. Archibald Geddes*, Constable of the said Castle of *Edinburgh*, and *John Malcome*. Herald. And for the further Verification of this my Execution subscribed with my Hand, my Stamp is affixed. *Sic sub. Ja. Currie, Ormond Pursivant.*

Thereafter my Lord Advocat produced with the Summons above-written, the Copy of the infamous Libel which was found in the hands of *Mr. John Dummure*, Notary in *Dundee*; bearing in the end thereof, that the said *Mr. John* being examined thereupon, he, by his Deposition has granted it to be the famen Libel which was in his hands: of the which Copy, the Tenour follows.

To the King's most excellent Majesty, the humble Supplication of a great number of the Nobility and others Commissioners in the late Parliament.

Humbly sheweth,

THAT the Notes which your Majesty put upon the Names of a number of your Supplicants in voting about these Acts, which did imply a secret Power to innovate the Order and Government long continued in the Reformed Church of *Scotland*; and your Majesty's refusing to receive from some of your Supplicants their Reasons for dissenting from the saids Acts before your Majesty, and in your Hearing in Parliament, to breed a Fear of our becoming obnoxious unto your Majesty's Dislike, if your Highness should still remain unacquainted with the Reasons of our Opinions deliver'd concerning the saids Acts: Seeing your Supplicants are confident, that your Majesty vouchsafing to take notice of the saids Reasons, would be pleased to acknowledge that no want of Affection to your Majesty's Service, but a careful Endeavour to conserve unto your Majesty the hearty Affections of a great many of your good Subjects that are tender in these Points of Novation, covertly thrust upon this Church, did induce our Wishes and Voices to appear in opposition to the saids Acts; and that a predominant Desire in us to have all your Royal Designs here to prosper without Interruption, did absolutely command us to forbear any Reasons that could have been propounded against many of the Conclusions in the late Parliament.

We do therefore humbly beseech your Majesty graciously to ponder the Considerations after-written, so shall we be encouraged (as in Duty bound) to continue our humble Prayers for your Majesty's long and happy Reign.

VOL. I.

First, we humbly beseech your Majesty to consider, That tho' these Acts, as they are conceived, and may concern your Majesty's Prerogatives, and the Liberties of the Church, had never been moved or concluded (as they are) your Majesty would have suffer'd no Prejudice in your Benefit, Honour, nor Power: That your Supplicants are much more free from all Suspicion of private Ends in dis-assenting, than the Contrivers of the saids Acts, in offering them to the hazard of Contradiction, or solliciting an Assent thereto: That in deliberation about matters of Importance, either in Councils or Parliaments, Opinions do often differ; and they that have been of contrary mind to a Resolution carry'd by the Plurality of Votes, have never hitherto been censured by a Prince of so much Justice and Goodness as your Majesty.

We do also most humbly beseech your Majesty to believe, that all your Supplicants do, in most submissive manner, acknowledge your Royal Prerogative in as ample manner as is contained in the Article 1606, made thereanent (thereabout;) and withall do consider, that the long Experience and incomparable Knowledge your Royal Father had, in matters of Government, as well in Church as in Common-wealth, is the very Cause expressed in the Act 1609, for giving Power to his Majesty to prescribe Apparel to Kirk-men, with their own Consent. And since in all the time of his Life and Government, for the space of sixteen Years thereafter, he did forbear to make any Change upon their former Habits; we are bold to presume, that in his great Wisdom he thought fit, that the Apparel used in time of Divine Service ever since the Reformation of Religion till his Death, and to this Day, should be continued, as decent in the Church, and most agreeable to the Minds of his good Subjects in this Nation. We do also beseech your Majesty to consider, That under the Act entitled, *A Ratification of the Liberty of the Church*, the Acts ratifying the assembly of *Pertb* in Parliament 1621, were declar'd to be comprehended: That most part of us being then in Parliament, did oppose the same; that Experience hath shewed how much these Articles of *Pertb* have troubled the Peace of this Church, and occasioned innumerable Evils and Distractions in it: That there is now a general Fear of some Novations intended in essential Points of Religion; and that this Apprehension is much increased by the Reports of Allowance given in *England* for printing Books of Popery and Arminianism, and the Restraint of Answers made to them; and by preaching Arminianism in this Country, without Censure; by the Admission made of divers Papists to the Parliament and upon the Articles, who by the Laws of this Realm can be no Members of any Judicatory in it: That the Minds of most of your good People being in this perplexity, your Supplicants have great reason to suspect a Snare in the subtle Junction of the Act 1609, concerning Apparel, with that of 1606, anent your Royal Prerogative; which by a sophistical Artifice should oblige us either to vote undutifully in the sacred Point of Prerogative, or unconscionably in Church Novations, [* A.] which blessed King *James* would never have confounded, as appeared evidently in the Parliament 1617, honoured with his gracious Presence; where his Majesty, by the Bishops

* *The Parliament's interlinings you will find in the other Copy herof.*

Instigation, tried, urged, and past in Articles a Ratiſication of his Royal Prerogative enacted in the Parliament 1606, with addition of an Article authorizing all things that thereafter ſhould be determined in Eccleſiaſtick Affairs by his Sacred Ma- jeſty, with the Conſent of a competent number of the Clergy, to have the Strength and Power of Law. When this Act came to be heard in open Parlia- ment, his Maſteſty gave order to read only the Rubrick of the Act; which being done, he was then pleaſed in his fatherly Compaſſion over the tender Affections of his loyal Subjects (well known to his Maſteſty, as fluctuating betwixt Love and Fear) publickly from his own mouth to declare his princely Love and Pleaſure, for Reaſons known to himſelf, to have that Act ſuppreſs'd, tho' paſt in the Articles: Becauſe his Royal Prerogative being of itſelf inviolable, was already eſtabliſhed ſufficiently; and in the depth of his Wiſdom he would abſolutely prefer the Peace of the Church to the Appetite of Church-men. And ſince we are fully perſuaded of your Maſteſty's unfeigned Affection to the true Religion, and ſo do preſume

* *Interlined*
[B of Reli-
gion C.] *in the*
other Copy by
the Pannel.

that none of theſe things lawfully rejected at the Reformation [*B— C—] thereof in this Kingdom, ſhould be introduced again without Conſent of our Clergy lawfully aſſembled; and fearing that a forcible and colourable intruding thereof, would dimin- iſh in the Hearts of many of your loyal Subjects that Affection which is founded on their Opinion of your Maſteſty's Goodneſs and Wiſdom:

We do therefore diſ-aſſent from the foreſaid Acts, as importing a Servitude upon this Church unpraſticed before, and giving ground for introduction of other new indefinite Devices.

We do further offer unto your Maſteſty's Conſideration, that albeit our juſt and heavy Grievances allow'd of in the late Convention of Eſtates 1625, and 1630, to have been repreſented to your Maſteſty, in hopes of Refreshment to the Country's Sufferings, have been altogether ſlighted in this your firſt Parliament; albeit your Maſteſty denying your Nobility their Freedom by Authority to meet with the Lords of the Articles, may ſeem againſt the Conſtitution of a free Parliament (under ſuch a juſt and lawful Prince, and contrair to the Cuſtom of your Anceſtors) which before the Parlia- ment held in *Anno* 1609, did always elect and chuſe the Lords of the Articles from among them of their own Rank and Quality; there having been no Parliamentary Biſhops from the Reformation of Religion till then, nor were they ſuch as now do cull and ſingle out ſuch Noblemen either Popiſhly affected in Religion, or of little Experience in our Laws, as having had their Breeding abroad, and ſo none of the ableſt to be upon our Articles, but fitteſt only for the Clergy's myſtical Ends. Whereas the former Praſtice was ſuch, as ſeemeth moſt agreeable to Reaſon, and what every Eſtate ſhould do, that ſo they may communicate their Minds with the reſt of their Body; ſince none but Men very preſumptuous of their own Knowledge, or ſenſeleſs in themſelves, will adventure to truſt their firſt Conceptions in Matters of ſo great Importance as are the Concluſions of Parliament. Albeit the humble Supplications of the Miniſtry to your Maſteſty and Eſtates of Parliament, deliver'd to the Clerk Register, (and that your Maſteſty was in all due Humility petition'd by the Miniſters of

this Kingdom, both Conformiſts and Noncon- formiſts, to give them a Hearing) have been ſuppreſs'd: albeit the Meeting of the Gentry, and happily of the Burrows too, in a joint Purpoſe to have repreſented to your Maſteſty our unſpeakable Sufferings by the Abuſes of the Coin (the Maſte- ry of the Mint being a thing merely Regal) and Increate of Theft and Oppreſſion of divers Par- ties, and other things worthy your Maſteſty's Con- ſideration, were in your Maſteſty's Name inter- rupted: and finally, albeit your Maſteſty was gra- ciously pleaſed by your former and later Speeches in the Parliament-Houſe to declare (anſwerable to your ſeveral Proclamations, bearing that the Courſe taken by your Revocation for ſettling the Patrimony of your Imperial Crown, was, that ye ſhould not be burdenſome to your People) that your Maſteſty had no purpoſe at this time to lay any Burden upon this Nation, according to the wiſe Counſel of King *James* in his *Basilicon Doron*, treating of the right Uſe of Subſidies: albeit that the preſent Condition of your Subjects is worſe, and the Patrimony of the Crown greater, than when King *James* I. remitted to his People a great part of his Taxations, granted even for that good King's Ransom; yet have we all as one Man con- ſented to all your Maſteſty's Demands, and more, even to have Taxations multiply'd, without repre- ſenting how the former have been, or theſe may fall to be, beſtowed upon divers Parties, whole Waſtes and Wants your good Subjects are not ob- liged to ſupply; without objecting that ſome of them have been granted extraordinarily for Sup- plies of the *Palatinate*, which being now by the Mercy of God in a better Condition, they might have pleaded in reaſon to be thenceforth diſcon- tinued; without foretelling that ſome of the Sub- ſidies are like to be means of more Proceſſes (or Suits) betwixt your Maſteſty's Subjects and the Treasuſer, than matter of Profit to your Treasu- ry; without putting your Maſteſty in remem- brance of the Impertinencies you have ſuffer'd by Men's Ambition after the publick Places of Judi- catories, which none have heretofore reſuſed by reaſon of the ſmall Fees due to them; without contradicting the Exceptions of your Officers Pen- ſions, or alledging their Fees to be as ſufficient for maintaining the Dignity of their Places now, as they were before your Maſteſty's Father ſucceeded to the Crown of *England*. And all this have we done implicitly, only to teſtify our ingenuous Affection to your Maſteſty, and our obſequious Reſolutions to give you full Content in every thing that makes not a Breach in our Religion and Laws, or occasioneth not Offence to the weaker ſort in the way of God's Worſhip here eſtabliſhed; and albeit we were not acquainted with any of theſe Statutes before the publick voting of 'em in Parliament. Therefore we are confident that your Maſteſty finding ſuch a Har- mony in our Affections to your Service in pre- ſerving our Religion and Liberties, will be un- willing, upon any Suggelſtion of ſuch as are (or hope to be) Sharers of our voluntary Contribu- tions, to introduce upon the Doctrine or Diſci- pline of this your Mother-Church, any thing not compatible with your Maſteſty's Honour, your good Peoples Conſciences, or that hath been re- jected by Acts and publick Praſtice of this Re- formed Church.

Follows.

Follows the said Mr. *John Dummure's* Deposition, written upon the end of the said Copy.

Apud Edinburgh xiv Martii 1634. convened St. Andrews, Traquair, Bishops of Edinburgh, Ross, Clerk of Register.

I Mr. *John Dummure*, Notary in *Dundee*, being examined in presence of the Lords of his Majesty's Secret Council above-written, depone and confess, That this Supplication within written, is all written with my own Hand, and is that which I delivered to Mr. *Peter Hay* of *Naughtoune* about *Lambas* last. And farther I depone and confess, That this is the just and true Copy of the Paper delivered to me by *John Lord Balmerino*, shortly after the end of the late Parliament, within *Edinburgh*; and that then my Lord of *Balmerino* (I being with him) said to me, *Because ye have given me many Papers, I will let you see this, and have your Judgment of it; but let it be tibi soli, as ye respect my Credit.* And that I kept it four or five days, and copied it, and then delivered the same back again. I further depone, That the Paper contained the Supplication within written, in the same Words and Sense: and it is not by my Lord *Balmerino's* Hand, but by some other Hand.

Sic subscribitur, Joan. Dummure.

Written on the back of the said Copy, *For the Kirk and Country in the Parliament, 1633.*

My Lord *Balmerino* produces two Warrands of the Lords of Session, by their Lordships Deliverance of the several Dates under-written, ordaining the Procurators therein contained, to compare and defend my Lord in the criminal Process above; and the said Lords by their Deliverance, of the Date the 19th of *November 1634*. The Lords having considered the Desire of the Supplication, &c. and appointed the Persons therein condescended on by my Lord to be his Advocats for his Defence, viz. *Sir Lewis Stewart*, *Mr. Thomas Nicolson*, *Walter Hay*, and *Mr. John Nisbet*. And by the Deliverance on the end of another Supplication given in by my Lord to the said Lords, craving (upon some of the former Advocats refusal) more Advocats, they by their Deliverance thereon, of the Date the 25th of *November 1634*, appoint and ordain *Mr. Roger Mowat*, *Mr. Alexander Pearson*, and *Mr. Robert Macgill*, Advocats; and ordains, &c. Upon the production and reading of the which Warrands, the said Lord *Balmerino* took Instruments.

Thereafter it was objected by my Lord's Advocats, that my Lord Register could not sit as an Assessor to my Lord Justice-General in this Process, because not only my Lord Register has been one of the Judges of the particular Committee appointed for Trial and Examination of the Pannel, before whom he has oftentimes appeared and been examined; but also my Lord Register has given partial Counsel, and has been upon the Counsel of the advising and libelling of the Dittay now produced and read, and has assisted in the same at several occasions: and so by giving Information and Advice in that kind, has behaved himself as Party in effect, and therefore cannot be Judge nor Assessor to the Justice-General. And after Answers and Replies, the Lords by their Interloquitor repelled the first part of the Al-

leadgance, bearing that my Lord Register cannot be Assessor, because he was a Member upon the Committee: And as to the second Member thereof, declares that they will have my Lord Register to make his Judicial Declaration, and that judicially thereupon, in presence of the Pannel, before any Answer be given thereto; which accordingly my Lord Register does.

The Pannel, in respect of my Lord Register's Declaration Judicial, is content that my Lord Register remain Assessor to the Justice-General: whereupon my Lord Advocat asked Instruments.

Thereafter the Pannel produced a Supplication to the Lords of Privy Council. with Deliverance thereupon, craving the Depositions made by the Earl of *Rothes*, *Mr. John Dummure*, and *Mr. Robert Dalgleish*, from the Clerk, to be seen by his Procurators; and their Lordships, by their Deliverance thereon, dated at *Edinburgh, 28 November 1634*: the Lords remit to the Justice the answering of the Desire of this Supplication. *Sic subscribitur, St. Andrews.*

Accordingly my Lord Advocat, at the Justice Ordinance, (i. e. by order of Court) gave up to *Mr. Roger Mowat*, one of the Pannels Procurators, two Depositions of *Mr. John Dummure*, one of *Mr. Robert Dalgleish*, one of the Earl of *Rothes*, one of *Mr. Peter Hay*; together with four missive Letters, sent by *Mr. William Haig* to the Pannel, to be reproduced Friday next, at which time they were accordingly reproduced.

Thereafter upon the said *Decemb. 5.* the Dittay and infamous Libel was read, as specified in the Dittay.

It is first alledged by *Mr. Robert Macgill*, as the Pannel's Procurator, under Protestation for himself and the rest of his Brethren, with an Apology that he nor they allows not the least sort of inordinate Speech against his Majesty, but only to free the Innocent, as they who are commanded by the Lords of Session, and take Instruments upon the first Article of the Acts imprinted in our Sovereign's first Parliament, anent the surveying of the Laws; does alledge the Dittay cannot be inferred against the Pannel, upon the first Act specially and at length set down (therein:) because it has not been the Mind of the Legislator there to inflict the Pain of Death upon such Reproaches as are contained in the Dittay, and alledged to be contained in the Supplication or Petition styled by the Dittay *Calumnious*. For the main cause of making that 20th Act, Parl. 10. holden in *December 1585.* (our dread Sovereign, and his Honour, being ever proposed) was not only to ratify the Grace given and extended to these Noblemen, who a little before became in at *Stirling*, as may be seen by the particular Acts of Parliament unprinted anent the restoring of those Noblemen, with their Followers; but much more to strengthen the Nobility (as reason was, and the time required) against Captain *James Stewart*, who then had fled, and was the cause of their former Banishment; and feared by them, that he might wrong them again, if he had regained his Majesty's Ear, because that they came in such a manner. And to strengthen also the Nobility against any other, who should take in hand the like, as to come in betwixt the Tree and the Rind; I mean, betwixt his most Sacred Majesty and his Favour & suos Comitibus, for his Nobles are so called, and has their Names as they who should be ever accompanying his

his most Sacred Person. For the Deeds done *contra aliquem & Comitatu vindicantur ut Crimen Læsæ Majestatis, Leg. quisquis, Cod. ad Legem Juliam Majestatis*, by the time.

The Strain of the Act carries also this, to wit, Reproaches of his Majesty's Estate or Government, or depraving his Laws and Acts of Parliament, or misconstruing his Proceedings: but answering to the Question, *In quem finem* should these Reproaches have been written, whereby any Mislaking may be moved betwixt his Majesty and his Nobility and loving Subjects? Where the word *his Nobility* is very emphatick, and the two last words expounds the samen, being exegetick of the former by a gracious Praise, testifying by the word *loving* the forgetting of the former Slip, which had been more by misreport than in verity. Compare also this Act with that which was made during the said Captain *James* his Grandeur, a little more than a Year preceding, *Parl. 8. cap. 134. Jac. 6.* in the which, as it were *consulto Consilio*, the Noblemen are omitted *ibi*; to the Reproach of his Majesty's Council and Proceedings, to their great Prejudice who were then put away by his [*i. e.* Captain *James's*] Counsel, and holden away by his Detractions, until they peartly enough (yet encouraged by their own Innocency) came in at *Stirling*: and incontinent did procure that tenth Parliament to be holden, in which was made the said tenth Act, no more Days intervening betwixt their Return and its Sitting but the Days of Citation. And is yet more clear by the words, *Deprave his Laws and Acts of Parliament*: meaning *Act 25 Jac. 2. Parl. 6.* against the Apprehenders of his Majesty's Person, as the Act bears; the literal Sense whereof might infer a Dittay against the Committers, if it were not to deprave the Laws, if the Mind of the Legislator were not look'd unto. So that this tenth Act cannot well be understood as convenient to infer the Dittay, especially seeing he was not the Author or Penner of that alledged infamous Libel; but Mr. *William Haig*, who has clearly taken it upon him by his own Letter, as was constant (*i. e.* evident) to the Lords of the Committee, and is acknowledged in the Dittay by these words, *At the least guilty of the Hearing*: wherein the Pannel's part was not much worse than others who heard it, and yet not revealed the same. As also altho' that Remonstrance by way of Supplication be now alledged to be scandalous, but then to be preferred to his Sacred Majesty, and was offered to be given; *ergo* the Dittay cannot be inferred in this Act.

And as to the second Act libelled expressly, *Jac. 6.*

*Parl. 14. cap. * 209.* containing divers Acts anent Leasing-makers; we repeat the forsaide Protestation, and say, If all sorts of inordinat Speeches (whilk let it be spoken with all Humility and dutiful Reverence, as not allowing any, but to shew the Pannel's Innocency) against his Majesty our dread Sovereign and his Government, even those which by Interpretation or Misconstruction may be inferred upon a Man's Speech, (*i. e.* contrary to) his Mind; and not only the Author of the same, but also the Hearers, not Revealers, and not Apprehenders, are understood to be punished with Death in our Law, in the Addition of that Act, and so are all to be comprehended therein: then we should make our Law to commit an Absurdity, which no municipal Law ought to do; but rather an Interpretation should be taken out of the Com-

mon Law and Reason. *Gailus ad Longum, lib. 2. Observatione trigesima tertia, quo modo Statutorum Interpretatio facienda sit.* The Absurdity is, that there should be Equality of Pains, and so Equality of Crimes, committed in Speeches (in most submissive manner be it said) against his most Sacred Majesty, not only by the Authors, but also by the Concealers and not Apprehenders, whatever the scandalous Speech be. But he that hears and not reveals a higher Speech, shall be punished as he who hears Treason. The Connection is cleared by this, *Quod Delictum majus a parvo dignoscitur ex Pœna qualificata. Tractatu incerti Authoris de Læsæ Majestatis Crimine, quest. 11. num. 5. Et passim in Jure, ut comprobatur Baldus in Capitulo primo, prima Nota ad Titulum 38. lib. 2. Feudorum de Vassallo qui contra Constitutionem Lotbarii.* And the Opinion of the Civilians is exploded long since, *ut sententia dignum horribili flagello.* For there are sundry sorts of inordinat Speeches and Contumelies against the Prince and the Estate; as these that are spoken against his Majesty's Person and Blood outrageously, or in a Conspiracy against the Country, understood in some manner by *Clarus, paragrapho Læsæ Majestatis, num. 1. in fine.* And here it is only that the Lawyers find the Hearers and not Revealers, and not Apprehenders, to be punished by Death: *Clarus, paragrapho ultimo, quest. 87. num. 2. Punctus in fine.* And yet he requires *ut adsit Tractatus.* Such were the Speeches uttered betwixt *Catiline* and his Complices; *Et non nuda Verba ab Authoris Animo detorta.* In which case it is well said, *Quod Crimen Majestatis a Judicibus non in occasionem ob principalis Majestatis Venerationem habendum sit, Leg. 7. § 2. F. ad Legem Juliam Majestatis.* The second sort are where *directis verbis Animo injuriandi viciis impropert*, to a Prince for lack of Virtue. Where the Lawyers remit the Author, *Lege unica Cod. si quis Imperatori maledixerit*; (it not being yet condescended fully amongst them, what is meant by the word *Remittendum.*) But anent the Hearers, nor Revealers, and not Apprehenders, not a mum, but on the contrary, *quod nulla Pœna teneantur*: As in *omni delicto nisi Casibus directis, Clarus* says, *num. 3. Versiculo quod tamen, dicta questione 87.* Far less can the Hearers, not Revealers, and not Apprehenders of the Authors of the third sort of Speeches be concluded under Death with the first; and that third sort (in all Humility I say) where Vice and Lack of Virtue is not *impropert directis verbis, (tantum abest ut sit animus injuriandi.)* But as a Flower or flourishing Weed may afford both Honey and Venom, so Speeches written to ane good End, by ane misconstruing Illation may be interpret in ane evil Sense; as the Informer of the Dittay makes the alledged Supplication to be a contumelious and infamous Libel: which cannot be done (in all Humility and Submission I say it) to infer the Dittay against this Pannel, upon the said Addition in the Act 205, as Hearer, not Revealer, not Apprehender, without a manifest Absurdity against the Law and Reason, as said is. For even in Speech, *quamvis dixit Dominum suum esse Dominum Hominum & Bestiarum, quod non debet Author puniri*; concluded remissive. *Cæsar Orcellus in advocacione ad decisionem Mathei de afflictis 265. num. 68, 69. & idem advocacione in decisionem 307. num. 15. Quod verba sunt civiliter capienda & ad bonum moderanda; itidem in dicto Tractatu incerti Authoris dicitur distinguendum inter verba narrativa & simpliciter enunciata quasi prætereundo, ac alia verba dispositiva seu positiones*

positiones affirmatas, ut ex illis non liceat Argumentum sumere, ex his vero liceat. Quæst. 6. num. 13. ibi nunc videndum. But of the Particulars, and even of this General, more falls to be said hereafter.

Only against Delators of Speeches, called *Fru-mentarii & Otacustai*, let it be remembered to the Justice, that some good Emperor (*quos infinitis illusterrimus & sacratissimus Imperator noster præcurrit parasangis*) used these Folks to know what the People thought of them, and how to amend any Slips, if any were. *Capitolinus in Antonino Philosopho* says, *Erat famæ suæ curiosissimus, requirens ut verum quisque de se diceret, emendans quæ bene reprehensa viderentur, & passus se impune cavillando perstringi, dicitur civiliter se egisse.* *Xiphilin* reports the fame of *Titus*; *Imo Tiberius deprecatus est apud Senatum nimis præcipites verborum penas.* Yea, to this tendit King *James V.* of worthy Memory, his disguising himself for such another Inquiry; as also *Goran*, one of our dread Sovereign's most worthy Progenitors, is commended for the same by *Hector Boyes*. In respect whereof, the Dittay is not relevantly inferred upon the two Acts of Parliament libelled.

It is farther alledged by Mr. *Roger Morvat* for the Pannel, That the saids two Acts of Parliament mentioned in the Dittay, and whereupon the samen is founded, can be no ground in Law for this criminal Pursuit; in respect the saids two Acts, and many others of that kind, but especially the last of the saids two Acts, and the Additions subjoined thereto, have never been in Observance, Custom, or Practice heretofore, against any alledged Contraveeners thereof: and therefore cannot now receive a beginning against this Pannel, being a Nobleman, known by the hail Course of his by-gone Life to have been an strict obsequious Keeper and Observer of his Sacred Majesty and his most noble Progenitors their Acts and Statutes; in such sort, that it can never be verified that ever the Pannel has been so much as once denounced Rebel, and put to his Majesty's Horn, (Outlawry) for any Action or Cause, Civil or Criminal, whatsoever; and so is not presumed to have contravened any of the said two Acts, albeit the same had been in custom and practice, as they have not. And that the said two Acts, specially the said Addition of the last Act, are fallen in desuetude, and never heretofore practised, is clear and evident, because the contrary cannot be shoven: And it has been received as a most laudable and warrantable Custom amongst wise and judicious Politiques, that Laws in desuetude and out of custom are not to be introduced at an instant, without some new Intimation thereof, when necessity is found for re-establishing of the said Laws; but specially such Laws and Acts, as carry with them the Pain of Death, Forfaulture, or such-like: Likeas some strict Acts of Parliament of this kind, containing the like or more grievous Pains, being ratified by subsequent and posterior Acts, the said posterior Acts have ordained Intimation to be made to the Leidges of the said former Acts, Pains, and Severity thereof, before the said Pains should be inflicted upon the Contraveener. And it is clear, that not only the said two Acts mentioned in the Dittay are not of custom, and have not been practised, but many more, containing some less and some greater Pains, in the most part of all preceding Parliaments: For which I will only adduce some few,

to verify and instance this part of my Alleadgance, (Allegation.) And first I alledge the 105th Act of the 7th Parliament of King *James V.* of worthy Memory, intituled, *Pains of them committing Fraud in Alienations*; which bears, about the end of the said Act, That the Person, Seller or Giver shall be declared infamous, and shall be punished in his Person and Goods at the King's Will. And it cannot be denyed, but that this Act hath been many times contravened, by many of good sort, in points of double Alienations, and yet was never heretofore practised against the saids Contraveeners.

There is another Act of Queen *Mary's*, of happy Memory, *Par. 5. cap. 16.* made against them that swears abominable Oaths; whilk Act is ratified by King *James VI.* of ever-blessed Memory, *Par. 7. cap. 103.* both the said Acts bearing in express words, That for the fourth Fault, Prelats, Earls, or Lords contraveening, shall be banished or put in Ward Year and Day, at the Will of the Prince. These Acts have been contraveened, yet no Pursuit for the saids Pains has followed thereupon.

The 2d Act of the 16th Parliament of most blessed King *James*, bears, That the slaying of Salmond, Smolts, Kipper or Black-Fish, shall be a Crime of Theft in time coming, and to be punished as Theft in every Quality. Which Act, if it shall receive force, and be put in practice upon a landed Man, (as questionless it may) it shall import him, or any landed Man Contraveener thereof, no less than Tinsel (Loss) and Forfaulture of Life and Goods; because by the 50th Act of the said 11th Parliament, landed Men convict of Theft or Receipt thereof, commits Treason: ergo landed Men, Slayers of Salmond, Smolts, &c. in forbidden time, commits Theft, and consequently Treason; which (as the Act bears) is declared to be Tinsel and Forfaulture of Life, Lands, and Goods.

These and many other of this kind, every where to be found amongst the said Acts, does evince, that with reason the said Acts libelled in the Dittay, and others of that kind, which never have been practised of before, cannot be received against the Leidges (Subjects) without a preceding Intimation; whereby good and loyal Subjects may be *in mala fide*, in case they be found after the said Intimation to have contraveened. And so the said two Acts, specially the said Addition mention'd in the last Act, cannot be found nor sustained as warrantable Grounds in Law against this Pannel; being a Nobleman, not only known to be an Observer and not Breaker of his Sacred Majesty his noble Progenitors their Laws, Acts, and Statutes, to draw upon him for alledged hearing, concealing, and not revealing and not apprehending of the Authors of the alledged infamous Supplication, the Pains contained in the said Acts and in the said Dittay, which is the Tinsel and Loss of his Life.

It is alledged farther by Mr. *Alexander Pearson* for the Pannel, in fortification of the Exception propounded, *Quod Leges per desuetudinem tacito consensu censentur abrogatæ, expressa Lege 32. § 1. F. de. Ita ut secundum ipsas non firmatas judicare non liceat, firmantur autem Leges cum moribus utentium approbantur, Canone in istis tertio distinctione 4ta. Et si hoc obtinet in Civilibus. quanto magis in Criminalibus, ubi tanto cautius agendum est, quanto magis periculum vertitur? Unde illud Papæ qui decrevit ut generaliter Clerici*

Clerici in Quinquagesim. a carnibus & deliciis jejument, quia moribus utentium approbatum non est, aliter agentes transgressionis reos, non arguit Canone supra citato. And therefore the Acts of Parliament whereupon the Propositions of the Dittay are founded, none of them, at the least the last thereof, never having been in observance at no time since the making thereof, now by the space of forty Years, even since the last Act; the Acts foresaid, specially the last, cannot sustain the Dittay, nor infer the Pains therein mentioned.

It's answered by my Lord Advocat, That all the Alledgances ought to be repelled, in respect of the Acts of Parliament, whereupon the Dittay is founded; and that there runs no Prescription against Laws, and specially against Laws prohibitive of Crimes, which are also prohibit and punished by the Common Law; of the nature whereof are these two Acts whereupon the Dittay is founded. And the Alledgance, *Quod Leges tacito consensu abrogantur*, is only *per contrariam Consuetudinem idque in contradicito Judicio*, which is that which the Law calls *tacito Consensu*; and all the Arguments adduced in the contrary, are *ab Incommodo quod non solvit*. And the Indulgence of the Prince in the overseeing the Punishment of Crimes in bygone time, cannot be adduced to warrant a Crime when it is pursued; and specially when the Crime is of the Nature of Rebellion against the Prince, in his Person, Estate and Government. And albeit this be a clear and sound Answer, and that no more is necessar; yet it is constant and nottourly known, that these Laws has been put in Execution this 34 Years bygone; as namely, against *Francis Tennant*, in the Year of God 1600. and against *Mr. Thomas Ross* in *Anno 1618.* and lately against *Mr. George Nicol* his infamous Libel.

It is duplyed (said again) for the Pannel by *Mr. Alexander Pearson*, That where it is alledged by my Lord Advocat, that Desuetude cannot be obtruded against Acts of Parliament, which has Warrant from the Common Law; it is answered, that the Acts anent Crimes by Desuetude rather loses their Vigour than Acts of Civil Business, because in Acts Criminal there is greater Hazard, as Loss of Men's Honour and Life. As to any Precedent in Civil Law giving Warrant to the Addition of the last Act of Parliament, it cannot be alledged, *Quia non est Lex statuens penam mortis, contra Hecers, Concealers, and not Revealers, which is the Addition of the Act.* And where it is alledged by my Lord Advocat, that Desuetude of Laws is only *per contrariam Consuetudinem in Judicio Contradicto*; it is answered, That Desuetude of Laws is clearly expounded otherwise by the Citations above-rehearsed: so that *Leges quae nunquam in usum forensium productae sunt & quae moribus utentium approbantur*, are become in Desuetude, *licet non sit Consuetudo in foro contradicito in contrarium.*

It is further duplyed by *Mr. Robert Macgill*: Not to dive any further into the Acts of Parliament, but respecting the Distinction already said, I alledge, that the Addition of the Act 205, cannot be thought to be *in viridi observantia* in this our Case; because if so ought to be, it should much more have been practised against the Havers, Hearers, Readers and Seers of any using *Mr. George Buchanan's* Books: But this hath never been

used yet, Act 134, Parliament 8th, albeit there has been many. But so it is, that this has not been used in its own Case; *ergo* it ought not to be begun to be put in use against this Pannel, who let be his other Virtues, has been ever a Patron of dutiful Obedience to his and our most gracious and sacred Sovereign. The Connection is clear, because that Book, as sundry reports it who has read it out of the Country, *ipsum regiminis Cardinem nititur corvellere, & impingit in Regiam Prerogativam.* Further, if all sort of Speeches (let me say it in all due Reverence) against his Majesty and Government, come under the Acts ratified here, with the Addition against Havers, Hearers, Revealers, and not Apprehenders, and were *in viridi observantia*, who should not be brought before this Judicatory, and under the compass of the said Act? for as we live all in one Family, every Man in his own, and talk thereof, so live we also in a Commonwealth, whereof to talk sometimes bitterly (which is not to be allowed) tho' foolish: And so the most part thinks that they have their own Interest, and will force as it were the Wiser, till they will they, to hear them. And anent that which my Lord Advocat says, *quod non valeat Argumentum ab incommodo*, it ought to be repelled in respect of the Place alledged out of *Gaius, Libro secundo, Observatione 33.* where he concludes, that the Argument is good against the Municipal Law to make it to be ruled according to the Civil Law, and to common Reason. And farther, that our own Municipal Laws ought to receive Limitation according to Reason. I repeat the foresaid 25 *Act Jac. 2.* Item by the said *Act 134. Par. 8. Jac. 6.* it is made capital to meddle in his Highness's Affairs and Estate, either present, bygone, or to come; saying further, That none of his Subjects of whatsoever Function, Degree, or Quality, presume in time coming to meddle as said is, without any Exception: then shall a Nobleman, who is born as it were by our Laws to meddle in such Affairs as concern the Commonwealth and Country, not have so much Liberty as to petition his Majesty most humbly in Matters of Government, for the Weal of all, as may seem to him, while his Reasonings be discussed, no not in Parliament; yea, even *extra Parliamentum* his sacred Majesty was petitioned after his Majesty's Revocation, howsoever it was conceived, and in whatsoever Terms: So that Punishment of Speeches anent Government, and the Laws, must receive their right Sense. Wherefore 'till they be surveyed (which has been most royally begun long since by his most sacred Majesty, and now enacted in his first Parliament) the Rigour of the said Addition ought not to be practised upon this Pannel; *Pars enim praecipua Legis est voluntas, & verborum dicitur Prerogativa, Lege non dubium. Codice de Legibus.* And *Menochius passim de arbitrariis Judiciis*, gives exception from Municipal Laws, according to Equity and Reason.

It is farther duplyed by *Mr. Roger Mowat*, to that part of my Lord Advocat's Answer anent the Instances and Practices alledged for proving of the Custom and Consuetude of the said two Acts of Parliament, to wit, *Francis Tennant*, *Mr. Thomas Ross*, and *Mr. George Nicols*; That the said Practices or Instances cannot be respected, because they are not produced: and if they were produced (as they are not) it should be clearly shoven, that they met not in (did not suit) this Case, either because

because they are not founded upon the said Acts of Parliament, and specially upon the said Addition contained in the said last Act, or else because the Crimes are not alike: for the first Crime of *Temani's* was ane Cokiland (Libel) bearing and propoing exprefs positive Scandals and Reproaches, whereof he was condemned to have been the Actor and Author. And so whether he was pursued and convict upon the Acts or upon the Common Law, his Dittay was most relevant. As for Mr. *Thomas Ross*, his Crime was also a most abominable Speech written by himself against the hail Nation *directis verbis*, whereof he confessed himself (being upon Pannel) to be the Penner, Former, Devicer, and Divulger; and Copies of his most infamous Libel affixed upon publick Places with his own hand: and so cannot be obruded as a Practick or Precedent in this Case. As for Mr. *George Nicol* his Crime, it needs not to be answered, because he was not pannelled nor convict; and so his Proccs intended against him cannot be adduced as ane Practick to rule the like Cases thereafter: and the Pain inflicted upon him was by Warrant of Council, and so none of the saids Practicks can be respected. In respect whereof, the Argument founded upon the Desuetude of the said two Acts, and the Danger that may follow hereafter upon other Acts of that kind, &c. which have not heretofore been practised, stands relevant. And it's craved, that the Dangers which may ensue to good Subjects upon the Practice of the Acts before alledged, may be adverted unto, und the dangerous Sequels prevented.

Secundo, It is alledged for the Pannel by Mr. *Alexander Pearson*, under Protestation forsaid, That the Writing whereupon the Subsumption of the Dittay is foundit, is not an infamous Libel *quoad accusatum*, neither in the Pannel's part in the Particulars libelled against him seditious and calumnious; neither can he be presumed to have had any such Intention. First, not ane infamous Libel *quoad accusatum*, but an humble Supplication of some Lords and Commissioners of the late Parliament, offered to his Majesty himself; whereunto the Supplicants were induced in love and tendering of his Majesty's Honour, and in fear of their Offence to his Majesty by their voting anent some Acts of the late Parliament. For removing whereof, and for satisfaction to his Majesty, they did humbly beseech his Majesty to be graciously pleased to ponder their Reasons for dis-assenting from the saids Acts; and to consider the Supplicants hearty Obsequiousness to his Majesty in other matters of the said Parliament, wherein they did forbear to represent any thing to the contrary thereof, for testification of their ingenuous Affection to his Majesty. This doing of the Supplicants is no Crime, *sed de natura boni*; and far from any culpable Commission, in meddling with things not belonging to them. And it is hard, that any Supplicants deprecating humbly his Majesty's Offence, should by so doing incur his Majesty's Offence, and the Crime of Capital Punishment: specially the Supplicants having no private Respects, but for the Publick, wherein they had Interest and special Charge; and for Conservation of themselves in his Majesty's good Favour, the Loss whereof, or the Fear of Loss, should be most grievous to any loyal Subjects; *Cujus Reipublice tantus ubique favor ut proclamant Leges quod Reipublice venerande causa secundum bonos mores sit, etiamsi ad Contume-*

liam alicujus privati pertinet, quia tamen non ex mente Magistratus facit ut injuriam faciat, sed ad vindictam Majestatis Publice respiciat, actione injuriarum non tenetur. Leg. 13. F. de Injuriis & famosis Libellis.

*Est ergo quoad accusatum Libellus supplex, & si Libellus supplex postulat Furi contraria, hujusmodi postulata ab omnibus Judicibus refutari precipiunt Leges & Supplicantem iterum super eadem causa non audiendum. Leg. 3, 5, & 7. Codice de precibus Imperatori offerendis. Sed non ideo supplicans reus est sceleris, quia Libellus continet refutanda; nec Libellus supplex ideo famosus, cum hæc fuit *ἐπιτόμιον*.*

Non Libellus famosus quoad accusatum, quia non ad infamiam, sed favoris conciliationem, ut supra: Item non clanculum & secreto, sed professo & recapse domino Regi oblatus. Atque ideo nullo modo quoad accusatum detractorius aut calumniosus, cum detractio sit seminatio mali occulte, & calumnia sit adversus absentem; neutrum autem committitur cum is cujus interest proponat querelam coram eo cujus partes sunt de ea cognoscere; de eo cujus interest Reipublice ejusque salutis causa duntaxat.

Non Libellus famosus quoad accusatum, quia non constat directis assertionibus in quibus venit verum aut falsum, quod omnino requirit Libellus famosus. Leg. unica, Codice de famosis Libellis. Sed postulatis in quibus considerandum venit bonum, justum, & qui verum & falsum non agnoscunt cum non fuit enunciatio.

Farder, the Pannel cannot be presumed to have had any other Intention than the Strain and Tenour of it, as a Supplication does imply, and which is most befeeming thereto; to wit, to the Voice of ane humble Suppliant. *Ea sententia accipienda est semper, quæ rei gerendæ aptior est, & in ambiguis orationibus maxime sententia spectanda est ejus, qui eas protulit. De Regulis Juris.* And it is always disagreeing to a humble Suppliant to tax or caluminate, and therefore it cannot be so expounded, but should be interpreted the best way the words may admit: *Quia de Jure in dubiis & obscuris, quod minimum & benignius est sequimur. Leg. 9. F. ibidem.*

Item, The Writing aforesaid, as in form of Supplication, was used also as a Supplication, and so delivered by the Pannel to the Earl of *Rothes*, to be presented to his Majesty, as affirmed by the Dittay itself, and indeed offered to his Majesty: which, howsoever his Majesty did not accept of then, and take the sament to his Consideration; yet the Supplicants did think that the very Presentation thereof did seem to assure the Nature of the Writing to be a Supplication: and scarcely even could the wisest conceive so of the Pannel's having the Writing, as it is now interpret, against his Majesty; but think that his Majesty had past all Offence thereof, as the Law speaks of Action of Injury, whereof the present Accusation is a kind. *Leg. 2. §. 1. F. de Injuria, Verba Legis injuriarum, actio ex bono & æquo est & dissimulatione abolitur, si quis enim injuriam dereliquerit, hoc est statim passus ad animum suum non revocaverit, postea ex penitentia remissam injuriam non potuit revocare.* By the which it appears, that the Pannel had no such Mind or Intention, as the Dittay would rub (fix) upon him in all the Progress of the Matter libelled against him. And I suppose that none will think, that by the Presentation of the Supplication at the first to his Majesty by the Supplicants, that they then by so doing were culpable of a Capital Crime, if the same had been immediately thereafter destroyed, and never more seen nor heard. And if they then

were not culpable, shall any supervenient Act make them culpable, or more culpable? *minimè nunquam enim crescit ex post facto præteriti delicti æstimatio. Leg. 130. § 1. de Regulis Jur. Multo minus ex post facto oritur novum delictum, quod ab initio non fuit quoad accusatum, aut ubi offensa si qua fuit dissimulatione abolita sit.*

It is eiked (added) by Mr. *Robert Macgill*, If it had been leifome (lawful) to this Pannel, as a born Counsellor, in that great Council and Parliament, and other Noblemen, to propound to his most Sacred Majesty the things contained in that Supplication alledged to be scandalous; which are not Affirmations, but as it may seem, Grievances, Remonstrances, and Expedients: then it was also leifome to the Pannel, and others, to represent even out of Parliament to his most Sacred Majesty, our dread Sovereign, what they could have propounded then, but did abstain (therefrom) for the Reverence they carried to his Majesty: specially when they did it in most submissive manner, as the hail Strain thereof bears, and out of a most loyal Affection. *Et prius est verum, ergo & posterius.* The Verity of the Minor is plainly embraced by *Bodin, qui est acerrimus Regiæ Majestatis propugnator, Cap. 1. Lib. 3. ubi de Senatu & quod Senatori de Republica loquendum sit, præsertim de omnibus ferè capitibus in Supplicatione hac contentis.* As to the Connection, it depends first on the Duty of a good Counsellor here, to whom as God has given to be endowed with Reason, so our most sacred Sovereign and his Progenitors have given to be a wise Man and Counsellor even from his Birth. That he may learn to exercise his Reason from his Birth, for the Benefit of the Commonweal; which is the first Place of Honour, as *Cicero* says, and is that which we call Nobility; shall he not have as it were a Magazine of Reasons, as may seem to him good, and even communicate them with others, for trying of the same? specially at this time of surveying of the Laws, that according to the Time, and other Circumstances, he may furnish to his Majesty his best Counsel in every thing that he thinks may concern the Weal of the Country wherein he lives, as by Duty even from his Birth he is bound: like to the Labourer, to whom in a rainy Day, *quæ mox Cælo properanda sereno maturare datur.*

Next, it depends upon the good Mind to the Commonweal, whereof his most Sacred Majesty is the Head; *ut non teneatur injuriarum qui quicquam Reipub. causa faciat.* Neither is that thought to be an Injury, *Lege Injuriarum 13. § 1. Lege quod Reip. F. de Injuriis juncti Leg. neminem 9 Cod. ex quibus causis irrogetur infamia, & Lege ex varia quarta de Delatoribus, Lib. 2. Cod.*

Thirdly, it does depend upon the Conception of the Words, which is by way of most humble Supplication. *Et verba propter adjunctam mutant naturam suam, Carvetta ad decisiones: afflicti neque tam refert qualia sunt quæ intra nosmet composuimus quem quomodo efferantur. Ac Quintilianus, Lib. 2. Et ut in aliis rebus ita in sermone, forma dat essentiam sermoni;* for even good Words may be used in an evil sense, *ut, Deus bone vir!* But this is worthy of all Praise: *Et si non dederis Cæsar, permittit regari, offendunt nunquam thura precesque Deum,* Kings are Gods on Earth; and albeit by *Bodin extrema Provocatio* be counted *inter Jura Majestatis,* that from a King himself there is no Appellation (Appeal;) yet he commends the sort of Appella-

tion *a Philippo ad Philippum,* and alledges it to be the Opinion of *Baldus, ad Legem primam & ultimam Cod. de Relationibus, & Leg. 1. § 1. F. de Appellationibus, viz.* to his Majesty.

For seeing the alledged scandalous Petition was offer'd to his most Sacred Majesty to be read, but not received nor read, nor after due Consideration condemned by his Majesty; it was not thought so dangerous (let me speak it with Reverence) as to come under the compass of the Acts of Parliament, and so as it ought not to have been divulged: I mean, in that quiet manner, as it might not be imparted to Mr. *John Dummure. sub Sigillo Taciturnitatis,* and not to have been copied. And farther, the Pannel ought to be excused and assoilzed (absolved) from the Dittay, *si delictum dici debeat, quod cum loquimur in delictis in quibus dolus est de substantia delicti, tum credulitas & sive justa sive injusta sit causa, excuset, nam videtur cessare animus delinquendi. Clarus & final. Quæst. 60. num 22. Et in delictis voluntas non finis attenditur. Gailus Lib. 2. Obser. 99. num. 6. At hic nullus exitus nisi bonus, idem Observatione undecima, quod in delictis principium non finis attenditur, num. 18. Ubi de homicidio perpetratur & consilium convitia tenditur. Lege si non, quinta Cod. de injuriis, & causatur hæc actio ex effectu inferentis, Pharma. Quæst. 105. Inspect. 3. num. 3. ex Lege illud tertia, § 2. Leg. non solum 2. in princip. si quis servum 26. de injuriis ubi Pharmaciis, Quod lata culpa his dolo æquiparetur & locutis multa de præsumptione doli in utramque partem, & de juramento purgationis subdit. Num. 118. dicta Inspectione quod verba debent impropari ad fugiendum delictum & malum animum, præsertim cum in publico dicta sunt.* Which we say, when it was not concealed, but offered to be given to his most Sacred Majesty; neither is it presumed that any Man has a mind to defame his Neighbour. *Pharm. dicta Inspectione. 2. num. 418, et sequent.* And were he not to be thought more than mad, who would draw up, instead of a Supplication, a Libel full of Detractions against his Sacred Sovereign Lord, or who would keep the same beside him, let be to offer to give it to his dread Sovereign? And in the Crime of Lese Majesty, *Dolus malus est de substantia criminis;* it being ever said in the *Digestis, Cujus opera dolo malo quid factum sit in Rempublicam.* What shall it not be *de substantia delicti,* in this alledged Crime of detraacting, not so evil as is alledged in the Dittay? But as the same agrees with a remonstrative Supplication (let me say it with Reverence) wrong glossed, as it may concern the Pannel, (where he had so many probable Causes inducing him thereto) *Quæ qualitates & circumstantiæ conjecturæ, cum nulla delinquendi Consuetudine probatæ relevant contra dolum præsumptum etiam propter prohibitionem. Carerius fol. 104, 105. viz.* That these things might have been propounded in Parliament; That he was a Counsellor of Estate; That other Noblemen thought then also (as) well of it as he; That it was for the Weal (at least so apprehended by them) of the Country, in this time of surveying the Laws; That it was offered to be given to his Majesty, and that under the form of a most humble Supplication; That other hard Supplications concerning the Estate had been received graciously by his Majesty; That it was not then taken notice of, nor upon Consideration condemned. And it might have been, that if any here had perchance lighted on it, they would have done worse with it than the Pannel. For, as *Quintilian* says, *Consilium & Ratio quædam acii, petita*

Et plura perpendens, ac comparans latentibus rebus & dubiis adhibenda. Now no Right nor Virtue in itself can be seen but *quasi facies*, as *Plato* says; yea, Verity, Equity, and Utility, are lain hid in the Draw-well of *Democritus*: *Et ut quisque altissima mente est, ita ex altissimo Democriti puteo quasi submersas Veritatem, Æquitatem, & Utilitatem, niture baurire.* Yet so is the Reason of Man obfuscated (darken'd) since his Fall, that he cannot penetrate to that Deep, for the Darknes; which by Disception of contrary Reasons, like two Flint-Stones stricken upon other, some Sparkles of Light flee out, for letting see to draw forth these Virtues. Wherein consider also the Pannel's Carriage and his Life by-past; and if any thing tending to Sedition was ever heard of him, or even what effect has followed. *Qualitas enim facti ex persona facientis presumitur, Glossa finali Canone non omnis 5. Quest. 5. & dicta Lege septima § 1. F. Ad Legem Julii Majestatis. Ubi ait Modestinus, nam & Persona spectanda est, an facere potuerit, an ante quid fecerit, & an cogitaverit justa, & jam causa excusat a seditione que jam erupit. Boerius Tractatu de seditiosis premissis 4. num. 2. Ubi utitur exemplo Moisis & Israelitarum ad Aquas Miriba.* And shall the Pannel, who had so many Reasons for him, be thought punishable as one seditious in that mean Matter of divulging as said is, of a Remonstrative Supplication? whereof but by Illation and Misconstructing (*salva pace dixerim*) it is gathered, far from the Pannel's Mind, that Sedition might have been moved. No, no, that Man is only styled seditious, who, by direct Speeches, draws the People in Factions, and going madly before one of them, cries out the Word *Proci*) scilicet *hec aut illa factio, Boerius dicto Tractatu Premissis 2. num. 2. Et Carerius Fol. 10, 31. Pag. 2. num. 3. in fin. ubi etiam dicunt, Quod in iis quique qui jam seditionem excitant puniendis requiritur, & studiose rumorem & tumultum conciliarent vociferatione.* Which things, seeing they are so far from the Nature of the Pannel, and from his Doings, his Intention and Mind ought to be justified, and consequently he ought to be absolved from the Dittay produced.

The 6th of December 1634.

It is alledged by Mr. *John Nisbet* for the Pannel, That the Dittay is no ways relevant, because nothing is libelled to infer a seditious and sinister Intention of the Pannel, in contriving, concealing, or impating of the Piece challeng'd; neither is it libelled, that the Pannel knowing the alledged Libel to be seditious and infamous, concealed or divulged the same: but to the contrair, it is libelled, That the Pannel, immediately after the receipt thereof, delivered it to my Lord *Rothes* to be presented to his Majesty, which clears the Candour of his Intention, and the Opinion he had of the Nature of the Piece, and of the use he thought might be made of it to propitiate his Majesty, and not to traduce his sacred Person or Government to his Subjects. And therefore, albeit he had concealed it, and divulged it, he cannot be obnoxious in the Pains of the Acts of Parliament, which are only against seditious Contrivers of slanderous Writings, and malicious Concealers of Writings, notoriously and to their knowledge seditious, expressly compiled by Incentives and Firebrands of Sedition, and exposed to the view of the Subjects for that effect. For the Words of the Acts of Parliament (*To the Reproach of his Majesty's Person, Estate and Government, steering up Sedition, tending*

to steer up the Hearts of the Subjects to Hatred) implieth Intention. And the Civil and Canon Law requireth *dolum generale in omni actione injuriarum tanquam substantiale requisitum. Gailus Lib. 2. Observatione 99.* And expressly both in the compiling and divulging of seditious and infamous Libels, *Leg. Lex Cornelia §. 1. F. de Injuriis, Cum dolum non accedit, nisi dolo malo quis fecerit, (viz.) Librum ad infamiam alicujus pertinentem scripserit, composuerit, vel ediderit. Leg. illud §. sane eodem titulo, Impubes & furiosus non possunt facere injuriam, quia neuter est doli capax; nam hi solent pati Injuriam, non facere: cum enim injuria ex effectu facientis non consistit, consequens erit dicere, hos sive pulsant, sive convitium dicunt, injuriam fecisse non videri. Leg. 34. F. de Obligationibus & Actionibus, Injuria ex effectu sit, Institutionibus de Injuriis, §. 1. Leg. 5. §. ult. pro. F. ad Legem Aquiliam; Ubi dicit Julianus, Actionem injuriarum non competere, quia non faciendæ injuriæ causam fecerit, sed monendæ, & Injuriæ non factum queritur, sed causa faciendæ expressa. Leg. 39. de Furtis decreti secunda parte, Causa 5. Quest. 1. Canone 4. Verba sunt (si vim Chartarum que famose sunt) scilicet dolose manifestaverit, si ad se quasi authorem hujusmodi delicti capitali sententia subjugandum. Turie-Cremata & alii Doctores in verbo dolose. Baldus consil. 230. in fin. Lib. 3. consil. 443. in fin. Lib. 5. Dolum in injuria requirit, sine quo illata dici non potest. Idem consil. 277. Num. 2. Volumine 5. Respondet totam culpam que alicui dolo æquiparatur non sufficere continet. Cravetta, consil. 419. num. 1. idem consilio, num. 36. At agens actione injuriarum debet allegari dolum & omnia jura clamitant, injuriam non fieri sine animo injuriandi. Leg. si non convitii, Codice de injuriis; verba sunt, si non convitii consilio probare potes, te aliquid injuriosum dixisse, fides veri a calumnia defenderit. Leg. 5. §. 1. F. de Furtis; Maleficia voluntas & propositum delinquentis distinguit. Leg. 14. F. ad Legem Corneliam de Sicariis; in maleficiis voluntas spectatur non exitus. Leg. unica Codicis, si quis imperatori maledixerit, ubi petulans & improbum mendacium, quo imperialia nomina laceffuntur, non statim injuria censetur, & eo nomine punitur; sed distinguitur an ex levitate processerit & sic contemnitur, an ex insania, & miseratione digna censetur, an ex injuria & sic remittenda declaretur. Sic injuria confunditur & reciprocatur cum animo injuriante. Omnes Doctores, Menochius consil. 197. Lib. 12. per totum. The Case debated by the Doctor is coincident with the present, but not so pregnant in favour. Arguebatur Senator scripsisse injuriose de principe in hunc sensum, quod cum Senatorum Numerus utili sanctione coarctatus fuisset, postea esset ampliatus importunitate & ambitione postulantium, mentem principis impellente; & cum rursus nova constitutione consultum fuisset, & numerus Senatorum imminutus, denique aut demum auctus fuit, & in immensum crevit magna cum supremi ordinis jactura & inutili intensa, totiusque status incommodo addiderat, hospitacionibus tota die Patriam maxime gravari & forenses nimis remanere gravatos. Menochius consultus num injuriose scripserit, respondet, Qui Injuriarum & Male-dicentia accusationem instituit, duo debet probari, alterum verba esse injuriosa, alterum prolata esse animo injuriandi. Et hæc Methodo ostendit verba non esse injuriosa, quia laudem ducis continent cum ejus Constitutio dicatur optima, & potius bono zelo & pro celsitudinis utilitate prolata videntur. Deinde arguit Senatorem penam non incidisse, quia verba injuriosa etiam de sua natura puniuntur, tantum cum animo injuriandi proferuntur, & præsumptio juris hæc pro eo qui protulerit aliqua verba que videntur injuriosa, ut dicatur ea dixisse absque animo injuriandi.*

*Ergo, satis superque fundata est intentio Senatoris quod scriptis prædictis, non modo non animo efficiendi injuria permissum principem, sed potius laudandi & in laudis verba a nobis bene merito de principe præsumitur prolata per bene merito zelo. Secundo, quia quando verba sunt dubia, sanam est declarationem ejus qui ea dicit; & quando sunt dubia, similiter Declaratio ab aliis verbis præcedentibus vel subsequentibus, vel ab actibus. Et in casu dicit Senatorem principem laudasse, cum dixerit se esse in curia sua celebrantis, nam Senatorum numerum auget. Adit, quod injuria requirit dolam, sine quo illata dici nequit, & in Casu constat omnem dolum abesse, quia dolus non præsumitur contra personam bene meritam; non præsumitur in dolo peccati, non præsumitur in eo qui pro beneficio Petitiæ, qua verba protulit, auctoris principis personam laudat; non præsumitur in dubiis, quia non nunquam contra principem motus est. Quæ præsumptio multo magis compræditur, quando verba sunt scriptis directa sunt ad principem: & si hæc in homine privato vera sunt, quanto magis in Senatore grati & illustri, qui antequam ex his verbis conceisset sine contingere grave detrimentum? Crævetta in simili casu dicit Judæos Christi inimicos, in dubio non præsumitur, aliquid dixisse ad injuriam Christi, quanto minus debet præsumi crimen injurie in verbis contra principem? Idem d. num. 20. Conventus non præsumitur injuria, conjunctum animo injuriandi intra supremum gradum. Gl. 9. in Leg. 2. c. 1. de injuriis. Nullus minus præsumendum est quod dicitur velle injurere dominum suum: & Consi. 6. Non est simile quod per facultatem penus alicuius fuerit, ut prodigium ejus personæ & æris, & quod dicitur non solet committi contra tantum principem sine causa. Idem d. Consi. 250. Ab ore quondam Paridem Senatoris insimulatur, quam nullo animo injuriandi dicitur, alia voce quædam princeps quidam male faciat, & facere non poterat, quia alia dicendum poterat bene dolo moveri, & in dubio præsumendum est ut delectum evadatur, & quæ præsumptio dicitur remouetur propter bonam fidem & opinionem Partis. By all which Presumption, more pregnantly concurring than in any Case extant in Law, the Pannel's Innocency is cleared abundantly. And nothing farther can be exacted but his Declaration by Oath, which he offers most willingly; and by the universal and uncontroverted Practick of all Nations, seconded with like Presumptions, importeth Absolution: Quæ probatur animo non injuriandi, juramento ejus ad injuriam impedit. Guido, Consi. 223. num. 2. in fine. Menoch. de præsumptionibus, Lib. 5. Præsump. 40. num. 22. Idem d. Consi. 256. Quæ intentione reat verba dicitur ab ejus animo pendet, & ideo ejus declarationem cum juramento standum est, quia dependentibus ad animo statum juramento ejus de cujus animo dubitatur. Leg. 1. C. de Sicariis & aliis Legibus ab eo citatis. Godophredus ad Legem si non certis, C. de injuriis, Reo purgationis juramentum causa cognita deferatur habita ratione personæ, qui injuriæ natura sua verbis usa est. Gailus, Lib. 2. Oportet. 106. Notum est injuriam absque crimine non committi, & immunitatem cum animo constat sanæ mentis probari posse, & ita in Camera judicatum refert. And therefore in respect of the Premises, the Dittay is no ways relevant, both because *Dous* is not libelled, and because the Dittay bears that the Pannel gave the Piece challenged to my Lord of Kerber, of intention to be presented to his Majesty: Whereby the Innocency of his Intention is evidenced, and of his Accession in having or divulging the Piece aforesaid, since he was so far from thinking the Piece injurious to his Majesty, in that he had*

ventured by my Lord *Rothes's* means, not only to acquaint his Majesty therewith, but to present it, as a fit Apology, to his Majesty; as is acknowledged by the Dittay, which we accept in that part.

It is farther alledged for the Pannel, That the Hearing, Having, and not Reporting, is not relevant to infer a Concealing after the Pannel's Knowledge that the King was acquainted therewith, because *celamus eum qui ignorat, Leg. 1. F. de Abiuribus empti & venditi*. And the Reason expressed in the Act of Parliament why the reporting is enjoined, is, that seditious Pieces of that nature may come to his Majesty's knowledge. After which time, the Pannel was not obliged to importune his Majesty with superfluous Reports, seeing it is acknowledged by the Dittay, that immediately it was delivered by him to my Lord *Rothes*; and so acquitted himself of all that was incumbent to him in Duty anent the point of Revealing.

It is likewise alledged for the Pannel, That the Points of the alledged Libel quarrelled as outrageous to Churchmen, or to Noblemen, is not relevant to infer the Crime and Pain of infamous Libelling, because they are not challeng'd by the Parties intersted, and of the Law: *Volenti non fit injuria, & injuria diffinitione notetur si quis deliquerit, & ad animum non revocaverit*. Secondly, There is no Act of Parliament irrogating capital Punishment upon the Authors of seditious Writings, reflecting against Subjects, but only against his Majesty's sacred Person, Estate and Government.

It was thereafter alledged, under Protestation *ut supra*, by Mr. *Roger Moreau* for the Pannel, That the Dittay is not relevant to infer the Pain libelled upon, because ane humble Supplication in Name of a Number of his Majesty's loyal Subjects, for removing of the Prejudices which his Majesty had or might conceive against them as Supplicants, and for conciliating his Majesty's gracious Favour towards them, is not such ane infamous Libel as falls under the compass of the Acts of Parliament upon which the said Dittay is founded: but the Supplication quarrelled, whereupon the Pannel is accused *quoad eum*, and the rest of the said Noblemen, is an humble Supplication in their Names, as a Number of his Majesty's most loyal Subjects, to remove his Majesty's Prejudices, and to conciliate his Highness's Favour; *ergo* no infamous Libel falling within the compass of these Acts, *quoad eos*, and the Pannel. The Major is clear by the Definition, Nature, and Qualities of ane infamous and scandalous Libel, (where there must be Maligning, Detraction, and Calumny) and by the Definition of an humble and submissive Petition and Supplication, which differs far from an infamous Libel, and altogether heterogeneous. The Assumption, *viz.* that the quarrelled Supplication, whereupon the Pannel is accused, is an humble Petition to remove Prejudice, and to conciliate his Majesty's gracious favour, is evinced in the said quarrelled Supplication itself, in the Inscription, in the Intention of the Supplicant; and lastly, in the humble Desire of the Supplication, which is the Substance, Life, and Quintessence of all Petitions: the Intention and End of the Supplicants being the Essence of the Petition, and the harsh or hard Expressions of the said quarrelled Supplication (being submissive and modest in the Inscription and Desire thereof, as said is) cannot infer Guiltiness against the Pannel, who is not Author nor Writer thereof. And also

any Petition, formal by a Secretary, a Lawyer, or a Writer, to be given and presented to his sacred Majesty, leven tho' the Desire thereof might seem just) being hard and difficile, or containing hark (harsh) Expressions not easy to be understood by every Reader, shall infer Guiltiness and Punishment of Death upon the Supplicants mentioned therein, who perchance may be absent out of that part of the Kingdom where the Petition was founded. And if the Harshness of some Expressions, contained in the said quarrelled Supplication, can infer the Guiltiness libelled, and Punishment of Death, upon this Pannel, the Supplication and Remonstrance made and presented to his most sacred Majesty by a great many of the Nobility, who then were afraid at the large Extent of his Majesty's late Revocation and Reduction, would likewise fall under the compass of these Acts of Parliament. But that Supplication and Remonstrance was accepted by his Royal Majesty, and his Majesty was pleased with it, And since the same has tended to his Majesty's Honour and Benefit, in the Matters of Surrender, Annuity, and Plantation of the Kirks, with competent Stipends, the Connexion is proven, because the humble Supplication and Remonstrance was no less exhortative nor this, which may be easily cleared by perusing the said Remonstrance it self; *ergo, &c.*

It is answer'd by my Lord Advocate, That the second Alleadgance, and all the Members thereof, and Additions made to it by the Pannel's Procurators, ought to be repelled, in respect of the Dittay, which subsumes relevantly upon the two Acts of Parliament, Word by Word, as the same are conceived. And where it is alledged that the infamous Libel cannot be esteemed infamous or reproachful, *quoad accusatum*: because it is conceived under the form of a Supplication, and contains not *Infamiam* or *Injuriam*, but tends to pacify his Majesty, whom the Supplicants supposed to be offended; and that it contains nothing *positivè vel enunciativè circa verum vel falsum, sed via postulati circa bonum vel malum*: And likewise where it is alledged that the Dittay is not relevant, there being nothing libelled to infer the Libel quarrelled to be seditious, and that the Pannel knew the same to be seditious; and that there is no *Dolus* libelled: It is answered, That all these Alleadgances ought to be repelled in respect of the Dittay, which is qualified according to the Qualification of the Acts of Parliament. And the Designation of a Supplication alters not the Nature of the Libel in the Points where it is challenged as reproachful and scandalous; but these Points being of their own nature scandalous and seditious, cannot be excused under the Veil and Pretence of a Supplication, especially where the Reproaches are emitted against his Majesty's sacred Person: *Quia in minima pulsatione sacræ & supremæ Majestatis nulla admittitur excusatio, ut ait Horoudus, Lib. 8. de Libellis defamatoriis: tanta est atrocitas Libellorum famosorum; & Imperator Augustus Libellos famosos in principem tractaverit sub specie læsæ majestatis. Et citat. Ciceronem. Lib. 4. de Republica, ubi ait nostræ duodecim tabule cum per paucas res capite sancivissent in his, hanc præcipue sancendam putaverunt, si quis hoc tentavisset sive carmen condidisset quod infamiam facere flagitiumve alteri; & multo magis ubi quis modestiæ nescius, & pudoris ignarus, improbo petulantique stylo sacræ Majestatis nomen crediderit lacefferunt.* And this Crime

is so odious and heinous that there needs no *Dolus* to be libelled, *quia dolus præsumitur*. And for the colouring of the Supplication, it is altogether impertinent; because that would elude the Law, seeing every Man who resolves to abuse the sacred Person of the sovereign Prince, has it in his power to give what Name he pleases to his scandalous and odious Conceptions, whether to design them by an Epistle, by an History, by a Petition, by an Admonition, and lastly, if he pleases, by a Vow, to cover his Crime under the Mask of Piety. And for Supplications, the Law is clear, That albeit they be offered to the supreme Prince, yet if they contain a Reproach and Scandal to a Subject, they are punished, *Lege apud Labionem, F. de Injuriis & famosis Libellis, §. 29. cujus hæc sunt verba; Si quis libello dicto principi famam alienam fuerit infectatus, tenetur Injuriarum*. And therefore much more, where a Subject dares presume to make offer to his sovereign Lord of a Supplication; and in it presume to tax or reproach his Majesty's Person, his Gestures, his Speeches, his Promises in his supreme Parliament, and to lay Aspersions upon his glorious Honour, Majesty, and Dignity; which, with the rest of the Points of the Libel, there repeated, are as many aggravant Qualities to infer the Atrocity of this infamous and seditious Libel. And *Pharma*, in his 30 *Concil. num. 34, 35, 37, & 62.* disputes at length this Question, *An sub specie voti Libellus famosus excusetur?* And concludes, *Quod quæsitus color infamiae sub velamine petitionis magis aggravat & injuriam & animum injuriandi*. And no Man can be able to deny but the Definition of ane famous Libel is most competent to this particular Case, which is *ubi vel delictum, vel vitium, vel defectus impropertur alieni personæ*. And not only one, but all these concur in the particular Qualifications contained in the Dittay; and of the Law, *Actus sumunt denominationem a potentiori, præcipuè in actu mixto*. And read this infamous Libel, it shall be found in the Strain of it, and the most powerful Positions, to aim still at his Majesty's Person, Estate, and Government; which are so much more inexcusable, that they were needless; and not only needless, but contrary and destructive of the Narration and Conclusion, which seems to tend for pacifying his sacred Majesty. For if the Purpose of the Supplicants had been to propitiate his Majesty, their Sorrow and Grief for his Majesty's supposed Offence, and an humble Deprecation of his Majesty's Wrath, had been fit and useful means to procure their wished Desire: But in place of these, to enter irreverently and outrageously upon the Gesture of the Prince, upon his Acts and Gestures in Parliament, upon the censuring and misconstruing of his Proceedings, and drawing the hail Body of the Estate under the Asperity and Atrocity of their seditious Speeches; it is a Thing without Example. And where it is alledged, That this Petition was presented to his Majesty by the Earl of *Rothes*; and if any Injury was therein, it was removed by Dissimulation: it is answered, That Dissimulation never removes Injury, but upon preceeding Knowledge. But there is no notice thereof to his Majesty, because refused: And, as I am credibly informed by these who have heard it out of his sacred Majesty's most gracious Mouth, his Majesty has declared that his Majesty remembers well the time that the Earl of *Rothes* made offer of that Supplication to his Majesty; and that his Majesty's Answer to him was, *My Lord, ye know*

what is fit to you to represent, and I know what is fit to me to bear and consider; and therefore do, or do not, upon your Peril. And the Circumstance of presenting to his Majesty can have no place to extenuat, but rather to aggravat the Crime; because the Pannel in his own Depositions has declared, that after reading thereof by the Earl of *Rothes* and him, it was thought of such a Strain as was not to be represented to his Majesty; and therefore the representing, after it was disallowed, increases the Offence. And where it is alledg'd, if his Majesty had received it, that no Crime nor Punishment might have been inferred against the Presenter; 'tis formally contrair, in respect of the odious and seditious Conception thereof, which would have deserved the Punishment of Law in greater measure: in respect whereof, the said hail Alleadgances ought to be repelled.

It is duplyed by Mr. *Alexander Pearson* for the Pannel, That where it is replied by my Lord Advocate, that the alledged and infamous Libel, tho' under the Title and Form of Supplication, yet the same being indeed scandalous and reproachful, that it cannot escape under that Cover: It is answered, That the alledged Libel cannot be thought scandalous, *quoad Supplicantes*, neither doth it affirm the Particulars libelled by the Dittay *cum hoc in se non habent*; being a Supplication which of its own nature speaks not but as it seeks, and no more than it seeks: and whatever Reasons or Motives it reports to persuade, it ends in a humble Request for a gracious Answer from his Majesty: That it cannot be said to affirm directly, which an infamous Libel of its own nature requires, *Dicta Lege unica Codice de famosis Libellis*. The Words of the Law is, *si ejusmodi assertionibus fides veri opitulata non sit*: Therefore requires Assertions direct, which is not in the alledged Libel: but reports Reasons and Motives, laying out the same to the View and Consideration of his Majesty, if thereby graciously and favourably it may obtain its Desire. Where it is replied by my Lord Advocate, That *Dolus* needs not be libelled, *Quia delictum & injuria presumitur facta animo injuriandi & sic dolo*; it is answered, That giving and not granting the same, *Injuria presumitur animo injuriandi in dubio tantum, & nisi probetur contrarium. Clar. § Injuria, num. 17*. But to the present Case it is by the most evident Presumptions, above rehearsed in the Defences made for the Pannel, clearly manifested, That there was no mind in the Supplicants and Pannel of Injury or Wrong; therefore cannot be presumed to have offered any injurious and scandalous Libel to his Majesty, or done any thing thereanent with that mind.

And where it is replied by my Lord Advocate, That if the Supplicants had a purpose of deprecating his Majesty's Offence, and intreating his Majesty's gracious Favour, they had made choice and use of fit Means to come to that End, and not by scandalous Speaking or Reproaching:

It is answered, What fitter means can a Supplicant use for intreating of Favour, than by humble Supplication? And that which my Lord Advocate calls scandalous Reproaches in the alledged Libel, is Grievances, and Remonstrances thereof, humbly presented to his Majesty, and not assertive Reproaches, *ut supra*. And where it is alledged, That Dissimulation removes not Injury, but upon preceding Knowledge; and that his Majesty did not read nor take to Consideration the Supplication

foresaid presented: it is answered, That the Supplication offered to his Majesty, altho' his Majesty took not the same to Consideration, seems to assever the Nature of the Writing to be a Supplication, and was a great Inducement to the Supplicants to think that his Majesty had paid all Offence thereof conceived. And where it is alledged by my Lord Advocate upon the Pannel's Deposition, wherein it is alledged that the Pannel and the Earl of *Rothes* together, after the reading the Supplication; thought it not fit that it should be presented to his Majesty; it is answered, That the Pannel's alledged Deposition reports not the Earl of *Rothes* and his together reading of the Supplication; likeas it is of truth, that the said Supplication was offered to his Majesty by the Earl of *Rothes*, before the Pannel and the Earl of *Rothes* had any thoughts or purpose of suppressing of it: and howsoever the Pannel had had once a mind of suppressing the same, yet he thereafter knowing that it was indeed offered to his Majesty, was a great inducement to the Pannel to esteem and think of it as ane Supplication.

It is further duplyed by Mr. *John Nisbet*, for the Pannel; Where it is replied by my Lord Advocate, That it is subsumed relevantly, and the Dittay is qualified according to the Qualifications in the Acts of Parliament; That Dole being essentially required in all Actions of Injury, albeit Acts of Parliament, by reason of their Shortness, are not specifick in the Expression thereof; they must be interpret conform to the common Strain of Law, *Quia in Statutis penalibus aliquid delictum capitaliter, etiamsi quod de dolo non fiat mentio, dolus requiritur, & non sufficit lata culpa. Phar. Quest. 86. Num. 15, 25. pro qua opinione citat & quamplures doctores, qui aiunt se liberasse aliquos a pena mortis, & esse mente tenendum ad Confusionem Judicum Imperatorum, qui credunt non esse recedendum a verbis Statuti: & subjungit, num. 27. Ibid. Multo magis cum Statutum imponit penam pro eo quod de Jure communi non punitur*. As the present Case, the Points of not reporting, and not apprehending, are punishable by no other Law in the World; and that the Sinistroulness of the Intention is necessary to be libelled, it is consistent with Reason, because the Crime consists thereof; *Et ideo oportet ponere in Libello, quia non probat hoc esse quod aliquando contingit abesse. Codice de Probationibus Leg. Neq;* as the present Case. A seditious Concealing or Having, is not relevantly libelled by the having of a Piece alledged seditious, because a Man may have a seditious Piece, and yet not be a seditious Concealer, because he may be of opinion that it is not seditious. And it were hard in Law or Reason, upon the Errors of Opinion, to infer the Guilt of so atrocious a Crime, which, as all Crimes, requires ane express Consent. And by the Law, *Nihil est tam contrarium consensui, quam error, l. de Jurisdictione omnium judicum Leg. si per errorem & erranti nulla est voluntas, Codice de Juris, & Facti Ignorantia*.

And where it is replied by my Lord Advocate, That the Designation alters not the Nature of the alledged Libel, it is duplyed, that the Designation of the foresaid Libel, joined with the Strain and Fashion of it, vindicates the Pannel's Innocency in the conceiving and using of it; because it would appear to any Man to be a Supplication, and not an infamous Libel, seeing it is addressed to his Majesty, whose royal and excessive Goodness excludes all Presumption of Injury, and

of the Law, *Subditi contra principem suum fraudem committi voluisse non presumitur. Menoch. concil. 404. num. 27. Cravetta concil. 309. num. 6.* It beginneth at ane humble Supplication of his Majesty, and concludeth with a hopeful Assurance, that his Majesty will listen thereto: And therefore, *cum ex ordine principii interpretemur fidem. Baldus in Leg. quinta Codice de Commissis. Multo magis ex principio & sine reliqua interpretanda sunt; & ex extremis mediis presumuntur. Menoch. de Presumptionibus, Lib. 6.* It contains ample Elogies of his Majesty's Royal Goodness, and Justice of his blessed Father and their Predecessors. *Et ideo verba debent intelligi de Actu uniformi, non difformi; id est, uniformiter in Laudem, & Decus, & non partim in laudem, partim in vituperium. Cravetta concil. 9. num. 27. & Verba debent potius impropriari & intelligi secundum fictionem Juris, delictum fugiatur. Ibid. & 1 harm. Quest. 105.* So that it is clear, that the Supplication proves not a naked and transparent Veil of Designation, but probable Grounds resulting upon the Strain of the Piece it self. Whereas my Lord Advocat aggravates the Circumstance of the Person injured, being his sacred Majesty, the Laws adduced convinces the Odioulness of the Crime, when it is nottour; but extenuates the Presumption, that the Pannel should have been tainted therewith, because so sacrilegious a Crime is not presumed: *& maxime petens & improbum mendacium,* convinces not ane injurious Intention against a Prince. And the Emperors have left place to prove the Candor of Intention, notwithstanding the most express and formal Injuries of Words. *Leg. unica Codice, Si quis Imperatori maledixerit.* And where it is replied by my Lord Advocat, that *Dole* is presumed; it is duplyed, *Quod animus Injuriandi non presumitur; & incumbit injuriato eum probare, Jacobus de Bello I. su. Lib. 1 Cap. 3. Actor habet onerum ponere in Libello quod animus injuriandi interceperit.* And all the Pretorian Edicts require formally *Dolum Malum, F. de servo corrupto, Lib. 3. & Edictum contra corruptentem album, F. de Jurisdictione omnium Judicum. Leg. 7. §. Doli Mali. Edictum de vi publica qui Dolo malo, F. ad Legem Juliam de vi publica, Leg. 10. Et in Crimine Majestatis ad Leg. Juliam Majestatis. Et cessat Dolus quia non presumitur, Leg. Dolum, Codice de Dolo. Pharm. Quest. 105. Inspezione 3. & 121. In Libello debet exprimi, Quod Injurians animo Injuriandi fecerit, quando sumit in Personis in quibus malus injuriandi animus non presumitur. Salicelus in Leg. si non convitii Codice de injuriis, Num. 4. distinguit utrum is qui injuriam fecit dicatur, talis sit Persona qui Presumptionem injurie faciat cessare, an vero talis qui non facit.* And far more when the Person that is injured concurs to exclude the Presumption of Injury. *Princeps qui transcendit omnem Injurie effectum & affectum. Cravet. concil. 9. Etiam Judæus non presumitur aliquid dixisse ad injuriam Christi.*

Whereas it is replied by my Lord Advocat, That if the Designation of a Supplication should be admitted to palliate ane injurious Intention, the Law would be eluded, *Questio Colore infamie sub velamine Petitionis;* it is duplyed, That the Inconveniency cannot be obruded in this Case, because the like Presumptions of Innocency will not be concurrent.

Where it is replied by my Lord Advocat, That the impudent Presumption in presenting a Piece of that Strain to his sacred Majesty, aggravates the Crime; It is duplyed, That the Citation adduced by my Lord Advocat, aggravates only the Intention,

& animum injuriandi, when it is constant; but infeeble the Presumption, That Noblemen of their Quality and Wisdom should have adventured to present a Piece that they thought of that nature; seeing it cannot be presumed, that they should have thought that the Name of a Supplication would have satisfied or eluded the King's Majesty's Sagacity, and make them to eschew due Punishment.

The Lord Justice-General continued the Court till *Tuesday* next the 9th. At which time, when it was replied by my Lord Advocat the last day of the Proccs upon the Law, *Item apud Labionem,* That the Nature of a seditious or infamous Libel is not compatible with the presenting to his Majesty, *Quia Libellus potest dare principi, & nihilominus in eo fama aliena laceffit:*

It is as yet duplyed thereto by the said Mr. *John Nisbet* for the Pannel, That the Case meets not, because the Law adduced is of a Libel presented to the Prince, and reflecting upon ane other Person than the Prince himself: and it has never been heard that any has been so inconsiderate as to present his own Dittay to a Prince.

Whereas it is replied by my Lord Advocat, That the most of the alledged Libel adduced by the Supplicants, to enforce their Intention in propitiating his Majesty, is impertinent and destructive of the Conclusion it self; and therefore, *Denominatio sumenda est a potentiori, precipue in actu mixto:*

It is duplyed, That in Law, Words destructive of a Protestation, *Relevantur per Protestationem (Verbi gratia.)* The word *Mentiris, salvo honore, si subessent conjecturæ per quas talis protestatio adjuvaretur, quod scilicet protestans non haberet animum injuriandi. Clarus, §. Injuria, num. 13.* And albeit in Matter of Notion and Form, *Conclusio sequitur deteriorem partem Syllogismi;* yet in *præctico Syllogismo,* the Conclusion being *the Το παρατίθεν, transmittit ab intellectu præctico,* to be espoused and embraced by the Will, is most considerable; and the Impertinence of *Misdes* used to enforce the same, is acknowledged by all Moralists to be an Escape of Imprudency in the Pre-election, and not of Guilt in the Intention. And whereas my Lord Advocat contends, *Quod denominatio sumenda est a potentiori;* it is answered, *quod expressa Elogia* are more powerful than strain'd Consequences. And an express Supplication contained in the hail Strain of the Piece, should preponderat some incident Glance: *Et quando verba injuriosa non principaliter, sed in consequentiam prolata sunt, etiam quando sunt de sua natura injuriosa* (as is not in this present Case) *presumuntur dicta vel scripta sine animo injuriandi. Mur. Conc. 107. num. 10.*

Whereas it is replied by my Lord Advocat, That the Definition of the infamous Libel, is quadrant against the Piece quarrelled:

It is duplyed, That albeit a Piece, *ubi delictum vel vitium vel defectus impropertur alicui,* be materially infamous; yet formally and in relation to a Guilt and a Crime, *Dolus malus* is necessarily required, as an essential Ingredient in the Definition of an infamous Libel. *Dambauderius in præctica, cap. 138. num. 1. Scriptis sit injuria cum dolose & maliciose componuntur & scribuntur Cantilenæ, Rythmi, Libelli, Comediolæ aut Cantionculæ, quibus aliterius iace-ratur nomen & fama; & libellus famosus & compositio facta in scriptis in infamiam alicujus, ejus quod quis probare*

probare non vult, & in publico jaëtat, vel in loco ubi inveniantur. Pbar. Quæst. 105. Inspect. 2. num. 1. Et ad essentiam libelli famosi videtur requiri, quod fuerit positus in publice, vel loco ubi inveniantur. Ibid. num. 485, & Canone, Caus. 5. Quæst. 1. Qui in alterius famam publicè scripturam aut verba contumeliosa confinxerit, flagelletur. And albeit in Law calumniari materially est falsa crimina intendere, ad Senatus Consultum, Turpilianum, Leg. 1. §. 1. nevertheless non utique qui non probat quod intendit protinus videtur calumniari, nam ejus rei inquisitio arbitrio cognoscentis committitur, qui reo absoluto de accusatoris conciliis incipit quærere qua mente ductus ad accusationem processerit, F. ad Senatus Consultum, Turpilianum, Leg. 1.

Where it is replied, That the presenting of such a Piece aggravates the Crime, and the odious Conception thereof is punishable notwithstanding the Presentation; it is duplyed for the Pannel, That the presenting of it by so worthy a Nobleman put the Pannel, *in bona fide*, to think it not a Piece of that Nature whereof it is alledged to be, and to overpass, at the least to mistake the Odioufness of the Conception of it, if there be any.

It is eiked (added) by Mr. Robert Macgill for the Pannel, with Protestation, as set down from the beginning, not repeating that which I have said; but remitting the most honourable and wise Judges (*quia via jam est præmunita*) to these Things set down before by me, touching every Particular, as they have been worthily replied by my Lord Advocat.

And first, anent the Qualification contained in the Acts of Parliament.

It is answer'd, First, That the first Act libelled is only against Delators, as said is, and expounds the Act 83 Jac. 5. Parl. 6. as might be cleared by the Time wherein that Act was also made: But he remits it to the Consideration of the Judges. Secondly, It is answer'd, That there being no Qualification set down in this first Act of Parliament, but a general Law, that general Law ought to receive the Qualification according to the Distinction propounded by me, in all Humility, of inordinate Speeches against a Prince, in the last part of my first Exception, in respect of the Absurdity of the Parity of Crimes, and Pains which would follow, if it were not so limited: And remits, as before, to *Gaius*, anent the Interpretation of municipal Laws. And what shall the general Rules of the Law (miscalled by some *Regule Lesbie*) receive their own Exceptions according to Reason; and the municipal Laws, which even in the most substantial Points of the Commonweal, will alter three or four times in an Age, according to the Circumstances, (*nam ex moribus Legis*;) shall they, say I, stand good in a general Sense contrary to Reason? Which I count to be the Judgment of the Lawyers. See in the last part of my Duply, strengthening my first Exception; where it is shewn that the word *Government*, in the 134th Act, and so in this Act, ought not to be understood against Counsellors and Lords of Parliament: which is followed out largely in my second Exception, and so ought not to be understood in any other Act, to make them Contraveners, where they had *optimum animum*, and according to their Opinion only might be thought to have erred, *quod humanum est*, as was alledged by Mr. John Nisbet; *Neque id prius quam rationes ad veritatem eliciendam inter se confliant.*

The Second is anent the Colour or Mask of Supplication; remits that to the Practicks alledged by Mr. John Nisbet out of the *Consultus of Menochius* touching Government, set down so rudely, *ut sit addita supplicatio*, and as it were, dropp'd out of the Gall of Bitterness. And yet notwithstanding the Lawyers Verdict was to absolve the Nobleman. Remits also to the last part of my first Exception in the end, anent the Exposition of Words and Sentences, taught likewise in the second Exception, and anent the Form of Speaking and Prayer, especially where *contra præsumptionem doli*. It is clearly evinced that the Pannel had not *animum dolosum*, but rather a very good Will and Intention, which he (as we say in a Proverb) wishes most humbly might be taken in part of Payment. And remits that anent Presumption of Dole, which my Lord Advocat said in the fourth Place to my second Exception, *Parte secunda*, That whether it be necessar to libel, or not, yet seeing it is *de substantia delicti, & credulitas a causa sive injusta excuset a delicto, quia abest animus delinquendi*, as *Clarus* has there alledged; *ergo*, to be assoilzed as Author, &c.

And to the Third, adduced by my Lord Advocat, anent the Definition of an infamous Libel, and the Punishment of Injuries against private Persons, and far more against Princes; we disallow altogether such inordinate Speeches, and say, That they ought to be punished as the Lawyers have defin'd according to the Mind of the Speaker or Penner. But that the Definition of an infamous Libel cannot agree herein, so far as concerns the Pannel, it is not to be thought; *quia directis & conceptis verbis, maliciose & perditissimo animo*, must Injuries be impropriat: which, in all Humility, the Pannel thinks not to be here; and remits to my second Exception. And that a capital Pain ought to be inflicted upon all sort of inordinate Speeches or Writings, and all sorts of Speakers and Writers, and upon the Havers, Hearers, and not Revealers, indistinctly, even against Princes; let me say it, with all Reverence, as my Lord Advocat would insinuate by the Places adduced, it is not the Lawyers Mind.

The fifth, alledged by my Lord Advocat, goes back again upon an alledged Disguising. But we deny that any thing adduced either anent Supplication or Vow agrees with our Case, where nothing can be said to be *improperat directis verbis*, (else the Pannel had been a mad Man:) But by a wrestling way (*salva pace dixerim*) may be thought by some to infer Injury. And here again remits to these parts of my Exceptions, *ut supra*, anent the Exposition of Words.

The sixth is anent our most sacred Sovereign his Refusal; wherein remits to that part of my Exception anent the appealing from a Prince to himself, especially by a Counsellor; *Donec intelligatur quid velit supplicatio, & rationes hinc inde adductæ, quasi ex adverso acies manum inter se conferant*. As to his Majesty's own Declaration, the Pannel seals his Mouth with the Finger of *Harpocritus*, and reverences his Majesty's Sayings as Oracles, and, in all Humility, receipts them as an Acknowledgment of the Offer made.

The last, I think, are the Pannel's own Depositions; wherein distinguish the Disallowing and the Times, and all shall agree. He disallowed of it first, as that of the General; it was rejected by his most sacred Majesty: but the Pannel thought

that

that it might have been kept till a more convenient Time, according to the Appellation also mentioned, and till *causa audita* it had been condemned. And the Pannel depones, That before ever the Principal came back, the Copy was surreptitiously purchased by Mr. *John Dunmure*, in falsifying his Promise.

It is triplyed (replied the third time) by my Lord Advocat, that the Duplies in the whole Parts and Members thereof are impertinent; because the Exception was founded upon the Form and Designation of the infamous Libel, That being designed a Supplication, it could not contain Matter of ane infamous Libel; which Exception was answered with this Reply, That the Dittay is directly subsumed upon the Acts of Parliament, *viz.* That this, which they call a Supplication, is a Writing containing Reproaches and Scandals against the Person, State, and Government of our gracious Sovereign, as the Dittay bears; and no more was necessarily to be replied but upon the Acts of Parliament. And yet, for informing the Mind of the Judge, it was cleared both by the express Text of the Civil Law, and by the Judgment of the best Jurists, and versed in Criminals, That the Designation purges not the infamous Speeches conceived in a Supplication to the Prince, being to the Infamy of ane Subject, much less to the Dishonour of the supreme and sovereign Prince. And this is not pertinently answered by no part of the Duply; but both the Acts of Parliament and Civil Law concurring, stand in full force to elide the Exception. And the Points urged by the Duply, has nothing to do with the Exception, but are Points extraneous, founded upon Intention, libelling of Dole, Presumption in favours of the Pannel, and others, in whose name it was alledged the said Supplication was drawn up; which I may justly term Presumption: For whatsoever distinction they have in their Quality from others, it is from the Bounty and Favour of their supreme Prince and Sovereign, who is the Fountain and Source of all Honour and Dignity. And good reason that they bruik (enjoy) all their Privileges, in all Causes with all Persons, except where they come in contestation with their supreme Sovereign: and there, as *Godophred* writes, *ad Legem Juliam Majestatis, ubi Majestas pulsata, defenditur nulla dignitas; nullum Cuimen, nulla Fortuna est immunis.* And in this case, where Reproaches, Scandals, and Aspersions are laid upon our gracious Sovereign, the Excuse of Nobility, that it may be presumed that they did it not *malo Animo*, is rather an Accusation than an Excuse; because no Subject is so bound to know the true Respects of Humility, and Reverence, and Obedience due to the Sovereign Prince, as those to whom his Majesty hath communicated a Shadow of his glorious Honour. And as to the Instance adduced out of *Menochius*, we have nothing to do with it; for it is likely, he that answered so, had not such a Law as we have. And as to the Instance adduced out of *Lex Unica, si quis Imperatori maledixerit*, that by that Law there is no place left to the Accused to purge himself of his evil Intention, that is true in the Case of the Law, but has nothing ado with us, *ubi non est lubricum lingue quod facile ad penam non est trahendum*; but a malicious and seditious Writing, compiled of purpose to the Reproach of their Gracious Sovereign. And in Writings of this kind, as *Haroudus* expresses in his 18th Title,

Fol. 208. there are no worse Reproaches and *Convitia* (says he) than those which are done by Writing, than those which are done upon manifest Deliberation; because the same proceeds upon ane evil and seditious Purpose, and pierces deeply, and abides longer than the Injury by Words. And for all the rest of the Instances and Authorities of the Civil Law, I oppone the two Acts of Parliament, which are the only grounds of this Libel; in so far as it concerns the Authors of the infamous Libel, the not apprehending the Authors thereof, the concealing and not revealing of the same. And as to the mention made in the entry of the Dittay of the Common and Civil Law, the same is wholly in respect of the divulging and dispersing of the said infamous Libel, whereof our said Acts of Parliament make no express mention. And where we have our own Laws, and Acts of Parliament, as we have in this Case, these must be the only Rule of judging. And the Exception and Duply, albeit they have many Quotations of the Common Law, yet all needless and impertinent; since they are not adduced to purge that part of the Dittay which is founded upon the Common Law. But in the Points disputed, we have good warrant to adhere to our own Acts of Parliament, (except in so far as we are forced by the Objections made by the Pannel's Procurators to clear the doubtful and ambiguous Terms of their Exception and Duply) because by Act of Parliament, made by King *James I. Par. 3. cap. 48.* and by King *James IV. Par. 6. cap. 79.* it is statute and ordained, That all the Leidges be governed by the King's Laws, and no others. And his Majesty's Advocat offers, whenever it shall please my Lord Justice-General to command him to clear any Speech that is founded upon the Common Law, that he shall do the same by word.

It is quadruplyed (pleaded the fourth time) by Mr. *Alexander Pearson*, for the Pannel, That where my Lord Advocat triplyes a part of his Lordship's Reply to have received no Answer by the Duplies made for the Pannel; to wit, that part thereof, which bears, that the Writing quarrelled, altho' in Form and Title a Supplication, yet does contain reproachful Speeches, &c. it is answered, That the alledged infamous Libel, in so far as it concerns the Pannel, cannot be esteemed but as a Supplication, in respect of the Duply and the Reasons contained therein, which I need not repeat here.

Where it is triplyed by my Lord Advocat, That our Duply is impertinent; it is quadruplyed, That if there be any Impertinency, his Lordship is to be blamed therewith, for having occasioned it by ane unnecessary Reply. And for the Points urged by us for the Pannel, to clear his Intention, and to vindicate him from the Presumption of Injury, in compiling or being accessory to the Piece quarrelled, not extraneous, both because the Acts of Parliament require Intention, by the intentional words *to the Reproach, steering of Sedition*, &c. And albeit they should contain nothing thereof, a sinister Intention being required in the Essence of the Crime, it must necessarily have been libelled conform to the Passages already cited in our Duply.

Whereas my Lord Advocat triplyed, That the Character of Nobility accused *non excusat* in this case; it is quadruplyed, That that is only where the Crime is constant, (*i. e.* evident :) And that eminent

Quality

Quality ever wants the Presumption, than any invested therein should injure their sacred Prince; whereof they are not only a Shadow, but noble and mystical Members, as is cited already.

Where it is triplyed by my Lord Advocat, that the Case adduced out of *Menochius*, is not pertinently adduced here, because there was no Law; it is quadruplyed, That the Question resulted upon the Common Law, which ordains due Punishment upon the Authors of infamous Libels, and chiefly against Princes. And the Case was not so pregnant in favour of the Party whom he absolves, because he was the Author, and had exposed to the view of all the World the Piece there challenged. And we adhere to the Author's Opinion; and instances, how it has never been found to be an undutiful part in Jurisconsults and Advocats, to vindicate Pieces quarrelled to be injurious.

And where it is triplyed by my Lord Advocat, that the Instance *Lex Unica* quadrats not; it is quadruplyed, That the Instance of the present Case is more pregnant, because the Case of the Law adduced, *improba & petulantia Mendacia*, are challenged: And in the present Case the Piece challenged is not expressly injurious: and all that can be inferred upon the Pannel, is an indirect and imprudent Accession thereto.

And where it is triplyed by my Lord Advocat, that the Allegations of the Duply are impertinent, because not alledged for the Points of the Common Law not expressed in the Acts of Parliament; 'tis quadruplyed, That there are alledged in our Duplies for all, and refers ourself to our Duplies.

To the whilk it is quintuplyed (answered the fifth time) by my Lord Advocat, That the Words of the Act of Parliament has no respect to the Intention of the Person, but only express the Effect of the Reproaches which tend to move Dislike betwixt his Majesty and his good Subjects. And it is granted in the Quadruply by Mr. *John Nisbet*, That they are materially reproachful, and not formally.

It is sextuplyed by Mr. *John Nisbet* for the Pannel, that the Words *to the Reproach*, imply Dole and Intention; because the Crime prohibited by the Act of Parliament consists essentially thereof, and is cleared by all the Allegations adduced, and more expressly by other Acts of Parliament of that nature, as the 60th Act of Queen *Mary*, 6 *Parl.* whereof the Words are, *Tending to stir the Hearts of the Subjects to Hatred*, which are emphatically Words of Intention. And whereas my Lord Advocat would inforce an Acknowledgment of material Injury in our Quadruply, we disclaim it, and maintain that it cannot be evinced therewith; and albeit it were, there rests a relevant Defence in Law upon the Innocency and Candour of Intention.

Thirdly, It is alledged by *Roger Mowat* for the Pannel, for a third principal Defence to that part of the Subsumption of the Dittay, Qualifications, and Condescendings thereof, bearing that the Pannel himself was and is Author, Deviser, Consulter, Adviser of the infamous Libel, and Airt and Part of the penning, writing, and up-drawing thereof; at least is guilty of the hearing, and of the concealing, and not revealing the Author thereof; and most guilty of the not appre-

hending of Mr. *William Haig*, whom the Pannel affirmed to be the Author of the said Libel, it being in his power to have apprehended him; and also is guilty of the divulging and dispersing thereof, in so far as the said Pannel knew of the penning of the said Libel, gave his Opinion to the making thereof, and in token thereof interlined a part of the same in divers Parts with his own Hand, which by ocular Inspection is to be seen, and which the Pannel has himself confessed by his Deposition under his Hand, at the said Dittay, in that part bears, &c.

That the Pannel ought and should be *simpliciter* absolved (absolved) therefrom: And 1st, That the said Pannel cannot be criminally pursued as Author and Deviser of the said Libel; because by the Pannel's own Deposition, taken by the Lords of the Committee on the 9th of *June* 1634, the Pannel has deponed, That the said Mr. *William Haig* was the Author of the said Libel. Likeas the said Mr. *William* his missive Letter, all written and subscribed with his own Hand, dated at *Campbire* the 27th Day of the said Month of *June*, which Letter was directed to the Pannel, and exhibited by him before the said Committee, bears the said Mr. *William* his Grant that he was the Penner of the said Supplication or Libel; and takes the Crime upon him in solliciting his Friends by his other Letters and Missives, likewise produced to the said Lords of Committee, to deal for purchasing and obtaining to him a Remission for the said alledged Crime. And so the said Mr. *William* having not only confessed himself to be the Author, but having dealt with and sollicitated his said Friends for a Remission, as said is, the said Dittay can never be sustained against the Pannel as Author and Deviser thereof; which missive Letters are in the Pursuer's own Hand. *Item*, The said Pannel ought likewise to be absolved from that part of the said Dittay, bearing to be Consulter, Adviser, and Airt and Part of the penning, writing, and drawing up of the said quarrelled Libel; because the said two Acts of Parliament, whereupon the said Dittay is founded, make no mention of Consulters or Advisers. And Acts of Parliament, specially in this kind, are strictly to be taken, and suffer no Extension beside that which is expressly set down therein. 2dly, Giving (granting) the said Acts might be extended to Consulters and Advisers, (as they cannot) yet *Absolvitur* ought likewise to be granted from the alledged Consulting and Advising by the Pannel, and his being Airt and Part of the penning, writing, and drawing up of the said Supplication now quarrelled; because the said Pannel being examined by the said Committee upon the said 9th of *June* last, and being then interrogat who was Author and Penner of the said Libel, not only has deponed, *ut supra*, That it was the said Mr. *William Haig*, who gave the said Libel to him, and who (as he thought) was the Author thereof: but being thereafter interrogat upon another Interrogator the same Day, if the said Mr. *William* had any Command to draw up the said quarrelled Supplication or Libel, or if the Pannel or any of his Knowledge, was at the forming thereof, the Pannel has also deponed upon his said great Oath to the said Interrogators, That the said Mr. *William Haig* had no Warrant from him, nor knew he of any Warrant given to the said Mr. *William*, or that any was present at the forming thereof. Which clearly evinces and manifests that the Pannel was neither Author, Deviser, Consulter,

fulter, Advifer, nor Airt and Part of the penning and writing of the faid Libel; feeing the faid Pannel being brought before the faid Committee, and urged by them to give his Oath upon the faid Points, he has given the same, he has deponed, *ut supra*, denying all the faid feveral Points. After the giving of the which Oath of Verity, and fubfcribing the same, as the same produced by my Lord Advocat bears, no Dittay or Pursuit, criminal or civil, can now or hereafter be fustained against the Pannel upon these Points, whereupon already he has given his faid Oath; because no other manner of Probation can be receiv'd against him, to prove contrair to his faid Oath, given before the faid Committee in manner foresaid. And where it is libelled in the faid Dittay, and Qualifications thereof, That the Pannel is Author, Confultor, Advifer, Airt and Part of the penning and writing, at the least guilty of the hearing, conceal- ing, &c. not revealing, not apprehending, &c. As fo far as the Pannel knew of the penning thereof by the faid Mr. *William Haig*, advised and gave his opinion anent the making of the faid Libel, and in token thereof interlined it in divers Parts with his own Hand, &c.

It is alledged, That the Pannel ought to be *simpliciter* absoived from the faid Qualification libelled in these Words, in fo far as the Pannel knew of the penning of it, advised and gave his Opinion anent the making of the same; because that is likewise directly contrair to the Pannel's Deposition foresaid, proceeding upon the faid Interrogator, mov'd by the faid Committee wherewith he was interrogat, If Mr. *William Haig* had any Warrant or Command from him to draw up the faid Libel, and if the Pannel, or any of his Knowledge, was at the forming thereof. Whereunto the Pannel has made answer, and upon his faid great Oath deponed, That Mr. *William Haig* had no Warrant from him, nor knew he of any given to him, or that any was present at the forming thereof. And fo the Pannel by his Deposition, upon his faid Oath, having deponed, That Mr. *William Haig* had no Warrant from him, nor knew he of any Warrant given to him, or that any was present at the forming thereof; the faid criminal Pursuit can never be fustained to infer thereby that the Pannel is Author, Confultor, Devifer, Advifer, Airt and Part of the penning, writing and drawing up; because that is altogether denied by the faid Pannel, as his faid Deposition clearly bears. And being denied upon his great Oath, as faid is, that part cannot be fustained upon the faid Qualification and Inference libelled; it being impossible, *per rerum naturam*, that the faid Dittay in these Points can any way be proven by any other Probation whatsoever, after giving his faid Oath.

Court adjourn'd till to-morrow the 10th Instant.

Intrant, the said 10th Day.

The Pannel and Procurators (as before) compar'd the said Day.

Quarto, It was alledged by Mr. *Roger Mowat* for the Pannel, As for his fourth principal Defence against that part of the Dittay, bearing, That the Pannel knew of the faid alledged infamous Libel, advised and gave his Opinion to the making of the same, and in token thereof interlined a part thereof in divers parts with his own Hand, as may be

seen by ocular Inspection, and as his Confession in the Deposition bears; that *Absolvitur* should be granted from that part, bearing that the Pannel knew of the penning thereof, because that is directly contrair to the Pannel's Deposition, before repeated, which does contain an exprefs Denial of his Knowledge of the forming of the faid Libel, or that any was present at the forming thereof. And to that part of the Qualification libelled, bearing, That in token that the Pannel knew of the penning thereof, he interlined a part with his own Hand; it is alledged, *Nullo modo relevat*, unless it had been relevantly libelled in the Dittay, that the Pannel interlined the faid Lines the time of the forming of the faid Libel, or shortly thereafter, which is not said: For mending and interlining to be a token against the Mender or Interliner of a Writing, that he knew of the penning thereof, and gave Opinion to the making of the same, must necessarily be libelled to have been at or immediately after the writing of the same. Which cannot be urged upon the Pannel in this Particular, because by his Deposition, given upon the 16th of *June*, 1634, upon an Interrogator wherewith he was interrogat, whether he had interlined some Lines in the faid quarrelled Supplication, which was exhibited by him before the Lords of Committee, and whether he did the same before he shew'd it to Mr. *John Dunmure*, or to the Earl of *Rothes*, has deponed, That the faid Mr. *John Dunmure* never saw the faid interlined Libel, but only the Copy, which was cast in the Fire after the redelivery thereof; and deponed, That the faid interlined Copy lying then before the faid Lords, and now in my Lord Advocat his Pursuer's hands, was that Copy which was deliver'd by the Pannel to the Earl of *Rothes*, but was not interlined 'till long after the Earl of *Rothes* redelivered the same; and deponed, That never one saw it since the faid interlining. And so it being that Copy which should have been presented to his Majesty, and which was offered to be presented, it is not likely nor probable, and with reason cannot be affirmed to have been interlined before the time of the faid Offer of presenting. And so the faid interlined Libel cannot be counted a Token (as the Dittay bears) of the Pannel's Knowledge of the penning of the faid Libel, and of his advising and giving his Opinion to the making thereof. Likeas, *in rei veritate*, the faid Interlining was after the faid Mr. *John Dunmure* was first questioned in *March* last, by the space of nine Months, or thereby, after that the faid Supplication was offer'd to have been presented to his Majesty. And so a private Interlining of the faid Copy by the Pannel, by adding or mending some few Words, which neither in Matter nor Form can be quarrelled, being so long after the intended Offer thereof made to his Highness, cannot be a token against the Pannel, as is libelled, to make him to have been upon the Knowledge of the penning, and to have given his Advice and Opinion to the making thereof; *Hoc attento*, That the faid interlined Copy was never seen by any, but by himself, after the faid Interlining, which simply he produced the same to the faid Committee, which in Law he could never have been compelled to do, if he had expected that any such Advantage had been taken thereupon, to his heavy Prejudice. For the Pannel did never fear nor suspect that the faid Committee would have desired or induced him to have exhibit and produced before them a Paper, the Production whereof might have imported no

less to him than the Probation of the alledged Crime, contained in the Dittay, to make him thereby guilty and punishable by Death. And it is nottourt that the Pannel did, at the saids Lords Desire, produce the same to them, upon their Promise that it should not ensnare the Pannel, seeing in Law he was neither obliged to produce any Writing, nor to declare, nor to give his Oath upon any Interrogators demanded of him; neither would he have done it, if he had known (as now in Experience he finds) that it might and would have brought upon him the said alledged Crime and Punishment of Death.

It is added by Mr. *Alexander Pearson* for the Pannel, in fortification of the said fourth Exception propounded for the Pannel: First, For that Part thereof, bearing, That the Pannel the 9th of June last deponed, upon his great Oath, that Mr. *William Haig* had no Warrant of him for drawing up of the said Supplication, and that he knew nothing of the forming thereof; that the Pursuer cannot be heard now upon that part of the Dittay, to pursue the Pannel, because of the Pannel's Oath and Declaration foresaid, which cannot in Law and Reason be called again in question; *propter jurisjurandi religionem, quod speciem transactionis continet majoremque habet auctoritatem quam res judicata, & dato jurejurando, non aliud queritur quam juratum sit.* Leg. 1, 2, & 5. §. 2. *F. de Jurejurando.* Where it is alledged by the Dittay, That by the Letters sent by Mr. *Haig* to the Pannel, it is affirmed by Mr. *Haig* that he had the Allowance of the Pannel to the making and penning thereof, *non relevat*, because Mr. *Haig* being Author and Penner of the alledged infamous Libel, by his own Grant in his missive Letter, dated 27 June, and also acknowledged so by the Dittay, Mr. *William Haig's* Declaration foresaid (no ways granting the same) can no ways be respected, or have force against the Pannel; *Quia de jure socius aut particeps criminis adversus socium fidem non facit, Leg. Quoniam, Cod. de Testibus. Leg. Si Filium, Cod. de Liberati Causa.*

It is alledged by Mr. *John Nisbet*, that the Dittay is not relevant, in so far as it qualifies the Pannel to be Author of the Piece challenged by the Interlining thereof; because the Interlining in one Point only, convinceth that he hath not been Author of the rest. *Secundo*, The Interlining has no Contingency with the Point challenged, but is a smoothing of some apparent Shrewdness in Conception. And in a word, the Dittay is no ways relevant in so far as it qualifies any Accession by the Pannel's Depositions; because it is affirmed by the Pannel, that he was induced to depone, upon assurance that he should not be ensnared. And of the Law, *Confessio emanata sub spe impunitatis non importat Condemnationem; Clarus, §. final. Quest. 55. num. 8. & 9. Ubi assert opinionem Imole id asserentis, esse equiorem; Pharm. Quest. 81. num. 280. Confessio emanata sub promissione impunitatis non sufficit ad condemnandum, nec in foro conscientie nec contentioso; & consistentem non afficit: Eadem Questione, num. 42. Hiplitus in §. Postquam, num. 15.*

It is answered by my Lord Advocat, That the Exceptions proponed against that part of the Dittay, bearing the Pannel to be Author, Adviser, Consulter, Deviser, and Airt and Part of the penning, writing, and drawing up of the infamous Libel, ought to be repelled in the hail Members thereof.

And first, where it is alledged, that my Lord is not Author, because that he has deponed, that *Haig* is Author, and *Haig* by his Letter has granted himself to be Author; because that is not a Defence, but a Denial: for both *Haig* and the Pannel might be Authors and Contrivers of an infamous Libel. And therefore the Dittay in this Point is relevant, and consequently must be put to the Knowledge of an Assize, (Jury) before whom the Probation and Verification of the Dittay is to be used; and before whom it is easy to shew and clear, that neither the Pannel's Deposition can liberat him, nor yet *Haig's* Letter, who in the Defence is granted by the Procurators to be *Socius Criminis*. And giving (granting) the Justice would take the Dispute of this to himself, which is proper to the Assize; yet if any Moment stood in *Haig's* Letter, it must be taken *complex*; for by the same Letter he affirms, that the Pannel was Adviser of the said seditious Libel.

And where it is alledged, that Deviser, Consulter, and Adviser, are not contained in the Acts of Parliament whercupon the Dittay is founded, ought to be repelled in respect of the Act of Parliament of K. *James VI.* his Majesty's gracious Father of eternal Memory, *Parl. 12. cap. 151.* wherein it is declared, That all criminal Libels shall contain the Parties complained upon to be Airt and Part of the Crimes libelled: which is in this Case *per expressum* libelled; and the words of Adviser, Consulter, Deviser, *sunt synonyma & synonyma.*

And where it is alledged, that the Pannel in his Deposition has denied that he was either Author or Adviser, that is a Denial *ut supra*, and not a Defence against the Relevancy. And where it is alledged, that the Pannel having deponed by Oath, that no other Probation can be used *contra Jusjurandum*; it is answered, That it is against all Law, Reason, and Custom, to oppone *Jusjurandum in Criminalibus*. For then after Examination by the Judge, which is ever taken upon Oath, no Criminal should pass the Knowledge of an Assize; and it were a Proclamation of universal Impunity if Oath should determine the Trial.

But that which is alledged by the Pannel and his Procurators *super Jurejurando*, has only place in *Civilibus & in Jurejurando delato per Actorem*, which cannot have any respect in this Case. And it is nottourtly known, that *Anchindrine* and *Garrarie* not only deny'd upon Oath, but abode by the Denial in the Torture and Question; and yet notwithstanding their Oath, and Denial by Oath, were put to the Knowledge of an Assize, and convicted. And where it is alledged, against the Specification in the Libel of this first Point of Author, that Knowledge, Advising, and Interlining, are not relevant; I declare that I adhere in the first place to the general Subsumption of the Dittay upon the Act of Parliament, whereby it is subsumed that the Pannel is Author, Adviser, Consulter, Deviser, and Airt and Part of the seditious Libel; and protest, that notwithstanding of whatsoever Defence is or shall be propounded against the Qualifications, (albeit the same might be found relevant, which cannot be in Reason and Justice) That the said General shall pass to the Knowledge of an Assize, as relevant *per se*. Under which Protestation, I proceed to make answer to the Defences made against the Qualifications.

And first, where it is alledged that this Clause, bearing the Pannel knew of the penning of the

the said scandalous Libel by *Haig*, and advised and gave his Opinion anent the making thereof; that the samen is contrair to the Pannel's Depositions, given by him upon Oath, (as said is;) I answer, That this impugns not the Relevancy of the Dittay concerning the Qualification, and therefore must pass to the Knowledge of an Assize. And as to the Pannel's Depositions, whether they be conform or disconform to the Libel, *non est hujus loci*; because neither is the Dittay founded upon them, nor are they used by me as Pursuer, neither as a Part of the Libel or Proof of the Libel.

And where it is alledged, that that Part of the Qualification anent the Pannel's Interlining is not relevant, except it be condescended *quo tempore* interlined, *if in ipso actu vel statim post actum*; it is answered, That this part of the Qualification is used jointly with the rest. And there is no necessity of condescending, because *quocunque tempore* interlined, it is a sufficient Evidence of the Concourse, Consent, and Advising to *Haig*, Maker thereof; especially in respect it was drawn up by him, *viz. Haig*, in name of the Pannel, and others having Interest in that Writing, which is truly an infamous Libel, and termed in a sinistrous Notion by name of a Supplication: Likeas the Pannel his Procurators has in their second Defence maintained this Action of Law, That *Principium & Finis tanquam duo Extrema includunt Medium*. And therefore the Pannel's Knowledge, as the first Imitation of that infamous Libel, and his receiving the same from *Haig* immediately after the penning thereof, and receiving to be presented to be his Majesty to their use who were alledged Supplicants, and the Interlining thereof *ex post facto*, (albeit not interlined before the Delivery thereof to the Pannel) is relevant in Law with the rest of the Members of the Qualification *per se*, by and attour (over and above) the General, to sustain this Dittay, to make the Pannel Author, Adviser, Deviser, Consulter, and Airt and Part of the penning and drawing up of the said infamous Libel: specially seeing it will be constant (*i. e.* evident) by the Depositions, when the same shall be used before the Assize, that the same was not interlined *longo intervallo* after delivery thereof by *Haig* to the Pannel, but very shortly after *in tempore quasi continuo*. And where it is alledged, That this Interlining was not till after nine Months after the Receipt thereof from *Haig*, that is not, nor cannot be verified, nor has no warrant in the Depositions. And where it is alledged, That this interlined Libel cannot be used against the Pannel, because it was never deliver'd to *Dunmure*, nor never shewn to any, till the Pannel produc'd it before the Committee, and it was produced under Promises that it should not be used to the Pannel's prejudice; and that the Pannel was not obliged to answer, neither to have produced the same before the Committee: It is certain the Committee urged nothing from the Pannel but by good Warrant and to which the Pannel was obliged to Answer upon his Allegiance; and the Denial to give an Answer to his Majesty's Commissioners, who had Warrant under his sacred Hand and Seal, which was exhibited to the Pannel, would have inferred against the Pannel a more dangerous Crime than that he is now accused upon, by declining of his Majesty's Judgment, and of his Majesty's Commissioners. And for the Committee, they urged nothing from the Pannel but a

plain, true, sincere, and speedy Declaration of his Knowledge of the Author and Contriver of the said scandalous Libel, which, as it was incumbent for the Committee in obedience to his Majesty's Warrant to them, so it could breed no Snare nor Prejudice farder, nor he did burden himself by his own Confession; in respect whereof, the Exceptions ought to be repelled.

It is duplyed by Mr. *Roger Morwat* to my Lord Advocat his Reply, made to the Defences proponed against that part of the Dittay whereby it is alledged, That the Pannel cannot be convened as Author, Consulter, Adviser, &c. but that the said Defence ought to be repelled, and the hail Members thereof. And first, That the said first part of the Defence is not a Defence, but a Denial of that part of the Dittay; and that the Denial must be referred to an Assize, and disputed there, and not here; and that the same is not relevant, because albeit the Pannel has alledged another Author, yet they might be both Authors of the said Libel. It is answered, That the said Alleadgance stands relevant, notwithstanding the Reply, because the said Defence in that part is not simply a Denial, but is a Denial very pregnant, instantly verifying that the Pannel cannot be said to be the Author, and so criminally to be pursued; because by his Deposition before the said Committee, he has not only denied upon Oath that he is the said Author, but has likewise instantly verified the same, condescended upon the true Author; and not only has simply condescended upon the said Author, but has likewise instantly verified the same: which Verification being proponed with the said Defence, is both relevant and competent now only to be decided before my Lord Justice, and not before the Assize, seeing it is a peremptor Exception instantly verified. And whereas the said Reply bears, That the said Author Mr. *William Haig's* Letter, bearing that the Pannel was Adviser, is to be taken complex, there is no such Speeches nor Words mention'd or contained in the said Letter, which must now be produced, because it has been seen by the Pannel, that it may say for it self. And whereas my Lord Advocat alledges, That the Assize is only Judges to the Probation, and that he prove before them that the Pannel was Author, Adviser, &c. of the said alledged infamous Libel; that ought to be repelled in respect of the Alleadgance propounded for the Pannel, founded upon his Depositions and *Haig's* Letter: which Depositions and Letter being already produced, and delivered to the Pannel, and used, and Liberty granted to propound his Defences thereupon, the Defence is so proponed, that it may be either found relevant or repelled. And it cannot but be found relevant, because a Pannel being pursued for a Crime, as Author thereof, this is a most usual and relevant Defence, that he cannot be convened as Author. But he must be absolved from that Point, because he offers him instantly to prove ane other Author: Upon whom he likewise instantly condescends; and not only condescends, but instantly verifies and proves. And so the Exception being relevantly propounded, and instantly verified, as said is, it must be here found relevant, and likewise proven, and cannot be referred to the Inquest. And where it is replied by my Lord Advocat, That that part of the Defence founded upon the Pannel's Depositions, bearing that he has confess'd ane other Author, and giving his Oath thereupon cannot be respected,

being but his own Depositions and Declarations, and cannot work in his own favours; it is duplyed, That that part of the said Answer and Reply ought to be repelled, in respect of the said Defence founded thereupon; especially seeing the said Depositions were given before the said Committee, who were appointed by his Majesty for trial of the said Author. And the said Depositions being a part of the said Trial, the Pursuer cannot be heard to quarrel them, especially seeing they are used by the Pursuer against the Pannel, and are now as his Evidence. And if the Pursuer use them against the Pannel, it is lawful for the Pannel to make his use thereof, so far as makes for him, in respect whereof the Alleadgance stands relevant in that part founded upon the said Depositions. Which, together with the said missive Letter written by Mr. *Haig*, and which the Pannel propounds *conjunctim*, to prove his Alleadgance, verifies clearly that part thereof: And so being both relevant and proven, is sufficient to elide (quash) that part of the Dittay, That the Pannel should not be found convenable as Author. And whereas my Lord Advocat in his Reply answers, That the said first Defence, or first part thereof, is not relevant, bearing that it is alledged for the Pannel, That he cannot be convened as Author, seeing there is another Author condescended upon, and proven; because it is replied that they might both be Authors of the said alledged Libel: It is duplyed, That that part of the said Reply ought to be repelled, in respect of the Dittay it self, wherein it is not libelled that they are both Authors, but only that the Pannel is Author; and when it shall be so libelled, it shall have an Answer. And where it is replied by my Lord Advocat, That that part of the Defence, bearing that Consulters and Advisers are not contained in the Acts of Parliment, upon which the Dittay is founded, ought to be repelled in respect of the 151st Act of the 12th Parl. of King *James I.* of happy Memory, wherein it is declared, that all criminal Libels contains Airt and Part: To that it is duplyed, That the Defence stands relevant notwithstanding of the said Answer; and that the Pannel can no ways be drawn within the compass of the said two Acts, except upon that which is specially contained therein; and Consulters and Advisers are not contained therein. And as to that contained in the other Act of Parliament, cited aient Airt and Part, it is answered, That they are different: And if they be alike, Airt and Part should only be mentioned in the Dittay, and not in the other with Consulting and Advising, which are clearly several Points, and must be severally elided; in respect whereof, that part of the said Alleadgance stands relevant. And where it is replied, That the Pannel's Depositions, alledged in the Exception, to verify that he was not Consulters, Advisers, &c. because that the said Depositions bears that he knew not of the penning, and gave no Advice thereto, that that Part of the said Alleadgance is likewise denied *ut supra*, and not a Defence: It is replied, That as my Lord Advocat repeats his Reply against the Denial, so for the Pannel the said Defence and Duply, made in fortification thereof, are here repeated; especially that part of the Duply founded upon the said Depositions, bearing that the said Depositions are used by my Lord Advocat against the Pannel, and therefore must work in his favour also. Where it is replied to that part of the Alleadgance, bearing that the Pannel cannot be convened as Author and

Deviser, because he has given Advice, and in token thereof has mended and reformed a part of the said Libel; that that cannot be respected, because of the Reason contained in the said Exception, bearing that it is contrary to the Depositions, and that it impugns not the Relevancy: It is answered and duplyed to the said Reply, That the same ought to be repelled, in respect of that part of the Alleadgance which is founded upon the Pannel's Deposition, and needs not impugn the Relevancy, because it is peremptor for that part; and as it is relevant, so it is instantly proven by the said Depositions, and elides that Member of the Dittay, being peremptorily proponed, and instantly verified and proven by the said Depositions. And albeit it be replied by my Lord Advocat, That the said Depositions are not used by him neither as Part nor Proof of the Libel, yet it is contrair, because they are mentioned in some part of the Libel, and so used. And as for Proof, they cannot be yet used as such, till the Relevancy be discussed. But albeit my Lord Advocat should not use them, yet the Pannel uses the same; and the said Depositions may be found a lawful Probation to him of any thing that he shall found thereupon.

And where it is alledged by my Lord Advocat in his Reply, That that part of the Defence used by the Pannel against the Interlining libelled, that the same is not relevant, because not libelled when interlined, as that part of the said Alleadgance bears; and it is answered by my Lord Advocat, That that part of his Lordship's Qualification is used jointly with the rest; and that *quocunque tempore* interlined is an Evidence of the Pannel's Concourse with *Haig*, in respect it was done by *Haig* in name of the Pannel and the rest of the Supplicants: To that it is duplyed, That that part of the Alleadgance proponed for the Pannel stands relevant, notwithstanding of that part of the Reply made thereto; and that it is yet contended for the Pannel, That it is no ways relevant to alledge *quocunque tempore* interlined thereupon, to infer against the Pannel that he was Author, Deviser, and Airt and Part of the penning: for common Sense evinces, that to be Airt and Part of the penning or devising of a Writing, must be done either the time of the forming of the said Writ, or very shortly after, otherwise Interlining can never infer Author, Deviser, or Airt and Part of the Penning. And it is clearly set down in the said Alleadgance, that great time intervned betwixt the Author's penning and devising of the said Libel, and the Pannel's interlining of it; for it is clear and noutour to my Lord Advocat and the Lords of the Committee, by clear Depositions before them, that the said interlined Libel was that same which was intended to have been presented to his Majesty by the Earl of *Rothes*, and that it was not interlined during the hail time the said Earl had the same, and for a long time after. And so that part of the said Dittay is no ways relevant to infer the said Pannel to be Author for the said Interlining, because the time of the said Interlining is not libelled *quando*, and that it was at the time of the Penning, or immediately after.

And where it is answered, That the said Libel was done by *Haig* in name of the Pannel and the rest, that part of the Answer ought to be repelled, as altogether irrelevant, not bearing that it was done at their Command; for to do any Deed in name of another Person, cannot be counted that Person's Deed in whose name it was done. And where it is replied, That the General is relevant, without

without that part of the Qualification anent the Interlining after that the Pannel received it from *Haig*, especially seeing it will be constant by the Depositions, when they will be produced before the Assize, that there was no interlining *longo intervallo*, but shortly: To that it is duply'd, It ought to be repelled in respect of the Alleadgance, and the Qualifications therein contained, bearing clear and undeniable Circumstances of the time of the Interlining; and likewise in respect of the said Depositions, whereupon that part of the said Alleadgance is founded, and which now the Pursuer uses by propounding his Reply thereupon. And seeing both the Pursuer and the Pannel condescends upon the said Depositions as a Probation of that part, that part of the Dittay cannot be referred to the Assize, to be proven before them, anent the time of the said Interlining; but as the Defence is relevant, as it is proponed, and ought and should be so found, so the Depositions may be presently received as the Probation thereof, being instantly verified and proven, as said is. And where it is answered, That the nine Months, contained in the Alleadgance, alledged to have intervened betwixt the penning and interlining, is not verified; it is duplyed, That, first, Relevancy must precede Probation: *Secundo*, That the said Space and Time may be gathered out of the Circumstances contained in the said Alleadgance and Depositions: and lastly, The Pannel's own Declaration must be taken thereupon; seeing the Pursuer shews nothing in the contrary. And this Judicatory admits no Dyet to prove any thing that is found relevant, which is not proven *instante*. And where it is alledged against that part of the Pannel's Alleadgance, bearing, That the said interlined Copy was never seen before it was produced before the Committee; and that the Pannel had Promise not to be snared, and needed not to have produced it, except he had pleased; and that it is replied by my Lord Advocat, That all that was urged from the Pannel by the Committee was by good Warrant, whereunto he was obliged to answer upon his Allegiance; and that the Denial to answer before them would have interred against the Pannel a more dangerous Crime, if he had refused; and the Committee only urged a true Declaration anent the Author: It is duplyed, That the Pannel is not to dispute now anent the Warrants of the said Committee, and upon the Crime that might have followed if he had denied to answer, and whether he might have declined them or not. But this he duplies in fortification of that part of the Alleadgance, That albeit he had neither declined the said Committee (as he did not) nor had opposed in any Case their Powers or Warrants; yet he might have lawfully proponed before them this Defence, which to his great and heavy prejudice he did omit, That of Law and Reason he was not obliged, nor could not been urged to have made any Depositions, nor given Answers to Interrogators anent any Demand concerning the said Libel quarrelled; because his Answers and Depositions might have been the Ground of a Criminal Pursuit against him (as now it is.) And so with reason he might have been silent, and the saids Lords of Committee could have taken no exception against him for his said Silence. And therefore that part of the said Pannel's Alleadgance stands relevant, notwithstanding of the Answer bearing that he could not have been compelled to have made any Deposition either upon his Oath or Declaration, if he had remembered,

and had alledged the Danger that was to follow and ensue thereupon. In respect whereof, the said Replies, and every one of them, ought to be repelled, in respect of the said Alleadgances and Duplies made in fortification thereof.

It is farther duplyed for the Pannel by Mr. *Alexander Pearson*, That where it is replied by my Lord Advocat to that part of the last Defence, bearing that Mr. *William Haig*, the Author and Penner of the alledged Libel, by his own Grant in his missive Letter, and also acknowledged by the Dittay, that his Declaration that the Pannel gave his Allowance to the penning and forming of the said alledged Libel, cannot be respected, nor have any Faith, *quia Particeps Criminis adversus Socium, fidem non facit*; whereupon my Lord Advocat infers a Grant against the Pannel, of his giving Allowance to Mr. *Haig* in the forming of the alledged Libel: To which it is answered, That the Inference and the Consequence is not good, and has no force; because the foresaid Defence does no ways inforce a Grant of Allowance by the Pannel to the forming of the alledged Libel, but does only import that Mr. *William Haig*, the Author and Penner thereof, that his Declaration (not granting any) bearing the Pannel to have given Allowance to him in forming the alledged Libel, cannot be respected, nor have any Faith at all against the Pannel, himself being clearly the Author and Penner thereof; *quia Particeps aut Socius Criminis adversus alium, fidem non facit*.

It is also farther duplyed for the Pannel by the said Mr. *Alexander Pearson*, That where it is replied by my Lord Advocat, that it is against Law and Reason to oppone *Jusjurandum in Criminalibus*, and that the Opposition of an Oath given has only place in *Civilibus*; it is answered, that the contrair is true in Law, to wit, That Causes Criminal are sometimes even decided by Oath of Party by clear Law. First, *Leg. 25. § 5. F. de Jurejurando: Verba Legis, Si quis juraverit se non capuisse, non debet adjuvari hoc Jurejurando in actione Furti, quia aliud est Furtum fecisse, quod vel clam fieri potest. Et Leg. 6. § 5. F. de his qui notantur Infamia: Verba Legis, Sed & si Jurejurando delato juraverit quis non deliquisse, non erit notatus; nam quodammodo Innocentiam suam Jurejurando approbant, quibus luce clarius est. Et in Causis Criminalibus Juramentum deferri, ergo etiam Causas Criminales per Juramentum delatum decidi.* And it is alike, *utrum Jusjurandum a Judice an a parte delatum sit, utrumque enim decisorium est Litis; expressa Leg. 1. F. de Jurejurando: Verba, Maximum Remedium expediendarum Litium in usum venit Jurisjurandi Religio, quia vel ex passione ipsorum litigantium, vel ex autoritate Judicis deciduntur Controversiæ: & Ratio quia Judex non defert Juramentum nisi in supplementum, & ubi res aliter probari non potest.* And therefore that part of the Defence foresaid stands good and relevant, notwithstanding of the Reply.

It is likewise duplyed by Mr. *John Nisbet* for the Pannel: Where it is replied by my Lord Advocat, that the opposing of the Pannel's Depositions, wherein he disavows that he is Author, Deviser, conscious or accessory to the framing of the alledged Libel, is not a Defence, but a Denyal; it is duplyed, That sundry Points of the Dittay being qualify'd, by the Pannel's Deposition, there results to him a relevant Defence in Law, upon the Indivisibility and complex Taking of his Depositions

tions, *quia Confessio non potest pro parte acceptari, & pro parte sperni: Bartol. in Leg. Aurelius, §. Idem quaesit, num. 2. F. de Liberatione Legata. Pharm. Quaest. 51. num. 168, & aliis numer. Quando est Presumptio quod qualificato confitente occiderit ad sui defensionem, ut parte si occidens sit vir probus, nullamque occidendi & offendendi causam habebat, & quia occisus erat homo rixosus; talis qualificata Confessio non potest dividi, nec poena extraordinaria imponi, & sic confitens omnino absolvendus est.*

Whereas it is replied by my Lord Advocat, that the Relevancy of the Qualification, and the Conformity and Disconformity of the Pannel's Depositions, is not proper to be debated here, but must be remitted to the Assize; it is duplyed, That all Dispute and Debate of Law must be decided by the Judge, and is not pertinent to be agitated before the Assize, who are only Judges *Facti, & Quaestores* to make inquiry into the Verity of the Deed.

Whereas it is replied by my Lord Advocat, that Interlining *vel in actu ipso, vel post actum quocunque tempore*, of a Piece drawn up for the use of the Pannel and others interested, evidences the Pannel's accessory Concourse in the forming and devising the Piece; it is duplyed, That it is most unreasonable, because it should follow, that interlining of any Piece or Book should import Concourse in the first framing of it, which is contrair to Reason.

Whereas it is replied by my Lord Advocat, That *Principium & finis tanquam duo Extrema Medium includunt*; as is acknowledged by us in the Use of that Maxim; and consequently that the first Intimation of the Pannel's Knowledge, and the immediate receiving of the Piece challenged, and Interlining *ex post facto*, are relevant to make the Pannel Author, or Airt and Part: it is duplyed, That that Maxim is used by us in the Interpretation of sundry Passages of a Piece done *unico Contextu*, which therefore must be presumed to be done *uno Animo & uno Stylo*, by the Analogy of the two Extremes interpreting the Midst; and can never be used to make disparat Acts, to join preposterously, to prove Accession in forming and devising, seeing the first Imitation alledged by my Lord Advocat is of Knowledge, which presupposeth a thing to be done.

Where it is replied by my Lord Advocat, that the Libel produced before the Lords of the Committee with the Pannel's Depositions, notwithstanding Promise and Assurance that they should not be used, may be used by my Lord Advocat, and that the Procedure of the Lords of Committee is most warrantable, that the Pannel was obliged to answer by his Alleadgance; it is duplyed, That the warrantable Procedure of the Committee is not contested, nor cannot be; and that the Pannel, albeit he could not decline his Majesty's Commissioners, might very well in Reason and Law have refused to depone his own Dittay. And we adhere to the former Citations, averring that the Assurance given by Judges should secure Pannels against any use that could have been made of their Depositions.

It is added to the Duplies by Mr. *Robert Macgill*, That where my Lord Advocat has replied, that the Oath of a Party to be indicted may be urged in Criminals, *quod hoc vix sit auditum in Jure, Clarus §. ult. Qu. est. 63. & Qu. est. 45. num. 9.* And if it hath been practised in some parts, as likewise

in this Country in the Examination of these who are to be indicted, *Consuetudo illa est vetustas erroris quae non adeo suo momento valitura, aut ut Legem vincat aut Rationem. Apud Gregorium, & Codice Justiniano, quae sit longa Consuetudo.* The Reason of the Law is, that the maintaining of our Life is so natural, that what will we not say for the defence of it? *Et supra omnia evitandum est Perjurium.* And the Reasons of the Practicians is nothing, which is lest Crimes should be unpunish'd: for upon Probation by Writing, Witnesses or other Confession, *quae non est jurata*, or upon Presumptions *luce meridiana clariores*, an alledged Criminal may be put to the knowledge of ane Assize; or otherwise the Question may be used *ad eliciendam veritatem*. And where Celerity of Punishment may be objected rather or a Man perjure himself, *vindictae Tarditas Supplicii gravitate compensetur*. But accepting the Practique to be so, I say, that *in Confessione jurata nullo pane metu propter Impunitatem promissam.* The Maxim of the Law must be here received, *quod approbo, non reprobo*; especially seeing the Pannel was so simple and careless in respect of his Innocency, that he remitted the forming of his Depositions to the Lords of Committee themselves, he being then removed the time of the dyting and writing of them, and did subscribe them *fide implicita*.

Where it is replied, that advising and devising may be attributed or qualified by any subsequent Deed to the alledged Crime; it is answered by that of *Sallust, Et antequam incipias consulto, &c.* and so it is *in Mandato*. And as to the Ratihabition, *est seditio Juris*; and it is to be understood *in Criminibus manifestis, & non ubi quaeritur de nomine Criminis*; as in our Case. And remits to the Distinction alledged in the hinder part of the first Exception.

It is duplyed by Mr. *Roger Mowat* to the two Practiques of *Auchindrane* and *Carrarie* alledged by my Lord Advocat, That they suit not this Case, saying that Depositions should not prove in favour of the Pannel, because if any Depositions were given by these two Persons (not granting the same) they were given after their Indictment for the Crimes of Murder; but here the Depositions are given before any Crime known. Secondly, if any Depositions were given, they were the voluntary Depositions of the Party, not demanded by the Judge. Thirdly, It is not replied, that these Delinquents proponed any Defence upon their Depositions, and craved their said Depositions to verify the said Dispute. Lastly, it was not there alledged and offered to be proven, That there was ane other Author of the said Murder, which was their Crime; whereupon if they had condescended and offered to prove the same, their Depositions would have been further respected. In respect of which clear Differences of these Delinquents from this Case, no respect can be had to the Practiques alledged.

The Dyet continued till to-morrow the 11th Instant.

Curia legitime affirmata, the said 11 of December 1634. Parties and Procurators as before.

The King's Majesty's Advocat having heard the Duplies made to his Lordship's Reply, declares that he finds nothing worthy therein to be answered, except one Point of Law moved very imperti-

impertinently anent the Division of Confession in Criminals, and another made in *facto* anent the Challenge made to the Committee in an alledged Promise made to the Pannel at the time of his Examination. And for the first, which is disputable *in jure*, if it had been pertinent to the purpose, his Majesty's Advocat declares he would have triplyed thereto in writing, and is ready, upon my Lord Justice's Desire, to clear it to his Lordship. And as to the other part *in facto*, 'tis more pertinent to be cleared before the Assyze. And therefore he supersedes his Answer, except he be enjoined thereto by my Lord Justice-General.

Quinto, It is alledged by Mr. Roger Mowat for the Pannel against the second Alternative of the Dittay, That the Pannel ought to be assoi'zed, and cannot be put to the knowledge of an Assyze, for alledged hearing, concealing, and not revealing, and not apprehending of the Author of the alledged infamous Libel, and alledged divulging and dispersing thereof, as the Dittay bears: because giving, and not granting, that the foresaid Supplication quarrelled might be found scandalous against Mr. William Haig, the known Author thereof; yet *quoad* this Pannel, who is not, nor cannot be found the Author, it cannot be so declared, because the Addition of the Act 1594, militats only against such Writings as are manifestly, clearly, and without doubt or difficulty evident and seen, and known to be infamous Libels, and at the very first sight may appear such unto every ordinary Understanding. But the quarrelled Supplication being of a dutiful strain, and such as might be mistaken even by very understanding Readers and Hearers, the addition of the said Act can no ways be extended to the Hearers, Concealers, not Revealers and not Apprehenders. But so it is, that the said quarrelled Supplication was delivered by the said Author to the Pannel as an humble Supplication, and given by him to the Earl of *Rothes* as an humble Supplication, and returned to him under the same name: likeas the Pannel is content to make Faith anent his Knowledge and Conception thereof, that he received and retained the same *eo nomine*; and therefore cannot be put to an Assyze upon these Points, seeing they are Points that cannot in reason be found capital by the Common and Civil Law, but by the said Addition, which was made in turbulent Times, and never took effect, but in continual desuetude, as has been said before. And it were very hard, upon such an Act, never practised heretofore, to make Noblemen and others his Majesty's good Subjects obnoxious to a Capital Crime. And albeit the said quarrelled Supplication might now be found to be infamous, yet the finding it now to be such, ought not, nor cannot be drawn back to infer the Pain of Death upon those who *bona fida* did not think it such, as now it is said to be by the said Dittay; they having *justam & probabilem Ignorantiam*, by doing that which truly they did, thereby not to have incurred the hard and rigorous Censure of the said Act of Parliament. Secondly, It is alledged, that *Absolvitur* ought to be granted *ut supra* to the Pannel, because the Supplication quarrelled was never declared heretofore infamous: and before it had been declared infamous and scandalous, and by the said Declarator the Pannel had been certified of the Danger, the alledged Having and Hearing thereof cannot be now sustained as a relevant Ground to infer this Criminal Pursuit

and Pains of Death against him. And with reason it should have been first so declared against him, that he, and others his Majesty's loyal and good Subjects, being lawfully warranted by the said Declarator, might have thereafter eschewed to have offended in that kind. Thirdly, *Absolvitur* ought to be granted, because the said quarrelled Supplication was intended and offered to be presented to his Sacred Majesty; which intended Offer of the said Supplication by the Earl of *Rothes*, put the Pannel *in tuto*, that he could never have suspected any Crime or Punishment for hearing, keeping, &c. to have followed after the said intended Offer: and so was thereby *in optima fide* to hear, keep, and not to reveal any thing thereanent. The making of the which Offer to his Royal Majesty, in the Pannel's Judgment, did then vindicat him that he thought nor conceived not the said Supplication scandalous or seditious; seeing it is presumed that no Man of Judgment or ordinary Sense and Reason, would be so foolish as to offer his own Dittay to his Prince.

And that the Pannel's Innocency may farther appear, and that his Opinion and Judgment of the said quarrelled Supplication, as he offers to declare the same then to have been, may be trusted above all other Presumptions that can be adduced in the contrair; it is to be remarked, and gravely and wisely considered by the Judges, that the Pursuer in effect has no other Evidence nor Probation of the said Particulars libelled in the said Dittay against the Pannel, but such as proceed from his own Depositions made before the said Committee: which Point is so considerable, that in reason no advantage should arise thereupon against him, seeing he was not obliged thereto, but of his own accord. And as in Law a Person accused criminally cannot be compelled either to depone or declare at the command of the Judge, so the Depositions given by this Pannel before the said Committee, should not be respected, in so far as the same may be made ane Ground of the said Dittay, which concludes and infers no less against the Pannel nor the Pain of Death. And for the Point of concealing and not revealing the said Writ, *de facto* the same was revealed by the Pannel to the Earl of *Rothes*, in so far as the same was appointed to be presented to his Sacred Majesty, and thereby to have been revealed to his Highness: likeas accordingly the Earl of *Rothes* did offer to present the same, as said is. In respect whereof, *absolvitur* from the said concealing and not revealing; *absolvitur* likewise for not apprehending, because, as is said before, the Pannel is ready to declare, that in his Judgment and Conception he did not think the said quarrelled Supplication to be such as it is libelled by the Dittay, for the Reasons before adduced. And in that respect it was hard for him as a private Man to take upon him to apprehend the Author of a Writing, which before he had not conceived to fall within the compass of the said Act of Parliament. For albeit in Matters of Treason all good Subjects are obliged in Duty under all highest Pain to discover and delate Authors and Practisers thereof; yet in other Matters, in Writing, and such like, wherein are doubtful and ambiguous Expressions, which may suffer divers Interpretations and Constructions according to the Humours, Capacities, and Conceptions of the Readers; there is no such Necessity posed by the saids Acts of Parliament libelled, nor by the Makers of the same, that a Writing coming to a
Man's

Man's hands, whereof he makes not the right Sense and Meaning as others do make thereupon; that the said Writing not rightly understood by him, shall thereupon be a Ground of a Criminal Pursuit to make him lose his Life for not taking; or not apprehending, or not revealing the Author of the said Writ. The Preparative seems dangerous and singular; it would therefore be carefully adverted unto, specially at this Time, and in this Case; whenas the putting of the said Act in practice, seems to have the first beginning upon this Pannel. And the taking and apprehending of Leidges has heretofore been dangerous to sundry Apprehenders; and is instanced by the Earl of *Queensbury* and the Laird of *Geichtis* Practices, for taking of Leidges at their own hands.

It is answered to that part of the said Dittay anent Mr. *Haig's* apprehending of his own Danger upon the simple sight of the Committee's Letter by the Pannel, that that cannot make the Pannel necessary to his Escape, no more nor his own Consent anent the penning of the said quarrelled Supplication can make the Pannel Airt and Part of the forming and penning thereof; seeing the said Pannel's second Deposition bears that he was neither upon the Counsel nor Knowledge of his Escape, and knew not of it 'till three or four Days after he was gone. That Part of the Dittay anent the Pannel's receiving of Mr. *Haig's* Letter, is no way relevant to infer the Pain and Crime libelled against the Pannel. First, Because this is not a Matter of Treason, wherein receiving and writing of Letters are prohibit. Secondly the Pannel was not prohibit by the Lords of the Committee to receive any Letters. Thirdly, the said Letters are produced and delivered to the saids Lords, which in Rigour of Law he needed not to have done. Fourthly, Being produced, they prove nothing against the Pannel, but are clearly in his favour; because Mr. *Haig* professes himself therein to be Author and Penner of the said Supplication. And where it follows in the said Dittay, that it is affirmed and avowed in some of the said Missives, That Mr. *Haig* had the Pannel's Approbation and Allowance to the making and penning of the said Supplication, that is altogether irrelevant, as having no Warrant from the said missive Letter, which contains no such Affirmation as is libelled. And the Pannel craves the Letter, bearing that Passage, presently to be read, seeing it is in my Lord Advocate's hands; which Desire should be granted, because the Pannel has seen it, with the rest of his said Missives, by Warrant from my Lord Justice and his Assessors.

It is added by Mr. *Alexander Pearson* to the Exception, That the Pannel is not guilty of concealing, not revealing and divulging of the alledged infamous Libel, because the Writing quarrelled being in form of a Supplication, and used as a Supplication by Offer made thereof to his Majesty, who then gave no Signification of any Offence therewith, the Pannel is not, nor cannot be counted formally a Concealer, not Revealer, or Divulger of an infamous Libel, there being no such Knowledge nor Opinion anent the Writing foresaid of the Pannel: *Quia injuriam potest facere nemo, nisi qui scit se injuriam facere. Leg. 3. § 3. F. de Injuriis. Sed accusatus non habebat hanc scientiam, sed justam causam credendi,* to think of it otherwise as a Supplication, for the Reasons above rehearsed. And as when any is accused of Theft, it is a good

Defence to say, *Quod domini voluntate & consensu rem contrahant, saltem putavit dominum consensurum; sive id falso; sive id vero putet; expressa Leg. 46. § 7. de Furtis, maxime dum suberat infra causa ita credendum.* So by the like Reason in the matter of meddling with the infamous Libel, it must defend the Pannel, That he had no Knowledge or Conscience of ane infamous Libel, and that he had just and probable Causes to think of it as a Supplication, *sive id falso sive id vero putavit, & generaliter ubi de obligando queritur, propensiores esse debere nos (se habeamus occasionem) ad negandum, ubi deliberando ad liberationem, ait Arianus, Leg. 47. de Obligatibus & Actionibus: ergo in re presenti rapienda est occasio ad liberationem accusati.* Specially anent the Divulging, because this Point of Dittay anent Divulging, is not founded upon any Acts of Parliament, but only upon the Common and Civil Law, and therefore should be decided by the said Law: by which the Defence now alledged for the Pannel is very relevant. Farther, that part of the Dittay, bearing that the Pannel by showing to Mr. *Haig* of the Warrant of his Citation, did thereby give him occasion to escape furth of the Country, is not relevant; because that which of itself is good, may give occasion to Evil: And the Pannel's shewing the Warrant of his Citation, is no more nor if being verbally cited, he had told Mr. *Haig* of his Citation, which is no Crime.

It is added by Mr. *John Nisbet*, that the Dittay subtyming concealing of the Piece quarrelled, is contrary to itself, bearing the imparting of it to my Lord *Rothes*, of purpose to present to the King's Majesty.

It is added, that the not apprehending the Author of an infamous Libel, is not relevantly qualified, by the not taking of *Haig*; seeing it is not libelled, that the alledged Libel was declared to be of that nature, or conspicuously or nottourly, at least to the Pannel's knowledge, an infamous Piece; and that it was in the Pannel's power to apprehend the Author, without incurring any hazard of Law, for the injurious Interpellation or Apprehending of any Person, whom he was not able to convince to be Author: specially seeing the not apprehending of the Author of a treasonable Piece cannot import any Guilt against the not Apprehender, who is not able to convince the Author of the Crime by lawful Probation, and therefore not obliged to apprehend, since he cannot do it without the danger of Retaliation, in case he succumb; *James VI. Par. 2. cap. 49.* And in Law, *Qui injuriose interpellit in Judicio civili tenetur Injuriam, F. de Injuriis, Lege 19. Et si Liber pro Fugitivo apprehensus sit, apprehendens punitur.* And by the like Reason the Apprehender of a Party, whom he cannot convince by lawful Probation, is punishable: And in the Civil Law, he is obnoxious in the Pains of *Lex Julia de Vi publica*, and of *Lex Cornelia de Injuriis.*

Secondly, The apprehending enjoined by Act of Parliament is only subsidiary, when a Party is declared Author, and cannot be well apprehended by the Judge: And a Party that is ready to delate the Author of an infamous Piece, to the end that he may be apprehended by the Judge, he is not obliged to apprehend him summarly.

Thirdly, The not apprehending of the foresaid Author is excusable; because the Pannel was enjoined by the Lords of the Committee not to divulge the Business whereupon he was

convened, and to keep all things secret until his Deposition.

It is farther eiked by Mr. *Robert Maagill*, anent the not apprehending, That the Pannel ought to be affoiled therefrom, because Freedom is so natural and favourable, that even amongst the *Romans* many of their Magistrates had not *Prebensionem*; and that which the Tribunes of the People had, it was also for the People's Freedom. *Gellius, lib. 13. cap. 12.* Wherein it is certain of the Law, *quod nec magistratibus licet aliquid injuriose facere, quin injuriarum teneantur. Leg. nec Magist. 32. F. de Injuriis. Unde etiam Captura debet esse ex decreto Judicis & Judicia, quæ resultant ex processu generalis Inquisitionis debent esse sufficientia ad Capturam, decerniturque Captura ex facti qualitate & debet processus esse informatus licet reus, qui capiendus est, non citatus sit: Clar. §. ultima, Quæst. 28. & Quæstione 20. num. 2. Quod in delictis enormibus id ita hodie servatur.* If then it be so, in *Magistratibus Capturam jubentibus*, can it be thought that any municipal Law can command Apprehension, *nisi in casibus de Jure, & ratione competentibus?* And so in *Criminibus Decorum enormitate jam satis constat* (where the Pannel professes before God) *& Jusjurandum purgativum de Jure recipitur. Leg. Lex Cornelia 5. §. 8. de Injuriis.* That he never remembered of such an Act, he could never have imagined at that time the Piece quarrelled to have been of such a sort, much less to be treasonable; and remits here to the Distinction of Crimes propounded in the last part of my first Exception, where Crimes and Pains ought to be ruled in Reason even in municipal Laws; and except in such seditious Speeches, which is the first sort of inordinat Speeches against a Prince, *Ubi & tractatus adesse debet, ut in Conjuratione Catiline*; no Lawyer did ever think the Haver, Hearer, and not Revealer, not Apprehender; to be punishable by Death; *& ut videtur absurdum.* All municipal Laws ought to receive their own Limitations according to Reason: and remits here to the second Part of my Duply, in fortification of my first Exception, grounded upon *Gailus, lib. 2. Observatione 33.* anent the Interpretation of municipal Laws; and to the Limitation expounding the Act 134. which forbids any Man, of whatsoever Quality, to speak in time coming anent the Government: which would be absurd, if it received not its own Limitation to speak (about it) in Council and Parliament. And repeats here again the gracious Acts of our dread Sovereign anent the surveying of the Laws.

It is answered by my Lord Advocat to the fourth Exception propounded against that part of the Dittay, whereby the Pannel is indicted, and is punishable by Death; and that by the Act of Parl. 94. for not apprehending of *Haig* the Author of the infamous Libel, and for not revealing of the same, ought to be repelled in the hail Members thereof. And notwithstanding the same, the Dittay in that part is severally and *per se* relevant, ought to be put to the knowledge of an Assize; because it is subsumed in the Dittay precisely, according to the Words of the Act, That the Pannel, who knew *Haig* to be Author, did not apprehend, but concealed him and it, and not revealed them; and also gave occasion to *Haig* of his Escape; and since his Escape, received divers Letters from him, which were concealed till the Pannel was interrogat thereupon by the Committee. And where it is alledged

in the Exception, That the Dittay is not relevant in this point, not condescending that the infamous Libel was declared to be an infamous Libel; and in particular, that the Dittay in that part is contrair to itself, which bears the Pannel to be guilty of concealing; and yet bears also that he delivered it to the Earl of *Rothes*, to be presented to his Majesty: It is answered, That the Dittay is relevant, because it subsumes directly according to the Act of Parliament, which speaks not of an infamous Libel declared to be so, but of an infamous Libel of Speeches, which are so really in the self. And there is no Contrariety in the Dittay, because giving to the Earl of *Rothes* is concealing, except it were qualified that the Earl of *Rothes* were such a Person to whom the Act of Parliament ties the Hearer to reveal, which he is not, not being of his Majesty's secret Council. And where it is alledged that the true Meaning and Sense of the Act is only to be understood of Reproaches and infamous Libels, which are certainly, conspicuously, and not-tourly so, and not of such Speeches and Libels which are of a doubtful and ambiguous, or indifferent nature, which at the first View and Hearing could not appear to all Men to be infamous and scandalous: It is answered, That *ubi Lex non distinguit, nec nos distinguere debemus.* And seeing the Act comprehends Reproaches and scandalous Libels, which are so really, *& non opinione*, the Judge and Assize are obliged to judge and proceed according to the nature of the thing prohibited, as it's so really, and not to leave place to frustrate the Execution of the Law under the Veil of Opinion. And of the Law, *ignorantia juris neminem excusat ne quidem in delictis, licet sit ignorantia probabilis præcipue in atrocioribus*; of which nature this is. Neither can the Pannel pretend excuse upon the Incertainty, Obscurity, or Ambiguity of the infamous Libel; because this infamous Libel, by the first View, Reading, and Inspection thereof, might and should have appeared to him to have been of that nature. And no Nobleman, or whatsoever Subject of whatsoever Quality, being of the Pannel's Knowledge, Learning, and Understanding, can or could justly pretend any Doubt or Scruple; but that the said infamous Libel was, in the first View and Reading thereof, of the nature of a scandalous Libel, punished by death. And albeit in infamous Libels against Subjects there might be some Shadow of Excuse, by reading and looking upon the same, and receiving thereof either for Curiosity, or to learn the Quickness of a Wit evil set in the penning of such infamous Libels: But such Excuses are damnable in infamous Libels which touch with the least Aspersion or Blame the Honour, Credit, and glorious Estimation of our gracious Sovereign. Like as the Pannel cannot pretend Ignorance, in so far as he granted in his Depositions, that after his receiving thereof from *Haig*, when he did communicate the same with the Earl of *Rothes*, that they found the same of such a Strain as ought not to be presented to our gracious Sovereign. And where it is alledged that this Act of Parliament 94. in the Points of the Addition anent not apprehending and not revealing, are not of Crimes punishable to death by the Common Law; and that the same has been in long desuetude, and out of use; that ought not to be respected, because we are ruled by the Laws of the Kingdom, by the Acts made by King *James* the First and King *James* the Fourth, before alledged; and there is no Prescription in Law. And where it seems to be adduced to infer

probabilem ignorantiam, it is answer'd, *Quod omnis ignorantia juris est improbabilis & punibilis*. And where it is alledged the Pannel *habebat ignorantiam facti eamque probabilem quæ excusat in delictis*; in so far as albeit this infamous Libel was punishable to death in the Person of the Author, yet it cannot be punishable to death in the Pannel, not being Author, as he alledges, because it was delivered to him as a Supplication, to be presented to his Majesty; and that he presented it to the Earl of *Rothes*, who made offer thereof to his Majesty; and after returned it to the Pannel, which (as the Pannel alledges) put him *in tuto & in bona fide* not to apprehend *Haig*, nor to reveal it to any of his Majesty's Council as a scandalous and infamous Libel, because he did not conceive it to be so; and is content to depone upon his great Oath, That he did not know, nor apprehend the same to be an infamous Libel: It is answered, That the Nature and Strain of the infamous Libel must be the Rule of Punishment or Impunity, and not the Opinion of the Pannel; the Reproaches, Exprobrations, and scandalous Aspersions thereby put upon his Majesty's sacred Person, Estate, and Government, being so nottour, evident, and conspicuous, that neither the Pannel, nor none of his Knowledge and Judgment, could pretend Excuse or Ignorance in the reading thereof; *Et est ignorantia maxime inexcusabilis nescire hoc quod omnes sciunt*: but specially in the Pannel, who adverted to it narrowly, and heard it not simply spoken, but had it delivered to him in Writing, which he kept, copied, and advised with, and found the Strain thereof of that nature, as was not fit to be presented to his Majesty. And where it is alledged, That the Pannel cannot be punishable to death for not apprehending of *Haig*, and not revealing of him and his infamous Libel, except it had been declared to have been infamous, and *Haig* to have been the Author thereof; and that the apprehending of *Haig* in a matter so obscure and doubtful, would have been dangerous to the Pannel *per Totam Retaliationem* or Retaliation, ordained by the Act of Parliament of King *James*, his Majesty's blessed Father, of happy Memory, *Parl. 2. cap. 49*. It is answered, That Act of Parliament requires no other Declarator but the real Nature and Quality of the Speeches and infamous Libel; neither could there have been Danger in apprehending, being warranted by the Law. And where it is alledged, That all depends upon the Pannel's Depositions, which he made voluntarily for Satisfaction of the Lords of Committee, and that therefore he must have yet place to clear his own Depositions; and that for clearing thereof, he is ready to depone, by his great Oath, that at the Receipt of the said infamous Libel, he received the same as a Supplication, and so kept it, and retained it: It is answered, That the most substantial Part of the Dittay is founded upon the nature of the infamous Libel, and not upon the Pannel's Depositions; wherein his Denial of Knowledge upon Oath cannot liberat him from the Punishment of Death contained in the Act of Parliament.

And where it is alledged, that albeit the Justice should find this Libel to be infamous now, yet it cannot be drawn back to the time of his Receipt from *Haig*; it is answered, That it needs no Declaration of Judge, and consequently is not to be drawn back, but was so from the beginning.

And where it is alledged, that albeit in Matters of Treason all Subjects are obliged to delate, yet

not in Matters which are doubtful, but certain; it is answered, That this is certain, & *de jure & de facto*: *de jure*, because commanded to apprehend under the Pain of Death; *de facto*, because of the said infamous Libel, which is really and of the own nature so.

And where it is alledged, that *Credulitas in Furtis prebet causam probabilem*, for the which the Text of the Laws are adduced; it is answered, *Quod illa Credulitas probanda est aliter quam per Juramentum rei*.

And where it is alledged, that *præiores esse debemus ad liberandum*; it is answered, That this has no place *in atrocioribus*, and which are so clear and manifest as this.

And where it is alledged, that the Pannel ought to be affoizled for not apprehending and not revealing, because he did reveal it to the Earl of *Rothes*, who did make offer of it to his Majesty; it is answered, *Quod nullo modo relevat*, in respect of the Act of Parliament which ordains the revealing to be to a Counsellor, which *Rothes* was not. And the Offer to his Majesty by the Earl of *Rothes* *non relevat*, except it be alledged, that the Earl of *Rothes* offered it to his Majesty as a scandalous Libel, to be punished conform to the Act of Parliament; which is not nor cannot be alledged. And supposing that this revealing by the Earl of *Rothes* to his Majesty might be sustained as lawful for procuring Impunity from the Act, which is not granted; yet the Pannel is punishable to death upon the other Member, for not apprehending of *Haig*, whom he in his Depositions declared to have been the Author thereof, and whom he might have apprehended, both at the time of receipt thereof, and also at the time when the Pannel shewed to *Haig* the Warrant of his Citation before the Committee, he having him then in his power. And where it is alledged, that he could not apprehend him then, in respect of the Command given to the Pannel by the Committee, to acquaint no Persons with the Causes of his Warning; that cannot be adduced for an Excuse, but rather makes the Pannel inexcusable, because he transgressed the Command of the Committee in showing of the Warrant to *Haig*, and yet did not apprehend him; but showing of the Warrant, gave him occasion to escape. And where it is alledged, that giving of occasion is not relevant, and also that receiving Letters from him (not being in a Matter treasonable) is not punishable; it is answered, That these Circumstances are not essential Parts of the Dittay *per se*, but used as Adminicles to aggravate the Pannel's Crime in not apprehending of *Haig*, and entertaining with him Correspondence after his flight.

And where it is alledged the Letters, if they were produced, would prove nothing against the Pannel, but in his favours, *non est hujus loci*, because now we are only upon the Relevancy of the Dittay. But when they shall be used in the proper Place before the Assize, it will be clear, that the same make rather against than for the Pannel, in respect whereof the said fourth Exception, and hail Members thereof ought to be repelled.

It is duplyed by Mr. *Roger Mowat*, in fortification of the Defence proponed for the Pannel, bearing, that giving and not granting that the foresaid Supplication quarrelled, might be found scandalous against *Haig* the Author; yet *quoad* the Pannel cannot be found, because the Addition of the Act 94 militats only against clear Writings, clearly

clearly known to be infamous; and at the first this appears not so, being of a doubtful Strain, as the Exception bears.

Whereunto it is replied, that the hail Members of the Dittay, anent hearing, not revealing, not apprehending the Author, are severally relevant, in respect of the Act of Parliament; whereupon it is subsumed, that the Pannel knew *Haig* to be the Author, and did not apprehend him, but concealed and revealed neither him nor the said alledged Libel, and sicklike occasioned his Escape, and received Letters from him since. It is duplyed, that the said fourth Alleadgance proponed for the Pannel, stands relevant in the hail Members thereof, notwithstanding of the said Reply founded upon the said Act of Parliament; and the Pannel refers himself to the said Exception and hail Members thereof, to be judicially pondered and considered. And farther alledges, that the said Reply is not relevant, bearing that that Part of the Subsumption of the Dittay is founded upon the said Act, bearing, that the Pannel knew *Haig* to be the Author, and did not apprehend him: Because albeit the Pannel knew him to be the Author, as his Deposition bears in these words, that he took him to be the Author; yet it followeth, not by good Consequence in Law or Reason, that he took him to be the Author of this as a seditious and scandalous Libel, as my Lord Advocat in his Replies bears hardly upon us, which were to take *Contraversum pro Confesso*: And so the Pannel still abiding by his former Defence, acknowledges, that if he had known the Libel to have been infamous, he was tied to the strict Observance of the Act of Parliament made against Libels of that nature and kind. But seeing the Pannel was still denied all such Knowledge as is enforced upon him by the Dittay and Reply, and that it is against Reason that any further Knowledge of a Writing should be enforced upon a Party, otherwise than he declares himself, and has declared *ab initio*; for he has still affirmed, and yet does affirm, that he never conceived that quarrelled Writ to have been infamous, or to have carried or rubbed any Aspersions upon his sacred Sovereign; which if he had perceived, he would rather have lost his Life before he had concealed one jot thereof, as he was bound in Duty. And so seeing the Gloss and Commentar of his Knowledge of the said Libel, must always be referred to himself, and not by the Gloss made in the Dittay, importing no less than the Loss of his Life; the said Reply ought to be repelled, unless it were alledged that the Pannel, by his Knowledge and by his Understanding, had perceived the said Libel to be as the Dittay bears, which he professes he never did. For if this Ground hold, that all Men reading Writings should have a like Knowledge thereof; and that any reading a Writing should understand all the Sense or Commentaries that could be made thereupon, or else to incur such Pains as might follow; this Inconveniencè might ensue, that Bairnes, or mere Ignorants or Fools, reading Writings of this kind and nature, might incur the self-same Dangers; which is a great Inconveniencè, for certainly they know no better: and by their Knowledge they apprehended not the Danger, which wiser and more learned Men prying more narrowly thereinto, did perceive and find out. For it has pleased God to give every Man his own particular Knowledge, and not all Knowledge to one. And except it were replied, that the Pannel either by

Word or Writing had signified or expressed any other Knowledge or Conception of the said quarrelled Writing, which may verify against him that he acknowledged the same to be scandalous, as the Dittay bears, the said Reply should be repelled as irrelevant. And the Conception and Knowledge of the said Writing must necessarily be referred to the Pannel's own Declaration; whose Life and Fortune cannot be taken away upon another Man's Exposition of a Writing, which the Pannel is content to make Faith that it never entered in his Judgment or Sense to know that to have been the Meaning; which if he had known, he could not but at the first view have fulfilled and obeyed the Law set down in the said Acts, as his Disposition, and his Carriage, and his bygone Actions clearly evince, and needs no further questioning. In respect whereof, the said Reply ought to be repelled, as altogether irrelevant, for the Reasons before alledged.

And where it is replied by my Lord Advocat, That the giving of the said infamous Libel by the Pannel to the Earl of *Rothes*, is *de facto* concealing, except the said Earl were such a Person to whom the Act tyes the Hearer to reveal; which he is not, because he is not ane Counsellor: to that it is duplyed, That the said Reply is no ways relevant, because albeit the said Act of Parliament expresses a number of kinds of Persons in place, to whom the Crimes prohibit by the said Act are to be revealed; yet it excludes not other Persons, but that such Crimes may be revealed to them as well as to the Persons contained in the Act: and the revealing thereof to other Persons would be counted good Service, and not taken for a Fault in the Revealer. Secondly, The said Earl, to whom the said Writ was revealed, albeit he be not Privy Counsellor, yet by the Laws of this Country he is born a Counsellor, and was so at the making the said Act, as all the Earls in *Scotland* were then: and therefore the revealing to the said Earl may be estimat to have been done conform to the said Act. Thirdly, The said Earl is ane Sheriff, and by the Act of Parliament the said Crimes are ordained to be revealed to Sheriffs, as one of the Persons mentioned in the said Act: and therefore the Delivery of the said quarrelled Writ to the Earl of *Rothes* by the Pannel, is clear revealing, and not concealing; at the least is such revealing, that in Law and Justice should liberat and free the Pannel from the Crime libelled in the Dittay, and from the heavy Pain that follows thereupon, being no less than the Loss and Tinsel of his Life.

And where it is replied by my Lord Advocat to that part of the said Defence, bearing that the Act of Parliament is of notorious and known seditious Libels, and not of doubtful and ambiguous Writs, which in reading may suffer divers Senses and Constructions, of the which last kind it is alledged that the Writ quarrelled is: to the which it is replied, *Ubi Lex non distinguit, neque nos distinguere debemus*. And seeing the Act comprehends Reproaches and scandalous Libels, which are really so, & *non in Opinione*; the Judge and Assyze should proceed according to the thing prohibited, and not leave place to the Veil of Opinion: To that part of the said Reply it is duplyed *ut supra*, That albeit the said Act comprehends reproachful and scandalous Libels, which are really so; yet it follows not, for the Reasons adduced in the first Duply made to my Lord Advocat's first

Reply immediately preceding, which I here repeat *brevitatis causa*: for here is all the Controversy, Whether my Lord Advocat's Opinion in the Dittay, or the Pannel's Opinion in the Defence against the Dittay, shall carry the greatest force, seeing they are both different Opinions. And it seems most favourable and most reasonable, that a Nobleman's Life being quarrelled and drawn in question and hazard upon the Interpretation and Commentary, that the Pannel should have the preference anent the Interpretation, for preservation of his Life, Honour, and Estate; especially in respect that it is not only simply offered, that he should declare the true meaning, which he always knew and understood, of the said Writing, but likewise offers to make Faith thereupon. And as this is most reasonable, so it ought to be favour'd upon the Pannel's part in this Case, so heavy and so dangerous to him; for it is not denied, but the Act prohibits the hearing, having, concealing, &c. of infamous and scandalous Writings; but this Writing *quoad eum* cannot be called so: neither prohibits the Act, that Readers of such Writings should otherwise read, know and understand the same, nor according to the Knowledge that it has pleased God to give them.

And to that part of the Reply, bearing that the Pannel cannot pretend Excuse upon the Uncertainty and Ambiguity of the said quarrelled Writing, because by the first view it might and should have appeared to him to have been of that nature; albeit in Libels against Subjects there might be some Excuse by reading, retaining, and looking upon 'em; yet the Pannel cannot pretend Ignorance after the receiving thereof from *Haig*, and communicating the same to the Earl of *Rothes*, that they found it of such a strain, as should not be presented: It is duplyed, That this part of my Lord Advocat's Reply doth unwillingly force the Pannel to fall upon the Exposition of the Words of the said Libel; which cannot be eschewed, in respect of that part of the Reply, bearing that by the first View it might and should have appeared to him to have been of the nature of a seditious Libel: which the Pannel flatly refuses, and is formally contrair, because he never took it to be so; for the first words of the said quarrelled Writ ar thir, (these) *To the King's most Excellent Majesty, the humble Supplication of the Lords and others Commissioners of the late Parliament, humbly sheweth, &c.* And these being the first words of the said Writing, if in reason it may be affirmed that the Pannel cannot pretend Excuse, because by the first view that Writing containing these words; if, I say, it might and should have appeared to him to have been a seditious Writing, the Pannel remits himself about it to the wise and judicious Deliberation of the Judges and noble Auditors. For as it has been oft said before, and now not to be repeated, the Pannel declares that he never took the said Writing in his Opinion and Judgment for any other kind of Writing or Libel, but for a humble Supplication and Remonstrance, in all humility to have been presented to his sacred Majesty; and which accordingly was delivered to the Earl of *Rothes*, to have been presented and by him offered to his Majesty, and refused in manner contained in my Lord Advocat's own Declaration of his sacred Majesty's own Speech and Words uttered to the said Earl of *Rothes*, the time of the offering thereof: whereupon the Pannel takes Instruments. And so the said quarrelled Writing not being at the first view seditious, as is libel-

led in the Dittay, and contained in the Reply, but in the said first Words being a most humble Supplication; the Pannel most justly pretends Excuse, that seeing *de facto* the said first words are not seditious at the first view, that therefore he ought not to be convened by this Dittay, as Haver, Hearer, and Concealer of the said seditious Writing; but ought to be suffered and permitted to make his own Interpretation, that he never thought it so; and therefore cannot be pursued criminally upon his Life therefore, as the Dittay bears.

And at that part of the Reply, bearing that albeit in Libels against Subjects there might be some Excuse by reading, receiving, and looking upon the same; yet the Pannel cannot pretend Ignorance, in respect of his Depositions, after receiving from *Haig*, by communicating the same to the Earl of *Rothes*, that they found it of such a strain as should not be presented: to that it is duplyed, That the saids Depositions make nothing against the Pannel; for the Pannel did never deny the Receipt of the said quarrelled Writing from *Haig*, nor that he did communicate the same to the Earl of *Rothes*, and that they found it of such a strain as should not be presented. But the Times being distinguished, the Doubt is soon solved: for the Depositions apparently express not the Times. For the Pannel did not depone, That before delivery of the said quarrelled Writing to the Earl of *Rothes*, and before the Earl of *Rothes* his intended Offer thereof to the King's Majesty, that they found it of such a strain as should not be presented: but that Conference betwixt the Earl of *Rothes* and the Pannel, was long after the intended Offer and Refusing. At which time, upon the occasion of the Harshness and Misconstruction of some Words, that Speech was uttered betwixt them; and from that time furth, nothing further followed. And therefore the Pannel's Deposition makes nothing for the said Argument, That the Pannel could not pretend Ignorance: in respect whereof, the said Reply, and hail Members thereof, out to be repelled.

It is farther duplyed by Mr. *Alexander Pearson*, That where it is replied by my Lord Advocat, that the Pannel's Opinion of the Writing, and the alledged probable Cause of his Ignorance to be a scandalous Libel, adduced, cannot defend the Pannel from concealing, &c. because the Writing in itself is really scandalous, and at the first view might and should have appeared in that nature to any Man of the Pannel's Understanding; and who can pretend Opinion *nesciendo hoc quod omnes sciunt*? It is answered, That the Pannel's Opinion of the Writing, and the probable Causes of his Ignorance of the same to be scandalous, does defend the Pannel from the Crimes libelled, not only for the Reasons and Laws already adduced, in the matter of Injury and other Crimes, which are most pregnant; but also because no Capital Crime whatsoever is or can be committed *sine dolo*, whereof the Pannel is altogether free in all sorts thereof; *Et a dolo vero & a dolo præsumpto ex qualitate facti*. *A dolo vero*, which the Pannel's innocent Intention evinceth in the Defences proponed for him in the second Exception; and there he is purged abundantly, for the Reasons contained therein, which are here repeated *brevitatis causa*.

The Justice and Assessors continues this Dyet till tomorrow, the 12th Instant.

Curia legitime affirmata, the said 12th of December, 1634, &c.

It is alledged by the said Mr. *Alexander Pearson*, and duplyed by the Pannel, *Secundo*, That the said Pannel is free *a dolo præsumpto, quia tunc præsumitur dolus ex qualitate facti, ubi quis facit quod scit vel scire debet se non debere facere: At in proposito nostro nulla scientia nec conscientia criminis in accusato, nec ignorantia ejus quod omnes intelligunt.* But most just and probable Cause of Ignorance of the Writing to be scandalous, which would have affected even the wisest and most sagacious then; although now *ex post facto*, by Pregnancy and Vivacity of Spirit, the Writing quarrelled being searched unto exactly, the same being interpret by the Dittay, and urged upon the Pannel as seditious; which Interpretation now of it, cannot make damnable the Estimation and Opinion of the Writing quarrelled, which it had of before amongst Men of common Understanding, to make culpable of capital Crime: *Quia Injuriarum Æstimatio non addit tempus quo judicatur, sed ad id quo facta est referre debet; Expressa Leg. 21. F. de Injuriis. Et nunquam crescit ex post facto præteriti Delicti Æstimatio.* And it is hard that the Pannel, upon Error of Judgment, should incur capital Punishment.

Where it is replied by my Lord Advocat, That the Pannel cannot pretend Ignorance of the Writing quarrelled, because by his Deposition the 7th of *June*, he has declared that he thought it not fit to be presented to his Majesty; it is answered, That the Reply is not relevant, and that the Pannel then thinking it not fit to be presented, hinders not but the said Writing being thought fit by others to be presented to his Majesty, and indeed offered to his Majesty, the Pannel thereby was confirmed the more to think of it as a Supplication, and may make the Defences thereupon, upon his Credulity foresaid.

Where it is reply'd by my Lord Advocat, *Quod omnis Ignorantia juris est improbabilis & punibilis*, and that the Pannel can pretend no probable Ignorance thereof; it is answered, That the addition of the Act of Parliament 94, anent Concealers, whereupon this part of the Dittay is only founded, had never Strength nor Vigour of Law, (never being yet practised against any since the first making thereof) but being as it were by desuetude abolished, *ut supra* in our first Exception, shews that the Ignorance thereof is neither improbable, nor punishable against the Pannel.

Where it is replied by my Lord Advocat to that part of the fourth Exception, bearing *quod Credulitas in furtis præbet causam probabilem*, and that by parity of Reason it should have place also in the matter of infamous Libels; to the which it is replied, *Quod illa Credulitas aliter probanda est quam per Juramentum Rei*: It is answered, That the Pannel urges not his Credulity of the Writ quarrelled upon his own Declaration only, but also upon other Circumstances, Evidences, and Presumptions, already adduced in the said fourth Exception and former Defences; which clearly evinces the Pannel's Credulity, and the Justness thereof.

Where it is replied by my Lord Advocat to that part of the Exception, propoing the Words of the Law where it is said, *Ubi de obligando & liberando quæritur, propensiores esse debemus ad liberandum*; to the which it is replied, That the Law cited has

no place in clear and manifest Crimes, as this is: It is answered, that the Reply takes *Controversum pro Confesso*, That the Crime whereupon the Pannel is accused is clear and manifest, which it is not; but in the Notion of a Crime (if any there be, which we do not grant) the same is most abstruse and obscure: and if any Clearness be, it is for the Pannel's Innocency; in respect whereof, the Exception stands relevant, notwithstanding of the Reply.

It is further duplyed by Mr. *Roger Mowat*, to the Reply made by my Lord Advocat to that part of the said fourth Defence, bearing that the Pannel is not punishable for not apprehending and not revealing, upon an Act become in desuetude, because the Leidges are ruled by the Laws of the Kingdom, as the Acts of K. *James I.* and K. *James IV.* bears; and that there is no Prescription in Laws, and that *omnis Ignorantia juris est improbabilis & punibilis*: It is duplyed, That albeit the Leidges are and should be ruled by his Majesty's Laws, yet where Laws are become in desuetude, and have never been practised, the Leidges ought to be certified thereof, and new Intimation ought to be made, as in the first Defence at length is contained. And neither of these can be alledged in this present Case; and therefore the dangerous Consequence of this and the like Laws ought to be prevented before the same be practised, which is the Mind of the Law-giver. And to that, bearing that there is no Prescription in Laws; it is duplyed, That Desuetude must be estimat equipollent to the Prescription of Laws obscure, or that are not in daily custom. And where it is replied against probable Ignorance, *Quod omnis Ignorantia juris est improbabilis & punibilis*; it is duplyed, That *Ignorantia juris in damnis vitandis non nocet*: and this is our Case. And where it is replied to that part of the said fourth Defence, bearing that the Pannel had probable Ignorance, the Defence ought to be repelled, because the Nature and Strain of the quarrelled Writing must be the Rule of the Punishment or Impunity, and not the Opinion of the Pannel; *Et quod est Ignorantia maxime inexcusabilis nescire hoc quod omnes sciunt*: It is duplyed to the said Reply, That the Pannel still contends that the Nature and Strain of the Supplication quarrelled may be the Rule of his Punishment and Impunity, according to his Opinion of the right Meaning and Sense that he made thereof, for the Reasons already adduced in the former Duplies immediately preceding; wherein the Pannel contends, that with reason he himself must be the only Trucheman and Interpreter of the said Writing, in case any other Commentar or Interpretation be made thereof, containing such a Sense and Meaning, as being received and admitted, will bring upon him the Punishment of Death: which Duply is here repeated *brevitatis causa*.

And where it is replied, That the Reproaches and Exprobrations therein contain'd are so nottour, that the Pannel nor none of his Judgment could pretend Ignorance on the reading thereof; it is duplyed *ut supra*, That the Pannel refuses his having knowledge of any such Reproaches, and professes his Ignorance thereof; albeit he read the same, and others likewise of better Judgment than himself, who did never observe nor find out the like, according to their Judgment and Understanding. Which Reproaches and Scandals, if they had perceived and remarked, (as they did not) would have

have touch'd them as near as any other of his Majesty's Subjects whatsoever of their Quality or Degree: but seeing the Pannel, and the rest of the Hearers and Havers of the said quarrell'd Supplication, pretend their Ignorance foresaid of any such Knowledge, as is now expressed in the said Dittay; the Pursuer can never be heard to force any other Knowledge upon them, to that end that they may be found guilty of the Crime libell'd, and Punishment of Death therefore.

And where it is reply'd, That it is *Ignorantia maxime inexcusabilis nescire hoc quod omnes sciunt*; it is duply'd, That my Lord Advocat will do well to apply that Rule to the present Case, and show *quid sit hoc quod omnes sciunt*. For if his Lordship means by his Dittay, then that Rule can have no place here; because no Man knew any such Glosses or Interpretation of the said Supplication, but the Pursuer himself, before the coming furth of the said Dittay. And if before that time many were of another opinion, concerning the meaning of the said Supplication; then my Lord Advocat cannot be heard to say, that it was *Ignorantia maxime inexcusabilis* in the Pannel *nescire hoc quod omnes sciunt*, seeing no Man knew that which was set down in the said Dittay, but my Lord Advocat himself: and many knew, and yet know, that the said quarrell'd Supplication in their Judgments and Conceptions carried with it no such Meaning or Construction.

And where it is reply'd, That the Pannel's Defence, founded upon his Depositions which he made voluntarily for satisfaction of the Committee, cannot be respect'd, because the most substantial parts of the Dittay are founded upon the said quarrell'd Supplication, and not upon the Pannel's Depositions; and that his Denial of Knowledge by Oath, cannot liberat him from the Pain of Death: It is duply'd, That albeit many substantial Points of the said Dittay be founded upon the said Supplication, yet they are founded upon the Pannel's Depositions also. And albeit the said Dittay quarrels and impugns the said Supplication in sundry Passages, which the Pannel doth not maintain as they are expressed in the Dittay, because when he and the other Supplicants read and heard the said Supplication, they found no such meaning in it; and they leave the Defence of that Commentay to the Author himself, and declare *ut supra* by their Judgment they found it not of such a strain as the Dittay bears: The Declaration ought now to be received, for clearing of the Pannel and remanent Supplicants from all Suspicion of such Knowledge as the Dittay bears upon them, for the Reasons foresaid, contained in the former Defences and Duplies. In respect whereof, the said Reply ought to be repell'd, in respect of the said Depositions already given, and of the Pannel's Declaration upon Oath, which he now offers to give.

Where it is reply'd to that part of the said Defence, bearing that albeit the said alledg'd Libel should be now found to be infamous, yet cannot be drawn back, That there needs no Declarator of the Judge; consequently may be drawn back, because it was infamous from the beginning: it is duply'd, That the Defence stands relevant notwithstanding the Reply. Which Defence bears expressly that the Pannel and other Supplicants received the said Libel (now quarrell'd) as an humble Supplication; and in token of their said Knowledge address'd the same to be present'd to his Sacred Majesty, as the said Defence bears. And

so what has been found out since to be therein by the Pursuers; and those of deeper Wit and Knowledge than the Pannel and other Supplicants, cannot be laid to their charge; for whom all Presumptions are most clear and evident, that the Pannel had never so much as one Thought or Opinion, as is contained in the Dittay.

Where it is reply'd to that part of the Exception founded upon the Instance of Treason, as the same bears; it is duply'd, That my Lord Advocat in that Answer takes *Controversum pro Confesso*, ever taking this for a ground that the Supplication is seditious and scandalous, and so to be reputed and holden against the Pannel and others in the like Case, which is still deny'd, for the Reasons before adduced. Where it is answer'd by my Lord Advocat, That that part of the said Defence anent the revealing to the Earl of *Rothes* is not relevant, in respect of the Act of Parliament; it is duply'd, and ought to be repell'd in respect of the former Duplies answering this Point, That Earls, the time of making the said Act, were born Counsellors; and that the Earl of *Rothes* was a Sheriff, which the Act allows.

And where it is reply'd, That the Offer to his Majesty *non relevat*, except it were alledg'd that he offer'd it as a scandalous Libel; it is duply'd, That the said Reply is no ways relevant, because it was sufficient by presenting it to his Royal Majesty to reveal the same in that manner: And it cannot be now known whether it would have been so thought by his Sacred Majesty, albeit he refus'd the same; but it is certain that the Pannel and the Presenter would never have present'd the same, if they had thought it scandalous. And that part of the Defence, bearing that it was revealed by the presenting, needs not to bear that it was offer'd to be present'd as scandalous, for that was not their End, neither had they any such Meaning by the said presenting; their Intention being, as is contained in the said Defence, to have it present'd as an humble Supplication, to receive a gracious Answer, as other Remonstrances had gotten before. And so there is no necessity to alledge it was to be present'd as a scandalous Libel.

And where it is reply'd, That (granting) the said Revealing to his Majesty might have been sustain'd as lawful, yet the Pannel is guilty of Death for not apprehending; it is duply'd, That the said Reply is not relevant, because if the said revealing was lawful, *ergo* there was no necessity of apprehending; for the words of the Act of Parliament anent the Prohibition are alternative. And albeit, as it is answer'd before, that the Pannel thought Mr. *Haig* to be Author, yet in respect of this Conception of the said Libel, he thought him not to be such an Author as merited Apprehension, because the said Libel in his opinion fell not within the said Act of Parliament. And repeats his former Answer, and the two Practicks about the apprehending of free Leidges; adding thereunto the late Lord *Maxwell's* Practick, who having apprehended by virtue of a Comission, was notwithstanding foresaulted therefore.

To the Reply, bearing that my Lord Advocat granted that the Circumstances of the Receipt of *Haig's* Letter are not essential Parts of the Dittay *pér se*, but used as Adinicles to aggravat the Pannel's Crime of not apprehending, and giving him occasion to escape, and entertaining of Correspondence with him thereafter: it is duply'd,

That the Pannel and his Procurators accept of the said Answer, and protest that no respect be had thereto, as ane essential part of the Dittay. And the alledged Correspondence is no ways relevant, not bearing that the Pannel did write Letters to Haig: for Correspondence must be mutual, otherwise it can be no Correspondence.

Where it is replied, *quod non est hujus loci* to produce Haig's Letter; it is duplyed, That 'tis *maxime hujus loci* to be produced, if that part of the Dittay founded upon it be found relevant, because they were already produced by Warrant of my Lord Justice; and being now produced, nothing shall be found in them to carry any Warrant for that part of the said Dittay. And being produced to the Pannel, and his Procurators for their Information and Defence, must yet be produced to be compared with the said Dittay. For if they shall find that the Dittay and the Letter do not agree, then that part of the said Dittay founded upon the said Missive will not be sustained, and so cannot be put to the knowledge of an Inquest. In respect whereof, the hail Replies and all the Members thereof ought to be repelled.

It is duplyed by Mr. John Nisbet; Where it is replied by my Lord Advocat, That the Dispute against the Relevancy of the Qualification is superfluous, because the general Subsumption conform to the Act of Parliament is *per se* relevant: it is duplyed, That the General is not relevant, *quia non oportet in Criminibus vagari, Leg. Libellorum, F. de Accusationibus: Et Locus, & Tempus, & Minutia Delicti exprimenda sunt; alioqui Accusatio ipso jure est nulla. Clarus, §. final. Quæst. 12. num. 8.*

Whereas it is replied by my Lord Advocat, That the Dittay is not contrair to itself, because of the acquainting his Majesty by my Lord *Rothes's* means does not expiat and purge the concealing, my Lord *Rothes* not being one of these Persons to whom the Delators of such Pieces, and Authors thereof, is appointed by the Act of Parliament: it is duplyed, That these Persons are only specified for receiving of such Delations *in subsidium*, where the Revealer knows not any other summar and secret way to acquaint his Majesty; and not to tye them to an unnecessary Circuit, where by a more compendious way his Majesty may be acquainted, and the Authors suppress. And we represent the Inconvenient to ensue, if Parties by whose means his Majesty has been acquainted with Pieces of that kind, shall be obnoxious to the Pains of the Act for not seeking a Bailly or Sheriff, to tell unto them that which by other and more direct means is shown to his Majesty.

Whereas it is replied by my Lord Advocat, That the Acts of Parliament require not a judicial Declarator of the nature of such Pieces, nor the former Knowledge of the Party challenged, but without distinction punish the not Revealers and not Apprehenders of the Authors of Pieces materially seditious; *Et ubi Lex non distinguit, nec nos distinguere debemus*: it is duplyed, That Statutes being particular Conclusions of Law, presuppose *Principia universalis & prima*, and imply intrinsically the common Notions of Law and Reason. And therefore seeing in Reason there cannot be a Crime of concealing, unless the Piece or Author alledged to be concealed were either declared to be, or to the Pannel's knowledge were such as he ought to reveal, because *celare* is relative to knowledge; it is not relevantly subsumed that Haig was

Author of ane Piece materially scandalous, and that the Pannel revealed him not, unless a former Knowledge were assumed likewise. And the Law itself furnisheth a Ground for this Distinction, because the Word *Concealing* importeth Knowledge: *Et statuta punientia delicta capitaliter non habent locum nisi dolo interveniente, etiam quod de dolo non fiat mentio. Paulus de Castro in Lege Nemo, num. 5. Codice de Episcopis & Clericis, Ubi perstringit imperitiam judicum qui verbis statutorum mordicus inberent, & multo magis cum dolus requiritur, vel expresse vel tacite, tunc enim nec lata culpa sufficit, tacite autem requiritur dolus, cum statutum utitur verbis, nullus audeat vel presumat.* Which are expressly in the Act of the 10th Parliament; and must of necessity be considered to understand the Addition contained in the Act of the 14th Parliament; *Idque multo magis in delictis quæ de sua natura requirunt dolum prout est falsum injuria & similia. Phar. Quæst. 87. per totam.* Whereas it is replied, *Quod Judex debet procedere secundum naturam rei prohibita*, and should not leave place to elude the Law *sub velo opinionis*; it is duplyed, That by all Statutes of that nature Crimes are only obviated and prohibited: And the Judge should proceed to try whether Crimes be committed, or not, and not to condemn Escapes or Errors of Judgment, which are not arbitrary to the Will to shun, but depend upon the Disposition of Organs, and Representation of Fantasms, which are exhibited *ab intellectu agente*, and *necessitate intellectum patientem* to ane Assent, where it is furnished with no probable Grounds to elide the same; as is known even to the Novices in Philosophy by that trivial Maxim, *Intellectus per assensum præmissarum convincitur ad assentiendum conclusioni, saltem quoad specificationem.* And where my Lord Advocat would expose the Weakness of the Pannel's Judgment in not discovering the nature of seditious Pieces, to enforce the Punishment of a Crime, it is duplyed, That the Law is not eluded by the slender Pretence of Opinion; but the Pannel's Conception of the Piece, verified by his Oath, and by all possible Presumptions, which we have at length deduced, must liberat him from the Guilt and Pain of the Crime, seeing in Law *caerent animo injuriandi ex quo crimen consistit*, verified by the Oath of the Party; and any assisting Presumption imports *absolvitur*, as is already shewn by the forecited Laws, and the Harmony of Doctors. And whereas it is replied, *Quod ignorantia juris non excusat in delictis atrocioribus*; it is duplyed, That *ignorantia juris* being at the most *lata culpa*, *æquiparatur dolo*, *& non excusat in actionibus descendens ex contractu, vel quasi, sed excusat in criminibus vel delictis, quia voluntas, quæ maleficia distinguit, spectatur, non veritas vel exitus. Leg. Divus Hadrianus, F. ad Legem Corneliam de Sicariis. Phar. Quæst. 87. Ubi regulariter dolum requirit, & ubi abest dolus, pœnam asserit cessare, idque etiam in crimine Læsæ Majestatis, num. 10. & per totam.* And the Atrocity of the Crime excludes not a probable Excuse, *Quia causa quælibet, etiam levitas, credulitas excusat a dolo regulariter. Phar. Quæst. 90. num. 1. Et non solum si sit levis sed colorata & irrationabilis imo etiam temeraria & bestialis. Idem ibid. num. 3. Ubi refert doctores concordantes Claudius Battandæ, Reg. Si fatua credulitas a dolo excusat cum vehementibus præsumptionibus probatur, num. 1, & 2. Et causa levis excusat in crimine injuriarum, & ad excusandum sufficit error verus vel præsumptus. Phar. dicta Quæst. num. 29. Et levis causa excusat etiam in crimine Læsæ Majestatis. Ibid. num. 26.*

Et multo magis in iis qui de sua natura nec de jure civili reprobata sunt: As is the Points of not apprehending and concealing. *Ibi enim dolus non presumitur, & si quis sic egerit sine dolo & animo delinquendi creditur agentis assertioni ex quo habet pro se juris præsumptionem.* Num. 14. & Num. 90. *Et ignorantia juris excusat a dolo.* Num. 91. *Et crassa supina & affectata excusat ex opinione Baldi & Tiraquelli, quo citat Num. 99. Nisi sint circa ea quæ sint de jure naturali gentium & divina prohibita.* Whereas it is replied, That the Pannel cannot pretend Ignorance in respect of the Piece conspicuously infamous, and of the Pannel's Sufficiency and Qualifications, and in respect of the Person injured, being his sacred Majesty; and therefore excludes all Excuse upon Curiosity, or any other respects, excusable by the Law, and, at last, in respect of the Pannel's disapproving of the Piece in his own Depositions: It is duplyed, That the Piece is not nottourly infamous for the Reasons adduced. And here we protest, That my Lord Advocat's odious decyphering of the Piece, necessitates us to vindicate not itself, but the Conception that the Pannel had, and that any Man may have, that is not pre-occupied with the unnatural Glosses of the Dittay. And for the Pannel's Qualifications, it evinceth that he would not have delivered a Piece nottourly infamous to be presented to his Majesty, as is acknowledged by the Dittay, and so to have indangered his Honour and Life, if he had had any such Conception of it. And for the Pannel's disproving of the Piece, it convinceth not his sinistrous Intention in using or having a Piece disprovable, because it is not deponed that he disproved it as seditious or infamous, but *quando verba confessionis sunt dubia, possunt & debent declarari & interpretari per contententem, & in meliorem partem.* Phar. Quæst. 81. num. 38. *Et confessio dubia & incerta interpretatur in bonam partem in favorem contententis, & secundum illius intentionem.* Bald. in Leg. unica num. 23. *Codice de Confessis.* And the Pannel declares that he disproved it not as seditious, but fit to be suppress'd, in respect of his Majesty's Will express'd to my Lord *Rotbes* anent Pieces of that Strain. Whereas it is replied by my Lord Advocat, That the Defect of the Common Law, in the Points of concealing and not apprehending, cannot be obtruded, and that there can be no Prescription of Laws; yet there is Antiquation and Desuetude, as we have before shewn: And the Defect of the Common Law is adduced as a probable Candour of the Desuetude in Points debording from the Common Law. Whereas it is replied by my Lord Advocat, That the nature of the Piece must rule, notwithstanding of the Pannel's Conception thereof, because it is only required that the Piece should be really seditious; it is duplyed, That in matter of Crime the Intention and Conception is most considerable, as is already inculcat; and when there is a Question anent the Credulity of the Party, his Credulity is probable by Oath, *Barad. §. Recte Lege inter omnes, F. de Furto*; especially where there concur some Presumptions. Whereas it is replied, That *ignorantia est inexcusabilis nescire quod omnes sciunt*; and that the Pannel's narrow Advertency and Canvassing of the Piece challenged, in reading, copying, advising, interlining, join'd with his Opinion anent the Presentation thereof, excludes all Presumptions of Ignorance: it is duplyed, That it cannot be said *quod omnes sciunt*, seeing my Lord *Rotbes*, a Nobleman of eminent Quality and Sufficiency, made offer, at least mention thereof, as a Supplication to his Majesty, for the

Pannel's Opinion. It is already answered for his perpending of the Piece; it is so far from aggravating or convincing his Knowledge of the Piece to be of that nature, that he is confident that indifferent and impartial Judgments, the more they advert to the Strain of it, they will be the more edified of the Nature of it, that it is not so nottourly injurious. And therefore the Pannel protests that his Procurators may vindicate his Conceptions of it, and remonstrate the strange Inferences that the Dittay makes of it. Where it is replied by my Lord Advocat, That apprehending is warranted and enjoined by the Acts of Parliament, and therefore not dangerous; it is duplyed, That apprehending is warranted, when Parties are able, by lawful Probation, to bind upon the Persons apprehended the Guilt of the Crime for which they delate and apprehend them. And that even in the Crime of Lese Majesty there is no Warrant to apprehend Parties, albeit known to the Apprehenders guilty of the Crime, unless they be able to qualify and prove the Guilt under the Pain of *Tortura* and Retaliation in case they succumb. Where it is replied, That the most material Parts of the Dittay are founded upon the nature of the Piece itself, and not upon the Pannel's Depositions; it is duplyed, That howsoever there results a relevant Defence in Law upon the Pannel's *Absentia animi*, which is probable by his Oath, assisted with Presumptions; and is admitted in the most strict Inquisitions, as is constant by the uniform and constant Harmony of all Criminalists. Whereas it is replied by my Lord Advocat, That there needs not a Declarator of the Judge to be drawn back; it is duplyed, That in all Countries where the concealing of Heretick Books is punished, a judicial Declarator is necessarily required; and the private Opinion and Mistaking of Parties before Declarator was never censured, much less punished.

Whereas it is replied by my Lord Advocat, That the Maxim, *Prioriores debemus esse ad liberandum non habet locum in atrocioribus & delictis contra Principem*; it is duplyed, That we retort this Answer, *ubi lex non distinguit nec distinguere debemus. Et non delinquit qui in dubio contra fiscum respondet, F. de jure fisci; & turpe est & principi injuriosum credere inventum qui principem omnibus beneficientem, neminem ledentem, injuria velit efficere; & quavis excusatio etiam levissima & maxime fatua in criminibus atrocissimis admittitur.*

It is added by Mr. *Robert Macgill* to the preceding Duplyes, That where my Lord Advocat replieth, that *Juris ignorantia non excusat*; that the said Rule may be understood *in Jure, quod usu invaluit*: For even if in these petty Statutes anent the inflicting of pecunial Pains contained in the 9th Act, *Parl. 21. 1612.* a new Intimation of them is thought sitting to put the Leidges in *mala fide* before they be practised, what then in this Act, and some others, under the compass whereof sundry here may fall, shall there not an Intimation be required where Life, Honour, and Lands, are in danger, and a capital Pain to be inflicted for to put the Leidges in *male fide*? *Item*, Where it is replied, *Quod nec ignorantia facti excusat propter præsumptum dolum*; it is answered, that the Pannel's *Ignorantia facti* is *ab omni doli præsumptione aliena*; who could never think that under the general Law, contained in the Addition, could come in all sort of inordinate Speeches, and all sort of Hearers, Concealers, and not Apprehenders. And for the excusing of any Dole that can be presumed, he adduces the Knowledge of Law and Reason, which ought

ought to expone all municipal Laws, *ut evitetur absurdum*; which is, that all sorts of inordinate Speeches or Writs, even against a Prince, and all Concealers and not Apprehenders, should be punished alike: For the *Prætor* says, *Si quis adversus ea fecerit, prout quaque res erit, animadvertam. Leg. item apud Labionem 15. G. 251. 28. Ubi de pœnarum distinctione ex circumstantiis juxta Legem aut facta 16. in principio, F. de pœnis, quam consideratione affectus & animus facientis maximum habet momentum, Leg. illa 3. §. 1. dicta Leg. 15. §. 38. Lege si quis certum 26. in fine, F. de injuriis.* So that my Lord Advocat's Reply anent Credulity, that it excuses not, and that it is not a sufficient Warrant *ad juramentum purgativum*, and that it ought not to be here received; the same ought to be repelled, because *Credulitas sive justa sit Causa sive injusta excusat ubi dolus requiritur*, as in our Case. *Clarus, §. finali, Quæst. 60. num. 22. Et quod recipiatur juramentum purgativum concurrentibus aliis ad animi boni probationem indicium constat per Phar. Quæst. 105. Inspect. 3. post num. 111. Leva vero judicia sufficere, ait Alexander, Conc. 115. Columna penultima, Volumine quarto. Et à delicto etiam conventicula, & malæ congregationes, causam vel levem excusare ait Cravetta, Conc. 4. num. 26.* But so it is, there may be many good Reasons alledged, wherefore the Pannel had a good Mind, as that all which is in this quarrelled Petition, might have been proponed in Parliament. And the rest of the Reasons adduced in my second Exception, *adeo ut dolus non sit præsumendus* against the Pannel; neither is the Argument good that the Pannel disallowed it, or thought it not fit for a time, *ergo* he thought it *sediticus negatur sequi*. And because my Lord Advocat, in all the Members almost of his Reply, returns upon this, That the Piece of it self is really seditious; and that Obscurity and Ambiguity of Words may receive Evasion and Excuse among Subjects, but not in the Case of the Pannel: I answer, That the Exception stands good, notwithstanding of the Reply, in respect of the Examples and Cases following. And, first, I confess that such inordinate Speeches and Writings as were uttered betwixt *Catiline* and his Complices against a Government, and against a Prince's Progenitors, or his Person, in that sort are punishable both in the Person of the Speaker and Penner, as also of the Hearer, not Revealer, and not Apprehender; wherein the Case of this Addition is verified: and no others are Hearers, not Revealers, and not Apprehenders. *Clarus, §. ultima, Quæst. 87. num. 2, & 3.* But mark in a second Case, *Quod nobilis qui directis verbis & assertionibus dixit, ait, scripsit, principem suum non habere animum remunerandi*; by *Matheus, De Afflictis, decisio 307. num. 27.* is not thought punishable by the ordinary Judge: but *remittendus, ut in Leg. unica, si quis principi maledixerit ubi tamen impropèratur defectus liberalitatis, quæ est præcipua virtus in principibus*; as our Saviour himself affirms, *Luke Chap. 22. Ἐξουγιέντι*, Bountiful. The third Case is of him who spake or writ that which by Interpretation might be misconstrued to an evil Sense, as was said in the second Part of my first Exception: And remits also to that Comment of *Menochius*, adduced by Mr. *John Nisbet*. And where my Lord Advocat would eschew, by saying that *Menochius* had not such a Law as we, and that we ought to be governed by our own Laws; remits to the end of my first Exception anent the Exposition of all municipal Laws, according to Reason. *Ubi Gaylus* expones the Maxim, *Ubi Lex*

non distinguit nec nos distinguere debemus, & ut vite-tur absurdum paritatis; our Laws may be so expounded. *Ergo* if the Authors of these last Speeches and Writings be scarcely punished, far less ought the Hearers, not Revealers, and not Apprehenders; for even in Apprehension, *quæ est captura oportet ut constet de criminis enormitate*, which is not here.

It is triplyed by my Lord Advocat, That he finds no necessity to triply. But if the Justice, and his Lordship's Assessors, require any thing to be explained in that which is duplyed, upon signification of their Pleasure, he shall be ready to expend all Doubts *verbo*, which he did.

The Justice-General continues this Dyet till to-morrow the 13th.

The said 13th of December, 1634. The Justice continued the Dyet till the 16th of December, 1634.

Curia legitime affirmata, &c. and Procurators in Defence, as before.

Mr. *Roger Mowat*, as Procurator for the Pannel, repeats only the former Defences, and Duplies of them, anent the revealing by the Pannel to the Earl of *Rothes* of the Supplication or Petition contained in the Dittay, and the Earl of *Rothes* his offering thereof to the King's Majesty; and that the Act of Parliament is satisfied thereby, which does not exclude the revealing to other Persons nor are mentioned in the said Act: But affirms positive all manner of revealing, whereby knowledge may come to his Majesty, which is the End of the said revealing, sufficient, as said is, in ane Act of this kind, which has never been in custom. And so revealing being clear, as said is, there needed no apprehending.

My Lord Advocat repeats his former Answers, That the revealing is not clear nor relevant; and albeit it were, that the not apprehending makes the Pannel guilty, and so to fall under the Punishment contained in the Act of Parliament libelled,

It is alledged by Mr. *John Nisbet* under Protestation, That the vindicating of the Libel challenged from the Glosses of the Dittay, shall not import any Approbation thereof, either by the Pannel or his Procurators; but in so far as they are necessitat, by my Lord Advocat's Replies, to vindicat the Pannel's Innocency in the hearing, or any other Accession to the said Libel challenged. It is first replied by my Lord Advocat in his Replies, bearing that the Nature of the Piece is so notoriously infamous, that at the first view it is apparent to the most shallow and ordinary Understanding, to be injurious to his Majesty in all the Points libelled: It is duplyed thereto, That the Points of the alledged Libel import no Reproach to his Majesty's Person, Estate, or Government, in the Pannel's Conception, for these Reasons: First, That Point anent Gesture is not reproachful, because *subjeeta sunt talia qualia prædicata demonstrant, Bartolin. Primario Leg. 3. F. de Instrueto vel Instrumento Legato.* And there is no injurious Attribute enumerat, to defame his Majesty's Gesture; but it is only affirmed, that his Majesty's Notes bred a Fear, which is ane Attribute of Causality, and not of Quality. Secondly, The Intention of his Majesty's Noting could not be conceived by the Pannel to be ane taxing of his Majesty of any Point

of Indiscretion or Injustice, unless the Act of Noting had been qualified in the alledged Libel to be unjust or indiscreet; which were sacrilegious to think of a Prince estranged from his Country, and from the Occasions of Knowledge and Knowing of his Subjects: for he may in Justice and Wisdom remark the Opinions of the Lords of Parliament, and thereby probably to found a Conjecture of their Inclinations to his Majesty's Service. Thirdly, The alledging the Noting of the Names of the Dis-assenters could not at the first be conceived to imply an officious prying into the Gesture of the Prince, but rather a loyal Fear of incurring the King's Displeasure; taking hold of a simple Gesture, whereby his Majesty might have seemed to have taken notice of their Untowardness to his Majesty's Service. Fourthly, There is no ground of Reproach inferred upon his Gesture, as the Dittay bears. It is dplyed to that Point anent his Majesty's Refusal to hear the Reasons of some Dis-assenters, That the first part of the Answer to the former Point quadrats here. Secondly, The alledged Refusal of his Majesty to hear the Reasons of the Dis-assenters, cannot be so readily conceived to rub matter of Reproach upon his Majesty's sacred Person or Proceedings; but in the contrair argues his Majesty's Royal Goodness in not accepting the scrupulous preposterous Anticipations of Reasons before voting in Parliament, as being derogatory from the antient and hereditary Liberty of Noblemen's Votes, and from his Majesty's Royal Bounty, ready to acquiesce in the free Opinion of his Estates; and far from a previous and partial espousing of either part of any debatable Point, before the final Decision in Parliament. And as for the Inference of Fear to become obnoxious to his Majesty's Displeasure, it is not an Inference of an Reproach, but rather of a dutiful Love, which debords (runs out) oft-times into a needless Fear.

It is answered to that Point of the Dittay challenging that Passage, *viz. That the opposing of Resolutions carried by plurality of Votes, was never censured by a Prince of so much Justice*, contains no Subject of Reproach; but on the contrair, an ample and due Acknowledgment of his Majesty's undoubted Goodness and Justice, used as an Argument to deprecate his Majesty's Censure, as incompatible with his Majesty's Goodness, and the Example of other Princes like to his Majesty.

It is answered to that Point of the Dittay bearing that his Majesty's Honour is undermined by the affirming a general Fear of Innovation in essential Points of Religion, That his Majesty's Honour is not stained, because there is nothing affirmed to have been done by his Majesty, which might occasion any such Fear; and the Panick and groundless Fear of Subjects, reflects no Reproach upon a blameless Prince. Secondly, It is affirmed that there is Fear of Novation intended, but not by his Majesty, as is clear by the Motives of that Fear adduced by the Supplicants, *viz. That there is Allowance of printing Arminian Books*; which is not positively affirmed, but upon report, and the Impunity of *Arminian* Preaching, which reflects upon Churchmen only, to whom it is incumbent to advert to the Printing and Preaching of Orthodox Tenents. And therefore albeit it were false, cannot fall under the compass of the Acts of Parliament, as seditious and reproachful to his Majesty, his Estate, Person, and Proceedings.

It is answered to the Point of Admission of Pa-

pists upon the Parliament and Articles, That in the Pannel's Conception it reflects not against his Majesty, and therefore is not relevant to infer the Crime of seditious Libelling, or Accession thereto. *Item*, It is answered to that Point of the Dittay, bearing the King's Majesty's Proceedings to be misconstrued in the alledged Prohibition of the Gentry to meet, That his Majesty's Royal Procedure is not taxed as unjust; but without dving upon the words of Justice or Injustice of the Interruption of those Meetings, it is only insinuat, that albeit in Parliament they might have objected against the Interruption of those Meetings, and had occasion to oppose his Majesty's Will, as they thought, that these Meetings should be interrupted, they contented themselves and were not refractory. And herein, and in the hail Strain of the following Points, (in the Pannel's Conception) it is only an Endeavour to shew that the dis-assenting from some Acts, was not from any Faction and Waywardness to oppose his Majesty's Will, as they feared he might have been possessed with; seeing in other Points, wherein they had occasion, and probable grounds in their opinion to oppose it, they were silent. Moreover, it is answered for this Point, and all others following, *Quod in causa criminali quando verba possint interpretari ad bonum vel malum, in dubio debent intelligi ad bonum, & excludetur presumptio delicti. Cravetta, Concil. 9. num. 21. Et secundum subjectam materiam, Leg. Protullus, F. de Usufructu: Et quando verba dubia sunt, non debent intelligi captiose in damnum proferentis, sed secundum ipsius mentem; & convenit animadvertere, qua mente quid dicatur, & multo magis quid concipiatur. Leg. penult. F. ad exhibendum. Et quando verba sunt dubia, ut videntur injuriosa, vel non, standum est declarationi ejus qui ea dixit vel scripsit. Menoch. Concil. 197. lib. 12. Multo magis ejus qui imprudens & bona fide iis usus est. Et quando verba sunt dubia, declaratio sumitur a verbis precedentibus vel subsequentibus, vel utrisque. Menoch. Concil. citat. num. 7.* And therefore if the Strain of the Words, the Nature of the Subject being a Supplication, the Declaration of the Pannel's Conception of them, and other ensuing words which declared them, be adverted unto; it will be found the Pannel is excusable, if in this Conception they import no Reproach to his Majesty: for the hail last part of the Supplication resolves in an Enunciation *de possibili præterito*. We might have represented *quo verificatur ratione præsentis*; and therefore if at the time of the Parliament they had Power to represent these things, the Enunciation of that Power cannot import Calumny or Reproach to his Majesty. And seeing the actual Representation of these things could have imported no Injury to his Majesty, *quia ubi licentia loquendi nisi in dando Consilio & Senatu? Menoch. Concil. 107. num. 2.* far less could the affirming of their Forbearance from an Act not injurious in itself, have been conceived or interpreted to be reproachful to his Majesty. And whereas it is libelled, that the Prohibition of the Nobility and Gentry to meet amongst themselves, or with the Lords of the Articles, is false; *non relevat*, because it is not positively affirmed that they were prohibit, but only that they might have represented the Prohibition of these Meetings. For the Verity of the which Enunciation, and the Defence of it from being reproachful, the Power of representing is sufficient with any probable ground to believe that these Meetings were prohibit, whether upon Surmises, or upon any other occasion. And lastly, it

it is declared afterwards, that they forbear to make use of these Reasons, which they might have probably represented, to give his Majesty full Content in every thing that in their opinion maketh not a Breach in our Religion or Laws; whereby the Justness and Lawfulness of all they consented to or forbore to oppose, is clearly acknowledged: And that it appeared to the Pannel, and may appear to any, that they might have opposed the King's Procedure. 'Tis not to traduce it as unjust in Points which they both by their Silence acquiesced unto, and expressly acknowledge that they import no Breach in our Religion and Laws, but to show how probably they might have opposed divers Points thereof, if they had been possessed with a seditious Spirit of Opposition, and thereby carried to dis-affent from other Acts, as they feared his Majesty might have been moved to believe.

It is answered to the Point of slighting the Grievances of the Country, That his Majesty's Proceeding is not taxed, because it is not said that they were proponed in Parliament, and rejected or slighted; but only whereas in the Convention of the Estates the Person chiefly intrusted by his Majesty undertook to acquaint his Majesty therewith, and to procure Redress, nevertheless no notice was taken thereof, and they were slighted not by his Majesty, but by those who undertook to acquaint his Majesty, and therefore reflects only upon them.

It is answered to that Point of the Dittay bearing the ignorant and false Affirmations, that before the 1609 Year of God, the Noblemen made choice of some of their Rank to be on the Articles, the Supplicant's Ignorance, in the Pannel's Conception, lays no Asperion upon his Majesty or his Proceedings.

It is answered to that Point of the Dittay, bearing the taxing of the undutiful Choice made by the Bishops, of Noblemen insufficient, or unexperimented, to be upon the Articles, That it is not injurious in the Pannel's Conception to his Majesty, in his Person, Estate, or Government. Secondly, Repeats the general Answer, that it is not positively affirmed of the Bishops, that they did undutifully, or that the Noblemen elected upon the Articles were Popish or Ignorant; but that they had probable grounds in their opinion to think so, and to represent.

It is answered to the Point of reproaching of his Majesty for the Acceptance of the Taxations, That in the Pannel's Conception his Majesty is not challenged upon his Speeches in Parliament, nor upon the Narrative of his Proclamations, nor by the Antitheses of King James I. his Practice: But his Majesty's Speeches in Parliament, his Proclamations, King James I. his Practice, and the Parallel of the Estate of the Country, and the End of Taxations under either King, and his Majesty's Father of worthy Memory, is adduced in the Pannel's Conception as specious Reasons where-with they might have opposed the granting of the Taxations, if they had had ane disloyal Intention to mar his Majesty's Ways and Benefits.

It is answered to the Point of challenging of his Majesty for Employment of his Taxations, and for his Liberality in rewarding his Officers, That in the Pannel's Conception it is not spoken positively and by way of Reproach, as the former Points, shewing how far the Dis-affenters were from Averseness or Tepidness in his Majesty's Service; seeing without expatiating on the common Head usual on such occasions, against the granting

Taxations without inquiring of the Reasons and Causes of granting the Taxations; without representing the Inconvenience to ensue; they all unanimously favoured his Majesty's Benefit.

It is added by Mr. Robert Macgill, That the Remedies apply'd to a Disease, must be thought both by the Physician, and the Patient or sick Man, meetest and most fitting for the curing of the Disease. But so it is, that the Pannel and Supplicants were sick of a Disease; and therefore they in curing by the Remedies as were thought fittest and most helpful by them, contained in the Supplication, must be thought therein to have had a good Mind, and that they thought and used the Remedies according to the nature of the Disease, as being most fit. Their Disease was Fear of Displeasure from his Majesty; for we must not think according to the Stoicks, That only *vires animi quas phantasias Philosophi appellant, quibus mens hominis prima statim specie rei ad animum accedentis pellitur, non voluntatis sunt, neque arbitrii*: But that also *assentiri & co-opinari incidunt in virum sapientem*. But so it is, that this Disease was filial, *erga Patrem Patriæ*: And like Bairnes who are dung (*i. e.* Children that are beat) go back again to their Father, so the Pannel and other Supplicants having by chance looked upon the Piece quarrelled, did think it a very good Remedy to appease his most sacred Majesty, their Father. As it is reported of the Spear of *Achilles*, that he who wounded them with Fear, might cure the same Wound, in shewing that they might have represented Grievances, which are Diseases, to the only Physician: And in our Acts of Parliament, Declamations are forbidden *ad Plebem*: so it must be thought of Writings also, in the Conception of the Pannel, *quæ per Plebem distribuuntur atque ita divulgantur*, which is not in our Case; *ergo, &c.*

It is answered by his Majesty's Advocat, That all ought to be repelled; in respect of the Dittay, and of the particular Points of Reproaches, which not so meikle (much) as by the Conception or Meaning of the Pannel can be justified. And all which is opposed, is either against the relevancy of the Dittay, which is remitted to the Justice; or against the Verification thereof, which is proper to the Assyze. And if the Justice and Assessors desire a more special Answer to be made to the Particulars, the King's Advocat offer'd to clear the sarnen by word in hearing of Parties.

It is last alledged by Mr. Roger Mowat for the Pannel, That that part of the Dittay anent the Pannel's alledged divulging and dispersing of the said alledged Libel, is not relevant to infer the Crime and Punishment concluded in the said Dittay; because divulging and dispersing are not contained in the Acts of Parliament whereupon the Dittay is libelled; and so cannot be the Ground and Warrant thereof. Secondly, In so far as the Dittay bears, that the said Libel was divulged by giving the said Copy to *Dunmure*; giving, and not granting, that divulging is warranted by the said Acts, or can be sustained as a Warrant against the Pannel to infer the said Crime and Pain, that cannot be called divulging, because *Dunmure's* own Depositions bear not, that he received the said Libel from the Pannel to copy or divulge, but that he took it up only to read upon very strict Conditions; which being the true manner of his Receipt there-

of from the Pannel, cannot be called properly divulging: because to divulge, properly is to affix *in loco publico*, as Mr. *Thomas Ross* did; whom my Lord Advocat cited; who affixed his seditious Pasquils, and Investives against his Nation, whereof he was the confessed Author, upon the publick parts and places of the Town and University of *Oxford*. Or to divulge is to tyne, (drop) and cast down Papers in Kirks, Tolbooths, or High-Streets, as did *Francis Tennant*, likewise cited by my Lord Advocat; who left and of purpose tynt (dropt) his infamous Missives in the Kirks. And it is universally maintained, that the delivering of a Libel or Writing to one only, cannot infer divulging; albeit it is not granted that the Pannel delivered the said Writ to *Dunmure*.

To that Part of the said Dittay bearing that the said Libel was divulged by delivering thereof to the Earl of *Rothes*; it is answered, That that was not divulging, because it is confessed in the said Dittay, that it was delivered to the Earl of *Rothes* to have been presented to his Sacred Majesty: And it is contended, as before, That that which is affirmed in the said Dittay to be divulging, is more properly to be called revealing, as indeed it was. So that it is retorted, to free the Pannel not only of divulging, but of all Crime for hearing or not apprehending; because if the Pannel delivered it, as the Dittay bears, to have been presented to his Sacred Majesty, *ergo* not as infamous, reproachful, or scandalous: which must be presumed by all manner of Presumptions in favour of the Pannel, that he did not consent to the presenting thereof to his Highness, as being in his least Thought or Imagination scandalous, or otherwise as the Dittay bears; but only to have been revealed to his Sacred Majesty as a Piece which he and the other Supplicants did think and conceive might have been graciously accepted, as others of that kind had formerly been received by his gracious Majesty.

To that part of the Dittay bearing the copying thereof by Mr. *Robert Dalglish*, the Pannel's Servant; it is answered, *Quod non relevat* to infer divulging, because the said Mr. *Robert* his Deposition bears, that he did only deliver the Copy to my Lord his Master, and did no farder. Neither depones he, that my Lord did any farder but took the Copy from him; which in no sense can be properly called divulging, for the Reasons before adduced.

To that part of the said Dittay bearing Mr. *John Dunmure's* keeping the said Copy in his hands, by the space and in manner libelled; it is answered, *Non relevat*, because it is not, *ut supra*, that the Pannel gave him the Copy, but that he took it, as the Deposition bears. And what he did thereafter, without any Warrant, Command, or Allowance of the Pannel, cannot be laid to the Pannel's charge, but to his own; seeing the manner of his receiving and divulging thereof, is notoriously known to have been against his Promise, or without the Knowledge or Consent of the Pannel, by abusing his Trust given to him by the Pannel, tho' innocently, who was free of all his subsequent Proceedings. And there being no Fraud or Malice in that point upon the Pannel's part, who was wronged by *Dunmure*, tho' innocently; that cannot be called the Pannel's divulging: for who lives, and may not be deceived and abused in that manner as he was, tho' innocently, on *Dunmure's* part?

To that part of the Dittay anent Mr. *John Dunmure* his Answer to the Earl of *Traquair*; it is answered, That the same cannot be respected as relevant to infer divulging, because the Pannel's Deposition bears that he gave no Warrant nor Direction to *Dunmure* to return answer to the said Earl: but that in discourse with *Dunmure*, the Pannel answered not those words, *That as honest Men would put their Faces thereto (i. e. justify it) as the Pannel himself*; but the Pannel's Answer only was in these words, *That as honest Men as the Pannel himself knew of it*: meaning of the Earl of *Rothes* and other Supplicants, who had intended to cause make offer of the same to his Royal Majesty, and accordingly did make offer thereof by the said Earl of *Rothes*.

And to that part of the said Dittay, concluding that the said Pannel being a Nobleman of good Learning and Understanding, should have revealed, should have not concealed, should have apprehended the Author; it is alledged, *Non relevat ut supra*, and *Absolvitur* ought to be granted from that Conclusion, for the Reasons mentioned before in the Defences and Duplies made for the Pannel, who still contends that as he never did conceive or understand the said Supplication, as the Dittay inforges and bears the same upon him; so his own Commentary and Declaration anent his Meaning and Sense thereof, ought only to be received, to free and vindicat him from the Crime and Pains libelled. In respect whereof, the said Dittay anent the Point of divulging can no ways be respected as relevant, but *Absolvitur* ought to be granted to the Pannel therefrom.

It is added by Mr. *Alexander Pearson* to this last and fifth Exception, That the Point of Dittay anent divulging is not relevant, and cannot infer the Pains concluded by the Dittay, because the said Point of Dittay is not founded upon any Act of Parliament mentioned in the Proposition thereof, but only upon the Civil Law, which the Leidges cannot nor are obliged to know in all the Sanctions thereof; specially seeing by divers Acts of Parliament, to wit, King *James I. Parl. 3. cap. 48.* King *James IV. Parl. 6. cap. 79.* by the which it is statute, That all the King's Leidges live and be governed under the King's Laws and Statutes of the Realm only, and not by any Laws of other Countries: And therefore cannot infer the Pains concluded by the Dittay.

Farder, The Pannel ought to be assoilzed from that Point of the Dittay of divulging, because the Pannel is not nor cannot be counted formally Divulger of the alledged infamous Libel; he not having Knowledge or Opinion of the Writ quarrelled, that it was infamous: but having just and probable Cause to think of it otherwise, *ut supra*. And as Credulity by the Civil Law defends in Theft, so by the like reason it ought to defend the Pannel here, anent divulging, as is confirmed in the fourth Exception proponed for the Pannel, which I here repeat, and which Defence is most relevant by the Civil Law, whereupon only this Point of Dittay is urged, and therefore should elide the same.

Item, Farder, The Civil Law does not make any to be Divulger of an infamous Libel, but after Knowledge of the same to be infamous; which is clear by the Ordinance of the Law set down in *Lege Unica, Codice de famosis Libellis*, which commands the Finder of ane infamous Libel presently

to destroy it; which the Finder cannot do, but after knowledge of the Writ to be such. And 'tis also clear by the Prohibition of the said Law, bearing, *Si vim earum manifestaverit*; which requires divulging of an infamous Libel, in the form and strength thereof. In respect whereof, the Pannel ought to be assoilized from that Point of divulging.

It is added by Mr. *John Nisbet*, That divulging is not relevantly qualified in Law, by the imparting of the alledged Libel to my Lord *Rotbes* and to Mr. *John Dunmure*; because it was imparted to neither of them in quality of an infamous Libel, but to my Lord *Rotbes* in the contrair quality of ane Supplication, to be presented by him to his Majesty, as is acknowledged in the Dittay; and to Mr. *John Dunmure* as a Confident of the Pannel's, under Promises of Secrecy: which Proceedure and Qualities of imparting are far from the nature of divulging; for the word itself implieth a publick Dispersion, and the exprefs Law requireth *manifestationem publicam & dolosam publicationem*; *Canone qui in alterius, Causa 5. Quest. 1. Dolosum. Canone 4. eadem Causa & eadem Quest. Et Libellus famosus dicitur Pasquillus, quod in Urbe Roma ad truncam Pasquini cujusdam statuam affigi solet. Harprechtus in tractatu Criminali, §. Injuria. Sectione de famoso Libello, Et qui Libellum famosum ab alio acceptum vicissim alii, & uni tantum secreto tradidit, Libelli famosi pœna non est plestendus, quia ex traditione secreto facta non obscure colligitur animus non diffamandi; & quia Libellum famosum non dicitur publicasse, nisi qui cum pluribus impertitus est. Harprechtus, ibidem.*

It is added by Mr. *Robert Macgill*, That the divulging qualified in the Dittay is not relevant according to the Civil Law, where a Publication and Out-setting is required: *Pharm. Quest. 105. Inspec. 11. num. 485, 487.* And the reason is, *quod Convicium dicatur quasi Convolum, Leg. Item, apud Labionem 15. §. 4. F. de Injuriis, ubi §. sequenti ait dici vociferationem in unum collatum: additis §. 8. & 11, & 12. Quod oportet in Cœtu dici, & cum vociferatione vulgare, etiam Nœnio Marcello est in vulgus dare, & quasi multis audientibus ac non taciturnus dicere.* Then *ei dispersionem & divisionem superaddunt, ut sit in plurium manus sparsio ab una eademque facta, & maxime si in Plebem distributio fiat, unde sœvitque animis ignobile Vulgus. Quippe ut Cicero pro Plancio, non est consilium in vulgo, non ratio, non discrimen, non diligentia.* And even in that title of the ninth Book of the *Cod. de Seditiosis*, it is added, *Et his qui Plebem contra Republicam audent colligere.* And so have I said not long since, that these private Writings, and the dispersing of them, must be understood in our Acts of Parliament, as the Declamations therein mention'd, that is, to the meanest and commonest sort; and that to ten at least, *quia non dicitur notorium nisi per decem saltem transeat*; *Boerius Tractatu de Seditiosis, Præmiss. 7. quippe quod populus dici non posse, nisi sint decem: Ibidem Præmiss. 3.* And remits here what I have said *de Seditiosis*, in the end of my second Exception. But so it is, that the communicating of the Piece quarrelled to Mr. *John Dunmure*, in that mean sort as is contained in the Deposition, and consequently in the Dittay, cannot be thought a divulging in manner above expressed; ergo the Pannel ought to be assoilized from that Part of the Dittay.

It is answered by my Lord Advocat, That the Alleadgance ought to be repelled, in respect of the

Dittay, which in this part anent divulging is founded upon the Common Law, *Leg. Unica de famosis Libellis.* And which Common Law, in the case where we have no particular Law nor Statute of our own, is obligatory against the Leidges. And the Acts of Parliament cited by the Defenders, That the Leidges shall be ruled by the Laws of the Kingdom allenarly, (only) and not by the Laws of other Kingdoms, excludes only the particular Laws of particular Kingdoms; but excludes not neither the Laws of God, neither the Laws of Nature, neither the Laws of Nations, nor the Common Law: Otherwise, odious Crimes against which there are no Municipal Laws, as *Sodomia, Plagium, privati Carceres, &c.* should be unpunishable. And as to the Exception proponed against the Relevancy, and the Alleadgance of the Civil Law anent divulging *uni*; oppones the Dittay, bearing the divulging thereof to three particular Persons in manner therein libelled.

It is duplyed by the Pannel and his Procurators, That the Point of divulging being founded only upon the Civil Law, if it were sustained, is only relevant to infer the Pain of the Civil Law, which is not capital, *Nisi non libellus famosus continet delicta capitalia in alium impropereata. Secus in eo impropereatur delictum non capitale, aut alia quævis. Culpa. Glossa in Leg. unica. Codice de famoso libello, in verb. si quis famosum. Phar. Quest. 105. num. 11.* And of the Canon Law, which has ever had more Force with us: *Pœna etiam atrocissimi Libelli est tantum flagellatio. Canone, Qui in alterius, Causa 5. Quest. 1.*

It is farder duplyed by Mr. *Roger Mowat*, to that Part of my Lord Advocat's Reply, bearing, That the Alleadgance made against divulging ought to be repelled, in respect of the Dittay, bearing the divulging by the Pannel to three several Persons: It is duplyed thereto, That the said Reply ought to be repelled, in respect of the said Alleadgance proponed against the said Member of divulging, and hail Qualifications thereof, to the saids three Persons; whereunto there is no Answer given by my Lord Advocat. And therefore remits the said Alleadgance, and hail Members of it, as yet unanswered, to be considered by the Judge as most relevant in it self. In respect whereof, the said Alleadgance, and hail Members thereof, stands relevant, notwithstanding of the Reply.

It is triplyed by my Lord Advocat, That the Pain by the Common Law is capital; and the Quotation by Mr. *John Nisbet* is a Gloss, without Warrant. And albeit some respect might be had to an infamous Libel against a Subject, yet none in that which concerns our Sovereign, tending to the Disturbance of the Estate and publick Peace.

It is quadruplyed by Mr. *John Nisbet*, That we oppone the Glosses aforesaid acknowledged and followed by all the Doctors, and founded upon the Equity of Retaliation; and oppone likewise the foresaid Citations out of the Canon Law it self, and the hail Title of the Canon Law *de Maledictis*, where Detractors of the Pope himself are only obnoxious to the Pain of Flagellation.

The Justices continues till to-morrow the 17th Instant.

Curia legitime affirmata, the said 17th of December, 1634, &c.

My Lord Advocat, after some Speech delivered by the Pannel's Procurators, *verbo* declared to my Lord Justice-General, That what was spoken was only a summary Recapitulation of that which is at length set down by the Pannel's Procurators in their Defences; and offered to his Lordship, if it were his Lordship's Pleasure that he, as Pursuer, should clear by his Answer *verbo*; and otherwise, that my Lord Justice, with Consent of his Assessors, would close (put an end to) all farther Writing, and declare that no more should be added, but that *Interloquitor* may be pronounced of that which is proponed and written already. To the which my Lord Justice made Answer, That there was no Necessity to answer farther than is said and written already.

It was thereafter humbly craved by the Pannel and his Procurators, That if any thing should occur to be demanded whereupon he desired to be heard before *Interloquitor*, that my Lord Justice would be pleased to hear him, he proponing the same, *verbo* in his Lordship's Audience.

My Lord Justice-General, with Advice of his Lordship's Assessors, declares that all farther Writing in this Matter shall cease before the Dittay be found relevant, and referred by *Interloquitor* to an Assize; and continues *Interloquitor* upon the Exceptions proponed in this Process, and Answers made thereto, till Friday next, the 19th of December instant.

The said 19th of December it was continued till the next Day, the 20th.

The said 20th of December, 1634, *Curia legitime affirmata*, &c. Pannel and Procurators as above.

My Lord Justice-General and his Lordship's Assessors having read and considered the Dittay, hail Exceptions, Replies, Duplies, with all that is proponed for the Pannel by his Procurators in this Process, and my Lord Advocat's Answers made thereto; by *Interloquitor* repel the first Exception proponed by the Pannel and his Procurators against the Relevancy of the Dittay, in respect of the Acts of Parliament standing unrepealed. Repel the second Exception in respect of the Dittay, and Acts of Parliament whereupon the same is founded. Repel the third Exception in respect of the Dittay, and that there may be more Authors than one; and likewise sustain these Words of the Dittay, *That the Pannel is Adviser, Deviser, and Consultor*, in respect they all signify one thing with Airt and Part. And as to the Qualification of the Interlining, set down therein, remit the same to the Assize, as proper to be cognosced by them, with the hail remanent Qualifications and Presumptions contained in the said Dittay, to be proven to the said Assize. Repel the fourth Exception in respect of the Dittay, and scandalous and reproachful Libel mentioned therein; which my Lord Justice, with Advice of his Lordship's Assessors, find to be of that nature, notwithstanding of any thing propounded in the contrair in the Pannel's favour. As to the last Exception, repel the same, and sustain that Point of the Dittay anent the divulging of the infamous Libel, to be tryed and

proven *conjunctim* with any one of the rest of the Articles of the said Dittay found relevant, as said is, to infer the Punishment prescribed by the Act of Parliament; and declare, That if it shall be only proven *per se*, to be punished *per pœnam arbitriam*. And in respect of the former *Interloquitor*, ordain the Dittay to pass to the Tryal of an Assize. And for that effect, continues this Matter to the 11th Day of February next to come; and ordain the Pannel to be returned to his Ward within the Castle of Edinburgh.

Curia legitime affirmata, the said 11th of February, 1635.

John Lord Balmerino delated of the Crimes contained in his Dittay, contained in his preceding Process.

The Justice Deputs (being Alexander Colvil of Blair, and Mr. James Robertoun, Advocat) foresaids, with Advice of the Assessors, before mentioned, continue this Dyet, anent the Trial of the said John Lord Balmerino, for the Crime specified in his Dittay, to the 11th of March next to come. The Persons of Assize are warned, &c.

The said 11th of March, it is continued till the 18th of March, 1635. And the said 18th Day, in respect of the Absence of Mr. Roger Mowat, the Pannel's principal Procurator, by reason of Sicknes and the Gout, the Justice continued the Dyet till the 20th of March thereafter, 1635.

The said 20th of March, 1635. Pannel and Procurators as before.

The Names of the Persons of Assize (Jury.)

William Earl Mareschal.
James Earl of Murray.
William Earl of Dumfries.
Mungo Viscount of Stormond.
John Earl of Lauderdale.
John Earl of Traquair.
George Lord Forrester of Corstorphine.
James Lord Johnston.
Sir Alexander Strachan of Thorntoun Knt.
Sir Robert Grier of Lagg.
Sir John Charters of Amisfield.
Sir Alexander Nisbet of Westnisbet Knt.
Sir Patrick Agnew of Lochnair, Knt.
Sir James Baillie of Lochend.
John Gordon of Buskie.

It is alledged by the Pannel and his Procurators, That the Earl Mareschal cannot be admitted upon the Assize, because he has received Information and particular Instruction of the Pannel's Guiltiness of the Crimes given up in the Dittay, and particular Direction what to do in case he pass upon the Assize; which they refer to the Nobleman's own Oath and Declaration; who being sworn, declared that he received no such Instruction or Information of any Person. Whereupon, being purged of partial Counsel, the Justice admits him upon the Assize.

It is alledged against the Earl of Dumfries, that he cannot be received upon the Assize, because he has given out his prejudged Opinion against the Pannel, affirming, before any Probation led, that the Pannel is guilty of the Dittay; which the Pannel referred to his Lordship's Oath, alledging that

in Law a Declinator is only to be proven against an Affizer by his Oath: And farther affirms, that the said *William Earl of Dumfreis* has been solicited and dealt with by Prayer to find the Pannel guilty of the Dittay. Which being referred to the said Earl his Oath, he denied any such Matter, that he either gave out Speeches of the Pannel's Guiltiness, or that he was solicited or dealt with by Prayer, or otherwise; the Justice admits him, in respect of his Declaration.

It is alledged against my Lord *Blantyre*, that he cannot be upon his Affize, because he has publickly reported to sundry, that the Pannel to his Judgment is guilty of the Dittay, and cannot be cleared thereof; which they refer to his Lordship's Oath: who being sworn, declared that he could not deny that he had spoken such Speeches. Whereupon he was repelled, and ordained to stand aside.

It is alledged by the Pannel and his Procurators against my Lord *Johnstoun*, the Laird of *Lag*, the Laird of *Amisfield*, the Laird of *Thorntoun*, the Laird of *Westnisbet*, that they cannot be received upon the Affize, because they have all been solicited by Prayer and Request to find the Pannel guilty; and that the Lord *Johnstoun* has declared to sundry, that if he were on his Affize, he could not but find him to be guilty: likewise, affirmed by *Thorntoun*, that as the Dittay is founded upon the Acts of Parliament, the Pannel must be guilty, and none can acquit him thereof; and that *Westnisbet* had affirmed in publick Conference, by his bewrayed Opinion, that he would file (convict) the Pannel, and do his Endeavour cause others file him of the Dittay. Whereupon the forenamed Persons having by their Oaths denied the Premises, the Justice thereupon having purged them of partial Counsel, admits them upon the Affize. Whereupon my Lord Advocat asked Instruments. Likewise admits my Lord of *Traquair*, notwithstanding of the Declinator proponed against him *verbo*, by the Pannel's Procurators.

My Lord Advocat, for verifying of the Dittay, 1st, Repeats the Acts of Parliament whereupon the Dittay is founded, (*viz.*) the 10th Act of the 10th Parliament of his Majesty's dearest Father, King *James the Sixth*, holden at *Linlithgow* the 10th Day of *December*, 1585; the other Act being the 205th Act of his Majesty's 14th Parliament, holden at *Edinburgh* upon the 8th Day of *June*, 1594.

2dly, Produces his Majesty's Warrant or Letter, direct for examination of Mr. *John Dunmure*, whereof the Tenour follows:

To the Right Reverend Father in God, our Right Trusty and Well-beloved Counsellor; To our Right Trusty and Right Well-beloved Cousins and Counsellors; To the Reverend Fathers in God, our Trusty and Well-beloved Counsellors; and to our Trusty and Well-beloved Counsellor, the Archbishop of St. Andrews, Primate and Metropolitan of all Scotland; the Earl of Mortoun our Thesaurer, the Earl of Traquair our Deputy Thesaurer, the Bishops of Edinburgh and Ross; and to Sir John Hay of Baro, our Clerk-Register of our said Kingdom.

CHARLES Rex.

RIGHT Reverend and Reverend Fathers in God, our Trusty and Well-beloved Counsellors, Right Trusty and Right Well-beloved Cousins and Counsellors, and Trusty and Well-beloved

Counsellors; We greet you well. Having seen the Copy of a Petition, which hath been in the Hands of Mr. *Peter Hay of Naughtoun*: And he being required by us to declare from whom he had the said Petition, hath done the same by naming one *Dunmure*, dwelling in *Dundee*, a Notary there: It is our Pleasure, that you call them before you; and having received the said Mr. *Peter Hay* his Information, and examined the said *Dunmure* concerning the Author of that Petition, and who may be any wise accessary unto it, you inform yourself so far as you can in all things concerning it, and certify us what ye find thereanent, that we may cause take such further Order with these that shall be found to have had hand therein, as we shall think fitting. And for your so doing, these Presents shall be your sufficient Warrant. *From our Court at New-Mercat, the 3d of March, 1634.*

3dly, Repeats the infamous Libel produced by Mr. *John Dunmure* before the Lords of the Committee upon the 14th Day of *March* 1634, with his Deposition made in presence of the Committee that same Day; which infamous Libel, with his said Deposition, is produced by his Majesty's Advocat upon the 3d Day of *December* 1634, before my Lord Justice, and is registrat in this Process that Day.

4thly, Produced the Double (Copy) of the infamous Libel, interlined by the Pannel, whereof the Tenour follows.

[*This is exactly the Double of the former, only with the Addition of the Pannel's Interlinings, which are these; First, at Letter A, on the 14th Page (or 411 of this Vol.) there is interlined by his Lordship these Words, which are not mentioned in the former Double, viz. In such a Case as this, it hath not been unworthy to have represented to your Majesty's Observation, that. And at this Mark also these Words are wanting in this Double, which the former has, viz. Which blessed King James would never have confounded. And betwixt Letter B and C, on the same Page thus, B of Religion C, is interlined in this Double. And the last interlined Words in this Double are to come in as marked on the 412th Page, betwixt C and D, these Words, viz. To suffer to be introduced.*]

Item, Produces Mr *John Dunmure's* two Depositions, made the 15th of *March* 1634, and the 7th of *June* after, whereof the Tenour follows:

I Mr. *John Dunmure* confes and declare, That the Copy of the Petition, remonstrat to the King's most sacred Majesty, to have been delivered by me to Mr. *Peter Hay of Naughtoun*, was intrusted by me to him upon his Faith and Promise never to have been imparted or divulged to any other, and that he should redeliver to me the same, after the Reading and Consideration thereof: And that I extracted the said Copy with my own Hand against the Direction, and by (without) the Knowledge of him from whom I had the first Copy and Warrant thereof. So help me God. And this for Amplification of my Confession of the said Matter, made in Presence of the Lords Commissioners, Receivers thereof, the 14th of *March* instant, by thir Presents written and subscribed with my Hand at *Edinburgh* the 15th of *March*, 1634.

Sic subscrib. Joan. Dunmure.
At

At *Edinburgh*, 7 June, 1634. Sederunt, *St. Andrews*, the Earl of *Roxburgh*, *Traquair*, *Brechin*, Clerk-Register, Advocat.

Lord *Balmerino* himself would set their Faces thereto.

Sic subscrib. Joan. Dunmure.

St. Andrews, *J. Morton*,
Roxburgh, *Traquair*,
Da. Episc. *Brechin*,
J. Hay, *Tho. Hope*.

THE which Day Mr. *John Dunmure*, being deeply sworn upon his Knees, ratified and approved his former Deposition of the Date the 15th of *March*, 1634; and declares, That at the time he received his said Supplication of my Lord *Balmerino*, the said Lord *Balmerino* desired him that he would take it, and give him his Opinion thereof; and as he loved his Credit, he would keep it, and shew it to no Man living, but only give his own Opinion there-ament: And declares that there was nothing spoken about the copying thereof; but is persuaded, if that my Lord *Balmerino* had known that he would have copied it, he would never have given the same out of his hand. And depones, after the Receipt thereof he abode three Days in *Edinburgh*, and during that time copied the same, and did return the same to my Lord *Balmerino*; but no ways told him that he copied the same. And depones, he shewed the same to no Person, nor had no purpose to divulge it, but did take it home with him to *Dundee*, and did keep it close and secret by himself by the space of six Weeks, till the Laird of *Naughtoun* came to him in his own Chamber in *Dundee* of purpose to ask his Advice in some Affairs, in respect he was his ordinary Writer, as his Custom was: And depones, that after some Conference with the Laird of *Naughtoun*, he took the same out of his Pouch (Pocket), and said to the Laird, He knew that he was a Man of Judgment, and well-acquainted with the Affairs of the Kingdom; and said, Here is a Paper whereof he would be glad to have his Judgment, providing he would keep it secret, and return the same back again: Which the Laird faithfully promised. Whereupon the Deponer gave the said Paper to the Laird. Whereupon he began to read: And before he had ended it, he said to the Deponer, Mr. *John*, I intreat you heartily that I may have this Paper to *Naughtoun*, that I may read it, and consider it at leisure. To the which the Deponer answered he would, providing he would keep it secret, and shew it to no Man, as he had promised; which the Laird of *Naughtoun* faithfully promised to do. And declares upon his great Oath, That if he had known the Laird would not have kept it secret, he would not have given it for all the World. As also depones, That within a Month or five Weeks after the Deponent went to the Laird of *Naughtoun's* House, as he was going through *Fife*, and craved the Paper back with great Earnestness; who answered, Tritle, tritle, ye need not be so curious; that there was a Gentleman at his own Table told him that there was three Copies thereof going through *Fife*, and my Lord *Balmerino* had given one thereof to Mr. *William Scot*, another to Mr. *Alexander Henderson*, and the third that the Gentleman would not name. And the Deponer declares, After that time he met *Naughtoun* divers time in *Dundee*, and asked the Paper back, which he ever shunned. And declares, About *October* last *Naughtoun* came to the Deponer's Chambers in *Dundee*, and told him that he had given the Paper to my Lord *St. Andrew*; at which the Deponer was mightily moved. *Item*, depones, After his first Declaration he went to my Lord *Balmerino*, who after Conference with him, my Lord *Balmerino* desired him to go to the Earl of *Traquair*, and tell him that better Men nor my

5thly, Produces three Depositions subscribed by the Pannel and the Lords of Committee, one dated the 9th of *June* 1634; the second the 16th of *June* 1634; and the third the 1st of *August* 1634. Of the which three Depositions the Tenour follows, viz.

Apud Edinb. the 9th of *June* 1634. Sederunt *St. Andrews*, Thesaurer, *Roxburgh*, *Traquair*, *Brechin*, Clerk-Register, Advocat.

THE which Day *John Lord Balmerino* being examined upon his great Oath, depones as after follows: *Imprimis*, depones, That the Libel produced is the just Copy of the Libel given by him to Mr. *John Dunmure*, so far as he remembers. *Item*, Being interrogat to what use he gave him the same, and upon what occasion, depones, That Mr. *John Dunmure* having given to him the Copy of my Lord *Brechin* his Sermon preached at his Majesty's Coronation, and Mr. *John* having seen the Paper, he gave it to him to look upon, but to keep it to himself alone, and to shew it to no other, as he respected his Lordship's Credit: And depones, That he never knew that Mr. *John Dunmure* had copied the same. *Item*, Being interrogat from whom he had the Paper he gave to Mr. *John Dunmure*, depones, As he remembers he received the principal of the same from Mr. *William Haig*. *Item*, Being interrogat who was Author and Penner of the said Libel, depones, That it was Mr. *William Haig* who gave it him, and, as he thinks, was the Author thereof. *Item*, Being interrogat to what use Mr. *William Haig* gave his Lordship that Paper, depones, That Mr. *William Haig* said he thought it a fit Supplication to be presented to his Majesty; which he had made out of some Collections which he had gathered upon some Conferences which he had with sundry Persons the time of the Parliament. *Item*, Being interrogat what he did with the Paper which he received from Mr. *William Haig*, depones, he received two of them from Mr. *William Haig*, whereof one was to be presented to the King, if it had been thought expedient, which he delivered to my Lord of *Rothes*; and the other he caused his Man Mr. *Robert Dalgleish* copy; and gave Mr. *Haig* his own back again, which he thinks he destroyed. And the Paper which he shewed Mr. *John Dunmure*, was it which his Man wrote, as he remembers. *Item*, Being interrogat if Mr. *William Haig* had any Warrant or Command to draw up the said Supplication, or if any Lord or any of his knowledge was at the penning thereof, depones, That he had no Warrant from him, nor knew of any Warrant given to him, nor that any was present at the forming thereof. *Item*, Declares that the Earl of *Rothes* and the Deponer having read the Supplication, thought it no ways fit to be presented to his Majesty, but to be absolutely suppressed. *Item*, Being interrogat if he had any of the said Copies, declares, After the receipt of

Mr.

Mr. *John Dunmure* his Copy, he cast the samen in the Fire; and for the other, he did diligence to seek the samen out and find it, and exhibit the samen to the Lords: and declared, that he had no more concerning that purpose. *Item*, Being interrogat if he gave any Copies of the said Supplication, or shewed it to any Person, depones, That he neither gave Copies thereof, nor shewed it to any except to the Earl of *Rothes* and Mr. *John Dunmure*.

Sic. subs. Balmerino.

*St. Andrews, Morton, Roxburgh,
Traquair, Da. Ep. Brechin,
J. Hay, Thomas Hope.*

Follows the Tenour of the second Deposition.

Apud Edinb. decimo sexto Junii, 1634.

THE whilk Day *John Lord of Balmerino* being examined upon his Oath if he knew any thing of Mr. *William Haig* his going out of the Country, depones, That he knew nothing of his away going till Wednesday last; that a Man of the *Lady Yeaster's* told him, when he was going to *Balcleugh's* Burial, that Mr. *William Haig* was gone out of the Country. *Item*, Being inquired anent that part of Mr. *John Dunmure's* Deposition, That after his first Declaration he went to the Deponer, who after conference with him desired him that he would go to the Earl of *Traquair*, and say, *That better Men than the Deponer himself will set their Faces thereto*; the said Lord *Balmerino* depones, That he never gave Mr. *John Dunmure* such a Commission, but only told him in conference, That there were better Men than the Deponer himself who knew of that matter. And being inquired what these were that he meant of, depones, That it was the Earl of *Rothes*, to whom he delivered the Supplication, conform to the former Deposition. *Item*, Being inquired whether he had interlined some Lines in the said Libel which was exhibited by him to the Lords, and whether he did the same before he shewed it to Mr. *John Dunmure*, or to the Earl of *Rothes*, depones, That it was the Earl of *Rothes* to whom he deliver'd the Supplication, conform to his former Deposition. *Item*, Being inquired whether he had interlined some Lines in the said Libel which was exhibited by him to the Lords, and whether he did the same before he shewed it to Mr. *John Dunmure* or to the said Earl of *Rothes*, depones, That Mr. *John Dunmure* never saw this interlined Libel, but only the Copy which was cast in the Fire after the redelivery thereof: And depones, That the Copy interlined lying before the Lords was the Copy delivered by him to the Earl of *Rothes*, but was not interlined while the Earl of *Rothes's* redelivery thereof to him; and depones, That never any saw it since the interlining thereof.

Sic. subs. Balmerino.

*St. Andrews, Morton, Roxburgh,
Traquair, Da. Ep. Brechin,
J. Hay, Thomas Hope.*

Follows the Tenour of his Lordship's third Deposition.

Apud Edinb. the first Day of August 1634. Sederunt, St. Andrews, Thesaurer, Roxburgh, Stirling, Traquair, Bishops of Edinburgh, Ross, Clerk-Register, the King's Advocat.

THE which Day *John Lord Balmerino* being asked upon his great Oath, if he shewed to Mr. *Haig* the Warrant of his Appearance before the Lords upon *Saturday* the 7th of *June*, depones, That after Dinner Mr. *Haig* came to his House, and asked by what Warrant he was convened before the Lords; and the Deponer took the Warrant out of his Pocket, and shewed the same: And adheres to his former Deposition, anent Mr. *Haig* his parting, or to the purpose thereof. *Item*, Being interrogat if he received any Letters from Mr. *Haig* since his parting, deponed, That he received at his back coming from *Balcleugh's* Burial a Letter from his Lady, direct from Mr. *Haig*, but without either Date or Place, which he produced: as also received from *Thomas Haliburton* a Letter direct from Mr. *Haig*, with some Note concerning my Lord *Jedburgh's* Business. And sicklike depones, he received a Letter from *Adam Watt*, which concerned some Business betwixt my Lord *Yeaster* and Mr. *Haig*; and in the end desired the Deponer to assist Sir *Lewis Stewart*, and other Friends that he had written unto for procuring of him a Remission: which Letter, after the Deponer had dealt with the Lord *Yeaster*, he cancelled and burnt. And last grants he received a Letter from *Campfire* the 27th of *June*, which he received from Mr. *Robert Bruce*; which he exhibits, and which Letter bears Mr. *Haig* has granted that he was the Penner of the said Supplication, and therefore protests that the same may be delivered up and given to him. And being asked anent that part of the said Letter, which bears that the Earl of *Rothes* and such other honest Men that did once approve the said Supplication, if the Deponer did ever allow and approve the samen; answers, that he did never allow nor approve the samen to be presented to his Majesty, but thought it fit to be suppressed. And in the rest adheres to his former Depositions.

Sic. subs. Balmerino.

The same Day, in presence foresaid, it being asked whether he did allow and approve the same himself, in the Matter and Substance; he declared, that he neither allowed nor allows the samen, and declares he condemns the same both in Matter and Form.

Sic. subs. Balmerino.

*St. Andrews, Morton, Roxburgh,
Stirling, Traquair, Da. Ep.
Edinb. Jo. Ross, J. Hay,
Thomas Hope.*

6thly, Produces Mr. *Robert Dalgleish*, Servitor to the Pannel, his Depositions, dated *July 3, 1634.* whereof the Tenour follows.

Apud Edinb. 3 July 1634.

THE which Day Mr. *Robert Dalgleish* being sworn upon his Knees, and the Libel being shewn to him, denies that he knows the Handwriting or the Writer: grants that my Lord *Balmerino* being in his place of *Barnetown* shortly after the Parliament, and being to go to *Edinburgh*, about Four after Noon delivered to the Deponer a Paper to be copied, which he did copy that same Night, and sent it with the Copy thereof to his Master inclosed in a Paper, the next day in the Morning. And being asked if that he had copied

another to himself, grants that he had made another Copy which he kepted to himself, which he did without the command or knowledge of his Master; which Copy he exhibited presently in presence of the Lords. *Item*, Being demanded if he did communicat that Copy which he kepted to himself to any other, depones upon his great Oath, That he did neither show nor give the Copy thereof to any other: but grants, while he was copying the same in *Barnetown*, Mr. *William Colvill* Minister of the Parish came in and read the same, but got no Copy thereof. As also depones, That since the beginning of the Trial about *Pasch (Easter)* last, the Lady *Balmerino* asked of the Deponer if he had kepted a Copy of the foresaid Libel to himself, and desired a sight thereof; and when she heard the same read, she said that he was a Fool in keeping, and bad him cast it in the fire.

Sic subsc. Mr. Robert Dalglish.

*St. Andrews, Mortoun, Roxburgh,
Stirling, Traquair, Jo. Rossen.
J. Hay, Thomas Hope.*

7thly, Produces *Mark Casf* his Deposition, dated *apud Edinb.* the 31st of *July* 1634.

Sederunt, *St. Andrews, Roxburgh, Stirling, Traquair, Rosse*, Clerk of Register, Advocat.

THE whilk Day *Mark Casf*, Writer, being examined upon his great Oath, depones, That about eight or ten days before Mr. *Haig* his going away furth of the Country, he being in Mr. *Haig's* Chamber, Mr. *Haig* asked him what News: to whom he answered, he had no News, but that he heard that my Lord *Balmerino* was troubled for a Petition that had been written. Likeas Mr. *Haig* asked him if he knew who was Writer thereof, whilk he depones that he answered him he knew not, neither did he know. Thereafter Mr. *William Haig* told him that he was the Penner thereof, and took out the Paper and read it over to him, and said that *Rozbes* and *Balmerino* knew the Paper, because it should have been presented to the King. *Item*, Being asked if he knew of Mr. *Haig's* away going, depones, That upon *Sunday* the eighth of *June* the Deponer being in *Newbottle* Kirk at the Communion, Mr. *Haig* sent a Boy to him before the ending of the Sermon in the Afternoon, and desired him to come out to him; who came out and met with him in the Hall of *Newbottle*, but spake nothing with him there. And then they went out together to the Green of *Newbottle*, where he told the Deponer that he was to go to the South Country, and that he had received for his comprizing of *Maxwellbeugh*, disponed by him to the Earl of *Roxburgh*, the Sum of Twenty Thousand Marks, which he had paid to Mr. *John Sharp* and others; and that there rested yet Eight Thousand Four Hundred and some odd Marks: And that he had taken the Deponer his Name to the Bond thereof to his own use, and that he would trust him with it till his Return; and then delivered to him the Bond thereof, and said to him that he would return shortly. *Item*, Depones, that he received a Letter from Mr. *William Haig* from *Yarmouth*, in which there was inclosed a Letter direct from Mr. *William Haig* to *Thomas Haliburton*, which he sent to the said *Thomas*: And the Contents of the Letter to himself was, that he desired the Deponer to assist his Nephew, the said *Thomas Haliburton*, to get a Trunk carried to *Holland* by

the Address of Mr. *Robert Bruce*; and that he should make the said *Thomas* forbear to do it, if I should find by Sir *Lewis Stewart* the appearance of the quitting of this Service. And depones, That he shewed this Letter to *Thomas Haliburton*, who was then present in *Edinburgh*, and declared to the said *Thomas*, that he would not speak the said Sir *Lewis Stewart* in such a business; and rave (tore) out so much of the Letter as concerned Sir *Lewis Stewart*, and desired the said *Thomas* that he would take it to him, because Sir *Lewis* knew Mr. *Haig* his Hand-writing: which the said *Thomas* refused, and said that Sir *Lewis* would believe him but (*i. e.* without) the Letter: And immediately after he read the hail Letter in presence of the said *Thomas*. *Item*, Remembers that the Letter did bear that he was presently going aboard. *Item*, Remembers that he receiv'd from Mr. *William Haig* since his parting in all three Letters, whereof the said Letter was one, and the other two which he exhibited to the Lords.

Sic subsc. Mark Casf, with my Hand.

At *Edinb.* the 31st of *July* 1634. Sederunt, *St. Andrews*, Theasurer, *Roxburgh, Traquair, Edinburgh, Rosse*, Clerk-Register, Advocat.

THE foresaid Deponent depones, That the 20000 Marks paid to Mr. *William Haig* upon the *Saturday*, was employed as after follows, *viz.* Eight Thousand Four Hundred Marks to Mr. *John Sharp*; then rested Eleven Thousand and Six Hundred Marks, whereof there was lent to the Earl of *Lothian* Seven Thousand Six Hundred Marks, and Four Thousand Marks to the Lord *Balmerino*; wherefore (for which) the Deponer received Bonds which are blank in the Name, in the Deponer's hands. *Item*, The Deponer produced two Letters from Mr. *Haig*, one of the Date *nono Junii* from *Bimerside*, with a Command to him to receive a Packet to be delivered to my Lord *Balmerino*; which Packet to his knowledge and memory *Adam Watt* delivered to my Lord *Balmerino*. *Item*, The other Letter of the 23d of *June*, dated from no place, which the Deponer received from *Adam Watt*, who had in hand a Letter to my Lord of *Lothian*, which he received: and delivered a Letter to my Lord *Balmerino*, and another to the Earl of *Traquair*; which Letters were received by *Adam Watt* from Sir *Lewis Stewart*. *Item*, Depones upon his great Oath, That he never opened the little Coffer, nor Trunk; but once that he opened the little Coffer, and took out the Keys of the Trunks, but never stirred the Papers, nor none others to his knowledge: but that he heard that *Thomas Haliburton* had looked in the Coffer before, but knows not whether he took any Papers out or not. *Item*, Declares that since Mr. *William Haig* his away going, there came a Trunk of his home, which is in *William Dick* his hands, whereof he has the Key; and that he never opened the same, but allenarly (only) once at the desire of Mr. *Alexander Johnstoun* Advocat, who alledged he had some Clothes and other Gear therein, which he had put in Mr. *Haig's* Trunk when Mr. *Haig* and he was at *London* the last Vacance. And the Deponer grants he received the Key of the Trunk from *William Frier*, inclosed in a Letter from *London* written by the said *William Frier*, and dated before Mr. *Haig's* going away out of the Country. *Item*, The Deponer remembers, that Mr. *Haig* told him that the Pamphlet was written by a
Man

Man employed by the Lady *Limplum* for that effect.

Sic subs. Mark Cafs, with my Hand,

*St. Andrews, Mortoun, Roxburgh,
Traquair, Da. Ep. Edinb.
Jo. Rossen. J. Hay.*

Sthly, Produces four Letters from Mr. *Haig* to the Pannel, dated 27 *June*, 1 *July*, 10 *July*, and 1 *August*, 1634. Of the which four Letters, the Tenour follows.

To the Right Honourable my singular good Lord my Lord Balmerino, These, at Barnetown; to be sent to him by Mr. George Lawson, or Adam Watt Writer in Edinburgh.

My Lord,

NOW that it has pleased God to bring me safely through the Seas, though slowly (in three Days and three Nights from *Yarmouth*) to this place, I begin with these to pray your Lordship either to use your Talent to get me home otherwise, or to give vigour to that way I wrote to your Lordship from *Yarmouth*. I thought it fit to be taken, to get a compendious way to an end of my Troubles by their means, who for private respects have given the name of a Crime to that Supplication, which tho' I cannot deny the penning of, yet would not have brought to me any Inconvenience, if it had either been used as once intended, or, after changed of purpose, kept from those base Bodies that put it into the hands of such, as have been able to make hard Constructions of it. And seeing for whatsoever I now suffer in my private Fortune, in my weak Body, or in my Name, by the Contrivance or Knavery of Mr. *John Dunmure*, I may justly blame your Lordship; I do here adjure your Lordship, by the Persuasion I have of your own Integrity, of your honourable Mind and Good-will to me-wards, and by your Knowledge of the Pains I have been ever willing to take for an ingenuous Furtherance of all that concerns my Lord of *Somerfet* amongst us; even to take pains to obtain to me a Remission, for doing that which is termed a Crime, and that by means of these that have termed it so; and make them sensible, that it shall be more for their credit so to make an end of the business, than to drive me to such Defences and Apologies as the publishing of will gall them, more than the blazing of the Supplication. Withal it may please your Lordship to represent to my Lord of *Rothes*, and such other honest Men, as I know did once approve that Supplication, that since a hard Character is made of it by these that have wrested in the King's Ire the Sense of it, they should do right both to themselves, their Prince, and Country, by another Petition to represent that whereas they intended to have delivered to his Majesty the foresaid Supplication by such as did dis-assent to that Church-Article, and changed purpose, because the Paper could not hold all their Subscriptions, and other good Respects, very compatible with their most humble Duties to his Majesty; yet since the foresaid Supplication has come to his Majesty's hands by such as have made wrong Constructions of it, therefore to conclude craving humbly that his Majesty would give them leave to be Interpreters of their own Language, and the Desire of their Petition, (for the Reasons it containeth) which is,

that no private respect, but mere Affection to his Majesty, did rule their whole Carriage in the late Parliament. But in this I submit my Desire to your Lordship and their Judgment and Pleasure. Howsoever, since I suffer for that which truly had their allowance, I think they are in honour bound to use discreet means to relieve me off this Cross, at least to help my poor Estate in some measure to bear out the burden of it. I suffer enough in the Toil of my Body, and Wounds given to my Name, though your Lordships amongst you free me of all the Charges that will be inevitable to me in this Course: a little Help from each honest Man that will possibly pity me, would do this business. Thus your Lordship may see there lieth a heavy Burden on my Stomach, when it is brought so low as to beg; yet I shall rather starve than discover so much to any other than your Lordship, to whom only I can lay open the silly and low Thoughts that Misery, and the Fear of it, may bring to,

My Lord,

Camphire, 27

June, 1634. Your Lordship's most Respecting Servant,

William Haig.

Postscript. Whatsoever Bonds are in Moneys to my behoof, I do not think one Groat thereof mine, till my Lord *Yeaster* be satisfied; which will be easily done, (upon the grounds I have sent a Note of to *Mark Cafs*) if your Lordship move him to a Submission, (wherein *Mark Cafs* and *Thomas Haliburton* shall take burden for me) but we will never end otherwise. Pray my Lord of *Rothes* to help your Lordship to induce him to a Submission to any that your Lordship and he can condescend upon; and tell him of his old Letter to my Lord of *Anchram*, That he should settle with me at any Man's sight I liked. But get him to a Submission in writing for his good as well as mine; for if God please to call me, he will find that he shall not make so good a Condition, as he may do now.

The Second Letter.

My Lord,

JUST as I had done closing of my Letters written to your Lordship with others at *Camphire*, the Conservator newly arrived here from *London* came to my Chamber in ane Inn kept by his Mother-in-Law; and hearing I was arrived there from *Scotland*, was very curious to ask News. And because I could tell him nothing, at last wondering, asked me by way of question, If I heard nothing of a Petition, which a number (35) said he of Lords had resolved to give to the King, craving a Relief of the Act made in the Church-business, and a Discharge of any further Payment and Taxations. I laughed, and told him that I durst assure him there was no such matter. That cannot be, said he, for I have this from such as has best Intelligence about the Court; and have seen a Letter, bearing under the hand of one of the Commissioners, That they had had my Lord *Balmerino* that day before them, who had behaved himself very modestly, and was to be before them the next day, where they hoped to get good Satisfaction in all they were about. Then I answered, I heard your Lordship was called for by some of the Council, but had not learned, nor so much as asked for what: and that the Council might have many things