

of that By-law they exacted and received the Moneys; and their Justification will be considered by-and-by. But as to the making the Law, they neither confess it made by themselves, nor by any deriving Authority under them; neither do they traverse, or deny it. For the Averment, that it is the same Law, and the Traverse, that any Law was made *aliter vel alio modo*, is no legal Denial, that the whole Corporation (consisting of Mayor, Citizens, and Commonalty) did not make that Law upon which an Issue could be taken. Besides, if Mr. Recorder would have the Court intend, that the Common Council, set forth in the Rejoinder, is a distinct Body of Men from the Politick Body of the whole City the whole Plea amounts but to the General Issue. What the Consequence thereof will be, I will consider upon the Point of the Crimes set forth; but at present the Court cannot otherwise intend, but that they that made this Law and this Petition, were the same Mayor, Citizens, and Commonalty, who are expressly charged therewith, and in their Pleas they do not traverse or deny it. It is just such another Plea, as where an Information is brought against several Persons for killing and taking away of the King's Deer; the Defendants should plead, that certain Persons (not naming them, nor from whence they come, nor by whom sent) pretended a Custom to kill the King's Deer, and according to that Custom they killed the King's Deer, for the Defendants Use, and the Defendants carried away the Deer. Who (I pray) shall the Court intend killed the Deer, but the Defendants, or some by their Authority?

I now come to the main Point of the Case:

*Whether by any thing disclosed upon those Pleadings, there appears a sufficient Title to the King, for the Court to give Judgment of Seizure of the Franchise of the City of London?* The Title I insist upon for the King, is for a Forfeiture by Acts done by the Mayor, Citizens, and Commonalty, in Breach of their Duty, and the Publick Trust reposed in them upon their first Erection. It is my part to maintain, that the Causes assigned are sufficient in themselves, and sufficiently disclosed to the Court, for the Court to give Judgment upon. I shall consider them,

*First*, As they stand upon the Replication, as Crimes laid to their Charge, which will amount to a Forfeiture of the Franchise.

*Secondly*, How they stand upon the Rejoinder and other Pleadings, whether sufficiently traversed or denied, confessed and avoided, or in the least extenuated.

*First*, The Crimes laid in the Replication, are two in general:

1. Oppression of the King's Subjects by Colour of Law: And,
2. Stirring up Seditions by Libelling their Prince, and his Government.

These two only are laid in the Replication, but collected out of many sufficient Causes for Seizure of any Franchise. The notorious Riots committed in the Face of Justice, to the Comforting and Abetting of Criminals, and Terror of the Judges; and those not only not suppressed or punished by the Magistrates, but countenanced and encouraged by them. The Tumults of many Thousands, exposing and burning in Effigie several of the King's Protestant Subjects, not suppressed or punished by the Magistrates; but by some encouraged, and by Contributions supported. The Encouragement of Libels and Libellers of the King

and Government, by and within the City. These and many more I could enumerate, are common Offences to the City of London, with other Cities, and populous Corporations; but these are such as have been in the Cases produced adjudged Causes of Forfeiture of the Franchises for Misgovernment.

And in these London hath but imitated itself in former Times, and other Cities and Boroughs.

But in the Cases insisted upon, London hath outdone itself, and all other Cities and Boroughs too, by assuming a Power to make Laws for levying of Money upon Foreigners for their own Use; and to deliberate, adjudge, and condemn their Prince's publick Actions, and publickly libelling of them to his Subjects. Never did London before now, or any other City or Borough, (in Times of Peace, and not under an actual Rebellion) commit the like Breaches upon the Government, to assume a Power superior to any the King hath in like Cases, to lay Burdens upon his People, and to levy Money, and to invade the King's Prerogative, by deliberating and determining of his publick Actions to the Consequences thereof, and publickly libelling them to the rest of his Subjects. And in Execution of such unjust Power, that the Mayor, Citizens, and Commonalty, did make and publish a Law for levying of Money upon the King's Subjects, as well Foreigners, as others, coming to the publick Markets with Provisions. And chargeth several Particulars, and divers other Sums imposed upon all Corners to the Markets, whether they sell or no; and that if any Person refused to pay, he should be put out of the Market.

Again, That the Mayor, Citizens, and Commonalty, by Pretext of this Law, (made by themselves, and for their own private Lucre) did exact and levy yearly of the King's Subjects, Sums of Money amounting to Five thousand Pounds *per Annum*, and converted and disposed the same to their own Use, in Subversion of the good Government of the City; in Oppression and Depauperating the King's Subjects coming to the Markets; in Raising the Prices of Provisions in Markets, to the Damage of the King's Subjects; to the manifest Dishonour of the King and his Crown, contrary to the Trust reposed in them as a Body Politick.

In the first Branch of their levying Money, there is this Crime laid to their Charge: An Abuse of the Liberty of a Body Politick in its highest Point of Trust, *viz* of making Laws for the better Government of its Members, and other the King's Subjects repairing to the City. This is no distinct Liberty from the Body Politick, but incident to it, as hath been shewn; and therefore cannot for any Abuse be singly lost, or severed from their Body Politick, no more than the Body Politick can subsist, or attain the Ends of good Government, without such a Power, which the Law raiseth for a better Discharge of that Trust. But the Law entrusteth no Corporation with a Power to levy Money for their private Profit, be the Colour what it will; nor can such Power be derived from the Crown to any Corporation; neither can any Authority be produced, that gives the least Countenance to such an Authority: The Case of *Blackwell-Hall* is express against it; that was ruled good, because it was *pro bono publico*, and not *pro privato lucro*; it was but a small Reward for the Officer who attended that Business; the City got nothing thereby. Corporations, as well as other Communities not incorporate, are by Law entrusted with Power to raise Money

Money for Uses publick to the Community; but such Power is confined to the Precincts of the Community; they cannot lay their Charge upon Foreigners; as for Reparation of Churches, Highways, Bridges, and such-like publick Charges. These Crimes, at Common Law, came the nearest Treason of any. Sir *Thomas Halley*, 20 R. 2. for preferring a scandalous Bill, was adjudged to die as a Traitor; his Life spared at the Instance of the Bishops; and after 1 H. 4. N. 9. upon his Petition, the Judgment was reversed. To lay Impositions upon the King's Subjects was not only an Incroachment on Royal Power, but of the Power of Parliaments. And what Incroachments of Royal Power were Treason, what not, was in the Breast of the Judges, as appears by the Petition in Parliament 21 Ed. 3. N. 15. and after settled by the Statute 25 Ed. 3. Certainly that they have an immediate Tendency to a Rebellion, is evident. To alienate the Subjects Affection from their Prince, is a great Step that Way; and for so great a Body of Men (both for Riches and Reputation) to adjudge and publish, that the King, by his Prorogation, hath interrupted the publick Justice of the Kingdom, and the necessary Provisions for his own Safety, and the Preservation of his Protestant Subjects, is in Effect to determine and publish the King unfit for the Government, and by necessary Consequence would aliene the Affections of such as should believe them. Add to this the Power they assume, and justify, to levy Money to their own Use, upon Foreigners as well as Citizens, and that to any Sum; which Mr. Recorder pressed as the Force of his Argument, that little or more made no Difference. When those they have persuaded to draw their Affections, shall be assured of such a Legislative Power to assist them with Supplies; what Consequences may be expected, every Man may judge. Especially if one thing more had been effected, as was contrived and endeavoured to be established; that *London* should become the *Asylum* of all Malecontents, as *Rome* was heretofore, who might there vent their Gall against the Government *impune*, and without Fear of Conviction.

I shall consider the Offences particularly, as they stand upon the Replication, as to the Levying of Money.

1. They are charged, that they in Common Council assembled, respecting only their private Lucre, and in Breach of the Trust reposed in them for good Government, did assume upon them an illegal and unjust Power and Authority to levy Money upon the King's Subjects to their own Use, without any lawful Authority. And the City of *London* have by several Charters such expresse Power given them, but it is confined to their own Members; neither the King nor the Law ever gave them any Power over Foreigners, to charge them for the private Profit of this City. Now to assume such a Power is a plain Usurpation by a Body Politick upon the Crown and the Law, and is a manifest Breach of that Trust for good Government, by an open and avowed Oppression of the King's Subjects by Colour of Law, which is the worst of Oppressions; and therefore the Law not only gives a new Name, but layeth heavier Penalties upon Oppressions committed by Persons in publick Trust. It is called Extortion, and Oppression, where committed by any Person in publick Offices or Trusts. It is not sufficient, that the in-

jured Persons may have their Actions, or that they may be fined at the King's Suit; but the Law gives a Forfeiture of the Places of Trust, and all may be exacted from them, if the King please. The Persons injured may recover their Damages: They may be fined at the King's Suit, and their Offices seized, the Law adjudging all these Penalties but equal to the Crime. The Markets, as they stand upon the Replication, must be intended Free Markets, as the Streets of *London* are for all the King's Subjects to have recourse to with their Provisions, for Supply of the Inhabitants, without Payment of any Toll. The Sums of Money, for buying whereof the Law is made, as set out in the Replication, cannot be for any Toll of Markets, nor for Piccage or Stallage, which may be annexed to Markets; but Imposition upon the Persons or Goods coming and brought thither, whether they sell or not, and whether they have any Stalls or not. And the Process is admirable, that if the Person refuse to pay, he shall be turned out of the Market; as if the Law were, that every Man that walks in the Streets should pay 6*d.* and if he refuse, he should be turned out of the City. I must confess, the Process is as good as the Law. Thus this Crime stands upon the Replication. How have the Mayor, Citizens, and Commonalty varied it in their Rejoinder? Not one Jot; for as to this Point of Charge, that they usurped such a Power, and did execute it by making a Law for levying of Money in Oppression of the King's Subjects, they give no Answer at all, either by traversing, or denying, confessing and avoiding. If they had traversed their making of the Law, the Special Plea had amounted to the General Issue; but as it is, there is no Answer at all given to it. And therefore, if the making of such a Law, in the manner set forth in the Replication, be an Abusion of the Franchise, Judgment of Seizure must be given for that Abuse.

The Reasons given by Mr. Recorder, that the making of this Law will not forfeit the Franchise, were these:

(1.) That if the King had made such a By-law in the Charter of Incorporation, that would not have forfeited the Corporation; no more can it, if it be made by the Corporation afterwards.

I do not understand the mystick Inference of this Argument, unless it be to continue the Allegory of resembling Corporations to Kings, that they can do no Wrong, and consequently can forfeit nothing by their Acts, though against Law. Where the King annexeth any Power to any Offices or Corporations, which the Law allows them not to exercise, the Law doth not adjudge the whole Grant void, but only those Powers: But if Officers or Corporations shall assume upon themselves to exercise Powers which the King could not grant, against the End of their Institution, by Extortion and Oppression of the King's Subjects, it is not sufficient, that the Acts are void, because illegal; but the Offenders shall be punished in such manner as the Law provides.

(2.) In all the Suits where By-laws have been adjudged unreasonable and void, it was never held or said, that such By-laws forfeited the Corporation; and if it should, every little Mistake in the By-law should forfeit the Corporation, which would render the State of Corporations very unsteady and uncertain.

(1.) I answer, first, That in those Suits between  
Party

Party and Party, there was no occasion for the Court to declare how far the By-law has intrenched upon the Prerogative, by Breach of the Condition in Law annexed to the Liberty. But I remember, in the Case of the Mayor of *Wiccomb*, *Mich. 27 Car. 2.* upon Complaint in this Court to my Lord Chief Justice *Hales*, of his Refusal to sign the Pools Rates, he publickly declared to him, That if he persisted in his Obstinacy, a *Quo Warranto* might be brought to seize the Franchiſe.

2.) There is a plain Difference between By-laws, for regulating the Actions of the Members, and others within the Corporation, with a Penalty to enforce Obedience, and a Law directly for levying of Money: In the latter Case, the levying of the Money is the principal End of the Law; and to levy it *pro privato lucro*, and upon Foreigners, can receive no Palliation from being a Mistake against all the Laws and Authorities that are extant. But in the former Cases they have a Semblance for common Benefit, and possibly might be for the Benefit of all the Members, could the Restriction be made by Law; and the Penalty is but collateral, to enforce Obedience, and will stand and fall as the Law determines of the Principal. And the Law nowhere determines all the Cases, where the Liberty of any Members (as to Trade) may not, or may be restrained, whereby there is Room left for Mistakes; but against so known and universal a Principle, that no Corporation can levy Money for their private Profit, no Excuse of Mistake can be admitted.

3.) That which shelters all other By-laws from Oppression, is wanting in this; that as to the Recovery of the Penalty, they refer to a Course of Law, whereby they submit their By-law to the Judgment of Law for its Validity, that if they have committed any Mistake, it may be corrected by Law. But here the Remedy is plain Force; if the Person do not pay, he shall be turned out of the Market with his Goods: What was fettered Wrong, shall be recovered by Force. Thus Mr. Recorder's arguing makes the Duty a mere voluntary Payment; it is, *Solve, aut abi*, he hath his Election to pay, or be gone. I have not met with a more arbitrary Principle asserted or defended in a Court of Law. Should the King lay an Imposition of 12 *d.* on every one that entered *Whiteball*, with Order to the Porter to turn him out upon Refusal of Payment, what a Dust would this make, that the Subjects Rights to have Access to their Prince were invaded? Why, it is no more than *Solve, aut abi*. The Right of all the King's Subjects, to come with the Provisions to publick Markets, is far greater, and as great as of the Lord Mayor, or of any of the Citizens to come there; and the putting such Terms upon their Right is absolutely illegal, in the worst Sense that Word is at any time used. And herein Mr. Recorder was in the right, that more or less are not material, because every Sum imposed in such Case is illegal, and what is illegal, cannot be reasonable; which absolutely precludes the Averment, that the Sums were reasonable; which obtains only in such Cases, where of common Right some Sum may be taken.

4.) In the last Place, the questioning of a Liberty in a *Quo Warranto*, whether upon the Title, or for a Forfeiture, is upon the Right between the King and the Corporation. In case of Mistakes and common Errors committed, those

are not to be justified upon a Question of Right; and if they be, they are no longer Mistakes, but wilful Crimes. And therefore, in all times such Mistakes, both in making of Laws and Matters of Fact, have been passed by, and pardoned by the Charter of Confirmation, *etiamsi abusi fuerint*. And in the Multitudes of *Quo Warranto's* that have been brought, most ended by Submission before Pleader. But where it shall be insisted upon in point of Right, though in a smaller Point of Oppression, upon such Grounds as may equally intitle them to commit the greatest Oppressions, *Magis & Minus* do not affect the Case in point of the Right or Forfeiture; but the Question is, Whether they have broken their Trust? And if so adjudged, Forfeiture is a necessary Consequence.

(3.) The Third Reason Mr. Recorder insisted upon is 19. *H. 7. cap. 7.* That there had been no need of that Law, if Corporations By-laws would be Cause of Seizure

1.) I answer, That Statute extends not to the By-laws of Cities and Boroughs incorporated; but to Guilds and special Fraternities.

2.) It extends to good By-laws as well as bad, for greater Caution, that they put no new By-laws in Use till allowed; but the Allowance makes them neither better nor worse, only shelters for the 40 *l.* Penalty, as in the Taylor's of *Ipswich's* Case, *c. 11. b. f. 54.* So that the By-laws are but of the same Force they were before that Statute, &c. If they are good Laws, they may be executed without Allowance; and I have before shewn, that the Addition of another Penalty doth not dispense with the Penalty upon Breach of the Condition given by the Common Law. The other Crime of Oppression they are charged with, is, that they did exact and levy, to their own Use, the several Sums, and others, amounting to 5000 *l. per Ann.* in Oppression of the King's Subjects, and raising the Prices in the Markets for their own private Lucre.

*Secondly*, In their Rejoinder, taking by Protestation they are not of that Value, the Mayor, Citizens, and Commonalty acknowledge the exacting and receiving the Monies to their own private Use, but say not of what Value they are; but be they of what Value they will, attempt a Justification. It must be admitted, that if the Justification be insufficient, the Court cannot otherwise judge of the Crime than as it is laid in the Replication: where it appears to be as great Extortion and Oppression of the King's Subjects, and continued for many Years together, by Colour of an Authority usurped by them, as ever was practised by any Subjects upon their fellow Subjects; which cannot be denied to be an apparent Breach of that Trust committed to them, for the better Administration of the Laws and Justice to the King's Subjects.

The Parts of their Justification are these:

(1.) A Custom, that Time out of Mind, there have been publick Markets within the City.

(2.) They make Title to these publick Markets by Prescription, but claim not any Toll of common Right belonging to these Markets.

So that both upon the Custom alledged, and Prescription made, the Court cannot otherwise intend but they were free Markets, as in truth they were. Then they alledge a Custom, that Time out of Mind, they used at their Charge to provide Places where the Markets were held, and Stalls

Stalls and Stations, and other Accommodations for the Market-people, and Surveyors, and other Officers, for the better Government of the Market-people; and did cleanse, and were bound to cleanse, the Market-places. And for defraying of their Charges for all the time aforesaid, they had and used to have *diversa rationabilia Tolneta, Ratas, sive denariorum summas*, of all Persons coming to the Market, for Stalls, Stations, and other Accommodations for the selling of their Provisions. Although they received Monies Time out of Mind, and until the By-laws, they cannot tell what these Sums were, nor what to call them, whether Tolls, Rates, or Sums of Money. Tolls they could not be, that is admitted of all Hands, because against common Right, and to be paid upon Entry into the Market, whether sold, or not. They do not intitle themselves so much as to Piccage or Stallage; for they make no Title to the Land where the Markets have been, or are held. And we all know, that before the Act of Parliament provided at the publick Charge fit Places, and settled them upon a publick Trust for Market-people, what Provision was made of Places by the City, *viz.* in the publick Streets, where there ever was a Free Market for Provisions, as would have been made evident, had the City tendered a sufficient Issue. Besides, the Sums charged in the Replication can neither be of Piccage or Stallage; but laid upon Goods brought within the Market, whether the Vender made use of any Stall, or Breaking of the Ground, or no. Neither is it averred in this Plea, or by any Words of Reference can it be inferred, that the Sums in the Replication are the same with those they claim; they claim only by Custom *rationabilia Tolneta, Ratas, sive denariorum Summas*.

(3.) Mr. Recorder would justify this Plea, that such a general Claim, with an Averment that they are reasonable, is a sufficient Justification of particular Charges, which are against common Right; and insisted upon the Claim of the City of London of the Water-Bailiff's Office, with the Fees thereto belonging; and the Case of *Maidenhead* in *Palmer's Reports*, of the Market, with the Toll thereto belonging. These Precedents answer themselves, there was no particular Charge for the Toll or Fees, but what is charged particularly is answered; besides, the Toll and Fees are claimed of common Right, as belonging to the Market and Office. In *Maidenhead's Case* the Judges agreed, that Toll according to common Right might be granted by general Words; but Toll against common Right could not, nor be prescribed for but in Certainty. In that Case reported by my Lord *Hales*, *Franchise pl. 11.* the Difference is expressly taken; and the Authorities cited of *9 H. 6. 45.* *11 H. 6. 14. Fit. Avowry 126.* That Demands against common Right ought to be prescribed for in Certainty; and the Authorities produced by Mr. Recorder in the Lord *Cobham's Case*, *1 Len. 218.* *Hickman's Case*, *2 Roll. Abridg. 125.* and *Roll. 2. Abridg. 265.* The Case of *Dublin for Keyage or Cranage*, so the Case of *Hill and Hawks*, and the Bell-man of *Litchfield*, prove it. No Man questions but Cities and Boroughs, upon good Consideration, may prescribe for Sums of Money against common Right; and may prescribe for an apt Remedy for Recovery of such Sums; but all the Authorities prove it must be prescribed for in Certainty, that

the Court may judge of the Reasonableness of it. And whoever claims against common Right, must make out his Demand, both in Certainty, and that it is reasonable; it is otherwise; where according to common Right, as in Fines for Copyhold Estates, it is incumbent on the Tenant to shew if unreasonable. Besides, this Custom is void; because they do not intitle themselves to any Remedy for these uncertain Sums.

(4.) The next Part of the Justification is, that Time out of Mind, within the City there hath been a Common Council; the Imperfection whereof I have already observed.

(5.) They set forth a Custom for this Common Council to make Laws for the better Government of the Markets, and appointing convenient Places and Times for the Markets. *Et ex Affessione & in certitudinem reductione* of reasonable Tolls, Rates, or Sums of Money to be paid by Persons coming to the Market, *pro Stallis, Stationibus, & aliis accommodatiombus*; so as these Laws be profitable to the King and his People, and not contrary to the Laws of the Land. For the first Part of the special Custom, for the better Government of the Markets, and appointing convenient Places and Times, it needed no; for it is incident of common Right to every Lord of a Market, and the Grantee of every Market, without special Clauses, hath the same Power and Trust. And yet it is ushered in with great Solemnity, a Confirmation by *Magna Charta*, a Charter in Parliament, *1 Ed. 3. & 7 R. 2.* to make good a Custom, which is but the Common Law. Unless they set up this Custom to divert themselves, who have pleaded themselves Lords of the Markets, and so to fix it in others who are no Lords of the Markets; and thence to infer, that the Custom having intrusted others than the Mayor, Citizens, and Commonalty, with the Government of the Market, they the Lords of the Market ought not to suffer for the Misgovernment of those other Members. The second Part of the Custom is insensible. To make Laws and Orders, *ex Affessione & in certitudinem reductione* of reasonable Tolls, Rates, or Sums of Money, to be paid by all Persons coming to the Markets, for Stalls, Stations, and all other Accommodations. What is meant by *Affessione* without an *Anglice*, I cannot imagine; it is no Law Term; in its proper Signification, it signifieth Sitting together; whence our Sessions quarterly, and Sessions of Parliament, have their Name. The general Rates set by the Parliament upon the several Counties are sometimes called Assessments, and those intrusted with equally dividing the Rates in the several Parcels upon the Inhabitants, are called Assessors. In which of these Senses, or what Sense, the City's Counsel apply this Word, I cannot resolve; for Mr. Recorder did not resolve it. It seems by the subsequent Words to be explained *in certitudinem ponere*, and to have some Resemblance to the Parochial Assessments, where the Duty before is imposed by Law, but the Ascertainings of every Man's Proportion is done by the Assessors: And this Mr. Recorder inclined to in his Endeavours to support the Custom, generally for reasonable Rates. And in this Sense too the City seems to understand it, by waiving of the Assessment in their Rebutter. In our Surrejoinder we traverse the Prescription of taking of the Rates mentioned to be by the By-law assessed, and reduced into Certainty; which Issue they waive,

and insist only upon their Prescription generally alledged. Now, if taken in this Sense, the Clause is wholly insensible and incertain, because the Tolls, Rates, or Sums of Money to be paid, are not referred to any former Law that imposed them; they do not so much as refer to the Prescription, and the Sums claimed thereby; but the Clause is independent and absolute of itself. Neither can the Court now intend it to refer to those Sums claimed, because we would have so intended it; and therefore took an apt Traverse; but the City waived it in their Rebutter; and they do lie under this *Dilemma*, that either it must be so intended, and then being traversed and waived by them, the Issue must be taken against them; or it cannot be so intended, and then the Custom is incertain and insensible. And it cannot be intended by the Court for levying of Money by a new Imposition for the private Advantage of the City; that (as I have shewn) would be against Law, and is contrary to the Prescription they have made, and would vitiate their Plea, by claiming the Thing by Prescription, and by a new Law.

(6.) They set forth a By-law, which imports a new Imposition throughout, of several Sums to be paid to the Mayor, Citizens, and Commonalty; and they provide a new Remedy, that the Refuser should be removed out of the Market. They aver indeed, the Sums are reasonable; but set out no Fact upon which the Court may any ways judge they are so; which are incumbent upon him that will claim any thing against the common Right. They do not so much as aver, that the Mayor, Citizens, and Commonalty laid out one Penny out of their Revenue, for providing the Markets and Stalls, or what other Stations or Accommodations they furnished the Market-people with, so as to give the least Support to this extraordinary By-law.

And this Averment was industriously left out, lest Issue might be taken upon it; and sufficiently proved, that both the Places, Stalls, and Conveniencies, were provided for out of the publick Monies granted by Parliament, in Trust for all the King's Subjects coming to the Market, as we have set out in our Surrejoinder. Then it would have evidently appeared, that this By-law was not only in Breach of the Common Law Trust reposed in them for good Government; but in Breach of that Trust reposed in them by Act of Parliament. For all the King's Subjects, and these publick Monies received and laid out upon that Trust, are made the Consideration to ground the Subjects Oppressions upon by this By-law. Though they laid out not one Penny, as appears to the Court, yet they acknowledge to have received all the Money to their own Use; and their Justification failing, it must be intended, they did it in such manner as is set out in the Replication, which chargeth the highest Oppression that can be possibly committed by Subjects upon Subjects, and is destructive of common Justice and good Government. It is likewise as great an Usurpation upon the Crown, to lay Taxes upon the King's Subjects without his Authority, and openly and avowedly to justify it. How much superior this Offence is to those, whereupon Instances of Seizure have been given, I leave to the Observation of the Court. Their Reply, that the Toll only can be forfeited, or at most the Markets, can weigh little. That the Markets cannot be

forfeited, Mr. Recorder admits upon the Authority of the Case of *Maidenhead*, that Toll is not incident to a Market. This Imposition is wholly foreign to the Markets, which must be intended Free-Markets, wherein all the King's Subjects have Right to sell and buy, discharged of Toll, which shall be intended to have its Commencement by Erection, not by Grant to any Person, which the King may do in Cases of Fairs and Markets. Or if they be granted to any Person, if without Tolls, such Grants are upon Trust, for Benefit of the King's Subjects to buy and sell in; and the Grantee intrusted with the Rule and good Government thereof, for the Benefit of others. Besides, the seizing of the Markets is no Punishment of the Corporation, but of all the King's Subjects, who are the Persons oppressed, and whose Rights are invaded by this Imposition. The Oppression is by the Corporation, and by an Authority they claim over the King's Subjects, to lay an Imposition upon their Goods, and to levy it by Force; which is an Abuse of the Power the Law hath intrusted them with, and a Misuser of the Franchise to Oppression. To forfeit the Sums exacted and levied is idle, and no Punishment; for they never had Right to them, and so no Right can be forfeited. In the Case of *Maidenhead*, where a reasonable Toll was granted, they had a Right to Toll, which may be forfeited by Abuser, in taking an unreasonable Toll; but where there is no Right to take any thing, there is no Right to be forfeited, but that Right by Colour whereof the Extortion or Oppression is committed. If an Officer, by Colour of his Office, oppresses, the Office is forfeited, or the Officer may be fined; the Cases were cited by Mr. Solicitor. The Levying of two Shillings for the Penalty of breaking the Assize, forfeited the View of Frankpledge. Using of false Weights and Measures forfeited the Franchise of *Evesham*. And generally, whatever is an apparent Breach of good Government, wherewith every Franchise is intrusted, will, in point of Right between the King and the Franchise, amount to a Forfeiture; because it is a Breach of publick Trust reposed in them by Law.

2. I shall conclude with the last Branch of the Crimes laid to their Charge:

For invading the King's Prerogative, and publickly libelling of him, and his publick Acts, to the People.

The Replication chargeth the several Facts thus:

(1.) That the Mayor, Citizens, and Commonalty, in Common Council assembled, maliciously, advisedly, and seditiously, and without any lawful Authority, took upon them to censure the King, and the Prorogation of Parliament made by the King.

(2.) That they gave their Suffrages, and ordered a Petition should be presented to the King, in the Name of the Mayor, Aldermen, and Commonalty, containing the scandalous Matter alledged.

(3.) That they maliciously, advisedly, and seditiously, and to the Intent the said Petition should be dispersed and made publick, to persuade them, that the King by the Prorogation had obstructed the publick Justice of the Kingdom, and to stir them up to a Dislike of the King's Person and Government, and to disturb the Peace of the Kingdom; did order the said Petition (containing the said scandalous Matter) to be printed.

(4.) They

R. Quo Warranto I.

(4.) They afterwards maliciously, advisedly, and seditiously, and to the Intent, that the Petition should be dispersed and published among the King's Subjects, to aliene and withdraw their Affections from the King and his Government, did print, and cause to be printed and published the said Petition, in Contempt and Scandal of the King and his Government, and to the promoting and exciting of Sedition and Disturbance of the Peace within this Kingdom.

The Crimes, at Common Law, were *contra Pacem*, and punishable by Fine and Imprisonment in particular Subjects; where committed by Persons in publick Office, or intrusted with Government and Preservation of the Peace, they are of a deeper Dye. In the Title of the Statute, 13 Car. 2. cap. 1. for Preservation of the King's Person and Government, they are called seditious Practices and Attempts; for Prevention whereof that Law provides, *That if any Person or Persons shall maliciously and advisedly (by Writing or Printing) express, publish, or declare any Words, Sentence, or Thing, to incite or stir up the People to Hatred or Dislike of the Person of his Majesty, or the established Government; such Person is made incapable of any Office or Place of Trust, and to be further punished, according to the Common Law and Statutes in such Cases.*

This Law takes Notice, they were Crimes at Common Law, and punishable as seditious Practices. Sir James Bagg's Case allows Conspiracies and ignominious Crimes to be Causes of Disfranchisement; much more a Conspiracy of all the Members, to libel the Government, and alienate the Affections of the People from their Prince.

Now, What Answer do they give to these Charges in either Rejoinder?

To the first and last they give none at all; they shew no Authority for them in Common Council to debate, deliberate upon, and to determine of Prorogations of Parliaments by the King, or the Consequences thereof, which are *inter ardua Regni*, and not to be treated of but by the King's Writ: They are not of the King's and Kingdom's Common Council, but intrusted to advise in Affairs of the City, and *ne sutor ultra crepidam*. They are charged to have done this advisedly, seditiously, and without any Authority; and it is charged precedent to the Petition.

To the fourth, for printing and publishing of it, to the Intent, that it should be dispersed amongst the King's Subjects, to aliene and withdraw their Affections from the King, laid to be 13 Jan. 32 Car. 2. they say it was printed by Samuel Roycroft, by the Mayor's Appointment; *Quæ quidem Petitio & Impressio sunt eadem Petitio, Impressio, & Publicatio*, in the Replication mentioned: And traverse, *Absque hoc quod aliqua Petitio concern' Prorogationem præd' fact', ordinat', publicat', sic impress. fuit aliter, vel alio modo quam;* but do not add *vel alio tempore*. In which respect this Plea is stronger than the former, to involve the City in the Guilt.

Then they own, the Petition was voted and ordered to be preferred and printed *nemine contradicente*, to be sure to leave not one Citizen out of the Guilt; but they do aver, the Printing was to undeceive their fellow Citizens, whereas the Charge is, that it was to deceive them. The whole Plea amounts but to the general Issue, admitting the Petition itself were justifiable, and

the making of the Petition lawful. Many Things in themselves are lawful, yet if done with an evil Intent, and for an evil Purpose, become unlawful and criminal, and upon *Not Guilty*, Proof must be made of the evil Intent; where the Thing itself is lawful, there needs no other Proof. To lie under an Hedge on *Shuter's Hill* is lawful; but to lie there in Wait to kill or rob a Man, is unlawful, and imports Scandal. To lay Wool near the Sea-side is lawful; but laying it there with an Intent to export it, is criminal, and forfeits the Wool. And it is not good in Pleading to answer such Intent with contrary Averments; but where the Intent is Substance, it must be traversed or denied specially, otherwise the Plea amounts to but the general Issue. This Manner of Defence, or Shadow of Jultification, proves one especial Ingredient of the Charge; that it was done *advise*. The City say, it was done upon weighty Considerations, and many Occurrences deliberated upon, and relate to them, all upon Record, that the Court may judge, whether they had not good Reason for what they did. And if they could judge, that their whole History taken together are no sufficient Considerations for any Subjects to agree or order any Petition to be preferred and printed, to stir up the Subjects to a Dislike of the King's Person and Government, which is charged upon them, and not answered; the Court must adjudge the Fact to be done maliciously, and seditiously. But the Words of the Petition are in themselves scandalous to the King and Government. Petitioning is lawful, and the City of *London* have often petitioned the King with good Acceptation, and observed a good Decorum becoming Subjects, both in the Matter and Manner of their Petitions; they used not to advise or meddle in Matters of State, but when sent for to advise, they confined themselves to the Affairs of the City. They never before, as I have met with, charged the King's Acts of State as Interruptions of the Prosecution of publick Justice.

The Words of the Petition are, *Your Petitioners were extremely surpris'd at the late Prorogation, whereby the Prosecution of the publick Justice of the Kingdom, and the making the Provisions necessary for the Preservation of your Majesty, and your Protestant Subjects, hath received an Interruption.* To delay, interrupt, or deny Justice, spoken of any Person intrusted with the Administration of Justice, and spoken of him in point of his Trust, always imports Scandal; in the Case of the common Magistrates, they do necessarily import Breach of Duty; neither in common Parlance amongst the Vulgar, nor any History or Author, that I have met with, were they ever used in any Sense of Credit or Reputation to the Person of whom they were spoken or published. Interruption of Justice is a greater Imputation than Delay barely, because the one may be a mere Omission, but Interruption imports some Act, whereby Justice is stopped; but both are temporary Denials of Justice, as Denial is an absolute Stop of Justice. *Nulli negabimus aut differemus Justitiam*, are not only the Words, but the Duty of every King. To say or publish of or to a King, in the Point of the Exercise of his kingly Office, and a Point of as high Trust as any is, that of the Prorogation of Parliaments, that he hath interrupted the Prosecution of the publick Justice of the Kingdom,

Lukner and  
Cruchly,  
4 Car. Cro. 140.  
Lock and Lock  
15 Jac. 1. Roll.  
Abr. 50.

dom, imports the greatest Scandal imaginable: For it was more of the King's Duty than of either Houses of Parliament, to promote the Prosecution of publick Justice, especially in the Cases set forth, which so nearly concerned his Person; and therefore the Charging of the King with the Interruption of that Justice, is of greater Imputation to the King; and the more Instances they give, it is an Aggravation of their Crime, by charging the King with interrupting the publick Justice in all these Instances. And there is as much Venom concealed in as few Words, as ever I met with. *Tacitus* did never outdo the Penner of that Petition, whereby all the principal Attributes, the Law makes necessary for Princes, are impeached at once, both the Judgment, Mercy and Wisdom of the King. The Interruption of the publick Justice reflects upon his Justice in a high Manner. The Interruption of the Means of his own Preservation, besides his Justice, reflects upon his Wisdom; that the King should not take care thereof, or did not foresee the Danger he put himself into, by the Prorogation. The Interruption of the Means for the Preservation of his Protestant Subjects, impeacheth his Mercy too, and chargeth the King with Cruelty to his Subjects, in taking no better care for their Preservation, when under such imminent Dangers; with a secret Insinuation, that as he had stopped Justice against his Popish Subjects, so he was regardless of the Preservation of his Protestant Subjects. What greater Malice could be inclosed in a Nutshell? If Words were dubious, and of a double Signification, and might be taken in a good Sense as well as bad, they ought not to be published by Subjects of their Prince; and when charged to be spoken or published in the worst Sense, to withdraw the Subjects Affections from their Prince, the Court cannot intend them spoken in any other Sense; that must appear upon the Evidence, which cannot be in this Case, because they have not pleaded the general Issue, nor traversed that Point. But here the Words can bear no other Sense, but a direct Scandal to the King and his Government, in the Point of Prorogation of Parliaments. That the City so understood them, is evident by the Petition, in that very Clause, where they say, they were extremely surpris'd at the late Prorogation. Why should they be surpris'd? If the King had done nothing thereby, but what was just and good for his People, they had often tasted of his Goodness, and could not be surpris'd at that. It must then be some very ill Thing in the Prorogation, that so extremely surpris'd them, and filled them with such Terrors, as throughout the Petition they express. And they discover their Minds plainly, that the Effects of the Prorogation were the Causes of their Surprisal, *viz.* The Interruption of the Prosecution of the publick Justice of the Kingdom, and of making the necessary Provisions for the Preservation of the King and his Protestant Subjects; and in the next Paragraph they explain themselves further, and call that a Delay, which before they called an Interruption; that they were even impatient of the least Delay, of the long-hoped-for Security, whilst they see the King's Life invaded, and the true Religion undermined, and their Families and innocent Posterity likely to be subjected to Blood, Confusion, and Ruin. The panick Fear, and dismal Consequences, are charged upon the Pro-

rogation. And to what other Purpose do they publish this severe Sentence upon the Prorogation, with their dismal Fears, but to affrighten the King's Subjects, and beget the like Fears in them? The natural Consequence whereof is, to withdraw their Affection: *Oderunt quem metuerunt Populi.*

Mr. Recorder, though he could not produce one Authority, that To interrupt publick Justice, was ever used in a good or justifiable Sense; yet endeavours to evade the Scandal of the Words by proper Answers.

That these Words are not spoken of the King, but of the Prorogation, as Consequences of it. Is not this Quibbling? The Prorogation is only the King's Act of proroguing the High Court of Parliament. And to charge the Acts of a King, or other subordinate Magistrate in Execution of his Office, with Injustice, Folly, or Insanity, is the same Thing as to charge the Persons themselves.

No, saith Mr. Recorder, unless the Action had been charged to have been done with such Intention; but they do not charge the King: And that it is so explained in another part of the Petition, by saying, *But that which supports them against Despair, is the Hopes they derive from your Majesty's Goodness, that your Intention was, by this Prorogation, to make way for your better Concurrence with the Counsel of your Parliament.* Evil Intention may make an Act, otherwise good, to be bad and against Law, by Intendment of Law; the Intention is evil, and the Person answerable for all the Consequences thereof. If a Man throw a great Stone over the Wall, and a Person is killed, the Law adjudgeth it Murder: He cannot justify it by averring he had another Intention. So in the Matter of Scandal, if an unlawful Act or Crime, which purports Scandal, be charged upon a Person, it is no Justification, or Excuse, to aver he did not charge the Person, nor his Acts, with doing it with an evil Intention; but as the Law supplies Malice in the Criminal, where the Act is unlawful, so it intends Malice in the Libeller, in a Matter which in itself imports Scandal. Several Cases may be put to this Purpose. To charge the Wife with poisoning her Husband, is actionable, though not alledged done voluntarily, or with an Intent to kill; the Law intends it. In this Case, they charge that the King by his Prorogation interrupted the publick Justice of the Kingdom, and with the dismal Consequences, which in their Judgment would follow thereupon, and publish this to affrighten the whole Kingdom; and that they were near despairing of their Safety, but hoped his Majesty did likewise intend by the Prorogation to make Way for his better Concurrence with the Counsel of his Parliament. A pretty Compliment for so infamous a Charge! And if it import any thing, it is a further Reflection upon the King, that he had not before concurred with the Counsel of his Parliament. But to fix the Matter home, Mr. Recorder in the last place justifies this Libel from the Truth of the Fact, that the publick Justice of the Kingdom, and finding out Means for Preservation of the King and his Subjects, had received an Interruption by the Prorogation. This toucheth to the Quick, and is more than the City have averred in all their Pleadings; they have nakedly represented their several Facts, precedent to the Petition; and leave it to the Court to judge, whether

whether there be sufficient to justify them, to make and publish such a Petition. But to aver it to be true, is to equal the Crime of the Petition, in charging the Prorogation with the Interruption of the publick Justice. But I hope, upon better Consideration, he will change his Opinion, and likewise upon the Inference he made, that if true, it is no Scandal to print and publish it to the King's Subjects; for in both Points he is apparently mistaken. It is admitted there was a Plot, and such Proceedings as are set forth against Delinquents; and that the King by his Proclamation and in his Speech exprested his Sense of the Plot, and pressed the Parliament to proceed to Trial of the Lords in the Tower committed for the Plot, and that there are many such Bills depending in Parliament. And it shall be admitted, that upon the Prorogation all these Proceedings were stayed, and, if Mr. Recorder please, received an Interruption; and to say so is true. But in this Case, if the City had been of an Opinion, that the Parliament, upon the King's Signification of his Pleasure they should proceed to the Trial of the Lords, did not make such Haste to try them, as the City judged was necessary for the Preservation of their Lives and Fortunes; and thereupon the City should have petitioned the Parliament to proceed to the immediate Trial of the Lords in the Tower, and thereby charge them, that they had delayed them the publick Justice of the Kingdom, by not proceeding sooner to the Trial of them, according to the King's Desire, Mr. Recorder would not have averred the Matter of Delay of Justice to be true, and therefore no Scandal to the Parliament; but he would then have found out the Difference between staying of Suits and Proceedings in Courts by the proper Judges, and the Delays and Interruptions of common Justice; the latter are unlawful and criminal, and against the Duty of the Judges, but the former upon just Grounds are lawful, and many times in Prosecution of common Justice; and many times to proceed in such Cases, would be great Injustice either to the Criminal or the Publick, where the Witnesses on either Side are not ready, or for some other good Cause the Judges put off Causes till another Time, or adjourn a Court before all the Causes be tried. No Lawyer can truly say, that by the putting off the Cause, the Prosecution of Justice hath been interrupted; or will it be any just Justification for him for such Scandal, that there were Causes depending before the Adjournment. The Acts of inferior Magistrates are not to be examined, censured, and adjudged, much less scandalized by those, that are under their Magistracy; that would let in Confusion, and tend to the Overthrow of all Government. To say of a Justice of the Peace, *You have perverted Justice*, is actionable; *Seignior De la Ware* and *Parolet*, *Trin. 37 El. More 409.*

*Mich. 1 Car. 1. Cro. 14. Sir John Isham versus Yorke; I have been with Sir John Isham for Justice, but could never yet get any at his Hands but Injustice.*

*Trin. 7 Car. Cro. 223. W. Marsham versus Briggs; Sir William Marsham is but an half-eared Justice, he will hear but one Side.*

*Mich. 8 Eliz. Rot. 1. Walsh* was indicted for scandalizing one *Sir Robert Catline*, Chief Justice, and this Court, by saying, *My Lord Chief Justice is incensed against me: I cannot have Justice, nor*

*can I be heard; for it is made a Court of Conscience.* He was afterwards discharged upon the general Pardon, *8 Eliz.*

They may be judged by Superiors, but not by Inferiors. Where the common Law alloweth or authorizeth the Staying of Proceedings by Adjournment, or otherwise; to say the Act is done to delay or interrupt the publick Justice of the Kingdom, or that thereby the publick Justice of the Kingdom hath received Interruption, is not only highly scandalous, but absolutely untrue: For it is according to the Rules of common Law, and the publick Justice of the Kingdom, and may be the promoting of common Justice, and for the Benefit of the Publick, and ought to be so intended, when done according to Law. For the Reasons of such Acts, much less the secret Intentions of the Judges, or of the Persons whom the Law hath entrusted with such Powers, are not to be examined, censured, or condemned by any Subjects, by any Corporation whatsoever. Petitions may be rejected by either House of Parliament, and so may Bills too, though they have the greatest Semblance of common Benefit; yet this is no Denial of Justice, nor to be scandalized under any such Notion: They may defer the Consideration thereof, or enter upon other Business; that is no Delay or Interruption of common Justice.

The King may do the like; he may reject the Bills passed by both Houses, or he may advise upon them by these Acts, which the Law allows to be no Interruption of publick Justice: The King may adjourn or prorogue the Court of Parliament. Anciently those Words were used and taken promiscuously, though now from the different Effects they are differently used. And Mr. Recorder owns, that the King is by Law intrusted with this Power, and it is happy for the Subjects he is so intrusted, it being for their Benefit; which is a flat Contradiction to his Position, that it is true, that the publick Justice of the Kingdom is interrupted, or hath received an Interruption, by the Prorogation: Because what is just and lawful, *secundum legem terræ*, cannot be unjust or unlawful, which every Interruption of publick Justice is; and if the Act be not unlawful, it is no Delay or Interruption of Justice. And if the Subjects cannot examine into or censure these lawful Actions of their Princes, but must intend them to be upon just Grounds, and for their Benefit, and in order to their common Safety; to charge their Prince's Actions with the Interrupting of publick Justice, and of the Means for his own and his People's Preservation; and to publish this to all his Subjects, is, in Judgment of Law, a false, scandalous, and malicious Libel; and if not sufficiently punished, where will it end? To publish a Libel is in no Case lawful, be the Matter never so true, nay, though the Party who is libelled be dead; and the Degrees of the Crime, where against a private Person, and where against a publick Person, appear in the Case cited by Mr. Solicitor in the Reports, *fol. 125.* And that it is against all Laws both of God and Man, and the Mischiefs there represented. In the Case of all Common Pleas, the Offender shall be fined, and by the Statute of *13 Car. 2.* all natural Persons are for the future disabled, and incapable of any Office or Place of Trust, where the Libel is against the King. But where the Matter is false, and the Libel published against the King, to



withdraw his People's Affections from him, and that by the joint Counsels of a Corporation, there can little Room for a Question remain, but they have broken their original Trust for good Government, and misused their Liberty to Licentiousness. How criminal is it for private Subjects to deliberate of, and determine, and publickly to censure the Counsels and Actions of their Princes, will appear by the Case of *Stubs*, *Mich. 21 & 22 Eliz. Rot. 3.* where the Case was, that a Treaty of Marriage being on Foot between the Queen and Duke of *Anjou*, *John Stubs* published a Book called, *The Discovery of a gaping Gulph, whereinto England is like to fall by another French Marriage*: containing a Dissuasive against the Marriage: And therein amongst other things chargeth, *That this Marriage bath Sin in itself, and of itself only, for being against the Law of God.* And in another Place, *That it opens all the Ports of Foreign Enemies*, with several bad Reflections upon the Duke. This Book was delivered by *Stubs* to *Hugh Singleton*, a Stationer, to print, who caused it to be printed and published. They were both indicted for it in this Court, and the Indictment laid to be, with Intent to hinder the lawful Purpose of the Queen and the Duke to marry, and to animate and stir up the Queen's Subjects to Rebellion, and to raise Discord between the Queen and her Subjects, and to subvert the good Government of the Kingdom. Upon *Not Guilty* pleaded (for they had not the Confidence to justify) they were found Guilty, and Judgment given for cutting off their right Hands upon the Statute *1 Eliz. cap. 6.* for libelling the Queen. In this Case the Censuring of the Queen's lawful Purposes, in a more private Matter than the Administration of her Regal Office, by common Subjects not called to advise, is a Subversion of good Government within the Kingdom; and the Publishing the Effects and Consequences thereof to be sinful and dangerous to the Kingdom, is a Libelling of the Queen and her Government within the Statute. The Censuring of the Exercise of the King's lawful Prerogation, and charging it with the Interruption of publick Justice, is of a more dangerous Nature. Every natural Person convicted of this Offence, is by the Statute of *13 Car. 2.* disabled for any publick Trust; the Proceeding against the natural Person could not be for Want of Proof, it being transacted in their Council. In this Proceſs against the Whole, they have confessed it with the Aggravations laid. If the King pass not a Bill which the City of *London* have a Mind to, this Rejection of such Bill shall in Print be published to all his Subjects, to be a Denial of Justice. If the King reprieve a Malefactor, it shall be a Delay or Interruption of publick Justice. To pardon a Malefactor shall be a Denial of publick Justice of the Kingdom. So that the Tenure whereby the City of *London* hold their Franchise, and all their Liberties, will be quite changed and altered, without the Aid of an Act of Parliament. The City will no longer hold all their Liberties from the Crown *quamdiu se bene gesserint*, which was their ancient Tenure, reserved by the Crown and the Laws of the Land upon their first Erection, but will gain *absolutum Dominium*. And the King shall exercise no just Prerogative, but at their good Pleasure; otherwise they will blast him to his People, and aliene their Affections from him. I have done with the Case. I have nothing more to offer. I have at large proved, that the Cor-

poration of *London* is a great Franchise and Liberty. I have proved that Point of Forfeiture, and their Demeanours towards the Crown: They stand in the same Level with other Cities and Boroughs, which be forfeited and seized. I have presented to the Court two superlative Offences, both against their Prince and their Fellow Subjects, as well can be; wherein they have exceeded all other Cities and Boroughs, and themselves too in any former Age. The Manner of their Pleading, and Defence at the Bar, argue the Disease to be dangerous and infectious to other Cities and Boroughs, and of the Nature of the King's Evil, incurable without the King's Hands. I have this Day brought them in Judgment before the Court, in order to their Cure. Nothing remains for effecting of the Cure, but the Judgment of the Court for Seizure of the Franchise of *London* into the King's Hands; which I demand for the King.

*Mr. Attorney General* having taken up so much Time, the Court put off the Hearing the Counsel for the City till another Day, when *Air. Pollexfen* argued, as follows:

*Mr. Pollexfen.* IN this Case, when I consider the Greatness and Consequence if it, That it affects the King, the Parliament, the Laws, the very Government under which we have lived, this great City of *London*, and all other Corporations and People of *England*, and their Posterities, for ever, I cannot but be troubled, that I should be the Man to whose Lot it should fall to argue it; but that which comforts me is, that your Lordship and the Court, upon whom the Judgment of this great Case depends, will help out my Defects, and according to what is required in the great Places you bear, take care and provide, that by your Judgment the ancient Government and Laws of this Kingdom receive no Damage or Alteration. The King's Counsel have on their Side only some general Words out of old Records of Forfeitures and Seizures of Liberties, which are of uncertain and doubtful Sense; but there is not on their Side produced any one Precedent, Judgment, or Opinion, to maintain the Point in Question, *viz.* That a Corporation, or Body Politick, ever was determined, or dissolved, or taken away for a Forfeiture: No, not in the maddest of Times, in the Times of *Edward the 2d.* and *Richard the 2d.* when the Tumults and Disorders were so great, that they not only seized and took away the Liberties and Franchises, but the Lives of Princes, Nobles, Judges, Lawyers, and all that stood in their Way: In those Times, though they have hunted and searched with all Diligence, not one Instance of a Corporation taken away, or dissolved by a Forfeiture, is cited. So that from hence I hope I may safely conclude, that I argue in this Case for the old and known Laws, as they have been ever practised through all Ages, and against that which never hath been practised or known; which is a great Encouragement to me. The Pleadings being very long, I shall only repeat so much of them as I use, when I come in order to speak of them.

I. The first Thing proper to be spoken to is the Information itself, and therein I make this Question: Whether as to that Part thereof, that chargeth the Corporation with usurping upon themselves the Being of a Corporation, whether that

that be properly brought against the Body Politick, as this is, or ought to have been brought against the particular Persons? I do agree, that as to the other Things mentioned in the Information, the having Sheriffs, Justices, &c. the Information is properly brought against the Corporation: And I do also agree, that it may be good as to those Things, though bad and insufficient as to the Charging the Corporation with Usurpation of their Being, without lawful Warrant or Authority. And, that I may come singly to this Question, I do put out all the other Franchises in the Information, and take only what concerns this Point; and then the Information, as to this Point, chargeth, That the Mayor, Commonalty, and Citizens of *London*, by the Space of a Month last past, before the Information, did use, and claim to have and use, without any Warrant or Regal Concession, within the City of *London*, the Liberty and Franchise following, *viz.* to be a Body Politick *Re, Facto, & Nomine*, by Name of Mayor, and Commonalty, and Citizens, and by that Name to plead and be impleaded; which Liberty, Privilege, and Franchise, the same Mayo:, Commonalty, and Citizens, upon the King, by the Time aforesaid, have and yet do usurp. This is the Substance of the Information as to this Point; and, Whether this Information thus brought, as to this Matter, be sufficient in the Law, upon which a Judgment can be given, or ought to have been brought against particular Persons, is the Question. I conceive it ought to have been brought against particular Persons, and is insufficient as it is, and that no Judgment can be given upon it, supposing the Defendants had demurred, or pleaded nothing to it. To make out the Insufficiencies, I desire to consider what it imports.

1. The very Bringing the Writ, and exhibiting the Information against the Corporation, imports and admits the Mayor, Commonalty, and Citizens, to be a Body Politick, capable to be sued and impleaded, *respondere, & responderi*; otherwise there is no Defendant, no Person in Court, against whom the Suit is brought. It is not enough, that the Person sued be a Person by Supposition, or a pretended Person, but none in Reality. If a Writ or Information be brought against a Baron and Feme, this must admit, that they are Baron and Feme really and truly; and if there be any thing after in the Writ or Information, that shews, that they are not truly and really Baron and Feme, but that they do wrongfully and unduly take upon them to be Baron and Feme, when in Truth they are not, this would be contrariant and repugnant, and abate the Writ or Information. The like is supposed by the Bringing the Writ or Information against the Body Politick; it supposeth and affirmeth them really and truly to be such, and the subsequent Affirmation, that they usurped so to be, and are not so really, is contrariant and repugnant.

2. When in the Information it is alledged, that the Mayor, Commonalty, and Citizens, the Liberty, Privilege, and Franchise of being a Body Politick, *Re, Facto & Nomine*, and to be sued and impleaded upon the King, have and yet do usurp; to usurp or do any Act, of Necessity imports and admits a precedent Existence of the Person that doth usurp, or do the Act, to the Act done. Particular Persons may usurp, and take upon themselves, that which they have no

Right unto: The Persons, that did the Act, did before exist, and had a Being. And when a Corporation is said to usurp, it of Necessity must be supposed to have a precedent Being. The Sense of Usurpation in a *Quo Warranto* is the Subject's taking upon him Franchises without Warrant.

My Lord *Coke* saith, That Usurpation in the Common Law hath two Significations: *Inst. 1. 277. b.*

1.) The one, when a Stranger presents to a Benefice, and his Clerk instituted and inducted, he gains the Advowson by Usurpation.

2.) The other, when any Subject without lawful Warrant doth use any Royal Franchises, he is said then to usurp upon the King.

So that an Usurpation supposeth of Necessity a Subject or a Person precedently *in esse*, that useth the Franchise, or that doth usurp. That which is not *in esse*, that hath no Existence, cannot use any Franchise, cannot usurp. The very alledging that they usurp, doth admit of Necessity an Existence precedent in the Corporation, such as can usurp, or act, and therefore this Information is inconsistent with itself.

3. But another Reason to prove, that it ought to be against particular Persons, and cannot be against the Body Politick, is drawn from the Judgment, that must be given upon this Information, if Judgment for the King. The Judgment must have two Things in it:

1.) To damn the Corporation, *Quod penitus extinguatur & excludatur* from being a Corporation for the future; for being wrongfully usurped, it cannot be continued: A Judgment to continue Wrong and Usurpation can never be a right Judgment.

2.) A Fine to the King, for the usurping it for the Time past. This Judgment may and ought to be given, where the Information is against particular Persons, for usurping upon themselves to be a Corporation, and they shall be fined and imprisoned; but this cannot be where the Information is against the Body Politick; for by the Judgment the Body Politick is extinguished and dissolved, and no Fine can be imposed upon that which is not: So that hereby the King must lose his Fine, which the particular Persons usurping ought to pay, and the Law is agreeable always to itself, and the Means answerable to the End. I suppose no Man will affirm, that where a Suit or Judgment is against a Corporation, that the Fine or Execution shall be against all, or any particular Member.

For the Precedents and Authorities in this Point,

(1.) I do agree, that there be Precedents in the Crown Office of *Quo Warranto's* brought against Corporations in such Manner as this is brought, for usurping to be a Corporation, and to claim divers other Liberties.

*Quo Warranto* against the Bailiffs and Burgeses of *Stratford*, for claiming to be a Corporation, and to have divers Liberties and Franchises; thereupon a Plea put in, and a Confession of their Claim by the King's Attorney. *P. 2 El. 1. 1.*

The like against the Corporation of *Reading*, the like Plea and Confession, the very next Term after the Information filed. *M. 3 & 4 El. 1. 4.*

Against the Corporation of *Horsbam*, a Plea and Confession by the Attorney. *H. 14 Jac. r. 37.*

The like against the Corporation of *Dover*, but nothing done upon it besides Plea put in. *H. 19 Jac. r. 26.*

The like against *Bath*, a Claim put in, and confessed. *H. 20 Jac.*

The like against *Brackley*, and a *Noli prosequi*. *H. 20 Jac. r. 58.*

The like against *Baston*, a Claim put in, and confessed. *T. 3 C. 1. r. 22.*

The like against *New Sarum*, Imparlanche, and nothing more upon it. *T. 2 C. 1. r. 47.*

The like against *Bridgport*, Claim and Confession. *T. 6 Car. 1. r. 43.*

The like against *Biddesford*, a Claim and *Noli prosequi*. *M. 2 C. 1. r. 36.*

The like against *Wiccomb*; they plead themselves a Corporation by another Name, and traverse the Name in the Information; nothing more on the Roll. *M. 8 C. 1. r. 42.*

And it is probable, there may be more like these; but if of any Authority, they are for me, and not against me.

1.) For that they all being for claiming other Liberties, as well as to be a Corporation, and being good and sufficient as to the other Liberties and Privileges, that the Corporation claims; though insufficient for this of claiming to be a Corporation, they must be proceeded upon, if the Attorney pleaseth. But is any to be found where only the Claiming to be a Body Politick, and nothing else? or if other Things questioned, yet only proceeded in as to this Particular of claiming to be a Body Politick, as in this Case? That will be like.

2.) In all these nothing is done; a Claim or Plea put in, and that confessed, or *Non prof.* or not proceeded upon to Judgment. Perhaps not proceeded in, because insufficient; and so are Authorities for me: For there being so many of these, which are either *Non prof.* or not proceeded in, perhaps the Reason might be, because insufficient in the Law, as to the Corporation, and so are Authorities for me in this Case. But one there is found.

*Quo Warranto* vers. Bailiffs and Burgessees of *New Malton* in *Yorkshire*; *T. 6 Jac. r. 3.* *Quo Warranto* they claim divers Liberties, as Courts, Markets, and others, and amongst the rest, to be a Body Politick. They put in a Plea, and make their Claim by Prescription; Issue is joined, and tried by *Nisi Prius* at *Tork*, and found against the Corporation, and a Judgment entered, *Quod Libertat' & Franchesia prædict' in manus domini Regis capiantur & seisiuntur, & quod Ballivi & Burgeses capiant' ad satisfaciend' Dom' Reg' pro Fine suo pro Usurpacion' Libertat' & Franchesia prædict'.*

There is no Mention of this Case in any Book or Report, as far as I can learn; so that this passed *sub silentio*. Next, how can this Judgment be good?

[1.] How can that be a right and lawful Judgment, which shall be given for the Continuing a Thing, that is by the very Judgment adjudged to be unlawfully usurped, and a Fine for it? It is directly *oppositum in objecto*.

[2.] How can the Corporation be seized into the King's Hands? *Extinguatur & excludatur* is proper; the Corporation cannot be in the King.

[3.] How could the Bailiffs and Burgessees be

fined? when they are vanished and gone, there is no Corporation in Being; that which is laid upon a Corporation cannot be levied upon the particular Members.

I have made Inquiry after this Borough of *New Malton*: It is a small Borough, within the Manor of the Ancestors of my Lord *Eure*; it did anciently send Burgessees to Parliament, but from the Time of King *Edw. 1.* to the Beginning of the Long Parliament, 1640. it sent none then; upon Petition a Writ was ordered, and they then and ever since have chosen Burgessees: My Lord *Eure* being Lord of the Manor, and offended with them, did prosecute this *Quo Warranto*, and they having neither Lands, Revenues, or Estates, to defend themselves, he easily prevailed, they never in Truth being incorporate, nor having any Charter. But that which I give for Answer to these Precedents is,

1.] They are all, where not only the Being of the Corporation, but also divers other Liberties were in Question; so that the Informations were good in part, and not worth the while to question whether good, as to that Part of their being a Corporation. The Fine upon them for usurping the other Liberties, would have been more than they could bear or pay.

2.] That this is but one Judgment, and in a Case of a small Borough, and that Judgment, as entred, not agreeable, but inconsistent with the Rules of Law or Reason. The Body Politick could not be seized into the King's Hands; but whenever a Judgment is given for the King, for Liberty which is usurped, or extinct in the Crown, the Judgment must be *quod extinguatur*, and that the Person, that claimed them *deinc'ps Libertat' & Franchesia prædict' nullatenus intromittat', sed ab usu earund' amodo omnino cessat; quodque* the Person that used them, *pro usurpacion' Libertat' & Franch' prædict' super Dominum Regem capiat' ad respondendum diei' Dom' Reg' de Fine suo pro Usurpacione Libertat' & Franch' prædict'.* That this is the Form, *C. En. 559. a 537. 527. b.*

3.] That this Judgment of *New Malton* passed *sub silentio*; for there is no Mention of it in any Book, nor doth it appear, that ever the Question was moved or debated. And for Precedents in Matters of Practice and Process, they are of Authority; but in point of Law, unless they have been upon Debate, are of little Authority to prove what the Law is. *Rep. 4. 94. Slade's Case, L. 5. E. 4. 110.*

But on the contrary, all the Precedents, that are in any printed Books of Informations, were brought to question, Whether Body Politick, or not, are against particular Persons by Name:

Against *Christopher Helden*, and others, *C. En. 527. Pal. 9. fo.*

*Quo Warranto* against *Cusack*, and others. *Rol. 2. r. 113, 115.*

*Quo Warranto* against the *Virginia* Company was brought against *Nic' Farder*, and others, *Quo Warranto* they claimed to be a Corporation. *Rol. 2. 455.* Some of them pleaded insufficiently, upon which there was a Demurr, and a Question, How the Judgment should be entered? for that the Master and Chief of the Company were left out of the *Quo Warranto*. By which it appears, that it ought to be brought against the Master, and particular Members by Name.

Next, for the express Authorities in this Case, to prove it cannot be against the Corporation.

*Rot. Rep.* 2. 15. is exprefs, That if a *Quo Warranto* be brought to difsolve a Corporation, the Writ ought to be brought againft the particular Perfons; for the Writ fuppofeth, that it is no Corporation. The Difference there taken, when the Attorney General fuppofeth the Defendant to be a Corporation, otherwife when he queftions them as Inhabitants of a Vill, then they ought to enable themfelves, they muft then fhew themfelves a Corporation, alfo prove it.

My Lord *Hales*, in his Common-place Book, in *Lincolns Inn Library*, fol. 168. faith thus: *Nota, fc. Quo Warranto foit port pur usurper de une Corporation jerra port vers particular Perfons, quia in difaffirmance del Corporation, & Judgment jerra donne que jerra ouste; mes si le Quo Warranto foit port pur Liberties claim. per Corporation, jerra port vers la Corporation.* This is pofitive.

This, if it were only my Lord *Hales's* Judgment, were of no little Authority; but I think it is a Report taken upon the Cafe of the *Quo Warranto* againft *Cusack* and others. But Mr. Attorney finding, as I believe, all the Precedents to be againft him, (for in them all there are either *non Prof.* or no Proceeding to Judgment, the Cafes whereof, or at leaft fome of them, probably might be the Inſufficiencies of thefe Informations) and finding alfo the Authorities in Print, which have been cited to be all againft him, and none for him, endeavoured to maintain the Information as brought not againft the Corporation, but againft the Citizens or Inhabitants of the City in their natural Capacities; and to that Purpose cited the Cafe, *C. En.* 537. of a *Quo Warranto* againft the Inhabitants of a Village, *Quo Warranto* they claimed to be a Body Politick; and argued, That a *Quo Warranto* lies againft the *Cives* of fuch a City, or *Burgenses*, or Tenants. This feems to be rather a fudden Conceit, and altogether undigefed, and not well confidered. But in Answer thereunto, and to prove, that this Writ is brought againft the Defendants as a Corporation, and cannot legally be taken in any other Cafe; if a Mayor and Commonalty plead, that they are feized in Fee, they need not fay in Right of their Corporation, the Name fhews them to be a Corporation, it need not be alledged, *Leo.* 1. 153. An Action there brought by the Guardians and Fellowship of *Weavers*; the Book faith, That they need not fet themfelves out to be incorporate, the Name fhews it; fo of Cities, faith the Book, *Hob.* 211. So then, when the Writ is brought againft a Mayor and Commonalty, or Mayor, Commonalty and Citizens, the Law takes Notice of them to be a Corporation, and the Writ againft them as fuch; the Name fhews it. But againft Inhabitants of a Village, a Writ brought by that Name, that cannot be taken to be other than Inhabitants, the Name fo fhews it; and in fuch Cafe, fome of the Inhabitants, by Name (*viz.*) *A.* and *B.* appear in Perfon, in their own, and Names of the reft of the Inhabitants, and plead, and are Defendants, *Co. En.* 537. So did they, as appears in that Precedent. No Appearance ever was of Inhabitants in other manner. But in this Cafe here are no Perfons, that do appear by Name, but the Corporation appear, and make an Attorney under their Common Seal. The Corporation, and no particular Perfons, are the Defendants before you, or elfe you have no Defendants before you; for there is none appearing in Perfon, here is no Defendant, nor none againft

whom you can give Judgment; but all the whole Proceedings vain and againft nobody. So, that if we fhould admit, as Mr. Attorney argues, That this Information is not brought againft the Corporation; then there can be no Judgment for want of Defendants appearing in their natural Capacities; you muft have it againft the Corporation, or nobody. A Mayor cannot be but where there is a Corporation; therefore this Notion is impoffible, as I conceive. So that if there were nothing elfe in the Cafe, if the Information be ill brought, they can have no Judgment againft us.

II. But admit, that the Information as to this Point be fufficient, then I proceed to confider the other Parts of this Cafe; the Plea: That contains the Defendants Title, (*viz.*) That ſhe is a Corporation Time out of Mind, and many Confirmations by Acts of Parliament and Charters. It is not denied, but that the Title made by the Plea is good.

But next the Replication, that contains,

1. An Ifſue upon the Prefcription (*viz.*) That the Citizens of *London*, have not been Time out of Mind a Corporation by Name of Mayor, Commonalty, and Citizens, &c.

2. A Pleading over, That the Mayor, and Commonalty, and Citizens taking upon them (*affumentes ſuper ſe*) to be a Body Politick, and to have Power to make By-laws,

1.) *Colore inde*, but for their private Gain, & *contra fiduciam per Dominum Regem & Leges hujus Regni* in them reposed, took upon them to raife Money upon the King's Subjects, by Colour of an Ordinance by them *de faeto* made; and in Proſecution of this usurped Power, the Mayor, Commonalty, and Citizens, in their Common Council aſſembled, published a Law for levying Money upon the King's Subjects, that came to the Markets within the City, 17 *Septemb.* 26 *Car.* 2. (*viz.*) *De qualibet Persona*, for every Horſe-load of Proviſions brought into any publick Market within the City to be fold, 2 *d.* a Day; for every Dorſer of Proviſion, 1 *d.* a Day; for every Cart-load drawn with not more than three Horſes, 4 *d.* a Day; if with more, 6 *d.* a Day; that if any refuſed to pay, he ſhould be amoved from his Place in the Market: That, by Colour of this By-law, the Mayor, and Commonalty, and Citizens have extorted great Sums of Money for their own private Gain, amounting to Five thouſand Pounds *per Annum*.

2.) And farther, That whereas there was a Seſſion of Parliament holden 21 *Octob.* 32 *C.* 2. and continued till the 10th of *Jan.* 82. and then by the King prorogued to the 20th of that inſtant *January*; the Mayor, Commonalty and Citizens, *Jan.* 13. in their Common Council aſſembled, *malitioſe, adviſate, & ſeditioſe, abſque legali Authority, in ſe aſſumpſerunt ad cenſendum & judicandum dicē' Dom' Regem nunc, & Prorogationem Parliamenti*, by the King prorogued; and in the ſame Common Council, *Vota & Suffragia ſua dederunt & ordinaverunt*, That a Petition *ſub nomine* the Mayor, Aldermen, and Commons of the City of *London*, in Common Council aſſembled, to the King ſhould be exhibited: In which Petition it was contained, That by that Prorogation the Proſecution of the publick Juſtice of this Kingdom, and the making neceſſary Proviſion for the Preſervation of the King, and his Proteſtant Subjects, had received Interruption. And that the Mayor,

Mayor, Commonalty, and Citizens, in the same Common Council, did unlawfully, *malitiose, advitate, & seditiose*, with Intent, that the same Petition might be published and dispersed among the King's Subjects, to induce in them an Opinion, that the King had by that Prorogation obstructed the publick Justice, and to incite Hatred against the King's Person and Government, and to disturb the Peace, did order that Petition, containing the said scandalous Matter, to be printed, and thereupon, to those ill Ends and Purposes, they caused it to be printed and published: By which the Mayor, Commonalty, and Citizens, the aforesaid Liberty and Franchise of being a Body Politick *forisfecerunt*, and after, by the Time in the Information, have and yet do usurp it.

Before I come to the Matter, I would speak to the Pleading herein, and in the subsequent Sur-rejoinder: And for the Pleading in it, I think it is as singular and unprecedented as the Matter of it is. This Replication, supposing the Matter had been the Act of the Body Politick, and good and sufficient, yet as pleaded, is insufficient, and not warrantable by any Law or Practice ever known. It contains,

1. An Issue, *viz.* no Corporation Time out of Mind.

2. Two Causes of Forfeiture of the Corporation, admitting they once were a Corporation.

So that, though the Point in Question be but one, *viz.* Whether we are lawfully a Corporation or no Corporation, though the Plea is single, that we are a Corporation by Prescription Time out of Mind; yet here is, to try this Point,

1. An Issue.

2. A double Plea, alledging two Causes to avoid it for a Forfeiture.

This I conceive cannot legally be done, though in the King's Case. I do agree, the King hath great Prerogatives in Pleadings; and as far as ever they have been allowed or enjoyed, let them be so still; but that the King can to the same Matter both take Issue, and also plead over at the same time, that I deny. It is most reasonable, that the Law should be careful to preserve the King's Rights; but on the other Side, I think it is not reasonable, that the Law should admit or allow as legal, any way of Proceeding, that should destroy or render the Subject's Right indefensible, be his Right as good as it may be. If so be, that Mr. Attorney may both take Issue upon the Fact, and also plead over, I would, by your leave, ask, How many Issues, and how many Pleas over, the King's Attorney may have? Suppose the King bring a *Quare impedit*, or Writ of Right, or any other Action, the Defendant makes his Title, which is usually done, by many Grants and Conveyances from one to another, to bring it to himself. May the King's Attorney now take as many Issues as Facts issuable, plead as many Pleas as he pleaseth, and all this *simul & semel*? It is true, that in this Case Mr. Attorney hath assigned only two Breaches, or Causes of Forfeiture; but he might, if he had pleased, by the same Reason, have assigned two hundred. If this may be, are we not all at Mr. Attorney's Mercy? If this may not be, then how many Pleas? Is it in Law defined? *In favorem Vitæ* a Man may plead a special Plea, and plead also Not Guilty, but not several special Pleas; but that there is any such Prerogative for Mr. At-

torney, in Suits betwixt the King and his Subjects, I can find no Instance or Authority for it: For though it be true, as I have said, that the King hath great Prerogatives in Pleading, yet it is as true, that this is not boundless; but that if in the King's Writs there be Mistakes, or his Writ or his Action misconceived, he shall be bound by it in like Manner as Subjects are or shall.

*Partridge against Strange, Com. 84. a. 236. a.* and in the same Book, in my Lord *Berkley's* Case, it is expressly said, That though the King hath many Prerogatives concerning his Person, Debts, and Duties; yet the Common Law hath so ad-measured his Prerogative, that it shall not take away, or prejudice the Inheritance of any.

The King hath a Prerogative, that he may waive his Demurrer, and take Issue; or waive his Issue, and demur upon the Plea: But, saith the same Book, *fol. 236.* he must do it the same Term, not in any other Term; for then he may do it *in infinitum*, without End, and the Party hereby may lose his Inheritance; and for that the Common Law will not suffer the King to have such a Prerogative. These are the Words of the Book. And in the Point, that this Prerogative must be made use of the same Term, and that the King's Attorney cannot vary in another Term, and waive his Issue, is *13 E. 4. 8. Bro. Prer. 69. 28 Hen. 8. 2.* So in making Title to a *Quare Impedit*, he at the End of the Term waived his first Title, and made another. But it is true also, that as to the Point of waiving Demurrers, and taking Issue in another Term, there is Authority, that he may so do; *Rex vers. Bagshaw, Cr. 1. 347.* but whether it may be done or not in another Term, is not material to our Case: But the Use I make of these Cases is to prove, that the King's Attorney should not have both together *simul & semel*, as in this Case he hath done; he must waive one before he can have another Plea. For those Debates about his varying his Plea, by waiving his Issue and Demurring, or waiving his Demurrer, and taking Issue, signify nothing, if he may in one Plea, and at the same time take Issue and demur, or plead over to the same Matter or Point, as is done in this Case; therefore those Books strongly prove, that the Prerogative, that the King hath, is by waiving or relinquishing one, and choosing the other; and therefore not to have or use altogether and at once, as is done in this Case.

The King shall be bound by one Issue, he shall not have divers, *9 H. 4. 5.* So that as this Replication is at the same Time *simul & semel* to the same Matter, to take Issue, that we were not a Corporation time out of Mind, and to plead two Matters of Fact for Forfeiture, is the first Attempt, that ever was of this Kind, and in its Consequence confounding the Right of the Subject, and leaves him perhaps only but a Colour of Law, but most difficult, if not impossible by it to be defended, let his Right be what it will, if Issues and Pleas without Number may be by the King's Attorney joined and pleaded, and the Subject must answer. The very Charge besides will undo the Subject, and wrest him out of his Estate by the Law, that should preserve him. This Point, if I mistake not, will deserve Consideration, if it be new, and the first Project (for so I beg leave to call it) of its Kind; for I know no Book or Instance of the like, unwarrantable by

by old Laws and Rules of Pleading. The old Laws and Ways are good and safe: *Eventos varios res nova semper habet.* Perhaps the Consequence and Mischiefs attending this way of joining Issue, and at the same Time pleading over as many Pleas as Mr. Attorney pleaseth, are as great as any other in this Case, and not less to be minded or regarded. As of the one Side, great are the King's Prerogatives, and most necessary to be preserved and maintained; so it cannot be denied, but that the Law hath set Limits and Bounds, which must be kept and observed in pleading, which is the Method and Mean of preserving and determining Rights, without which no Man can be preserved by the Law. But supposing, that several Causes of Forfeitures may be assigned, yet they must be all Facts done at the same Time, or they confound one the other; for if the first Fact was a Forfeiture, thereby the Corporation was determined, and at an End, and the subsequent could not be the Act of the true lawful Corporation; for that was forfeited, determined, and gone, by the precedent Forfeiture: And if so, that it was forfeited and gone by the precedent Act, *viz.* the making the Ordinance *Septemb. 17. 26 C. 2.* then how could it act and forfeit itself six Years after, in the Year Thirty-two? This seems impossible. But to avoid this, Mr. Attorney in his Argument doth hold, That though the Act be a Forfeiture, yet till there be a Judgment, or something on Record, to determine the Corporation, (and in this Case the Judgment to be given shall do that Work) till such Judgment, the Corporation remains: Then taking it as Mr. Attorney will have it, and as the Truth is, supposing a Forfeiture, until that Forfeiture appear on Record, or that there be some Office or Inquisition that finds it, and that returned, and on Record, were it of any Estate in Lands, Tenements, Hereditaments, or Offices, it is not determined or vested in the King, but continues. This is quite contrary and contradictory to all that you have done, and the very Foundation of this *Quo Warranto*; for if you admit, as then you do, that the Forfeiture *ipso facto* did not determine, but that it must be this *Quo Warranto*, or Judgment upon it, that must determine the Corporation; and that the Corporation, notwithstanding such Act, was or is in Being; then they have not usurped upon the King: They are the same Corporation they were; they have the same Power to act they had; they have the same Warrant and Right they had, only subject to a Judgment against them, that may be given hereafter, for a Fact already past: For since that an Usurpation is a sortious and wrongful using a Liberty or Franchise upon the King, without lawful Authority; then, supposing such an Act of Forfeiture doth not *ipso facto* determine or dissolve, but a Judgment, or some other Act of Record, must first be had before such Dissolution; then till such Judgment, or Act of Record, they are lawfully a Corporation in Being, and their lawful Warrant remains, and they did not, nor could so long usurp their Being, and then hereby is your own Information destroyed and abated: For there you say, that they did by the Space of a Month, without any Warrant, use and usurp the Liberty to be a Corporation. But hereby you grant, that it was not used unlawfully, nor usurped; but notwithstanding the Forfeiture the Corporation lawfully continu-

ed, unless there had been some Judgment, or other Act, on Record, to determine it. This I rest upon as impossible to be avoided. Is it possible, that a Corporation or Body Politick can at the same Time be lawfully and rightfully such, and not lawfully and rightfully such? Can Right and Wrong be the same? Can the same Thing rightfully be, or have its Being, and at the same Time not rightfully be, or have its Being? Can we possibly be at the same Time, *viz.* the Time mentioned in the Information, a lawful Corporation, and yet an usurped or unlawful Corporation? Could we then have a lawful and rightful Authority to be a Corporation, and at the same Time have no lawful or rightful Authority to be so? These seem to be Contradictions; and if so, are the most difficult of all things to be believed or imposed; therefore to be plain in this Matter, either tell us, that we are yet till Judgment a Corporation or Body Politick lawfully and rightfully, or not. If you say we are, then as yet we are no unlawful Corporation, nor have usurped to be one, as in your Information and Replication you have alledged. We have not then unlawfully taken upon us to be a Corporation, and therefore cannot have Judgment against us; or be fined for having or being that which we lawfully have or be, as you now admit we are; consequently you must go some other way, you have destroyed your own Information, and can have no Judgment upon it. But perhaps this Concession of Mr. Attorney, that the old and lawful Corporation and Body Politick is still in Being, and shall so continue, till by Judgment or Matter on Record determined, may only be some sudden Thoughts; for not only the Matter, but the whole Proceedings in this Suit, being at least unexperienced, and perhaps much out of Practice, it might easily happen, that in an hasty Proceeding, all things might not be thought on, nor all the Objections or Inconveniencies foreseen, and perhaps the Consequence of the Position, that a Miscarriage, or doing an unlawful Act, should *ipso facto* forfeit the Body Politick or Corporation, might make a Man start, and cast about how to avoid it, and flying from one Danger run into another. These are things ordinarily happening, and perhaps have in this Case happened, and were the Cause of this Concession, that the old and lawful Corporation is yet in Being, which is contrary to the whole Frame and Scope of both the Information and Replication, and probably never thought on or intended when the Information or Replication was made, being quite contrary and inconsistent with the Frame and Foundation of them both. If it be holden according to this Concession, that the old and lawful Corporation was not by the supposed Acts of Forfeiture dissolved and determined *ipso facto*, but remained and continued lawfully a Corporation, and yet is so; then we have not usurped, but are a lawful Corporation during the Time in the Information, and not as therein supposed by Usurpation, and without lawful Authority; and thereby the Information confounded and abated.

But supposing, according to what the Information and Replication suppose, that the Acts of Forfeiture did *ipso facto* dissolve and determine the Corporation; for they will at last, I doubt, come to that again; for this present Thought, that it shall be forfeit, but not dissolved

or determined till Judgment, will be subject to almost all the same Inconveniencies; for when Judgment is given, the Forfeiture must relate to the Time of Offence, and to avoid all mean Acts, as in other Cases it doth: But to pass this over.

III. Supposing the Information good, the Replication good, and the Matters alledged for Forfeiture to be as in the Replication alledged: The next thing I pray Leave to speak unto, is, Whether the Matter alledged in the Rejoinder be not sufficient to justify or excuse the two Facts alledged for Cause of Forfeiture. I conceive they are. The Pleadings here must first be stated.

I. As to the Ordinance or By-laws for the Toll in the Markets. As to that, the Defendants in their Rejoinder have alledged, That the City of *London* is, and was always, the capital and most populous City of the Kingdom; that there are and always have been great publick Markets within the said City; that the Mayor, Commonalty, and Citizens, are and always have been seized of those Markets in their Demesne as of Fee, and at their own proper Charges provided Market-places, Stalls, Standings, and other Accommodations for Persons coming to those Markets, and Overseers and Officers for better Regulation, and keeping good Order, and cleansing the same; that for defraying those Charges, they have, and always had and received, divers reasonable Tolls, Rates, or Sums of Money, of all Persons to those Markets coming, for Stalls, Standings, and other Accommodations by them had, for exposing to Sale their Victuals and Provisions in those Markets; that the Freemen of the City of *London* are numerous, above fifty thousand; that there hath been, Time out of Mind, a Common Council, consisting of the Mayor, Aldermen, and certain Freemen annually elected, not exceeding the Number of two hundred and fifty, called the Commons; that there is a Custom within the City, that the Common Council make By-laws and Ordinances for the better Regulation and Government of the publick Markets, and for the appointing convenient Places and Times when and where, within the City, the Markets shall be kept, and for the assessing and reducing to Certainty reasonable Tolls, Rates or Sums of Money, to be paid by Persons coming to the same Markets, for their Stalls, Stations, and other Accommodations by them had, for exposing to Sale their Victuals as often as and when to them should be thought expedient, so as their Ordinance be useful to the King and his People, consonant to Reason, and not contrary to the Laws of the Land; that this Custom is confined by *Mag. Char. Stat. 1 E. 3. Stat. 7. R. 2.*; that after the burning and rebuilding *London*, and the Alterations thereby made, Controversies did arise within the City concerning the Markets and Tolls; that thereupon Sir *William Hooker*, then Mayor, and the Aldermen, and Commons in Common Council assembled, did make an Ordinance, intituled, *An Act for the Settlement and well-ordering the severall publick Markets within the City*: By which reciting, that whereas for Accommodation of Market-people with Stalls and Necessaries for their Standings, for cleansing and paving the same, for defraying incident Charges about the same, reasonable Rates had always been paid.

To the end the Rates to be paid might be ascertained, that the Market-people might know what to pay, and the Officers what to take, to avoid Extortion, it was ordered, there should be paid by the Market-people for their Stalls, Standings, and Accommodations in the Markets, For every Horse-load of Provision under publick Shelter 2*d.* a Day, for every Doffer 1*d.* a Day, for every Cart-load drawn with not above three Horses 3*d.* a Day, with more Horses 4*d.* a Day, and upon Refusal to pay, to be removed: Then they aver, that these Rates are reasonable; that they are all the Rates that are paid by such Market-people to the Use of the City; that these Rates they have received since the making these Ordinances; that there is no other Ordinance for raising Moneys for such Provisions exposed to Sale in their Markets in any manner made.

To this Rejoinder Mr. Attorney hath sur-rejoined, and taken it by Protestation, That the City were not seized of the Markets, nor at their own Costs provided Stalls and other Accommodations; and that the Rates by the Ordinance appointed were not reasonable. For Plea sets forth an Act of Parliament made 22 *Car. 2.* enacting, *That to the end apt and convenient Places within the City should be put out for Buildings, and keeping the Markets; and that the Royal Exchange, Old Baily, and common Gaols and Prisons within the City, should be made more commodious*; for the enabling the City to do these things, they should have a Duty out of Coals imported betwixt *May 1670.* and *Mich. 1687.* into the Port of *London*, 12*d.* per Chaldron; which Duty they have accordingly received, amounting to a great Sum; and notwithstanding that Duty, without Title or Right, the Defendants made the By-law for their private Gain, *absq; hoc*, that the Mayor, and Commonalty, and Citizens, have Time out of Mind had, or accustomed to have, *Tolneta, ratas, sive denariorum summas per ipsos Majorem, Communitatem, ac Cives Civitatis prædictæ superius suppositæ fore per præfatam legem sive ordinationem prædictæ assessit & in certitudinem reducit prout per placitum superius rejungendū supponitur.*

The Defendants they rebut, and say, that they have always had reasonable Tolls, Rates, or Sums of Money of all Persons coming to their Markets to sell their Provisions, for their Stalls and Accommodations: *Et de hoc ponit se super patriam*: the Attorney demurs. Upon his Pleadings, the Questions are, Whether the Matters alledged by the Defendants, in Justification of the Ordinance, or By-law, be a good Justification in Law, or not? If it be, Mr. Attorney in his Sur-rejoinder hath given no Answer to it at all; he hath neither confessed it, nor denied it. The Rejoinder saith, that the Defendants are, and always have been, seized of the Markets in Fee; that they at their Charge provided Market-places, Stalls, Standings, and Officers for the Accommodations of the Markets, and cleansing them; that for defraying those Charges, they have always had divers reasonable Tolls and Rates for Standings, and other Accommodations; that the Common Council have, as often as expedient, always made Ordinances for regulating those Markets, and for assessing and reducing to Certainty reasonable Tolls, Rates, and Sums of Money to be paid by the Market people for their Accom-

Accommodations; that according to this Custom, they made the Ordinance and By-law. Mr. Attorney in his Sur-rejoinder hath not denied any Part of this; but offers a Traverse to that which is no-where alledged or supposed. It is never pretended, that the City have had Time out of Mind the very Tolls and Sums of Money for Toll assessed by the Ordinance. There is not a Word in the Rejoinder to that Purpose, but to the contrary; (*viz.*) That they in their Rejoinder claim a Power by Ordinance of Common Council to assess and set the Rates of these Tolls and Payments, as often as and when to them shall seem expedient. It is admitted in the Rejoinder, that these Sums were not Time out of Mind, only they had Power to set, assess, and ascertain, as often as expedient: Therefore when Mr. Attorney traverseth our having Time out of Mind the Tolls, Rates, and Sums of Money by the Ordinance assessed, and *in certitud' reduci'* this is plain, besides any thing claimed or pretended unto, if he had intended to traverse what we have alledged, that we have had Time out of Mind divers reasonable Tolls and Sums of Money for Stalls and Accommodations: Or if he would have traversed the Instance alledged for the Common Council assessing those Tolls, as often as expedient, that was plain and easy to do; but that he hath not done: He hath only traversed whether the Tolls, Rates, and Sums of Money, by the Ordinance assessed, and reduced into Certainty, have been Time out of Mind. This is the proper Sense of his Traverse; but if doubtful in its Sense, his Traverse is nought for that Cause; for dubious Words can make no Issue for the Jury to try, else Men should be tricked and ensnared by doubtful Words to pervert Right: So that if the Matter alledged in the Record be sufficient in Law to justify the making this Ordinance or By-law, then what is done therein by the Act of Common Council is lawfully and rightfully done, and no Forfeiture. I do agree, that for a Lord of a Market to prescribe to have a Toll uncertain, and as often as expedient, to ascertain it, is no good Prescription. But that is not our Case; I do distinguish betwixt that and this Case: Where there is by Custom, confirmed by Acts of Parliament, (for I shall shew, that they are Acts of Parliament, notwithstanding what hath been objected against them) a Power and Authority vested in the Lord Mayor, Aldermen, and Common Council, to regulate and order the People, Trades, and Markets in the City, and the Places, and Conveniencies, and Officers, from time to time, and consequently to regulate and ascertain the Tolls or Rates to be paid by the Market-people, to prevent Extortion and Disorders; that such Custom is legal. The Chamberlain of *London's* Case: An Ordinance that no Broad Cloth shall be sold in the City, before it be brought to *Blackwell-Hall* to be searched, and a Peny for every Cloth to be paid for Hallage, under pain of forfeiting 6s. 8d. a Cloth, to be recovered in the City Courts, *Rep.* 5. 69. Though objected that this was an Imposition of Payment of Money upon the King's Subjects, yet adjudged good, and a *Procedendo* granted.

An Ordinance that no Unfreeman shall use a Trade in *London*, adjudged good, *City of London's Case*, *Rep.* 8. fol. 1. A Multitude of Ordinances they have for regulating all manner of

Trades, and of Rates and Prices; and as much Reason there is to object against them, as this Ordinance, or the Custom in this Case: But the City of *London* have a Government and Power of making Ordinances, for governing and regulating Trades, buying and selling within the City, placed in the Common Council, and confirmed by Act of Parliament; and therefore not like the Case of any private Lord of a Market. But it is true, their Ordinances must not be unreasonable. The Payments that are imposed by this Ordinance, are only imposed upon those that are under Shelter. It is Reason a Recompence should be paid; and there is no Unreasonableness or Injustice appears in the Ordinance, but a reasonable Recompence. But the Custom or Power of the Common Council is not denied, as I take it: For they have not denied the Power to regulate and ascertain the Tolls or Sums of Money alledged to be in the Common Council; if they had, that must have been tried: Nor have they denied the Rates set to be reasonable. So that I think, as to this Matter, we have well intitled ourselves, and justified our making our By-law, and taking the Tolls or Rates thereby appointed; and nothing in the Sur-rejoinder against us to the contrary is objected.

But for confirming and making good our Customs, in the Plea, there are three Acts of Parliament pleaded:

1. *Magna Charta.*
2. *Stat.* 1. *E.* 3.
3. *Stat.* 7. *R.* 2.

The King's Counsel have not denied *Magna Charta* to be a Statute, but have denied the other two to be Statutes, or Acts of Parliament; and the Reasons given by them are:

Because not in Print, nor Roll of it to be found; or because nobody knows where to find it.

As to the first, Private Acts of Parliament do not use to be printed, few are.

As to the second, Suppose there were no Roll to be found, Doth this after so long a time conclude there was none such? especially since Mr. Solicitor was pleased to acknowledge, that there are no Parliament Rolls of *E.* 3. till 4 *E.* 3. It is true, that almost all the Parliament Rolls of *H.* 3. *E.* 1. *E.* 2. and till 4 *E.* 3. are indeed lost. But besides, in those Days publick Acts were not only entered upon the Parliament Rolls, but from thence transcribed, and sent under the Great Seal to be published by the Sheriffs of the Counties, in the Cities and Boroughs, and also by Writ to the Courts in *Westminster-Hall*, to be there entered and recorded, of which there are many found, especially in the *Exchequer*; and hence came the Rule in Law, that Judges, *ex Officio*, are bound to take notice of general Acts of Parliament: But for private Acts, they were put under the Great Seal, and the Parties interested had the same to produce: But that these in this Case should be questioned to be Acts, is strange.

But to prove them Acts: As to the Act 1 *E.* 3.

(1.) We have pleaded it under the Great Seal of King *E.* 3. that made it with a *Profert hic in Cur'*, and shewn it with our Plea as we ought; and this is Evidence sufficient of itself. If the same, produced under the great Seal put to it when made, be not sufficient Evidence to satisfy, what can be?

(2.) But in this Case it is inrolled upon Record



also, *Inter placita Coronæ penes Camerarios in Scaccario*; it is inrolled there, *Trin. 1. E. 3. r. 61, 62.*

But perhaps it may be objected also, That this was no Act of Parliament, but only a Grant or Patent in Parliament; because it is that the King *de assensu Prælatorum Comitum Baronum ac totius Communitatis regni in presenti Parlamento.*

I answer, That Acts of Parliament observe not any certain Form. In the Case of the Earldom of Oxford expressly, *Jones 103.* that there was Variety in penning Acts of Parliament in ancient time, *Dominus Rex per Consilium fidelium subditorum suorum statuit*, and other Forms there, are yet good Acts. But that they were anciently in Form of Patents or Grants in Parliament, *Magna Charta, C. 1.* is in Form of a Charter or Grant. The Form of the Act of Parliament, *11 E. 3. Prince's Case, R. 8. fol. 8.* for creating the Prince, Prince of Wales, begins *Edwardus Dei Gratia, &c.* in Form of Patent, and is *De communi assensu & consilio Prælatorum Comitum, Baronum & aliorum de concilio nostro in presenti Parlamento*, and adjudged a good Act of Parliament; and the Authorities and Reasons to prove it an Act of Parliament are *fol. 18, 19, 20.* so full, that it might be thought that this Objection would never have been made: And that this is in the same Form that all the rest of the Acts of this very Parliament of the *1 E. 3. Memb. 17.* are, appears by the Patent Roll of the same Parliament. A Charter granted by the King *de assensu Prælatorum Comitum Baronum Communitatis Regni in Parlamento apud Westm'* to enable the City to apprehend Felons in *Southwark.* An Act in the same Form, for the annulling the Conviction of Treason, that was against *Roger Mortimer*, in the Time of *E. 2. Rot. Claus. 1 E. 3.* An Exemplification then entered of an Act made in the same Form, in the same Parliament, for the annulling the Attainder of *Thomas Earl of Lancaster*, attained *tempore E. 2. Rot. Pat. 2 E. 3. P. S. 1. M. 17.* Divers other Acts of Parliament in the same Form made *1 E. 3.* for annulling divers other Attainders that were *tempore E. 2.* So that as to this Act of Parliament *1 E. 3.* I think the Objections are answered, and that it is an Act, as pleaded, *Rot. Pat. 2 E. 3. P. S. 2. M. 11. Inst. 2. 527, 639.*

And as to the other Act *7 R. 2.* that that is no Act of Parliament, only a Prayer of the Commons, that there might be a Patent granted to the City, confirming their Liberties, *licet usi vel abusi fuerint*; and the Answer was, *Le Roy le veult.*

They object for Reasons against that being an Act of Parliament,

First, That it wants the Assent of the Lords.

Secondly, It is only a Prayer of the Commons to have their Liberties confirmed, and the King's Answer *Le Roy le veult*, but nothing done to confirm it.

As to the first Objection, supposing it true that there is no mention made of the Assent of the Lords, yet the Act is a good Act.

1.) It appears to be in Parliament *ad instantiam & requisitionem Communitatis Regni nostri in presenti Parlamento.*

2.) The Answer in Parliament, that is given by the King to the making all Laws, is given to this, *Le Roy le veult.*

3.) And next, it is admitted to be upon the Parliament Roll, *7 R. 2. Num. 27.* I have before said, that Acts of Parliament are not in any certain Form; sometimes entered as Char-

ters or Grants, sometimes as Articles, sometimes and frequently as Petitions; the Books I have already cited prove it. But according to the Course of Parliaments, let it be in what Form it will, let it begin in which House it will, yet it must go through both the Houses of Parliament, before it can come to the King for his Royal Assent. If either House rejects or refuseth, there it ends, it comes not to the King; nor is the Royal Assent in these great operative Words, *Le Roy le veult*, in Parliament given to any thing, but what the whole Parliament have assented and agreed unto: So that this is an Objection grounded upon a Reason contrary to all the Course of Parliaments, which shews, that the Lords Assent was to it, though not mentioned. *Selden's Mare Claus. 249.* gives a full Resolution herein: *Certissimum est*, saith he, that according to Custom no Answer is given, either by the King, or in the King's Name, to any Parliamentary Bills, before that the Bill, whether it be brought in first by the Lords, or by the Commons, hath passed both Houses, as it is known to all that are versed in the Affairs and Records of Parliament. And in the Prince's Case before cited, there the Act is said to be *de Assensu & Consilio* of the Lords, but doth not name the Commons; And this answers the other Reason also, *viz.* That it should only be a Prayer and Petition also, to have a Charter of Confirmation granted: For since the Forms are in manner of Petitions, since the Royal Assent or Words, *Le Roy le veult*, is never put to any Bills in Parliament, but such as are thereby made and passed into Laws, the giving the Royal Assent is sufficient in this Case to prove it a Law. But for further Evidence, we have it under the great Seal of King *R. 2.* thus penned: *Ad instantiam & requisitionem Communitatis Regni nostri Angli in presenti Parlamento nostro, pro majori Quiete & Pace inter Legeos nostros fovendis, & pro bono publico de assensu Prælatorum, Dominorum Procerum, & Magnatum nobis in eodem Parlamento assistentium, &c.* So that hereby it is fully proved, and shewn, that though the Assent of the Lords be not mentioned in the Copy, yet that it was had, and under the great Seal of *R. 2.* it so appears. We have also, in our Book of the Acts of that Time in the City, the Proclamation made upon the first promulging this Act, in the Time of Sir *Nicholas Brember*, Lord Mayor, *Lib. H. f. 169. a & b.* and therein it is also entered in the same Words, as before, under the great Seal of *R. 2. de assensu Prælatorum, &c.* Next, our Books and continual Practice ever since. It is true, that in the *7 H. 6. fol. 1.* when it is said, that the Customs of *London* were confirmed by Statute, *Quære*, what Statute; but it is not there made a *Quære* whether this were a Statute; *Inst. 4. 250. Rep. 5. 63. Rep. 8. 162.* all say, that the Customs of *London* are confirmed by Parliament, *7 R. 2. Justice Jones 283.* hath it *verbatim* out of the Parliament Roll. The constant Course of Pleading the Customs of *London*, is to plead a Confirmation of them by this Act of Parliament: So that as to this Point there is not any one Book or Opinion, before this Day, in favour of what is affirmed, that these are not Acts of Parliament; and our Plea stands good in Law, and the Ordinance, and By-law, and Custom is good, and then no Forfeiture thereby.

But suppose, and admit, that this By-law be the Act of the Corporation, and not good and sufficient in Law, nor in Law justifiable, *Quid sequitur?* Then it is void in Law. Then if it be void in Law, how can it make a Forfeiture? Suppose a Lessee for Years, or for Life, makes a Feoffment, but it is not duly executed for want of Livery and Seisin, by which it is void in Law, can this make a Forfeiture of the Estate of the Lessee? Suppose a Corporation *Tenant pur auter vie* makes a Feoffment, which is void for want of Livery duly made, will this forfeit their Estate? A void Act shall not destroy or forfeit a precedent Estate. A Parson, that hath a former Benefice, accepts a second Benefice incompatible, was instituted and inducted, but did not read the Articles, his first Benefice was not forfeit or void hereby, because by the Statute the not reading his Articles had made his Institution and Induction void. *Dyer 377b.* So that then whether this By-law or Ordinance were good and void in Law, perhaps is not much material; it cannot make any Forfeiture of the Corporation, it can have no such Effect; for if it be a good and lawful By-law, no Forfeiture can be for doing a good and lawful Act. If the Ordinance be not warrantable by Law, then it is void in Law; if void in Law, a void Act can make no Forfeiture.

But you received, say they, and exacted from the King's Subjects Sums of Money by this Ordinance.

I answer, Suppose we did, and that we had no Right to have this Money; if an Officer, by Colour of his Office, receive more than is due, it is Extortion, and a Crime punishable: But if a Person, that is no Officer, take Money that is not due, or more than is his Due, the Parties injured have their Remedies by Action; but this is no Crime for which any Forfeiture or Penalty is incurred by the Person that so takes or receives the Money. Suppose a Lord of a Manor exact or take greater Fines or Sums of Money from his Copyholders or Tenants than he ought, they have their Remedies by Actions against those that receive; so if a Corporation receive or take Money supposed to be due, but in Truth is not, how can this forfeit any thing?

But you took upon you, say they, a Power and Authority to tax the King's People, and to take and receive the Money so taxed.

I answer, This is but the same thing, only put into greater Words. It is still but the making of an unlawful By-law, and thereby appointing Money to be paid which ought not, or more than should be; and as to the turning of it, or expressing it in stately Words, of taking upon you, or usurping Authority to impose upon, and tax the King's People; whosoever doth any Act or Thing, he takes upon him, and doth also execute the Power and Authority of doing that Act or Thing, which is comprehended in the Thing done. The making a By-law, or Ordinance, whereby more is ordered to be paid than ought, or Money appointed to be paid where none is due, is still all the Fact and Thing done; and if that make no Forfeiture of the Corporation, or Crime punishable by Indictment or Information, except only as the Statute 19 *H. 7. c. 7.* which I shall hereafter mention, hath appointed for Forfeiture of 40*s.* the taking or usurping the Power to do it, cannot be more, or effect more, than the doing the thing which comprehends it.

2. As to the other Cause alledged in the Replication for Forfeiture, the Petition, printing, and

publishing it; in the Replication 'tis alledged, That the Parliament the 10th of *January* was prorogued to the 20th of *January*; that the 13th of *January* the Mayor, Commonalty, and Citizens of *London*, in their Common Council assembled, *malitiose, advise, & seditiose*, took upon them *ad judicand' & censend'* the King, and the Prorogation of the Parliament by the King so made; and that the Mayor, and Commonalty, and Citizens of *London*, so in the said Common Council assembled, did give their Votes and Order, that a Petition, in the Name of the Mayor, Aldermen, and Commons of the City of *London*, in Common Council assembled, should be exhibited to the King: In which Petition it was contained, that by that Prorogation the Prosecution of the publick Justice of the Kingdom, and the making necessary Provisions for the Preservation of the King, and his Protestant Subjects, had received Interruption; and that the Mayor, Commonalty, and Citizens of *London*, in Common Council, as aforesaid, assembled, maliciously, and seditiously, to the Intent the same should be dispersed among the King's Subjects, and to cause an Opinion, that the King obstructed the publick Justice, and to stir up Hatred and Dislike against the King's Person and Government, did order the said Petition to be printed; and afterwards they did print it, and caused it to be published.

The Defendants in their Rejoinder to this Breach set forth and alledge, That there was a Plot against the Life of the King, the Government, and the Protestant Religion; and set forth all the Proceedings upon it, the Attainders and Impeachments of the Lords in the Tower in Parliament depending, the Proclamations declaring the Dangers by this Plot, that they could not otherwise in human Reason be prevented, but by the Blessing of God upon the Consultations and Endeavours of that great Council the Parliament, and commanding a General Fast to be kept in *London* the 22d of *December*, and that it was kept accordingly; the Proceedings in the Parliament towards the Trial of the Lords, and preparing Bills to be enacted into Laws, for Preservation of the King and his Subjects against these Plots and Conspiracies; that divers of the Citizens, loyal Subjects, being much affrighted, and troubled in their Minds, with the Apprehension of these Dangers, did exhibit their Petition to Sir *Patience Ward*, then Lord Mayor, and the Aldermen, and Commons in Common Council then assembled, containing their Fears, and Apprehensions, and Expectations from the King and that Parliament; did petition, that the Common Council would petition for the sitting of that Parliament, at that time prorogued. And thereupon the Mayor and Aldermen, (naming them) and Commons in Common Council assembled, from their Hearts truly loyal to the King, and for the Satisfaction of the Citizens, who had exhibited that Petition, and of Intent to preserve the Person of the King, and his Government, did give their Votes, and order a Petition should be exhibited to the King in the Name of the Mayor, Aldermen, and Commons in Common Council assembled, and set forth the Petition in the Name of the Mayor, Aldermen, and Commons in Common Council assembled *in hæc verba*: Wherein among other things it is contained, That they were extremely surpris'd

at the late Prorogation, whereby the Prosecution of the publick Justice of the Kingdom, and the making Provisions necessary for preserving the King's Person, and his Protestant Subjects, received Interruption. And did farther agree and order, that that Petition, after it had been presented, should be printed, which was so ordered with Intent, that false Reports concerning the Petition might be prevented; the Enemies of the King, and the Conspirators, from proceeding in the Conspiracy deterred; the Troubles in the Minds of the Citizens alleviated, and the Citizens know what had been done upon their Petition; that the Petition was delivered to the King, and afterwards printed; that this is the same Petition and Printing in the Replication mentioned *absq; hoc*, that any Petition of or concerning the Prorogation of the Parliament was made, ordered, published, or printed in any other manner than they have alledged, as the Attorney General supposeth. To this Part of the Rejoinder Mr. Attorney hath demurred generally by the Demurrer, the Fact alledged in the Replication is admitted to be true. And it is true, that there are no Words, that are written or spoken, but are subject to various Constructions: But I take it, that no Words, whether written or spoken, ought to be taken in an ill Sense, if they may reasonably be taken in a better; *Nemo presumitur esse malus*; and therefore the Words must stand as they are penn'd: And having first expressed their Fears, and next their Hopes, from the King and Parliament's Proceedings in Trial of those that were impeached, and making Laws for their Security, and how they were surpris'd at the Prorogation, then they say, That by that Prorogation, the Prosecution of the publick Justice of this Kingdom, and the making necessary Provisions for the Preservation of the King and his Protestant Subjects, had received Interruption. It is mentioned only as a Consequence of the Prorogation, it is not said or expressed, that the King did interrupt; for I think there is great Difference betwixt the one sort of Expression and the other. An ill Consequence may attend a good, and commendable, and most necessary Act; but no Consequences can make an ill Act good; and therefore the expressing the Consequence doth not necessarily condemn or declare the Act to be an ill Act. Suppose, that in the time of the great Plague a Man had had a Suit in *Westminster-Hall*, wherein all his Estate had been concerned, and had said or writ, that by the Adjournment of the Terms by the King, the Proceedings of the Courts of Justice in his Suit had received an Interruption, had these Words been punishable? The Adjournment was then the most necessary and commendable Act that could be for the Preservation of the King's Subjects in that raging Pestilence; and the Act itself being so good and necessary, though there were such Consequence as to that particular Suit, the writing or saying, that it had such a Consequence, such an Interruption, did not, I conceive, condemn, judge, declare or express the Act to be ill. Suppose a Man had had a Bill depending in that Parliament, to be enacted for the enabling him to sell his Land to pay his Debts, to free him from a Gaol: Or, suppose that some one of the Lords impeached in that Parliament had made a Petition for the Sitting of the Parliament, and had therein expressed as a Reason and Ground of his Petition,

the like Words as in this Petition: What would the Court have judged of it? Are not the Cases much the same? If they are, there will be no Distinction of Persons in Judgment; I am sure there ought not. Perhaps when this Petition was made, there might be too much Heat in the Minds of Men; and it is true, that Heat increaseth Heat, and Fire kindles Fire; it is time for all sorts to grow cool and temperate, and to weigh and consider we are, or should be, considering Men. This Petition was made *Nemine contradicente*, and undoubtedly among such a Number as the Common Council, there must be Men of Variety of Tempers and Dispositions: But for the greatest Number of the Aldermen, and Common Council, think of them; we know the Men, many of them; can we imagine, that they had either the least ill Thought or Meaning towards the King, his Person, or Government, in this Petition, or the printing it? And as for the printing it, that, my Lord, stands upon the same Reasons and Grounds: For if there be nothing ill or unlawful in it contained, then the printing and publishing of that which contains nothing ill or unlawful, is not, as I conceive, ill or unlawful. Printing is but a more expeditious way of writing, and is good or bad as the Matter printed is good or bad. The Defendants in their Rejoinder have set forth their whole Case, the Reasons and Grounds of what the Common Council did, and the Manner and Intent of their doing it; all which Fact cannot be denied to be true, but is now confessed by the Demurrer. It hath not, nor can be said, but it is well pleaded, and might have been traversed and denied, if not true: But it is confessed by the Demurrer to be true, and therefore that must be taken to be the Fact, and not as alledged in the Replication, and then so taken, I submit it to your Judgment.

3. But the next thing considerable is, Whether, supposing and admitting, that if done by the Body Politick, it had been a Miscarriage or a Crime? Whether not being done by the Body Politick, nor under the Common Seal, but by Common Council, whether thereby the Being of the Corporation shall be forfeit?

A Common Council in Corporations is generally a select Number of the Body Corporate, constituted to advise and assist the Corporation in their ordinary Affairs and Business. There is no certain Rule nor Measure of their Power, wherein all the Common Councils agree. In some Corporations the Common Council have greater Authority, in some less, according to the several Authorities by the respective Charters, where the Corporations are by Charters; or by Custom or Usage, where the Corporations are by Prescription: But in all they are a subservient Number of Men, constituted and authorized for particular Ends and Purposes: And in this Case I think the Court can take notice of the Common Council no otherwise than upon the Record they appear to be. The Replication doth not say what they are, but would go in the Dark, by Intention and Presumption, the best Way and Method to arbitrary Determination. The Rejoinder saith, that the Citizens and Freemen are a great Number, fifty thousand, and more. That there hath been Time out of Mind a Common Council, consisting of the Mayor and Aldermen for the Time being, and of certain Freemen, not exceeding

ing two hundred and fifty, annually elected to serve as Common Council Men, and are called the Commons of the City; that Time out of Mind there hath been a Custom, that the Mayor, Aldermen, and such Citizens, so elected to be of the Common Council, according to Custom, have been accustomed to make By-laws and Ordinances, for the better Regulation of the publick Markets, for appointing Times and Places, and assessing and reducing into Certainty reasonable Toll, Rates, and Sums of Money, payable for Stalls and Standings in the Market: For any thing appears upon the Record, this is all they have Power to do: *Non constat* to the Court, that they have any other Power or Authority over Lands, Estates, or any thing else. Next, if this which in the Rejoinder is alledged, of the Being and Power, be true, and so admitted, then what they did in making the Ordinance, was done by good and lawful Power and Authority, and then can be no Offence: But if to make the Ordinance be an Offence, and an unlawful Act, you deny the Custom to be good, and say, the Custom is void, and against Law, and for that Reason the Ordinance illegal. Then *non constat*, that they had any Power at all to do any thing, and then a Common Council to advise without Power to do any Act; and if so, How can a Parcel or Part of a Corporation, not authorized to do any Act, do an Act that shall forfeit? Suppose a particular Company, as the Mercers, had done this, could this be a Forfeiture? But if to avoid this you will say, that the Court shall take Notice of the Common Council of *London*, to have the Management of the Business of the Corporation belonging to them; this I think the Court cannot do, and I cannot see how possibly they can, as a Court, judicially take notice hereof. Suppose our Question had been concerning another Corporation, could the Court then, as a Court, judicially have taken notice of the Power or Authority of their Common Council? Mr. Solicitor in his Argument held, that there was no Difference betwixt *London* and another Corporation, except that *London* was the biggest. Then put the Case of any other Corporation, could the Court judicially have taken notice of their Power or Interest, without having it specially set forth? Is it possible the Court can, since they differ one from the other, as much as their Charters or Constitutions do differ, of which there are hardly to be found two in *England* that do agree in their Powers? If it had been of another Corporation, of Necessity the Constitution of the Common Council must have been set forth. If you are upon a By-law, made by any other than the Body Politick itself, must not the Power and Authority of those that made it be shewn, and set forth in Pleading, in any Case where there is Occasion to use it? How otherwise could the Court judge or determine of it? So that taking the Law to be as the other Side saith, that *London* differs not from any other Corporation; it is no-where alledged in the Pleading, that they have Power to make By-laws, for the ordering and governing the City, or that they can bind all the Corporation in Sale or Disposition of their Lands, or have the Power of the Common Seal: Therefore when the King's Counsel argue from these Powers, their Power of forfeiting, they argue quite out

of the Record; they have no-where alledged or pleaded what they are, or what Power they have, as they should have done, if they had so intended. So as to this Particular, here is nothing before the Court, nothing upon Record, to shew how or which way the Body Politick should be concerned in these Acts of about two hundred and fifty of their Members, called the Common Council. Wheresoever any By-laws or Ordinances are pleaded, the Power to make these By-laws or Ordinances is pleaded, and so are all particular and derived Authorities, whenever Occasion to plead them, and necessary they should be so: For it is Fact, that the other Side may and ought to be at Liberty to deny it, if he see Cause; and therefore if they will have it, that the Common Council have abused some Power or Authority they have, thereby to forfeit the Corporation, they ought to have shewn it; to say that Notice shall be taken, or it shall be intended or presumed, is in Truth a Presumption upon the Court, as if the Court should take notice of, intend, or presume, what the King's Counsel would have, which the Court cannot, nor will do, more in this than in other Cases. But supposing the Court will take more notice of *London* than any other Corporation, and will take notice of the Common Council there, and of their Power and Authority; and I will suppose, as the other Side do, that they have the Power of making By-laws, of leasing, granting, and managing the City-lands and Revenues, and of sealing with the Common Seal, and that this they have by Custom; then surely, say the other Side, they have the Power of surrendering and forfeiting the Corporation. If I should answer, Surely and without doubt they have not, this would not argue they have not; but the Argument should come of the other Side, to prove they have; they have not, nor can produce any Case or Opinion to prove it; and the very Thought, that they could, is so new, that I believe none can be found like it. But let us consider the Nature of this thing a little particularly: Though general Discourses are most easy and florid, yet perhaps a particular Inquiry may best discover. Admit, that they have the Power the other Side say they have; yet they are not the Corporation, but a Part constituted for these particular Ends and Purposes, for which they are impowered. Corporations had their Creations by Charter; that gives them their Being, and the Form, Method, and Power of Action. Suppose, that the first Charter of Incorporation that was granted to *London* did grant, that the Citizens should be incorporate, and a Body Politick, by the Name of Mayor, and Commonalty, and Citizens; that there should be a Mayor, so many Aldermen, and so many of the Citizens, annually elected, that should be a Common Council; and that they should have Power to make By-laws, to demise or grant their Lands, under the Common Seal, in the Name of the Corporation. If they do any Act not within their Commission, is not that void? Suppose a Grant made to the Common Council, would not that be void? Suppose a Grant made by the Common Council, in the Name of the Common Council under Seal, or in the Name of the Corporation, but not under Common Seal; is not all this void? This I only instance, to shew that their Charter and Authority

is their Power and Warrant they are to act by: Did ever any Man hear of, or see a Charter giving the Common Council Power to surrender the Corporation? Or was it ever thought of before these Days? If then no such Power by the Charter be given, if they cannot do it without Power given them, shew me their Power, or else I think I may conclude sure they cannot surrender the Corporation without Power. But the Common Council in *London*, that is by Custom, and their Power is by Custom. Then if the Question be, What is their Power? It is answered, What they have used and accustom'd to do, that they may do; what they have not used or accustom'd to do, that they cannot do; for if Custom and Usage be the Authority, that Authority can go no farther than their Custom and Usage goes. Then put the Question, Have the Common Council used to surrender or forfeit the Charter? Nobody can say it. What Reason then is there for any Man to say they can do it? It is probable, that the Common Council in *London* had first their Institution from some By-law or Ordinance, though now not to be produced, but consumed by Time. But be it that, or any other imagined Commencement, can it be imagined, that those that gave them their original Authority, gave them Power to surrender the Corporation, or forfeit it? Suppose that the Power given them did authorize them not only to make By-laws and Ordinances for the good Order and Government of the Corporation, to grant or demise their Lands and Revenues, but had some general Words in it to act and manage the Matters of the Corporation: Is it not against all Sense to suppose, that that which is deputed and constituted for the well-ordering and managing of the Corporation, should have Power to surrender it? Then as the Counsel of the other Side argue, that because they may surrender, they may forfeit: By the same Reason, I hope, I may argue, if they cannot surrender or dispose of the Corporation, they cannot forfeit. Next, those Acts of the Common Council are not done neither in the Name, nor as the Acts of the Corporation, nor under any Seal; but do import in themselves only to be the Acts of the Common Council: The Ordinance, that is made by the Mayor, Aldermen, and Commons, in Common Council assembled. The Petition is the Petition of the Lord Mayor, Aldermen, and Commons, in Council assembled: Their Leases or Grants are in the Names of the Corporation, and under the Common Seal; and the Common Council only ministerial to the Corporation in ordering, managing, and disposing all for the Benefit and Advantage of the Corporation, to avoid the Inconveniency of assembling the numerous Body. But that any thing, that hath but a ministerial Power, for the Service and Benefit of their Principal, should have Power to dispose of, sell, convey, or surrender, and destroy their Principal, is no Consequence in Law or Reason. No Deputy, Assistant, or Bailiff, hath such Power; if he exceed his Authority, his Act is void. Is it not so with all Authorities and derived Powers? What they do beyond their Authority cannot bind those from whom they derive it. It cannot be the Act of the Corporation; for a Corporation cannot make a Petition, no more than they can make a Deed, or subscribe a Writing, except under the Common Seal. Corporations cannot make a Lease at Will, license a Man to enter upon their Lands, or do

any like Act, but under their Common Seal; nor can they commit a Trespass or Disseisin but by Command precedent, or Assent subsequent, under their Common Seal. How then can this be their Act? There is nothing in it that imports it should be theirs, nor ever intended to be theirs; it is not done by them, nor in their Names, but by the Common Council, and in the Name of the Common Council. If we may take notice of what is out of the Record, we know, that they have in *London* a greater Assembly than the Common Council, viz. the Common Hall, wherein the Common Council are no more than others. Can the Petition of the Mayor, or Mayor and Aldermen, in their Names, be taken to be the Act of the Corporation? If that cannot be, why should the Petition of the Common Council in their own Names be any other than their own Petition, as their Ordinance and By-law are theirs, and not the Corporation's? 12 H. 7. 25, 26. 9 E. 4. 39.

The Case of Corporations takes notice of their Power, as Common Councils, to exclude the Commonalty, and the rest of the Corporation. The Act allows the Common Council's ordering Petitions. But where is it to be found, that it was ever said or thought on before, that they could forfeit or dissolve the Corporation? Rep. 4. 77. 13 C. 2. cap. 5.

4. But supposing all that I have said against me; and supposing the Acts of the Common Council to be the Acts of the Corporation, and supposing those Acts, viz. the making the Ordinance and Petition, not justifiable or excusable; then the great Point will be, whether they or either of them are such Miscarriages or Offences in Law, for which the Charter, that is the very Being of the Corporation, shall be forfeit? This I call the great Point; for I think it to be as great in Consequence as ever any at this Bar, as if *Magna Charta* were at stake; for in my Apprehension, not only *London*, but all the Corporations of *England*, and the Government of *England*, will be deeply concerned in the Question. For let us but consider what a vast Part of *England* is concerned in the Corporations of *England*.

(1.) Ecclesiastical, or mixt, as Archbishops, Bishops, Dean and Chapters, Parsons, Vicars, Universities, Colleges, Hospitals of all sorts.

(2.) All the Cities and considerable Towns and Boroughs in *England*.

(3.) The very Frame of our Government is concerned; for one of the Estates of the Kingdom, viz. The Commons in Parliament, consists of Knights, Citizens, and Burgesses; the Citizens and Burgesses are usually chosen by them that are free of the respective Cities and Corporations; and where not chosen by them, yet the Elections are generally under their Power and Influence, and the Return made by them.

Perhaps also a Peerage is a sort of Corporation. Perhaps the World itself, at least this little World, will no longer be able to subsist in Health than the due Order and just Temperament of the several Parts and Powers therein are preserved, and contain themselves within their own Bounds. The taking away or infeebling any principal Part brings a Lameness and Deformity, Pain and Disorder upon, and at length confounds the Whole. The Laws answer their Ends, whereof the principal is the Preservation of the Government, which preserves the Laws, they cannot subsist one without the other; therefore whatsoever it is that tends to the Subversion, or leaving

ing at Will and Pleasure, that which is so considerable in our Government as Corporations are, ought to be thoroughly considered.

The better to examine and consider this great Point: In the first Place, the Reasons given on the other Side are,

*First*, That if Corporations be not forfeitable for their Miscarriages, they will attempt and do extravagant Acts, raise Sedition or Rebellion, and there will be no adequate Punishment to their Miscarriages.

In Answer to this Reason, I say, that there is no illegal Act that they can attempt or commit, but that they are under the same Severities and Corrections of Law, as any other the King's Subjects, not incorporate, are. Though it be true, that the Corporation itself is only a Body Politick, an invisible Body, yet the Members of it, they are visible. If they as Members of that Corporation commit or do any unlawful Act, they are punishable for it in their own private Capacities: If they make any Ordinance or By-law to raise Money unlawfully upon any of their Members, or others, the By-law or Ordinance is void: If they receive or collect any Money by it, the Receivers and Collectors are to answer it, they are to be sued as any other Subject. Suppose a Lord of a Manor or Market make an unlawful Order to collect or take Money from his Tenants or Copyholders, or unreasonable Tolls in his Markets; this Order is void in Law, and those that collect or receive any Money by it, are answerable for it, and the Parties grieved have their proper Actions and Remedies, and perhaps the Markets, or at least the Tolls, may be seized, or forfeit for this Miscarriage. This is the Provision that by Law is made against such Exactions, and this is just, and adequate, and reasonable. And if a Corporation made such Ordinance, By-law, or Order, and thereby there is the same Receipt or Exaction, the Subject hath the same Remedy, and there is the same Forfeiture of Toll or Market, as in case of any natural Person, or Lord of a Manor; and the Provisions by Law made are just, and reasonable, and adequate, in this Case of the Corporation, as of the other. The like for any Offence that can be committed, it must be done by particular Members, and they must answer for it. And this is no new Opinion; 21 E. 4. 14. is express, that a Mayor and Commonalty, or other Body Politick, cannot commit Treason, although all the Commonalty do commit Treason; every of them is a Traitor in his own Person. I might cite other Authorities to this Purpose, but they have been already cited by Mr. Recorder in his Argument; and though the Counsel for the King would make these Books to be but some slight Opinions, yet unless they could shew some Authority, Book, or Case, to the contrary, their despising or little valuing what they can find no Answer for, will not render the Authority and constant Opinions of our Books of less Esteem than they ought to be. It is no Excuse, if they do an unlawful Act, that they are Members of a Corporation, or did it as a Corporation. Nobody can say this will excuse them; so that, notwithstanding their being a Corporation, they are as subject to the Law, be the Offence Treason, Sedition, or any other Crime or Offence, as any other the King's Subjects are; every particular

Member, that acted or committed that Offence, is answerable to the Law for it. The particular Members, that commit the unlawful Act, and all that act under their Authority, are subject to the same Law as all other the King's Subjects. And therefore this Reason, that else there will be no Punishment upon them adequate to the Offence, and consequently a Mischief and Inconvenience, is but a Shadow, and nothing proportionable to the Mischiefs and Inconveniencies attending the Position of a Forfeiture of the other Side. But consider the Injustice that would be of the other Side, if this should be so: We know Assemblies determine their Acts by the major Vote, and great Struggling there is, as we too frequently see in their Debates and Resolutions, and carried by Majority of one or two Votes, sometimes by Surprizes and undue Management, sometimes by Fear and Terror: Suppose an evil Act so carried or managed, is it Reason that all the whole Corporation should be thereby forfeit; and thereby all other Men, to whom they owe any Debts, must lose them, and the many Interests and Livelihoods depending upon the Corporation, the Customs, Courts, Offices, and Privileges belonging to it, endless to enumerate, shall all be undone and destroyed?

*Secondly*, The next Reason that hath been given is, that it is a general Rule in Law, That the abusing or misusing of a Franchise, is a Forfeiture of the Franchise.

I answer, This is true in the Sense that the Books do say it; for if a Man misuse or abuse a particular Franchise, he shall forfeit that particular Franchise; but he shall not forfeit any other, except it be depending upon, and incident to it. And the Cases cited prove nothing farther: That when a Man hath divers Franchises not depending one upon another, and misuseth one Franchise, he shall not thereby forfeit the rest, but only that which he misuseth. 22 Aff. p. 34. Br. Fran. 34. And therefore the Cases cited, where the Abbot of *Crowland*, and the Abbot of *St. Albans*, had Franchises of Custodies of Gaols; one would not be at the Cost of a Commission of Gaol-delivery, the other did detain in Prison after legal Discharge, and Fees paid, 8 H. 4. 18. Rep. 9. 96. b. 24 E. 4. b. Inst. 2. 43. This was a Misuser of those Franchises and Forfeitures. So also perhaps if there be a Franchise that hath Incidents to it; as Pypowders to a Fair, Pillory to a Leet: An Abuser of the Incident, as the Court of Pypowders, or the not having a Pillory, may forfeit the Market or the Leet. If the Lord of a Market take outrageous Toll, he shall forfeit the Market, Stat. West. 1. cap. 31. Inst. 2. 219. But doth this prove, that if a Corporation have Fairs, Markets, Gaols, or Leets, and misuseth any of them, that the Body Politick, the Corporation, shall be forfeit? If this be so, the Abbots, they being Corporations, in the Cases of the Abbots of *St. Albans*, and *Crowland*, should have forfeited not only the Liberties of having Gaols, but the very Corporations, or Bodies Politick, of being Abbots; a Conceit never yet imagined. Can you say the City of *London* is either dependent or incident to the Markets; or on the contrary, that the Markets are so incident or dependent upon the Corporation, that they cannot be one without the other? Can this be said? If this cannot be said with Reason, how can then the taking these Toll, admit they were

outrageous, and a Forfeiture of the Market, forfeit the Corporation? The making the Ordinance, supposing they made it, is but the Mean by which they took it. Your Books only prove the Abuse of a Franchise, a Forfeiture of that Franchise, or Incidents to it, and no other: But the Inference in this Case is not the Forfeiture of that particular Franchise, but of the Being of the Corporation that owned the Franchise; which is a plain *non sequitur*, unless you say the Corporation is incident to the Market. Arguments from general Rules are the most fallible, especially in Law; and that this is such, I hope most plainly to shew in the distinguishing the different Nature of Franchises; which I shall do presently, only taking in my Way their next Reason that they offer, and answer both together; which is,

*Thirdly*, That a Corporation is a Franchise; that it commenceth by Grant, and therefore is forfeitable and surrenderable, as other Franchises are; and if they be surrenderable, then also are they forfeitable.

I do agree, that *Franchise* is a large Word, it is of the like Sense of Liberty or Privilege. Therefore in *Quo Warranto* Franchises, Liberties, and Privileges, seem to be of the same Sense. To be a Subject born, and to have Liberty and Privilege of a Freeman, and no Villain, is a great Franchise; and therefore in Law, when a Villain is made free, we say he is enfranchised, he hath the Franchise, Liberty, and Privilege of being a Freeman. An Alien, he is made Denizen by Letters Patents; a Person attained is pardoned by Letters Patents, and a Restitution in Blood granted, and made a new Creature. By these Grants the Alien and the Person restored have such Franchises, Liberties, and Privileges granted them, that though before they were not capable to take, hold, or enjoy, or act as natural-born Subjects or Freemen; yet hereby they have such Capacity granted. Next, I think it will be granted, that this Franchise, Liberty, Privilege, or Capacity, is not surrenderable or forfeitable, except only in Cases of Treason or Felony, where they forfeit their Lives; by these Instances this is proved, that it is no true Position, that whatsoever is grantable is surrenderable; and if surrenderable, forfeitable; which is one of the Reasons given by the King's Counsel, why a Corporation is forfeitable; for these Franchises or Privileges are by Grant, and yet not surrenderable or forfeitable; and this also shews, that Arguments general, and from general Rules, are most fallible, and fit only to take weak Apprehensions. But next, consider what it is to be a Body Politick or Corporation. A Body Politick is framed and constituted in similitude or likeness of a natural Body, with Capacity, to take, hold, and enjoy, and act as a natural Body, and can no more surrender or forfeit his Being, while the Members of that Body are subsisting, than a natural Body can while alive. It is only a Capacity framed and created in a Multitude to be and act as one Person; they are incorporate and made one Body Politick, that have Power, and Capacity, or Franchise of acting, taking, holding, and granting; this is their Franchise, admit it so, but differs from others. Franchises and Liberties of all other Natures are Estates and Inheritances grantable and conveyable from one to another, as other Estates are; this is no such thing, grantable or transferrable; other Franchises and Liberties af-

fect the King's Subjects, and are Privileges claimed, wherein the King and the rest of his Subjects, not claiming the Franchise, are more concerned than in this of being a Body Politick; for other Franchises either convey some Profit from the King, as Felons Goods, Waifs, Estrays, Wrecks, or the like; or affect his Subjects, as Courts, Gaols, Returns of Writs, Fairs, Markets, and the like: But this of being a Body Politick is only a Capacity to be a Person capable of having and holding what may be granted unto it, and of granting and acting as a natural Body, and affects the King, or other his Subjects, no otherwise, than giving Capacity to take, hold, and enjoy what they can get, as other Persons capacitated may. Other Franchises, Liberties, and Privileges are distinct and separate Estates, and if any one be forfeit, as it may for Misuser, the rest are not; except Incidents and Appurtenances. But if the Being of a Corporation be forfeited, all their Estates, Lands, Goods and Chattels are gone at once: So that though you admit and call this a Liberty or Franchise, it is nothing like in its Nature to those Things generally known and understood by the Name of Franchises or Liberties; and general Sayings are generally to be understood of such Things as are generally so taken and called. If then there be such great and apparent Difference betwixt this of the being a Body Politick, supposing it being, in a general and large Sense, a Franchise, Liberty, or Privilege, and other particular Franchises, admitting that which is said, that the Misuser of a Franchise is a Forfeiture, holds generally true, yet it is not in every Particular true; where there is such apparent Difference and Reason to distinguish, as betwixt the Being of a Corporation or a Body Politick, which is only a Capacity, and other particular Franchises, which are Estates; there is also apparent Reason to distinguish betwixt one and the other, they being so much differing one from the other in Nature and Reality. But next, that this was never taken in Law to be such a Franchise, Liberty, or Privilege, as was comprehended under the general Meaning of Franchise or Liberty: By *Stat. of Glost' 6 E. 1. Inst. 2. 278.* Writs were to go to all Sheriffs forty Days before the Eire, of general Summons, for all to come in at the Eire to claim their Privileges; and the second Day of the Sitting of the Justices in Eire a Proclamation made to the same purpose. In the Comment upon that Statute it appears, *Inst. 2. 281, 282.* that if the Party did not appear, his Franchises were seized into the King's Hands, *Nomine districtionis*; and if not replevied, sitting the Eire, they were forfeit or lost for ever. If the Party did appear, and did not claim, then they were lost for ever. In all the Proceedings in Eire there is no such Thing can be found, that the Corporations did come in and make Claims to their being Corporations or Bodies Politick, or that ever any were seized, if it be seizable, into the King's Hands, or was forfeit for not claiming. *Fulcher and Heyward's C. Palm. 491.* It appears, that the Dean and Chapter there surrendered their Charter, and all their Manors, Lands, Possessions, Privileges, Franchises, and Hereditaments, Spiritual and Temporal, and this with Intent to surrender, that there might be a new Corporation erected; as is recited in the Letters Patents of new Erection.

In this Case, *Rep. 3. 75. And. 2. 120. Jones 168.* resolved, That by this Surrender the old Corporation was not surrendered. This Judgment doth conclude, and must be given, either because by the Word Franchise, and the other general Words, the Franchise of being a Corporation was not comprehended; or if the Word is sufficient, and did comprise it, that it could not by Law be surrendered. This I think sufficiently shews, that Corporations were in Law as Persons natural are, and in like manner claimed; and that the being a Body Politick, or Corporation, was not to be claimed, comprised, or meant within the general Word Franchises, no more than the Liberty or Franchise of Denizen, or Manumission. Next, no Instance can be given of any Seizure of any Corporation, or Body Politick, for any Forfeiture: Seizure of their Liberties, or putting Officers upon them, is quite another Thing, as I shall shew presently: So that these general Sayings in Law Books, that Misuser of a Franchise forfeits the Franchise, neither in Law or Reason extends to the Being of a Body Politick or Corporation, but is applicable only to particular Franchises of other Natures; and the other Reason, that that which is grantable is forfeitable, is as fallacious, as before appears.

3. As for the Records cited to prove, that the Corporation or Body Politick may be forfeited, I will state those that are most effective, and do them Right therein.

*Johannes Dennis*, Mayor of *Sandwich*, P. 9. E. 1. and three more, were attached to answer *Domino Regi de placito transgr' & unde Robertus de Stokbo*, Sheriff of *Kent*, qui sequitur pro ipso Rege, complains, that he had sent his Bailiffs (naming them) to make Execution of the King's Writ, in *Villa de Stanore*, quæ est Baronia domini Regis, and that the Defendants, with Swords drawn, took away the King's Writ, and trod it under their Feet, and would not suffer it to be executed; unde dicit quod deterioratus est, & damnum habet ad Valentiam 2000 Marks. The Mayor appears, and pleads to the Jurisdiction, that he ought not to answer this Matter, except in the Court of *Shipway*. The Sheriff replies, that *Stanore* is the King's Barony, belonging to the Barony of *St. Austins*, and relies upon a Record before Justices in *Eire*, where an Amerciamment upon that Ville was formerly set. The Mayor refuseth to plead over. Then a Day is given over, then it is entred thus: *Posteaq; coram Domino Rege, & ejus Concil', quia Barones de l' Cinq; Ports, nec aliqui alii in Regno nostro possint clamare talem libertatem, quod non responderent Domino Regi de contemptu sibi fact', ubi Dominus Rex eas adjornare voluerit; et quia prædict' Barones non protulerunt aliquas Chartas a Regibus concessas, in quibus non fuit excepta Regia Dignitas, consideratum est quod respondeant; & quia le Defendants would not answer any otherwhere than in Shipway, consideratum est quod habeantur in defensionem, pro convictis de prædict' Transgr' & Contempt'. Et quia the said John Dennis is convicted of the said Offence, and the Fact of the Mayor, in those things, which touch the Commonalty, is the Fact of the Commonalty, consideratum est quod Communitas de Sandwich amittat Libertatem suam, &c.* Then follows *Postea, in præsentia* of the Bishop of *Bath* and *Wells*, then Chancellor, and others, *cum Assensu Regis*, an Agreement betwixt the Abbot of *St. Austins*, the Men of *Stanore*

and *Sandwich*, de omnibus contentionibus. And then goes a long Agreement betwixt the Abbot and the Men of *Sandwich* and *Stanore*, concerning their Jurisdictions and Courts: *Et si aliqua pars contra concordantiam illam ire vel facere, alia pars habeat suam recuperare per breve Domini Regis de Judicio exeunte de isto Record. Et pro hac prædict' homines vadiant prædict' Abbati 100 Marks*, which the Abbot remits for 10 *dollis Vini*, prædicti 30 Marks, to be paid at the Feast of *St. John* the Baptist. This is the Record at large; and for the Extract in the Collections at *Lincoln's Inn*, whether it be of this Record, or any Execution that went out upon it, non constat: But that I think it could not be upon this Record; for the Record is not 30 Marks annuatim, as the Abstract is, and the Entry of the videtur at the Conclusion, *quod Judicium extendit contra Barones quinque Portuum, & eorum Libertates, ut mihi videtur*, that is not my Lord *Hale's* Note; nor doth it appear whose it was. Out of this Record how can a Man infer, that a Corporation shall be forfeit for the Miscarriage of the Mayor or Officer? How doth it appear from hence, that they should lose or forfeit their being a Corporation? By *amittat Libertatem* all that is meant thereby is their Liberty in *Stanore*, or the Liberty they claimed to be impleaded in the Court of *Shipway*; and the Note in the Extract, *videtur quod Judicium extendit versus Barones*, must be, I think, taken to be as to their Liberty in *Stanore*, or to be sued only in the Court of *Shipway*. I have taken the more Notice of this Record, because it hath Countenance of a judicial Proceeding; but as to all the other Records cited,

A Writ to the Sheriff of *Gloucester*, reciting, that the King, for Injuries and Contempts done by the Mayor and Commonalty of *Bristol*, the Liberty of that Ville by *Bartholomew de Baddlesmere*, Custos of that Ville, into his Hands had seized. 6 E. 2. R. Cl. m. 5. The Writ commands the Sheriff, that the Custos should have the Execution of Writs as the Mayor and Bailiffs used to have. And in the Times of *Henry* the Third, *Edward* the First, *Edward* the Second, and *Richard* the Second, there were frequent Seizures of the Office of Mayor; and the Kings did put in a Custos in the Place of Mayor, or made a Mayor, and these are called Seizures of Liberties.

King *Henry* the Third put in a Custos over *London*, which continued till the 54th of his Reign, and then was taken off, and the City restored to its Election. 49 H. 3.

*Edward* the First put in a Custos, and continued so to do till the 24th Year of his Reign, and then was taken off. 15 E. 1.

The 14th of *Edward* the Second a Seizure of the Office of Mayor by *Henry de Staunton*, and his Fellows, Justices in *Eire* in the Tower, and Mayors put in by the King till the 20th of *Edward* the Second, and then restored: But for that of *Richard* the Second, give me leave to digress, and give you the State of it out of the City Registers, which are more full than these cited.

A Writ from the King to the Mayor, Sheriffs, and Aldermen, commanding them to come with twenty-four principal Citizens, before the King and his Council at *Nottingham*, in crastino Sancti *Johannis Baptist' tunc prox' fut'*, and to bring sufficient Authority from the Commonalty to answer such things as should be objected. 16 R. 2. July 22. Lib. H. fol. 269. b. City Reg. They appear-



ed, and had a Letter of Attorney, *ubi pro diversis defectionibus in Commissione sua sub communi Sigillo, & aliis de causis*, the Mayor and Sheriffs were discharged of their Offices, and committed *diversis Prisonis*; and afterwards, the first of July, Sir Edward Dalingrigg, made *Custos* by the King, came to the *Guildhall*, and his Commission being read, he was sworn before the Aldermen, *secundum quod Majores ante jurare solebant*; the King also made the Sheriffs, and they were also sworn. This is also entred in the City Register, *Lib. H. fol. 270. b.*

It appears that the King first swore the *Custos*, and the Sheriffs, to be true to him, and also turned out the Aldermen. And that the Proceedings were before the Duke of Gloucester, and other Lords, by a Commission to inquire of all Defaults in the Mayor and Sheriffs, in the well-governing of the City, awarded upon the Statute made by the King's Grandfather; and that they were convicted by their own Confession, and thereupon the Liberty of the City seized.

The Pardon and Restitution entred, and thereby it is recited, that the Proceedings were upon the Statute, and the Judgment was, That for the first Offence they should forfeit One thousand Marks; for the second, Two thousand Marks; and for the third Offence, that the Liberty should be seized. 19 Sept. 16. R. 2. *Lib. H. fol. 272. a. ubi supra.*

The Statute 28 E. 3. cap. 10. enacted, That the Mayor, Sheriffs, and Aldermen of London, which have the Governace of the same, shall cause the Errors, Defaults, and Misprisions in and about the same, to be corrected and redressed from time to time, upon Pain, that is to say, to forfeit to the King for the first Default, One thousand Marks; for the second Default, Two thousand Marks; and for the third Default, the Franchises and Liberties of the City shall be seized into the King's Hands. And that the Trial of these Defaults shall be by Inquests of foreign Countries, and the Pains levied upon the Mayor, Sheriffs, and Aldermen. Upon this Statute were the Proceedings of R. 2. grounded.

The other Side have likewise much relied upon another Seizure made of the Liberties of the City of Cambridge.

A great Riot committed by the Town upon the University, heard in Parliament by way of Petition, and Form of Articles exhibited by the Scholars against the Mayor and Bailiffs. Upon reading of which it was demanded of them, What they could say, why their Liberties should not be seized? After many Shifts they submitted themselves to the King's Mercy. The King thereupon, by common Consent in Parliament, seized the same Liberties into his Hands, as aforesaid, and then granted divers Liberties to the Universities, and certain Liberties the King granted to the said Mayor and Bailiffs, and increased their former. These are the most substantial; it would be too tedious to repeat all, for there have been in those Days, but not since, many like Seizures of Liberties, as these; only general, but nothing particular to our Purpose, and though not cited, I shall also mention those in *Crook. 5 R. 2. Rot. Par. N. 45. Inst. 4. 228.*

*Certiorari* to the Mayor of *Fith*; they disobeyed the Writ, and gave scurvy Words *Cr. 1. 252. Tyndal's Case*; and thereupon Mr. Noy cited two Cases of Seizures of Liberties. The Bishop of *Durham* had contemned the King's Process,

and imprisoned the Messenger. An Information exhibited against him, the Offence proved; adjudged he should pay a Fine, *& quod capiatur*, and should lose his Liberties for his time; because *justum est quod in eo quod peccat in eo puniatur. 33 E. 1. Rot. 101.* Another in *Banco Com'* a Prohibition awarded to the Bishop of *Norwich*; and he communicated the Party that brought the Writ; 21 E. 3. *Rot. 46.* the Party brought his Action, adjudged against the Bishop, that his Temporalities should be seized till he absolved the Party, and satisfied the King for his Contempt, and that the Party should recover 10,000 *l.* Damages. I answer to them,

(1.) That they were all above three hundred Years ago, except that of 16 R. 2. which is above two hundred and ninety, and no such thing ever was done since; what Stress or Weight can be given to such Proceedings? To what Rules of Law, since known or practised, can we bring these Proceedings? Are they now legal Precedents for the like things to be done? The Writs out of old Records for the Ship-money, and the Knighthood-money, had as good Records to warrant them, and much more plain to the Purpose than these. The Precedents of *Edward* the Second, and *Richard* the Second, either of their Lives, or of their Deaths, or of the Lives or Deaths of some of the Judges of those Days, ought, as I conceive, to be no Examples. And for *H. 3. E. 1. E. 2. and R. 2.* and those Times, they were Times of great Troubles and Disorders; and what was then done is no Rule or Precedent for this Court, or any other Court of Justice, to go by, unless by later Times allowed or approved. No Law-book or Report of any judicial Proceedings, either of *E. 2.* or of *E. 3.* or any later Book of Law, that I have yet heard of, or met with, (and I doubt not but if there had been any, the King's Council would have made use of them) hath ever given so much Credit or Countenance to these Proceedings, as to take any notice of them. To make use of old Records or Precedents, the Grounds or Reasons whereof cannot now be known, to subvert any Law or Government established, is neither advisable nor commendable. But for further Answer to them:

(2.) As to that of 16 R. 2. that you see is grounded upon the Statute 28 E. 3. c. 10. and can signify nothing to the present Purpose; for there, according to that Statute, they condemn the Mayor, Sheriffs, and Aldermen, upon their Confession, that they had misgoverned the City. The Mayor and Sheriffs being committed to Prison, and this done before Dukes and Earls, by special Commission to that Purpose appointed, and convicted by their Confession, for the first, second, third Offence, all at once, is this of good Authority in Law? And for the others, that of *E. 2.* was before Justices in Eire at the Tower, the Office of Mayoralty seized into the King's Hands, and replevied from Year to Year. And that Seizure that was made by King *E. 1.* for what Reasons or Grounds, or by what sort of Proceedings, doth not appear; all that doth appear of it is, that *de facto Custodes* and Mayors were put upon the City; but *quo jure*, who can tell? We know these Times were Times of Trouble, in the Barons Wars. The Barons, *Simon Mountford*, Earl of *Leicester*, being their General, fought a Battle with the King at *Lewes*, and took the King and Prince, *Edward* the First, both Prisoners.

48 H. 3. The Barons differing among themselves, and the Earl of Gloucester joined with the Prince, who got out of Prison, another Battle was fought at *Evesham*, and the great Earl *Mountford* slain; 49 H. 3. and then at *Winchester* by Parliament all his Party, and the Liberties of the City of *London* seized; and in such Times as these, and which followed in *E. 1. E. 2. and R. 2.* it is not to be marvelled if there were many Seizures and *Custodes* put on the City; it is more a Marvel they were not destroyed. The Statutes made in these Times shew not only the Disorders, but that the Liberties were greatly infringed, or else there would not have been Statutes to confirm them; whether the infringing or seizing were the Cause or Effect, is hard to know; but just before in those Times there were undoubtedly many extravagant Acts of all Sides, which produced *Magna Charta*, made the 9 H. 3. for confirming of the Liberties and Privileges not only of *London*, but of all other Towns; and after these Times, in the three Reigns of the three succeeding Kings, how many other Statutes for confirming the Liberties and Privileges of the Cities and Towns were made 1 H. 4. cap. 15? The Penalties and Forfeitures imposed by the Statute 28 E. 3. cap. 10. upon the City of *London*, put into the same Condition with other Cities and Boroughs, as to Penalties and Seizures. A Statute confirming to all the Cities and Boroughs the Liberties and Franchises, which they by former Grants or Confirmations had, viz. 4 H. 4. cap. 1. confirmed in like manner by 7 H. 4. cap. 1. Again confirmed in like manner by 3 H. 5. cap. 1. Again confirmed by Statute of 2 H. 6. cap. 1. By which it appears what a Sense and Memory they had of the Seizures that had been of their Liberties and Privileges, that they never thought them sufficiently confirmed; but they were sufficiently confirmed; for from the Time of *R. 2.* to this Day we do not find any Seizure of any Liberties or Franchises, or *Custos* made or put upon them. That which was in those Days of Violence done, shew them the worst of Times, but are no Precedents for the best. But next,

Supposing and admitting these Records of these Times of good Authority, and as authentick Precedents as can be, they are so far from proving against me, that I hope to make it most plainly to appear, that they are strong and plain Authorities and Evidence against them, and for me. It is ordinary in disputing or arguing to lose the Point disputed or argued. That I may not commit so great an Error, but may evince and make plain what I have affirmed, give me leave to look back to the Information and Replication, and from thence to make the Points that we argue, single, clear, and open. The Information, that saith, that we usurped upon the King to be a Corporation and Body Politick, but in Truth are none. The Bar sets forth the Title to be a Corporation by Prescription, Time out of Mind. The Replication, that endeavours to avoid the Bar, by allowing that we were once a Corporation lawfully; but that by our Miscarriages we have forfeited our being a Corporation, and thereby became none, and after that usurp'd to be one. So that, that which the other Side maintains, is, That by our Miscarriages we have committed a Forfeiture of our old lawful and rightful Corporation. This I deny; the Affirmation is upon them to prove, and they producing no Record that expresses

any such Forfeiture of a Corporation; but only Records generally saying, that the Liberties should be forfeited or seized, the Question is, What the Meaning is in these old Records of forfeiting and seizing Liberties? Mr. Attorney was pleased to take it, and so did Mr. Solicitor, as I think, that forfeiting and seizing were much one. I shall not dispute that; but whether in any of those Records the Corporation or Body Politick were by these Words taken to be forfeited? Mr. Attorney was so careful to avoid the Consequences of a Forfeiture of a Corporation, which are so great and destructive, that he would not by a Judgment in a *Quo Warranto* against a Corporation have the Corporation determined, no more than he would by the Forfeiture *ipso facto* have it determined, but that there should be some Seizure into the King's Hands; but what that is, or how to be understood, I cannot imagine. For if the Corporation be not to be dissolved and determined, in whom should it rest or remain after such Forfeitures, or during such Seizure? Shall it after Forfeiture remain in the same Persons that it was in? Shall it subsist, live, and act as before? or shall it be in *Limbo patrum*, or in *Nubibus*? Is a Corporation transferrable to any other Person or Persons? Can a Corporation be conveyed or transferred? That is impossible; and so it appears in the Dean and Chapter of *Norwich* Case, and *Fulcher* and *Heyward*, and 1 *Inst.* in the Case of the Homage Ancestral before cited. That a Corporation is not transferrable from one Body of Men to another; therefore the King cannot possibly have it, nor can he grant it. Ay, but, saith Mr. Attorney, it shall be seized, and in the King's Hands; what is meant by these Words? How can it be in the King's Hands, if not transferrable? Next, What shall the King do with it, shall he grant it to others? No, that is impossible; by the Cases cited, it so appears the King may make a new, but he cannot grant an old Corporation, because not transferrable. Then if he cannot grant, if it be not transferrable, if a Corporation or Body Politick be by Law framed in Similitude of a natural Body, then it is no more transferrable than a natural Body is. The Body Politick cannot be taken out of the Hands of the Persons incorporate. From hence then, if this be so, it will follow of Necessity, that the Corporation, if it cannot be transferred to the King, or by the King's Grant, out of the Persons in whom it is, to others, it must remain where it is, or be dissolved. Next, that which I shall shew is,

That by the Words *forfeiting* and *seizing* Liberties in those old Records, it cannot be meant forfeiting and seizing a Corporation or Body Politick; they still continued. But that which is the true Sense of these Words, forfeiting and seizing Liberties in those Records was, if the Abuse or Misuse were of a particular Franchise, as of Courts, Prisons, Markets, or the like, the King had them forfeited to him. If the Abuse were by a Corporation, they acted by their active Parts, by their Mayors, Bailiffs, Sheriffs, Coroners, or the like; the King seized these Offices, turned the Corporation-officers out, and put others into their Places. This was the Course in the *Eires*, where these Seizures in those Days usually were: But for seizing Corporations as forfeit, there hath been no Instance of it in any Time; but the contrary is most evident. For the Corporations, notwithstanding the supposed Forfeitures or Seizures, remained

remained still in Being; and this is evident even to Sense. The Seizures, that have been mentioned, have been of *London, Bristol, Gloucester, Cambridge, and Cinque-Ports, Ipswich, and Winchester.*

I offer to your Consideration, whether these Cities of *London and Bristol, Gloucester, Cambridge, and also the Cinque-Ports*, ever since, have not continually in all Pleadings, Claims, and Titles, made themselves a Title by Prescription? Are they not by Prescription to this Day? Do they not claim their Markets, Tolls, and all their Privileges by Prescription? Do not the Acts of Parliament that immediately follow these Seizures made by *H. 4. H. 5. H. 6.* in the Times succeeding, all confirm their Privileges? Not a word of granting new Privileges, but confirming the old; which shews plainly, that in those Days the Corporations were not thought or imagined to be determined or dissolved. By these Seizures, or supposed Forfeitures, the Enjoyment or Possession, for the Space of three hundred Years, is Evidence sufficient of their remaining and being Bodies Politick by Prescription, which they could not be, if they were forfeited, as pretended. For by Forfeiture they must mean the losing their Corporation, or being divested; no other Sense can be, or ever was, of Forfeiture. Could they forfeit them, and yet keep them? Could they lose them, and yet have them? If they could not, then it is plain, that since they always have had them, they never forfeited or lost them. But for farther Evidence hereof, I shall make it most plainly to appear, that during the very Times of these Seizures the Corporations remained and acted as Corporations; and that at that Time it was never thought or imagined, that during the Seizures the Corporations were forfeit; all that was done was, that the Election of their Mayor, or of their Sheriff, was *de facto* taken from them, and either a *Custos*, or a Mayor, by the King put over them, and continued till those Kings Displeasures were over, and then they chose their own Officers again: But no Thought then of forfeiting the Corporation. By the City Books, as well as Records, this is most evident. The putting a *Custos* by King *E. 1.* continued for the Space of eleven Years, from the *15 E. 1.* to the *26 E. 1.* and then they chose their Mayor again. By the City Books it appears, that their Court of Hustings all along continued, as at other Times, Aldermen all along. *Lib. A. fol. 50, 51, 135.*

*Radulphus de Sandwyco Custos Civitat' London, Henricus le Walleys, and others, Aldermen, (naming them) & universalis Communitas ejusdem Civitatis, make a Conveyance of a House to John de Bangwell, 18 E. 1.*

The Court of Aldermen holden before the *Custos* and Aldermen, *18 E. 1. Lib. A. fol. 110.*

With the King's Remembrancer in the Exchequer, *Cives London venerunt coram Baronibus, & presentaverunt Johannem de Canluar' & Willielmum de Betoynne ad respondend' pro Civitat' prædict' & Com' Middlesex, de his quæ ad Officium Vicecomitis pertinent, & ad hoc faciend' præstiterunt Sacramentum, 16 E. 1. Ro. 1.*

*Ibidem, The Presentment and Swearing two other Sheriffs, 18 E. 1. Ro. 1.*

*Ibidem, The like, 21 E. 1. Ro. 3.*

*Ibidem, The like, 23 E. 3. Ro. 3.*

*Auby le Artheir attachiatus fuit ad respond' Communitat' Civitat' London' de placito, for that he,*

being no Freeman, merchandized in the City, *21 E. 1. Lib. C. fol. 19. b.*

Another like Suit against an Un-freeman. *Lib. C. fol. 7. b.*

A Writ of Right in the Hustings, brought by the Corporation. *Communitas Civitat' London per Radulphum Pecoeks Attornatum suum petit versus Hugonem Episcopum de Bedlam unum Mefsuagium, &c. 22 E. 1.*

All the Aldermen, and twelve Citizens, were called before the King and his Council, and the King restored them the Election of their Mayor, and they chose *Henry de Gabeyes* Mayor. And on Monday following comes the King's Writ, whereby the King, for good Services, *reddidimus & restituimus Civibus London Civitatem, una cum Majoritate & Libertatibus suis, quas certis de causis dudum capi fecimus in manum nostram.* So that hereby it most evidently appears, the Corporation was not forfeit, lost, or dissolved, only a *Custos* put over them, which acted in the Place of Mayor; and when removed, they chose their Mayor again. *26 E. 1. Lib. B. fol. 38.*

The Liberties not forfeit, only seized into the King's Hands; so saith the Writ *dudum capi fecimus in manum nostram.* The Record of *Cambridge* I have looked upon; it plainly appears in it, that the Corporation was not forfeited and dissolved, as you suppose: For it appears, that when they submitted to the King to do with their Franchises what he pleased; yet it was *salvo* to the Mayor and Bailiffs, their Response to all other Matters. And afterwards, at the same Time, the King grants to the same Mayor and Bailiffs divers Liberties; by which it appears, that the Corporation was not forfeit, but still in Being, notwithstanding the Seizure and Forfeiture.

The Seizure that was by King *Edward* the Second was in no sort any Forfeiture or Determination of their Corporation; but either under a *Custos*, or under a Mayor put in by the King.

The *Custos*, Aldermen, and Commonalty, appeared, and turned out some of their Aldermen. *Lib. E. fol. 11. b.*

They chose and swore their Sheriffs, and by this Time they had a Mayor again; but the Office of Mayoralty, granted them by the King. *Lib. D. fol. 6.*

The King grants to *Nicolas de Farringdon* the Office of Mayor, *quamdiu nobis placuerit. 16 E. 2. Lib. E. fol. 146.*

They had a Writ restoring to them the Office of their Mayor again, *20 E. 2.*

Then for the Seizure of *16 R. 2.* that continued but from the 22d of July unto the 19th of September following; and the Form or Colour of Law that they had for that, was the Statute of *28 E. 3.* and the *Custos* put in sworn at *Guildhall*, and took the Oath of the Mayor, as appears in the Book which I cited; where it is mentioned to be upon that Statute. *Lib. H. 269. b. 16 R. 2.*

But for farther Evidence; in the Treasurer's Remembrancer's Office in the Exchequer, *4 E. 3. Rot. 2. in Bago de Quo Warranto in Itinere Northampton & Bedford, Quo Warranto versus Villam de Bedford;* in that Record are these Things: First, that the Village of *Bedford* had not at the last preceding Eire made Claim of divers Liberties, and thereupon in that Eire adjudged, *quod omnes Libertates non clamant' capt' fuissent in manus Domini Regis,* and had not been replevied, but the

the Corporation not seized: Thereupon the Corporation offer a Fine of eight Marks to the King; *pro licentia clamandi* their Liberties, and admitted to a Fine: But then it appeared, that the Mayor and the Coroners had sat in Judgment, and condemned Men for Felonies committed out of the Jurisdiction; and thereupon *Consideratum est, quod prædictæ Libertas de Infangtheife, & Officia Majoris, Ballivorum, & Coronatorum ejusdem Villæ casiantur in manus Domini Regis. Sed quia cæteræ Libertates & Consuetudines Villæ prædictæ absque Ministris pro communi utilitate Populi ibidem nequeant conservari,* the Court puts *Johannem de Tound Custos, Johannem Wymound and Richardum Rounds* Bailiffs, and *Nicolas Astwood* and *William de Knight* Coroners, who are all sworn to execute those Offices, and to answer the King the Profits. Hereby it appears, that the Course was not to forfeit or dissolve the Corporation: they never were so unreasonable; for hereby all their Lands and Goods, and all the Debts owing by them, or to them, would all be lost: All they did was, they put in Officers to preserve the Corporations. So that I think there is nothing more plain, that though the Liberties were seized, and that Officers, *Custos*, or Mayors, were put upon them; yet the Corporations, or Bodies Politick, or their Liberties, were not forfeit, or determined. If they had been either forfeited, or determined, could the Writs of Restitution have set them up again? The old could never be restored or set up again, but by Act of Parliament; they might have had new Charters, and have been made new Corporations; but the old could never have been restored, if once forfeited, as now imagined. So that the Point betwixt us is, Whether the Records of *E. 1. E. 2.* and *R. 2.* of Forfeitures and Seizures of Liberties, supposing the Causes or Offences for which they were seized were very great and provoking, as in all Probability they were, do prove that thereby the Corporations were forfeit, dissolved, or determined: It appears they were not forfeit. You can never avoid it. If abusing the Franchise or Liberty of being a Corporation be a Forfeiture, as you affirm, and that they were seized for being forfeit; then the Offences that were committed by these Corporations in those Princes times, were Forfeitures, and consequently the Seizures dissolved the Corporations. They could not forfeit and lose their Corporations, and yet keep them. And that they still had their Being, is most evident by the Records of those Times, shewing, that they acted, and enjoyed their Corporations under those Seizures, only a *Custos* instead of a Mayor, all other Things the same; that they have in all Ages ever since been allowed to be Corporations by Prescription, never denied or questioned; that the Acts of Parliament immediately following, confirming their Privileges, never questioned their having them. Never any Thoughts of making void any Forfeitures by these Acts, or any new Grants, but always pleaded by Prescription. These Things plainly shew, that the Offences committed in those Times did not forfeit the Corporation; and all that dark Authority they have out of those Records is directly against them, proves only that these Abuses gave only Cause of Seizure of some Offices. but no Forfeiture of the Corporation, that still continued.

Having thus answered those old Records, and

shewn, that they are of Authority for me against them; and since it hath been stirred in this Case, whether a Corporation or Body Politick be surrenderable or not, and insisted upon, by the other Side, that it is, and from thence an Argument drawn to prove, that if surrenderable, it is forfeitable: Whether it be surrenderable, or not, perhaps is also doubtful, so that I think a Man cannot argue from it any thing. First, I am sure there is no great Reason why it should be; for since that Men that are of the Corporation take, upon their coming to be made Free, an Oath to preserve the Rights, Liberties, and Privileges of it; and since the active Members are intrusted for all the other Members that elect and choose them, and also for their Successors; I cannot see how a Man can satisfy himself in so doing.

Sir *James Bagg's* Case, *Rep. 11. 98.* they forfeit their Freedom by doing contrary to their Oath and Trust. If every Freeman by his Oath and Trust be obliged to seek the Benefit of the Corporation, to surrender is against the Oath. The Law seems to have a Care of preserving Corporations; and therefore provides, that the taking any new Charter, though there be many Alterations in Offices and Names, yet doth not surrender the old. But were it of any other Franchise, the taking anew of the same thing is a Surrender of the old.

Dean and Chapter of *Norwich* Case, *Rep. 3. 73.*

*Fulcher* and *Heyward's* Case seems a strong one to prove it not surrenderable, *Jones 266.* And though the Bishop did not in that Case join in the Surrender, that cannot hinder; because the Bishop is no Part of the Corporation, and therefore cannot hinder them to surrender, if they will.

A Vill incorporate by the Name of Bailiffs, *4H. 26. 22. b.* The King *de novo* incorporates them by the Name of Sheriffs: Are their Privileges that they before had, gone? No, *Dieu defend*, saith the Book. But this being not my Question, I intend not to debate it thoroughly, but to keep to the Point of a Forfeiture of a Body Politick or Corporation, and farther to examine the Reasonableness and Justice of this Doctrine of Forfeiture, and see how adequate and just it is; for that is the thing, I perceive, desired.

First, Their Position is, That a Corporation, or Being of a Body Politick, is a Liberty or Franchise; and if abused or misused, is forfeited, determined, and dissolved.

That I may a little understand this Position, and consider of Abuse and Misuse, and of the Extents and Consequences of it: By Abuse or Misuse, every Act that a Corporation doth, that is not justifiable by Law, is, as I take it, an Abuser or Misuser. If a Corporation receive any Money, that is not due to them, if it be by Virtue of any By-law, that is a Forfeiture, though it be but a Groat. What if they by their Common Seal command their Servant to enter into such Lands, or distrain such a Man's Cattle for Rent not due; is not this a taking upon them to oppress the King's Subjects, and to extort from them their Lands or Moneys where not due? This is a Misuser. A Body Politick, as I have said, is but a Person created in Resemblance of a natural Person, to have a Capacity to take, hold, and enjoy to particular Ends and Purposes. And hold or enjoy is not possible, without acting; and all that act must

of Necessity be subject to Errors sometimes, in their Actions, as natural Persons are. And must it be so penal to them, that every Error, Misuser, or Abuser, must be a Forfeiture? Can it be reasonable or just in Law, that this can be? Laws are made for Preservation, not for Destruction; if every Abuser or Misuser forfeit, be it a small Transgression, is it either reasonable or probable, that any Law shall punish it with Destruction of the Body? The greatest Offence, be it Treason or Rebellion, or the least illegal Act, Offence, or Misdemeanour, must have the same Measure of Punishment by this Rule; and the Law then doth not distinguish. If a natural Body, or Person, hath a Market, and orders his Servants to take such Tolls, and he takes them; what would this Crime be, besides Forfeiture of his Market? Why should a Corporation then, not only in such Case, or for any Offence or Miscarriage to the Value of a Penny, forfeit and lose, as in the Case of High Treason, his Life or Being, Lands, Goods, and All? This cannot be agreeable to any Rules or Reason of our Law; and therefore I take it, it cannot be the Law. The next thing I design to insist upon is,

*Secondly*, The Mischiefs and Inconveniencies that must attend this Doctrine or Law of forfeiting and surrendring, if the Law be so.

Let us then consider, whether this at one Stroke do not make all the Corporations in *England*, of all sorts, forfeit at once, and perhaps many Years since. Is there any Corporation in *England* that hath not offended or transgressed? All manner of Corporations fall under this Rule. If they have transgressed or done any such Act as makes a Forfeiture (as every Miscarriage, for any thing I can see to the contrary, doth) whether the Corporation be *ipso facto* dissolved by the Offence committed, or else by the Judgment, which must relate to the Offence, to avoid all mean Acts done by the Corporation; all that they have done since such Miscarriage, they have done without Right; and all that they think they have a Title to, as a Corporation, they are mistaken in, they have none. Perhaps if a Parliament should be called, those forfeited Corporations can lawfully send no Burgesses. I do not know whether I am mistaken, or not, I only offer this to Consideration amongst others: As (give me leave to venture a little farther upon these Considerations of Surrenders and Forfeitures of Corporations) can a Bishop, Dean and Chapter, Prebendary, Parson, &c. surrender his Corporation or Body Politick? If they can, most of them, perhaps, are of the Foundation of the Crown, and had their Lands from thence. We have many Statutes made to restrain their Alienations: Those of Queen *Elizabeth* did not extend to hinder their Alienations to the Crown; but perhaps, out of Hope of Preferment, they aliened to the Crown, till the Statute of 1 *Jacobi*, cap. 3. took away that Power also of conveying to the Crown: Can these forfeit the Corporations? Perhaps we are Sinners all, or at least, as the Balance at some time or other may be holden, may be found too light: We are upon a Point that goes to Posterity; Fear, and Favour, what may it do, and what may it not do? If they may surrender or forfeit, what Effects may this have upon the whole Ecclesiastical Estate? If this had been known in the Days of King *Henry* the Eighth, perhaps there would

have been no great need of Acts of Parliament to make him Head of the Church, or to have dissolved the Monasteries. Suppose that Colleges, Hospitals, and other Corporations founded for Charity, can surrender or forfeit; the present Masters and Fellows, and the Heirs of the Donors, may truck; what Effect may this have upon them? what Ways may they find out? Also Cities and Boroughs; what Divisions and Contentions hath it already produced, some for surrendring, others for defending, what Animosities are about it? The End of the Law is to preserve Peace and Quiet. Divisions and Dissensions frequently end in the Destruction of both Parties. The Citizens and Burgesses are, I think, three Parts of four of the House of Commons. It is considerable what Effects this may have in Parliaments, our Laws and Posterity perhaps not a little concerned herein; and if so, surely this is a great Case. But if only the City of *London*, give me leave to see what the ill Consequences and Mischiefs will be. Arguments from Mischiefs and Inconveniencies are forcible Arguments in Law: So saith *Littleton*, and my Lord *Cook* upon *Littleton*. And Men must be desperate and sensual, that despise future Mischiefs and Inconveniencies. And many other Places there cited. *Inst.* 1. 11. 60.

1. All their Lands will be gone and revert to the Donors, and their Heirs. By Dissolutions of Corporations, all their Privileges are gone, and their Lands revert to their Donors, or Lords, of whom they were holden. *Jones* 190 *F. N. B.* 33. *k. Inst.* 113. *b.*

2. All their Markets, Tolls, and Duties, that they claim by Prescription; whereby the Government and the Honour of the City, the publick Halls, Gates, Prisons, Bridges, and other Edifices, are in a great measure maintained.

3. All the Debts owing to the City, and all their personal Estate, by the Death or Dissolution of the Corporation, will be gone; but who shall have them? Perhaps, *non definitur in jure*.

4. All the Liberties, and customary Privileges, that the Freemen of the City, their Wives and Children claim, *viz.* to have customary Shares in their Husbands or Fathers Estates; to be exempt from Tolls in other Towns, Ports, and Markets; to exclude Foreigners and Unfreemen from using their Trades in *London*, and many others.

5. All the Acts of Parliament, that give particular Powers and Authorities to the Lord Mayor and Aldermen, or Common Council, or Corporation, respecting either the Government or Justice of the City; as about Ministers, and Payment of their Dues, Buildings, Paving of Streets, Sewers, Insurance Office, and many others.

6. What shall become of the Orphans, and all the Moneys and Debts the City owes, and all the Charities in the City? We have seen the City burnt, and may remember what a Swarm were unhived thereby; but we never yet saw it dissolved, nor are the Consequences measurable. And though it please his Majesty, upon the Dissolution of this, to grant a new Charter, yet it will be impossible any of these Things can be preserved: Their Lands, Estates, Debts, Privileges, Customs, are all Personal, and

and annexed to the Corporation, and must live and die with it; the said Acts of Parliament are all fixed to this Corporation, and so are the Charities, and cannot, as I conceive, be ever transferred to any other to be new created. A new Corporation can be in no Succession or Privity with the old. If a Body Politick be once dissolved, though a new one be founded of the same Name, that can have no Succession to the old, nor come in Privity to it: Therefore it is, that in the Dean and Chapter of *Norwich's Case*, and in *Fulcher and Heyward's Case*, the Preservation of the old Corporation is insisted on. *Inst.* 1. 102. b. If every Abuser committed by a Corporation be a Forfeiture, Determination, or Dissolution, is there any one in *England* not forfeited and dissolved? Abuse is a Word of a wonderful large Sense: When the Law speaks of a Franchise abused or misused, it is applicable to a particular Franchise, as to a Market, Court, or the like; and if that Franchise be misused, or abused, in Oppression or Misuse, contrary to the Ends of it, some Certainty there is in it: But the Abuse of a Corporation extends to all its Acts, and all Estates of the Corporation; and all the Privileges of all the particular Persons, and all that are concerned in them, are Sufferers for every Abuse, or Misuse, or Mis-act, or Trespas, how small soever. Who can tell in the Actions of a Person what may be taken to be ill or illegally done, or an Abuse? Who will trust a Corporation, if its Duration and Existence be so sickle and infirm, that every Abuser or Misuser shall forfeit it? There will be no need of Officers to be amoved, thereby to determine this Corporation at Will and Pleasure, this Position contains enough to do all. These great Consequences, attending this Doctrine of Forfeiture, are Reasons to prove the Law otherwise.

But saith Mr. Attorney, (if I understand him) We do not intend to destroy the Corporation, though we say in our Pleading, That you have forfeited your old Corporation, that you have, without any lawful Authority, usurped upon the King, and pray in our Replication, that *de Libertate, Privilegio, & Franchesia illa (viz. the being a Corporation) abinducantur & excludentur*. These are but Words of Form, we only will lay the King's Hands gently upon it, and seize it; but the Corporation shall not be destroyed or dissolved.

I answer, This is wonderful, and a great Compliment to the City, as I take it; let us not flatter or deceive one another. We are not now in the irregular Days in the Records mentioned, nor in such sort of Proceedings as in those distracted Times. Let us not go by blind Conjectures, out of old Records, and bring in unknown Ways. We are now in a *Quo Warranto*, which, as Mr. Attorney truly saith, is in the Nature of a Writ of Right; and a Writ of Right is the highest Writ that is in the Law; and the Judgment therein, and in this *Quo Warranto* must be conclusive to all Parties. If given against the Defendants, it must conclude them for ever, and dissolve their Corporation; and if given against the King, he shall never hereafter bring it in Question for any Cause precedent. *Rep.* 9. 28. *Inst.* 2. 282, 495. *Cook's Entries* 527. D. hath a Precedent of it. *Consideratum est, quod* the Defendant *de & in Libertatibus, Privilegiis, & Franchesiis præd. in Informatione prædictæ specificat' nullo*

*modo se intromittat, sed ab iisdem penitus excludatur*. The like against *Ferrers*, and the *Virginia Company*, and many others may be found, *M.* 21. *Jur.* 1. r. 9. The Court cannot alter the Judgment, it will be erroneous, if they do. And to talk of a Judgment of a Seizure, what is the Meaning of it, or such Judgment? Is it final, or not final? The Court must give a final Judgment, that the Party, if he think fit, may have his Writ of Error. The Court will not take any of your old Records to go by, if any such are to be found, that would warrant any other Judgment: Therefore a Seizure, without such a Judgment, that determines the Corporation, cannot be any way brought to pass, as I believe, nor can I understand in whom, by your Seizure, you would have the old Corporation to subsist. Transferred from the Persons, in whom it now subsists, I think is impossible, but dissolved by your Judgment it may be: And I hope your Lordship will not be induced by singular unwarrantable Things, that a Judgment should be given that shall neither dissolve the Corporation, nor continue it, that shall neither be for Plaintiff or Defendant, that shall leave the Corporation neither alive nor dead, but in *Transitu*, or *Limbo Patrum*: A Judgment, *quod capiantur, or quod Libertates & Franchesiæ prædictæ seiscantur in manus Domini Regis*. Was there ever any the like? What shall be understood by it? Shall we be afterwards a Corporation? Shall our Magistrates continue? Shall we have our Lands, Markets, Tolls, Customs, or Franchises, or not? Or shall we be none, and yet not dissolved? I must confess, I am confounded in these Notions.

Next, as to the Authorities in Law for me:

1. I take it to be a great Authority for me, that there is no Precedent or Judgment, or Book-case, produced or found, that ever a Corporation was forfeited. It lies upon the other Side to produce it, or shew it; and no doubt they would, if there had been any, but there is none by the Authorities they cite; you may easily perceive, any sort would not be omitted.

2. The Nature of a Corporation, as our Books do describe it, shews it not forfeitable. I take it plain out of the Case of *Sutton's Hospital*, and the other Books there cited. *Rep.* 10. 92. b. 21. *E.* 4. 72. A Corporation aggregate is invisible, immortal, and rests only in Intendment and Consideration of Law, cannot commit Treason or Felony, be out-lawed, excommunicate, hath no Soul, cannot appear in Person, cannot do Fealty, cannot be imprisoned, nor subject to Imbecility or Death. *Br. Corp.* 24. 34. They cannot commit any actual Trespas or Disseisin, except under their Common Seal, by Command precedent, or Assent subsequent: When our Books say, that they are a Body Politick, and rest or have their Being in Intendment or Consideration of Law, thereby is meant, that they are by Law enabled to act to particular Ends and Intents answerable to their Ends and Creations. Their Ends or Creations are only to be subservient to the publick Good, and Government, and Preservation of the City or Town incorporate, and of the Members thereof. And if there be any Act done by the Members, that are the active Part of such Corporation, to any other Intent, End, or Purpose, this is not the Act of the Corporation, but of the particular Members, and they only are answerable for it. And as to particular

Offences and Miscarriages in this Case alledged, it cannot be denied, but that the particular Members are answerable for it; and if they, then according to all Books, they ought not to be doubly chargeable or answerable in both Capacities. And the Argument cited out of *Bagg's Case*, of a Freeman convict of Perjury, and thereupon disfranchised, doth not prove, that they shall be punished in a double Capacity; for the Corporation is not thereby punished, but preserved. The Being of a Body Politick is only a Capacity, and in resemblance of a natural Body, and no more forfeitable than a natural Body. It is seizing and forfeiting of Liberties, that we meet with, that is such as are generally spoken of; as Markets, Courts, Jurisdictions, and the like: And in the old Records, by seizing the Liberties of a Corporation is meant the taking from them their Officers, and putting in others upon them for a Time. But a Forfeiting, Dissolving, and determining the Body Politick, never was yet done or known, nor, as reasonable to believe, ever entered into any Man's Thoughts till now; for I have already shewn, that Offences and Miscarriages, that were committed by the Corporations in those troublesome Times of *E. 1. E. 2. and R. 2.* for which their Liberties were seized, were not Forfeitures and Determinations of those Corporations; they all remain Corporations by Prescription to this Day: And I have also taken Notice, that the Acts of Parliament, that were made in the succeeding Kings Reigns, of *H. 4. H. 5. and H. 6.* are only Acts of Confirmation to the Cities and Boroughs of their Liberties and Privileges. From that Time till within these three Years, I believe it never entered into any Man's Thoughts, that a Corporation was forfeitable; for farther Proof whereof divers other Statutes, and the whole Series of Matter is Argument.

The Statute *15 Hen. 6. cap. 6.* that provides against Abuses and Exactions made by Societies incorporate, by their By-laws and Ordinances, and appoints a Forfeiture of Ten Pounds, and of their Power to make By-laws: To what End should this be, if the Corporations themselves were forfeited, or thought so to be?

The Statute of *19 H. 7. cap. 7.* recites the Statute of *H. 6.* and the Exactions and Abuses by Fellowships, by their By-laws and Ordinances; and appoints a Penalty of Forty Pounds, if they exact Money by an unlawful and unwarranted By-law, not examined and signed by the Chancellor and Chief Justice.

The Statute of *12 H. 7. c. 6.* sets forth grievous Exactions by the Fellowship of Merchant Adventurers by their By-laws, and imposeth a Penalty for the Future.

The Statutes *22 H. 8. 4. 28 H. 8. 5.* shew like Exactions by Corporations upon Apprentices by their Ordinances and By-laws, provides Remedy, and enacts Penalty. If in those Times it had been thought or imagined, that a Corporation had been forfeitable, every of these Offences forfeited it, what need farther Remedy? In the Case of *Hoddy and Wbeehouse*, of excessive Toll by the Town of *Northampton*, *Moore 474. 39 Eliz.* In the *Quo Warranto* against a Corporation, though the Question was concerning their taking Toll, and whether they had forfeited their Market, or only their Toll; no Thought of forfeiting their Corporation was ever mentioned. So that I think I may conclude with the tumultuous Times of

*Edw. 1. Edw. 2. and Richard 2.* what was then done, doth plainly shew the Corporations were not forfeit or dissolved: That by all the Acts of Parliament, and Proceedings in almost all the Reigns of any Length or Duration, from that Time to this very Case, the Opinions and Thoughts of Men were otherwise; as by the Statutes and Transactions appears: Not one Opinion, Book, or Authority, produced, or to be found. The great Concern not only of this great City, but of all other Cities, Towns, and Corporations, Ecclesiastical and Temporal, all depend upon it. And which is more than all, the very Government by Law established will be in great Danger of Alteration by it.

I have argued long, and tried your Lordship's Patience; the Weight and Length of the Case, and Rareness of the Matter, there never having been the like before in any Age, will, I hope, excuse me. But besides the whole Frame and Foundation, that the other Side have laid, being all built upon general undigested Notions, as I take it, *viz.* that Abuser and Misuser of Liberties forfeits them, without distinguishing betwixt one Thing and another; that the Words Forfeiting and Seizing Liberties, found in old Records, should be Authorities to prove Forfeiting Corporations or Beings of the Body Politick, though no such Thing then, or at any time since, till very lately, was ever thought on or imagined: It was necessary for me to open and set forth these general Notions, and to explain and distinguish; which, I hope I have done, that it may appear what the Sense of them is, how far they agree with Law and Justice, and how far not. And if, in the Doing hereof, or in the setting out the repugnant or inconsistent Matters or Opinions arising in this Case, to maintain this *Quo Warranto*, I have expressed myself in any other manner than became me, I humbly beg Pardon for it; and that it may not reflect upon the Cause, nor prejudice it.

Upon the whole Matter, if this Information brought against the Body Politick for usurping to be a Body Politick, ought to have been brought against the particular Persons; if it be repugnant or contradictory, that a Corporation can usurp to be a Corporation; that a Body Politick or Being can usurp to be a Body Politick or Being, before it had a Being, or to be that same Body Politick or Being, which it was when it did usurp; if forfeiting a Franchise, or Liberty, or other Estate, cannot determine or vest that Franchise or Estate in the King, till the Forfeiture appear on Record; then the old Corporation supposed to be forfeited, if it were so, did notwithstanding, and yet doth continue in Being, there being no Record to determine it; and consequently that, which is pretended a new one by Usurpation, is impossible. If by Seizure into the King's Hands (as pretended) the Continuance of the Corporation be intended, how inconsistent is it with Law or Justice to continue any thing in the King, that is wrongfully usurped, and the Parties to be punished, fined, and committed for usurping? If Mr. Attorney's Repliation, taking Issue upon our Prescription to be a Corporation, and going over, and alledging several distinct Causes of Forfeitures, cannot by Law be maintained, and in the Example doth introduce a Way to bring all Mens Estates subject to Mr. Attorney's Will and Pleasure, (for, let any Man's Right be as good as can be, it will be scarce possible

possible to defend it, if such Pleadings as in his Replication be allowable by Law) then be the Matter in Law as much against us as possible, yet Mr. Attorney can have no Judgment for him upon this Information. Next, Supposing the Information all good in Law; yet, if the Judgments, Records, and Authority, that have been cited by them for Seizures, do plainly shew, that Seizures and Forfeitures are very different in their Natures; that the Corporations all continued notwithstanding the Seizures; and the Seizure was only the King's putting in Mayors and Officers, to act in them, instead of others elected or constituted by the Corporation, and they remain Corporations by Prescription to this Day, and never were forfeited, dissolved, or determined by such Seizures; if the general Authorities in Books, that the Misusing or Abusing a Franchise be truly applicable to Franchises, (that are Estates and Interests grantable or conveyable from Man to Man) and never were intended of such a Thing, as is rather a Capacity or Being, than a Franchise; if there be no Case, or Precedent, or Opinion to be found for it; if, on the contrary, the particular Cases cited prove, that were the Corporations have by Miscarriages forfeited particular Franchises, they do not forfeit their Corporations; if there be scarce any Corporation in *England*, that have not at some Time or other done something they should not, or omitted to do something they should, and thereby forfeited their Corporation, and consequently all are Usurpers, and their corporate Acts since done all void: If the Corporation here hath done nothing, but that the Mayor, Aldermen, and Common Council, are only Delegates, Deputies, or Ministers of the Corporation for particular Purposes; if Servants, Deputies, or Delegates do that which they have no Authority to do, they must answer for it in their own Persons; but their Masters, or those that deputed or delegated them for another Purpose, they are innocent; they shall not suffer by it, though no Acts of Parliament had been in the Case; if the Acts of Parliament against seizing the Liberties of the City, for or by reason of any Miscarriage of their Officers or Ministers, extend to these Acts of the Mayor, Aldermen, and Common Council; if so be that these Acts were the Acts of the Corporation; yet, with Submission, if they have shewn a good and legal Right, by their Custom and Title, to make By-laws for regulating and settling the Markets and Tolls, and that which they have done be, as pleaded, reasonable, and that there was reasonable Ground at that Time for their Petition, which they have set forth; if all these Particulars, that I have now summed up, be against me, then Judgment must be against me; though I know not what that Judgment can be. But if any one of these Particulars, thus repeated, be for me, and against Mr. Attorney; then Mr. Attorney can have no Judgment against the City; but Judgment must be for them; which I humbly pray.

THE next Term, viz. *Trinit. 35 Car. 2.* (Chief Justice *Saunders* dying the Day of the Judgment given, or the next Day after) Mr. Justice *Jones*, Justice *Raymond*, and Justice *Withens*, being in Court, Justice *Jones* pronounced the Judgment of the Court, and Justice *Raymond*

and Justice *Withens* affirmed, that Chief Justice *Saunders* was of the same Opinion with them, and that they all agreed,

1. That a Corporation aggregate might be seized. That the Statute 28 *E. 3. cap. 10.* is express, that the Franchises and Liberties of the City, upon such Defaults, shall be taken into the King's Hands. And that Bodies Politick may offend, and be pardoned, appears by the general Article of Pardon, 12 *Car. 2.* whereby Corporations are pardoned all Crimes and Offences. And the Act for regulating Corporations, 13 *C. 2.* which provides, that no Corporation shall be avoided for any thing by them misdome or omitted to be done, shews also, that their Charters may be avoided for Things by them misdome, or omitted to be done.

2. That exacting and taking Money by the pretended By-law, was Extortion, and a Forfeiture of the Franchise of being a Corporation.

3. That the Petition was scandalous and libellous, and the making it and publishing it a Forfeiture.

4. That the Act of the Common Council was the Act of the Corporation.

5. That the Matter set forth in the Record did not excuse or avoid those Forfeitures set forth in the Replication.

6. That the Information was well founded (a). And gave Judgment, That the Franchise should be seized into the King's Hands, but the Entry thereof respited, till the King's Pleasure was known in it. Justice *Raymond* and Justice *Withens* declare, that they were of the same Opinion *in omnibus*.

And accordingly after Entry made by Mr. Attorney, That as to the Issue joined to be tried by the Country; as to the Claiming to have and constitute Sheriffs; as to the having the Mayor and Aldermen to be Justices of the Peace, and to hold Sessions, *quod ipse pro Domino Rege ulterius non vult prosegui*; Judgment is entred:

*Ideo consideratum est, quod prefat' Major & Communitas ac Cives Civitat' Lond' as to the Issue aforesaid, betwixt our Lord the King and them joined, and as to the Liberties and Franchises aforesaid by them claimed, to have and elect Sheriffs, and to have their Mayor and Aldermen to be Justices of the Peace, and hold Sessions, eant inde sine die, salvo jure Dom' Regis, si al', &c. Et quod dictas separales materias in lege unde tam prefat' Att' Gen' quam prefat' Major & Communitas & Cives Civit' prefat' posuerunt se in Judicium Curie, the Court advise till Trinity Term; and then pro eo quod videtur Curie hic quod prefat' Major & Communitas ac Cives Civitat' prefat' forisfecerunt Domino Regi nunc Libertat' Privileg' & Franchef. prefat. ob causas in Replicacion' prefat' Attorn' Gen' superius specificat' quod Placita prefat' Major & Communitat' ac Civium Civitat' prefat' superius rejuendo & repellendo in ea parte placitat' materiaque in iisd' content' minus sufficien' & invalid' in lege existunt ad precludend' dict' Dom' Reg' a Forisfactura prefat. aut ad Major' & Communitat' ac Cives Civitat' prefat' ad clamand' Libertat' Privileg' & Franchef. prefat' sibi allocand' & adjudicand' manutenend' maturaque Deliberacione superinde prius habi' considerat' est, quod Libertat' Privileg' & Franchef. prefat. fore de seipsis unum Corpus corporat' & Politic'*

(a) See the Petition of the *Mayor*, and *Aldermen*, and Lord Keeper *North's* Speech to them, in *State Trials*, Vol. VIII. p. 446—447.



*Politic' in re, fact'o & nomine per nomen Majoris Communitatis & Civium Civitat' Lond' ac per idem nomen placitare & implacitari, responderi & responderi per eisd' Majorem & Communitatem, ac Cives Civitat' London' præd' superius clamant' capiuntur & sestantur in manus Domini Regis; & quod præfat' Major & Communitas ac Cives Civitat' Lond' præd' capiuntur ad satisfaciend' dicit' Dom' Reg' de Fine suo pro Usurpatione Libertat' Privileg' & Franchef. prædict'.*

*Thus was the Metropolis of the Kingdom deprived of its Charter and Magistrates, till the Year 1688, when King James, terrified at the News of the Prince of Orange's intended Invasion, thought fit to restore it, October the 6th, and ordered Lord Chancellor Jefferies to carry it back himself; whereupon Sir George Treby was restored to his Place of Recorder, and the rest of the Magistrates, according to the ancient Constitution of the City.*

P O S T S C R I P T.

**T**HE Question concerning the Surrender of Corporations, or Bodies Politick, not being directly in the Case, but in the Arguments on both sides insisted on, it may not be unnecessary to state that Point, and collect what hath been in the Debates or Arguments alledged on either side, that the easier View and Judgment may be made of it. By Surrender in this Question is, by both sides, meant and intended some Deed or Instrument in Writing, whereby a Body Corporate or Politick can surrender and dissolve itself. It is agreed that a Body Politick may be dissolved, either by the Death of the Persons incorporate, or their Refuser to act, nominate, or elect Officers or Ministers, so as there remain not sufficient, authorized or enabled by their Charter or Constitution, to preserve their Being: This is admitted to be a Cesser, or Dissolution of the Corporation, and such a sort of yielding up, or Surrender, is admitted possible. But whether by any Deed or Instrument in Writing it can be done, that is the Question intended. For the Surrender, it hath been alledged,

1. That the Being of a Body Politick is a Liberty, Privilege, and Franchise, that had its Commencement by the King's Charter, or by Prescription, which supposes a Charter; and if it have its Beginning and Creation by Charter, which is the King's Deed that grants it; by Deed again it may be regranted and surrendered: And it is a Maxim in Law, *Unumquodque dissolvi potest ead' modo quo ligatur.* And instances in Fairs, Markets, Leets, and such-like Franchises, granted by Charter, which, say they, may be surrendered by Deed, or Regrant.

2. That it is necessary that it should be dissolvable by Surrender. Perhaps a Town may come to decay, and not be able to defray the Charge that the Support and Maintenance of the Corporation may require; for every one sees that Ornaments and Officers must be, and these cannot be bought or maintain'd without Estates; and poor Men are not able, without Ruin to their Families, to bear the Magistracies and Offices; and therefore it is necessary there should be a Power in them to surrender.

3. That the Books and Cases in Law do prove, that a Corporation, or Body Politick, may surrender itself, and thereby be dissolved.

Dy. 273. There the Case is thus stated: The Deanry of the Cathedral Church of *Wells* was dissolved by the Surrender of *Fitz-Williams*, *tempe H. 8.* And the Prebend of *Currey*, in the same Church, was also surrendered by *Goodman*, Prebendary there, *1 E. 6.* And in this Year the Dissolution of the Deanry was confirmed, and the Deanry extinct by Act of Parliament, and a new Dean erected and created; to which new Deanry, the Lands and Possessions of the old were annexed, amongst other Possessions, and the Nomination of the new Dean and Successors given by that Act to the King; and that he should have the same Power in *Choro & Capitulo*, as the old Dean had; saving to all Strangers, other than the Bishop of *Bath and Wells*, the old Dean, and the old Prebendary, and their Successors. In this Case it is admitted, and taken for granted, that the Deanry, and also the Prebend, were surrendered.

Dy. 282. There the Archbishop of *Dublin* had two Chapters, *viz.* the Dean and Chapter of *St. Patrick*, and the Dean and Chapter of *Christ Church*, and both these used to confirm the Bishop's Leases. The Dean and Chapter of *St. Patrick*, by Deed under their Common Seal, gave and surrendered all their Church, Houses, Lands and Possessions, to the King, without Licence or Consent of their Bishop, being their Ordinary, and Patron of the most part of the Prebends. After this Surrender their Church was used as the Common Hall, for the four Courts in the Term there; and a Lease is made by the Archbishop, confirmed by the Dean and Chapter of *Christ-Church* only; and whether the Successor of the Archbishop were bound by this Lease, was the Question. The Judges in *Ireland* were divided in Opinion, and thereupon the Case was sent over for the Opinion of the Judges here: And the Opinions and Resolutions of five Justices, *viz.* *Catlyn, Dyer, Saunders, Welsh, and Carus*, certified to the Lord Deputy of *Ireland*, under their Hands, were, *Quod non fuit aliud Capitulum in esse tempore confirmationis Dimission' præd' nisi Christ-Church tantum, quia Corporatio & Capitulum Sancti Patrick fuit per donum & sursum reddition' Decani & Capituli præd' legitime dissolutum ab'que consensu Archiepiscopi.*

*Jones* 168. The Opinion of Justice *Jones* there, that a Corporation may be dissolved by an Act proper, *viz.* by Resignation.

On the other side, it hath been answered,

1. Admitting it to be true, That to be a Body Politick, is a Liberty, Privilege, and Franchise, created by Charter, which is the King's Deed; yet it doth not follow, that it may be surrendered by Deed: For the Charters that incorporate the Citizens, or Inhabitants of such a City, Town, or Place, and make them a Body capable of taking and having Lands, Goods, or Chattels, to sue and to be sued, and to have a Common Seal, and to act according to the Powers, Ends and Purposes, in their Charters contained, only give them a Capacity for those Ends. The Liberty, Privilege, and Franchise, that they have, goes no farther. They cannot transfer this Privilege, or Franchise, to any other Persons. These are only personal Franchises or Capacities, fixed in the Persons, to whom they are granted, like to Patents of Denization granted to Aliens, whereby a Capacity is granted to have, hold, and act, as a natural born Subject; Grants of enfran-

enfranchising a Villain; these are Grants that cannot be surrendered; these are Franchises and Capacities like this; these are Exceptions to the general Rule, *Unumquodque dissolvitur eodem modo, &c.* So also of Fairs, Markets, Courts, &c. they are created by Charter, they may be granted over, or granted to the King, but if they be regranted to the King, they are not extinct, but remain in the King.

Abbot of *Strata Marcella's* Case, *Rep. 9. 25. b.* shews the Difference thus: When the King grants Franchises, that were in the Crown before the Grant, as *Bona Feloniam, Deodands, Wreck, &c.* and these come again to the Crown, they are merged in the Crown, and the King is seized of them *Jure Coronæ*; but when a Privilege, Liberty, Franchise, or Jurisdiction, was at first erected or ordained by the King, there, by the coming of it again to the Crown, they are not extinct; and instanceth in Fairs, Markets, Hundreds, Leets, & *similia.* They are not dissolved or gone, for thereby Subjects would be prejudiced: For if the Court should be so granted, and thereby dissolved, the Subjects Judgments and Suits in those Courts would be all lost. These are other Exceptions to that general Rule, *Unumquodque, &c.*

2. That the Reason given for the Surrenders of Corporations from the Poverty that may happen, for the Conveniency of some Corporation, is answerable; for that doth not very frequently happen: But when it doth happen, if they are weary of it, they may let it alone, and not act, or choose Officers; it will cease of itself, they need not be at the Charge or Trouble of a Surrender: But on the other Side, the Inconveniences are very great, and are some of them before specified. The Establishment of the Church is all in Corporations, Bishops, Deans, Chapters, Prebends, Parsons, Vicars; if these be surrenderable, as by the Cases cited, without Consent of Bishops (a Prebend is, as to his Being, but as a Parson, or a Vicar) the Universities, Colleges, Hospitals, all the Cities, considerable Towns, Trades, and Mysteries, are Corporations; if these be surrenderable, it affects our old Government.

3. As for the Books and Authorities. *Dy. 273.* the Dissolution of the Corporation thereby surrendered is only mentioned in putting the Case, it is not debated, nor was it material in the Case: For the Act of Parliament there settled the new Dean and Chapter; and the Prebendary, and the Matter of the Case ariseth upon the Deprivation of Dean *Goodman*, and the Appeal and Reversion of that Sentence, there is not as much as any Opinion in the Case concerning the Dissolution or Surrender, whether good or bad. But what may reasonably be inferred from that Case is, that the Surrender and Dissolution thereby was not good in Law; for if it had, what needed the having an Act of Parliament to secure against the old Dean and Prebendary? which yet appears in the Case was had.

And, *Co. Rep. 3. 75. b.* in the Case of the Dean and Chapter of *Norwich* this Case of *Dyer* is cited, and there it is expressly said, that that Surrender was not thought good, till confirmed by Act of Parliament.

And as for the other Case, *Dyer 282.* of the Surrender of the Dean and Chapter of *St. Patrick*, the Opinion of the Judges there given

is, by all the Judges; *3 Car. 1.* in the Case of *Heyward* and *Fulcher*, in *Jones 168.* denied to be Law; and said to be a private Resolution. So that these two Cases in *Dyer* having been by those later Authorities denied, remain no Authorities. And as for the other Authority, *viz.* The Opinion of Justice *Jones 168.* that a Corporation may be dissolved by a proper Act, *viz.* by Resignation, that is true, taken in the Sense he speaks it: It is spoken of a Dean and Chapter resigning to the Ordinary, *viz.* the Dean resigning his Place of Dean, and the Prebendaries of the Chapter resigning their Prebends to the Ordinary, whereby their Churches and Prebends became void, and to be supplied by the respective Patron, collating or presenting, as in Cases of Resignation, by any Parson or Vicar to his Ordinary. But this is nothing of a Surrender of the Body Politick to the King, and thereby dissolving the Corporation, and destroying all Supply, by new Presentments or Collations. And this appears by the very Words of Justice *Jones* there; for when he saith, they may be dissolved by a proper Act, *viz.* by Resignation; the next Words are, or by Death of the whole Corporation, and the King being Patron, it is in his Election whether he will collate *de novo*, or not, and till he collates the Corporation is in suspense; but if the Bishop be Patron, then the Bishop, upon the Resignation, hath Power to collate, and thereby to continue the Corporation: So that it is very plain, that the Resignation he speaks of is not meant for any Surrender to the King, or any thing that determines the Corporation, except the Patron will not collate, and thereby suffer the Corporation to cease. But on the contrary, that a Corporation cannot be dissolved by any Surrender.

The Suppression and Dissolution of the Abbeys, Priors, and Monasteries, by *H. 8.* was no Dissolution of their Bodies Politick. *Br. Extinguishment, 75. Br. Corporation, 78. Davies, Rep. 1. Moore's Rep. 282.* Though their Houses and all the Possessions were gone, and the Persons either discharged of their Orders, or sent into other Houses; yet resolved, that the Corporations remained. And it can scarce be imagined, but in some of those Cases it would have been practised, or at least something said about surrendering their Body Politick, if it had been then thought surrenderable. But the Case of the Dean and Chapter of *Norwich, Rep. 3. 41 Eliz.* before-cited, and the Case of *Heyward* and *Fulcher* before-mentioned in *3 Car. 1. Jones, 168. Palm. Rep. 500, 501. Andersf. 2. 120.* have been cited as Judgments against Surrenders by all the Judges of the King's Bench. The Case was, That the Dean and Chapter of *Norwich, 3 Junii 1 E. 6.* surrendered to the King their Cathedral Church, and all their Manors, Lands, Tenements, Hereditaments, Franchises, and Liberties, Spiritual and Temporal, by whatsoever Names they are known, or which they have or ought to have in the Right of their Church. And by the Case *41 Eliz. Co. Rep. 3. 74.* and the Opinion of all the Judges of the King's Bench, *3 Car. 1.* adjudged, that this was no Surrender of the Corporation.

*They object,* That the Words of the Surrender do not shew any Intent to surrender the Corporation, but only the Possessions.

*I answer,* The Being of a Corporation is a Franchise

Franchise or Liberty; and there is an exprefs Surrender of all Franchifes and Liberties, Spiritual and Temporal, by what Name ſoever known, which they have in the Right of their Church: And this was a Spiritual Franchise, which they had in Right of their Church.

Next, This Surrender was made with Intent to diſſolve the Corporation, and to have a new one erected: This appears by the new Charter of Erektion, made in *November* following; which recites the Surrender made to that Intent. It is not any-where in the many Arguments of that Caſe alledged, that there wanted Words in the Surrender to do it, which would have been, if that had been the Ground of their Judgment.


In the Caſe cited out of *Dyer* 282. there the Words of the Surrender were, that they ſurrendered their Church, Houſes, Lands, and Poſſeſſions, which are not half ſo large and ample Words as in this Surrender are contained; and the other Side cite that as an Authority, to prove a Corporation ſurrendered, and admit the Words there ſufficient, and deny them to be ſufficient here, though much more large, exprefs, and

general. The Arguing there in *Palmer* 501. that it is againſt the Nature and Conſtitution of Corporations, that by the Words put in their Charters, by their very Conſtitution, are to have perpetual Succeſſion, *perpetuis Temporibus duratur*, and which by their Oaths they are ſworn to preſerve, or they ſhould be *Felo de ſe*. And the exprefs Words of the Judges reported in theſe Books ſhew their Opinion, that the Corporation could not be ſurrendered. *Jones*, 168. *Dodderidge* Juſtice, there ſaith, that the Dean and Chapter cannot ſurrender their Corporation. *Palm.* 501. *Whitlock Inſt.* there ſaith, For that the Dean and Chapter are Counſel to the Biſhop inſtituted to that Purpoſe, they cannot diſſolve themſelves; for the Publick Corporation is the Soul to the Body, that cannot be granted or ſever'd; though the King can create a Corporation, he cannot diſſolve it. And *Jones Inſt.* there 502. ſaith, that the Dean and Chapter were Counſel to the Biſhop, and cannot deſtroy themſelves; if they could, great Inconveniencce thereby will enſue to the Church.



CXV. *The Trial of \*Thomas Pilkington, Eſq; Samuel Shute, Eſq; Sheriffs, Henry Corniſh, Alderman, Ford Grey of Werk, Sir Tho. Player, Knight, Chamberlain of London, Slingsby Bethel, Eſq; Francis Jenks †, John Deagle, Richard Freeman, Richard Goodenough, Robert Key, John Wickham, Samuel Swinock, John Jekyll, Sen. at Nifi-Prius at the Guild-hall of London, for a Riot, and an Affault and Battery on Sir John Moore ††, then Lord Mayor, May the 8th 1683. 35 CAR. II.*

The INFORMATION.

London ſſ.  E it remember'd, that *Robert Sawyer*, Knight, Attorney-General of our Lord the King, who for our ſaid Lord the King in this behalf proſecuteth, cometh into Court in his proper Perſon on *Friday* next after fifteen Days of the *Holy Trinity*, in this ſame Term, and for our ſaid Lord the King doth give the Court here to underſtand and be informed, that the Four-and-twentieth Day of *June*, in the Four-and-thirtieth Year of his now Maſteſty's Reign, at the *Guild-hall* of the City of *London*, a certain Court for Aſſembling the Citizens and Free-men of the City of *London*, called a Common-hall, being ſummoned and called by *Sir John Moore*, Knight, then and yet Mayor of the City of *London*, was in a lawful Manner held before the ſaid *Sir John Moore*, Knight, Mayor of the City aforeſaid, as well for the due Election of Sheriffs of the City aforeſaid, for the Execution of the Office of Sheriff of the ſaid City for one whole Year, next

following after the Vigil of the Feaſt of *St. Michael* then and yet next coming, as for the Election of divers other Officers of the ſaid City: And that then and there in the ſaid Court it was begun to take the Poll of the Electors then and there preſent, for the making known of the Election of the Perſons to ſerve in the Office of Sheriffs of the ſaid City, for the Year aforeſaid. And that the ſaid *Sir John Moore*, Knight, Mayor of the ſaid City, afterwards the ſaid 24th Day of *June*, in the 24th Year aforeſaid, at *Guild-hall* of the ſaid City of *London*, (to wit) in the Pariſh of *St. Michael Baſſiſharw*, *London*, in a lawful Manner did make and cauſe to be made Proclamation for the Adjourning of the ſaid Court ſo as aforeſaid held, and then and there did adjourn the ſaid Court until *Tueſday* then next following, to be held at the *Guild-hall* of the ſaid City of *London*; and then and there after the ſaid Adjournment, ſo as aforeſaid made, the ſaid *Sir John Moore*, Knight, Mayor of the ſaid City of *London*, did make and cauſe to be made publik Proclamation for the Departure of all Perſons upon the ſaid Occaſion there aſſembled: And further the ſaid Attorney-General doth give

\* *Burn. Hiſt. Own Times*, Vol. I. p. 535.

† See *State Trials*, Vol. VII. p. 468.

He was afterwards Lord Mayor for two Years together, 1689, and 1690.

†† *Burn. Hiſt. Own Times*, Vol. I. p. 528, 530.

give the Court to understand and be informed, That *Thomas Pilkington*, late of *London*, Esq; and *Samuel Shute*, late of *London*, Esq; then Sheriffs of the said City of *London*, and *Henry Cornish*, late of *London*, Esq; *Ford Lord Grey* of *Werk*, &c. the said Premises sufficiently knowing, but being ill-disposed Persons, and devising and intending to disquiet, molest and trouble the Peace of our said Lord the King, and the common Tranquillity of this Kingdom of *England*, they the said *Thomas Pilkington* and *Samuel Shute*, under Colour of the Office of Sheriffs of the said City of *London*, and the said *Henry Cornish*, *Ford Lord Grey*, and others afterwards, and after the Adjournment aforesaid, (to wit) the said 24th Day of *June*, in the 34th Year aforesaid, at the Parish of *St. Michael Bassishaw*, *London*, aforesaid, in the said *Guild-hall*, there with Force and Arms, riotously, routously, unlawfully, and seditiously, did assemble, congregate, and unite themselves with very many other ill-disposed Persons, and Breakers of the Peace of our said Lord the King, to the Number of One Thousand Persons, to the said Attorney-General of our said Lord the King, as yet unknown, to disturb the Peace of our said Lord the King; and being so assembled, congregated, and united, then and there with Force and Arms, &c. riotously, routously, and unlawfully, in and upon the said *Sir John Moore*, Knight, Mayor of the City aforesaid, in the Peace of God, and our said Lord the King, then and there being, did make an Assault and Affray, and him the said *Sir John Moore*, Knight, then and there did beat, wound, and evil-intreat, so that of his Life it was greatly despaired; and after the Adjournment aforesaid, and Proclamation so as aforesaid made by the said *Sir John Moore*, Knight, Mayor of the said City, they the said *Thomas Pilkington* and *Samuel Shute*, then and there by Colour of their Office of Sheriffs of the said City of *London*, and the said *Henry Cornish*, *Ford Lord Grey*, &c. with divers other Persons to the said Attorney-General of our said Lord the King as yet unknown, unlawfully and seditiously aiding and assisting the said *Thomas Pilkington* and *Samuel Shute* with Force and Arms, &c. riotously, routously, and unlawfully, did there continue to take the Poll of the Persons so then and there unlawfully assembled, as if the said Persons had been lawfully assembled for the Election of Sheriffs of the said City; and that the said *Thomas Pilkington*, *Samuel Shute*, *Henry Cornish*, &c. then and there unlawfully, tumultuously, and seditiously, did affirm, and every one of them did affirm, say, and with a loud Voice to the said ill-disposed Persons affirm, that the said *Sir John Moore*, Knight, Mayor of the said City of *London*, did unlawfully and unjustly assume upon himself the Liberty to adjourn the said Court, which did not belong to him: And that the said *Thomas Pilkington*, *Samuel Shute*, *Henry Cornish*, &c. then and there, the said unlawful and ill-disposed Persons, so as aforesaid, assembled and congregated with Force and Arms, riotously, routously, unlawfully, and seditiously, by the Space of three Hours, to disturb the Peace of our said Lord the King, and to commit the Riot aforesaid, did stir up, move, persuade, procure, and then and there by the whole Time aforesaid in *Guild-hall*, *London*, aforesaid, in the Parish aforesaid, great Rumours, Cries, Hollowings, and terrible and unwonted Noises, with Force and Arms, &c. riotously, routously, unlawfully, tumultuously and seditiously, did make and cause to

be made, and did stir up, in Contempt of our said Lord the King, and the manifest Disturbance and Violation of his Laws and his Peace, to the great Danger of stirring up and moving of a Tumult, and the Spilling of much Blood there, to the great Terror, Trouble, and Fear of all his Majesty's Liege-people, Subjects of our said Lord the King, to the ill Example of all others in the like Case offending; and against the Peace of our said Lord the King, his Crown and Dignity, &c. Whereupon the said Attorney-General of our said Lord the King, for our said Lord the King, prayeth the Advice of the Court in the Premises, and due Process of Law against the said *Thomas Pilkington*, *Samuel Shute*, *Henry Cornish*, *Ford Lord Grey*, &c. in this Behalf to be made to answer our said Lord the King, of and in the Premises, &c.

*To this Information the Defendants had pleaded Not Guilty.*

Cryer. YOU Good Men of Nisi-Prius, summoned to appear here this Day, between our Sovereign Lord the King, and *Thomas Pilkington*, and others, Defendants; answer to your Names, and save your Issues.

The Jury appeared.

Mr. Sommers. My Lord, I am to challenge the Array.

Mr. Thompson. My Lord, I desire this Challenge may be read.

*The Challenge read in French.*

L. C. J. \* Gentlemen, I am sorry you should have so bad an Opinion of me, as to be so little a Lawyer not to know this is but a Trifle, and nothing in't. Pray, Gentlemen, don't put these Things upon me.

\* *Sir Edmond Saunders.*

Mr. Thompson. I desire it may be read, my Lord.

L. C. J. You would not have done this before another Judge: You would not have done it, if *Sir Matthew Hale* had been here.

Mr. Thompson. My Lord, I believe if there had been nothing in it, it would not have been signed.

Mr. Att. Gen. † Very few but Mr. † *Sir Robert Sawyer.* *Thompson* would urge it.

Mr. Thompson. I don't know whether you think so, or not, Mr. Attorney; but I have a great deal to offer, if you please to answer it. We offer our Challenge in point of Law.

L. C. J. There is no Law in it.

Mr. Thompson. We desire it may be read in English.

L. C. J. Why? Do you think I don't understand it? This is only to tickle the People.

*The Challenge read by the Clerk accordingly.*

Mr. Serg. Jefferies. Here's a Tale of a Tub, indeed!

L. C. J. Ay, it is nothing else; and I wonder Lawyers would put such a Thing upon me.

Mr. Thompson. My Lord, we desire this Challenge may be allowed.

L. C. J. No, indeed won't I, there is no Colour for it; and I am apt to think, there are not many Lawyers in *England* would have put such a Thing upon me: Because I am willing to hear any thing, and where there is any Colour of Law, I am not willing to do amiss: Therefore you think I am

now

now become so very weak, you may put any thing upon me; without you think I was always so, and therefore may be so at this Time. For, pray now consider, if so be the King's Counsel should come and plead this *Challenge*, what would be the Consequence of it? I thought you would have said, that the *Sheriffs* had been a-kin to the King, but you have made it worse. You do come with a long Tale here of the whole Merits of the Cause, and more than yet doth appear; and by this you would have the *Challenge* to be allowed: In such a Case a Man may come and tell a Tale of the Merits of the Cause, and then it must be tried by the *Challenge*. If the *Sheriffs* do return an Inquest for the King, and the *Sheriffs* do hold of the King a Fee-farm, or have a Pension or an Annuity from the King, the Book doth say, that in some Cases it is a *Challenge*; for though they cannot be challenged as being favourable for the King, yet for those Reasons they may be challenged. But what is here? Here you tell a long Process concerning a Difference between the Mayor and the *Sheriffs*, and all this Matter is wrapp'd up all together; and if all this were true, it is no *Challenge* at all.

Mr. *Thompson*. We shall speak with all Submission to your Judgment, my Lord. — Good, Mr. *Attorney*, give me Leave.

Mr. *Attorney General*. I move for you.

Mr. *Thompson*. If you please, you may move for yourself; I don't need you to move for me. My Lord, with Submission, the Information is not good: My Lord, it is an Information that doth set forth, that my Lord Mayor had Right of Adjourning the Poll, when an Election is to be for *Sheriffs*. My Lord, if he had not that Right, it can be no Riot according to this Information. My Lord, upon his Adjourning, Mr. *Sheriff North* was chosen: My Lord, if that Adjournment was not according to Law, Mr. *Sheriff North* never was *Sheriff of London*; then, my Lord, here is the Case in this Question of Title; for Mr. *North* doth come in Question, Whether he be a legal *Sheriff of London*?

L. C. J. Prove to me now that of *Sheriff North*; Pray what Annuity, Pension, or Fee-farm hath he as *Sheriff of London*, whereby he is concerned?

Mr. *Thompson*. My Lord, there are other Reasons which I shall shew to you; and the first Reason, my Lord, in this Case, is this; it will appear the Election of Mr. *North* is interested in this Matter; and Sir *John Moore* had not an Opportunity to adjourn the Poll, Mr. *North* was not chosen duly *Sheriff*; now, if the *Sheriff's* Choice come in Question in point of Right, it is a good *Challenge*.

L. C. J. In point of Profit it might be so, and not in all Cases neither; for he that holds Lands *in capite* of the King, cannot be challenged for all that.

Mr. *Thompson*. I think, my Lord, this is a common Case in our Books, That if in case a *Sheriff* be concerned in point of Title, this is a principal *Challenge*, because that he is interested in that Title, he is no Person by Law to return a Jury. I don't doubt but your Lordship will do that which is right, and according to Law. My Lord, I say, where a *Sheriff* is interested in point of Title, he is no Person by Law to return a Jury, and this Question will appear plainly upon this Information; for if in case this was not a lawful Adjournment by Sir *John Moore*, this is not a lawful Return—  
Gentlemen, my Lord, I know, will hear me, if you have but Patience; I always speak and stand up for my Clients as I ought to do. If you please to let me have Liberty, I have my Lords. If a *Sheriff* be concerned in point of Title, it is a prin-

incipal *Challenge*, and the *Sheriff* ought not to return the Jury, but the *Coroner*: And, my Lord, much more in this Case; for that the very Title to the Office of *Sheriff* is here in Question, and therefore he is no Person fit to return this Jury, my Lord. We desire your Lordship's Opinion.

L. C. J. Mr. *Thompson*, Methinks you have found out an Invention, that the King should never have Power to try it even so long as the World stands, Say you, *Sheriff North* is not a right *Sheriff*, Who should have been? Why, say you, *Dubois* and *Papillon*, or one, or both of them. Now the King he hath brought his Suit for a Riot.

Mr. *Serg. Jefferies*. And an Assault and Battery upon Sir *John Moore*.

Mr. *Thompson*. That is a Fiction.

L. C. J. The King hath brought his Suit, and brought it to an Issue. Why now, if so be this *Challenge* should have any thing in it, then the King must have challenged *North*, and what must he have done then? Why, for *Papillon* and *Dubois*, they are not *Sheriffs in actu*, then, say you, the *Coroner*. Pray, Mr. *Thompson*, if so be the King had made the *Venire* either to *Papillon* or *Dubois*, or to the *Coroner*: Whether or no had not the Cause been found against the King, before one Word had been said actually for him? You say the Question is, Whether he be a *Sheriff* or not? If the King had challenged him, and made the *Venire* to the *Coroner*, for God's sake, Had not that made an End of the Question?

Mr. *Thompson*. No, my Lord, not at all.

L. C. J. Now? Then I understand nothing.

Mr. *Thompson*. My Lord, if the *Sheriff* appear to be concern'd, it doth not determine the Cause.

L. C. J. But it does by your own Opening now. You say the Question is, for which you do now challenge the Array, because it is returned by Sir *Dudley North*, supposed to be one of the *Sheriffs*, and tell the whole Process, how that in Truth it is a Question whether he be a *Sheriff* or not; and therefore, say you, or you say nothing, that the *Venire* should not go to *North*.

Mr. *Thompson*. No, my Lord, I pray, good my Lord—

L. C. J. Should it have gone to *Dudley North*, and then have been challenged for him?

Mr. *Thompson*. No, I beseech your Lordship, we do not say so. My Lord, we say, That whereas they do charge in the Information, that there was an Assembly for the Election of *Sheriffs*, and that Sir *John Moore* being then Mayor, did lawfully, according to Law, adjourn this Assembly; and that afterwards the Defendants, *Pilkington* and *Shute*, did continue this Assembly, and took a Poll, and so they would make this a Riot in the Continuance of it: My Lord, we do say this, That the Election of Mr. *North* upon this Point, doth come in Question; and my Lord, we do say, That if that be not a legal Adjournment, then Mr. *North* is not legally chosen.

L. C. J. Right, now you have told it in more Words.

Mr. *Thompson*. We say, If the Election be interested, they are all Parties by Law.

Mr. *Serg. Jefferies*. Who would you have the Process go to?

Mr. *Thompson*. To the *Coroner*.

L. C. J. Very well, upon my Word. If he were *Sheriff*, it cannot go to the *Coroner*, you know, and therefore if he were challenged, to go to the *Coroner*—

Mr. *Thomp-*

Mr. *Thompson*. *Sub judice lis est*, my Lord.

Mr. Serg. *Jefferies*. We desire for the King, that the Challenge may be over-ruled.

L. C. J. Ay, ay.

Mr. Serg. *Jefferies*. I desire the Jury may be sworn.

Mr. *Williams*. Certainly if they be impanelled by Persons that are not Sheriffs, that is a good Challenge, that is admitted by every body; now we have made a Challenge, and that is a good Cause of Challenge certainly, if that were the Cause. But now, my Lord, I must confess what your Lordship says, it is a difficult Matter to challenge any Array, because they are arrayed by a Person that hath an Interest, or some such thing that is a Challenge of the Array, but that is not the Matter in this Case. It cannot be denied, if these Persons were not Sheriffs of *London*, that that is a good Cause. I take the Result of the Challenge to be this: Say we, the principal Question of this Information, the Riot, will depend upon this Question, Whether there were a regular Adjournment or not? There, say we, begins the Question of the Riot. If so be that my Lord Mayor of *London* that was, had Power to adjourn the Court, and it be admitted a regular Adjournment, certainly the Riot would follow, and what follows then? Then comes on a Question, and it is immediately consequent upon it, That these Gentlemen be actual Sheriffs of *London*, they being actually chosen upon this Adjournment, they are actually Sheriffs: But if really my Lord Mayor had no Power to adjourn, and that Power was in the Sheriffs, that they were actually taking the Poll, and the Poll was for Mr. *Dubois* and Mr. *Papillon*: Then the Question is, if so be the Adjournment by my Lord Mayor were not a good Adjournment, then the Poll was a regular Poll taken by the Sheriffs, then consequently those that were elected upon that were truly chosen, and then it is a right Challenge. These Gentlemen, I must confess, they are Sheriffs *de facto*, but we know very well there may be Sheriffs *de facto*, and there may be other Sheriffs *de jure*, these Things are very consistent. If so be that Mr. *Papillon* and *Dubois* be duly elected, they are Sheriffs *de jure*, but they want the Formality, for they are not sworn, and cannot return a Jury. On the other side, the Sheriffs are Sheriffs *de facto*, but not legally chosen, and the Riot will depend upon that Question, of the other Persons that are Sheriffs *de facto*, and not *de jure*. This we suggest in this, Whether your Lordship will receive this Challenge, or whether your Lordship will proceed first to the Trial of the Cause, and let this follow. My Lord, Might not there have been something in this Case upon the Roll at *Westminster*? Might there not have been a Surmise to this Purpose, because there is such a Question upon the Roll? For it appears, that the Common Hall was for the Election of Sheriffs, and that it was adjourn'd by the Mayor: And what follow'd? Might there not be such a Surmise, that the *Venire facias* should not go to the Sheriffs, but to the Coroner? Might there not have been such a thing?

L. C. J. My Speech is but bad: Let me know what Objection is made, and if I can but retain it in my Memory, I don't question but to give you Satisfaction. If the King had brought an Information against Mr. Sheriff *North*, and charged him with a Crime, there is no manner of Question, that the King should have challenged as he was a Sheriff, and sent the *Venire* to the Coroner, or other

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Officer; here he is not accused, nor to be acquitted, of any Crime. Gentlemen, I put you upon this, if so be that the Sheriff of *London* should get a great deal of Money, (but I never understood, that he got by it) if you prove, that he hath got any considerable Matter by the Office, it would be something in the Case, that he should be greedy of the Office. But look ye, on the other Side, if there be nothing in it one way or another, that there is Profit accruing to him by the Office, what can the Law say? But here was the Question between, indeed and in truth as you do open it, between the Mayor, Sir *John Moore*, I think, and the Sheriffs that then were, that was the Question between them. Now what is this in point of Law, that the Sheriffs must be challenged? They must be challenged, because it is return'd by these Sheriffs: You can't say the Sheriffs do favour — the King.

Mr. *Sol. Gen.* My Lord, we trouble your Lordship about a Question very unnecessary: The Sheriff is not concerned in this Question, neither can the Consequences affect the Sheriff any way.

Sir *Fr. Winn.* My Lord, if I don't shew, that he is concern'd, notwithstanding what Mr. Solicitor says, it is another matter. If this had been upon a common Riot, and not related to the Election of Sheriffs, it would have been harder against us. I only offer a Word or two, and submit to your Lordship. This Information doth take notice of the Election of Sheriffs, and of an Irregularity in disturbing the late Lord Mayor about adjourning the Poll; I do believe, my Lord, it will not be deny'd, but that in this Cause a Riot or no Riot will depend upon the Poll, or the Mayor's adjourning. If that be so, that which your Lordship is pleased to urge, That the Sheriff gets nothing, yet that he hath assumed the Office *de facto*, appears by the Return, that is very plain, my Lord, he hath assumed it, and did exercise it. If it appear to be legal or illegal upon the Adjournment by the Mayor, then it must have one of these two Consequences, my Lord, I humbly conceive, till the Sheriffalty had been agreed, it would have done very well for Mr. *Attorney* to let this Riot alone, unless he would have made it a common Riot; if he would have been pleased to stay till the Law had determin'd who had been the right Sheriffs, then *Process* would have gone for the King. And, my Lord, there is another Thing under Favour: If Mr. *Attorney* had been pleased to prosecute for the King, then surely, my Lord, there was a Way to lay it so that the *Process* should be return'd by Persons uninterested, and not by the Sheriff whose Election is in Controversy: I don't argue out of the Record, but by the Record itself. If in case it doth appear still to be under Consideration; if that be so, I do humbly conceive, because that Right of Election of Sheriffs is undetermined, that therefore he might have made the *Process* to the Coroner, if he would have made it before; but it should not be heard before the Election of the Sheriffs, because it will be a Riot, or not a Riot, upon that.

L. C. J. Good now, Sir *Francis*, you mistake, it could not be to the Coroner.

Mr. *Sol. Gen.* My Lord, it is but wearying your Lordship to no Purpose.

Mr. *Wallop.* If he be not Sheriff, that Title of his depending upon my Lord Mayor's Adjournment, which is reasonably set forth, it is concerned in the Consequence of the Cause.

4 M

Mr. *Att.*

Mr. *Attorn. Gen.* If you please, my Lord, I will answer what hath been said. Mr. *Thompson* did first urge according to the Rules of Law, if the Matter that appears upon the Record be the Thing in Question; that if the Sheriff be interested in that Matter, that that is a good Cause of Challenge. That is a good Rule, and the Law is so; but that is nothing to this Purpose; my Lord, here upon the Record there is nothing in question but a Fine for the King, nothing to be recovered: Where Lands are in question, as in an *Ejectment*, if the Sheriff be interested in that Land, in that case that is a good Challenge; but here appears nothing by the Record, here is nothing in question but a Fine for the King; so that certainly that Case, in point of Law, is nothing to the Purpose. Then they say it appears in the Record by Recital, and in the Information, for that is the Substance of all they say: It doth appear there, as it is said, that the Mayor did adjourn the Court, and so the Question of the Riot will very much stand upon the Validity of that Adjournment. But it doth not wholly stand upon that; for there are many outrageous Actions, Assaults of the Mayor, throwing off his Hat, great Clamours; thrusting and pressing many of the Aldermen; nay, bruising them; so that this Riot, notwithstanding the Adjournment, be that as it will, will appear, in the Upshot of the Cause, to be a Riot, notwithstanding that Question. But in the second Place, the Question of Mr. *North's* being a Sheriff, or not a Sheriff, no ways depends upon this Adjournment, no Pretence of the Title depends upon that; so, my Lord, they have suggested a Thing that is foreign to the Record; it depends purely, that, upon a Custom of the City for my Lord Mayor to elect, not upon the Power of my Lord Mayor's Adjournment; for after that they proceeded on with the former Choice of Mr. *Papillon* and Mr. *Dubois*; so that whether that Adjournment be a good Adjournment, or no good Adjournment, his Title will depend upon that, whether at the second Meeting or no Mr. *Papillon* and the other Gentleman be well chosen, and Mr. *North* not well chosen; so that his Title doth not depend upon this Question one way or other. But, my Lord, that which makes this as frivolous a Thing as ever was urged in a Court of Law, my Lord, that it should have been upon Rule before any Direction to the Sheriff or Coroner, if they would have had *Process*; they have suggested Matter of Fact wholly out of the Record, Matters have been suggested, that it might have been tried before it came to Direction; now there appears nothing in the Record to bring a Challenge to try the Matter; nay, as they themselves say, it is to try the Merits of the whole Information, that the Information depends upon that Question, Whether the Mayor may adjourn. It is a great Usurpation upon the Government of this City, as they have done in other Things to the King. My Lord Mayor is the Supreme Magistrate here, and the Sheriffs have nothing to do in this Point, and therefore I pray it may be over-ruled, and that the Jury may be sworn.

Mr. *Thompson*. We would have, my Lord, the Benefit of a Bill of Exceptions.

Mr. *Serg. Jefferies*. Swear the Jury, swear the Jury.

Mr. *Thompson*. I have another Challenge.

L. C. J. I tell you plainly, I see nothing in it for a Bill of Exceptions.

Mr. *Thompson*. We desire we may have the Be-

nefit of a Bill of Exceptions. My Lord, if this be the Case of trying a Riot, we must take what Advantage we can in point of Law.

Mr. *Serg. Jefferies*. We come to counsel the King, as we ought to do, by Law.

Mr. *Thompson*. My Lord, I challenge, on the behalf of my Lord Grey, this Jury.

[*Challenge read.*]

Seignior Grey.

Mr. *Att. Gen.* They call that a *Nezgate* Challenge.

Mr. *Wallop*. That was a Challenge taken at the *Old Baily*.

Mr. *Thompson*. And over-ruled.

Mr. *Serg. Jefferies*. And I pray it may be so here.

L. C. J. I think your Challenge is, that they are not Sheriffs?

Mr. *Thompson*. My Lord, Is the Fact true or false? I desire of these Gentlemen, if it be insufficient in point of Law, let them demur.

Mr. *Serg. Jefferies*. Pray tell me, *Robin Hood* upon *Greendale* stood; and therefore you must not demur to it.

Mr. *Thompson*. If the Challenge be not good, there must be a Defect in it either in point of Law, or in point of Fact. I desire, on the Behalf of my Lord Grey, this Challenge may be allowed.

Mr. *Serg. Jefferies*. And I pray for the King, that it may be over-ruled.

L. C. J. I think you have owned them to be Sheriffs already.

Mr. *Serg. Jefferies*. My Lord Grey did own it in his Challenge, because there were no Knights.

L. C. J. We try a great many *Nisi-Prisus* here sometimes, two or three Days after the Term, every Defendant, that thinks it goes hard with him, we must have a Trial still, whether the Sheriffs be Sheriffs, or no? This that you have done now, may be done in every Cause that we may be trying. Upon your Evidence if you can prove them none, you go a great way.

Mr. *Thompson*. My Lord, we desire the Challenge may be allowed, or otherwise a Bill of Exceptions. My Lord, we pray a Bill of Exceptions.

Mr. *Serg. Jefferies*. This Discourse is only for Discourse sake; I pray the Jury may be sworn.

L. C. J. Ay, ay, swear the Jury.

Sir Benjamin Newland, &c. sworn.

Mr. *Thompson*. We challenge Mr. *Fensil*; he hath given Evidence in this Cause at the Council-Table.

L. C. J. What then?

Mr. *Att. Gen.* My Lord, they shall have all fair.

L. C. J. Mr. *Attorney* says he won't stand upon it

Mr. *Thompson*. My Lord, we pray a Bill of Exceptions.

L. C. J. I think many would not have offer'd it besides you. Shall I go and sign a Bill of Exceptions, to let all the World know this is so, and so all the World must try whether they be Sheriffs of London?

Mr. *Thompson*. My Lord, don't say so; for I think all the Counsel in the Court would.

L. C. J. If it doth fall out, that in truth they don't happen to be Sheriffs, surely you shall have all the Advantage that can be for you; but pray don't think, that I will put off a Trial upon every Suggestion

Suggestion, that the Sheriffs are not Sheriffs. You shall have all that is Law by the Grace of God, and I am not afraid, that you or any Man should say, I don't do Justice; I am not bound to gratify every Man's Humour; I am to do according to my Conscience, and the best of my Knowledge, and according to my Oath; and I will do that, and gratify no Man.

Sir Benjamin Newland	} Jur.	Henry Wagstaff
Sir John Matthews		Barthol. Feriman
Sir John Buckworth		Thomas Blackmore
Sir Thomas Griffith		Samuel Newton
Sir Edmund Wiseman		William Watton
Percival Gilburne		George Villars.

Cryer. O yes, O yes; O yes, If any Man can inform my Lord the King's Justice, the King's Sergeant, or the King's Attorney, or this Inquest now to be taken, &c.

Mr. Dolbin. May it please your Lordship, and you, Gentlemen of the Jury, this is an Information brought by the King against Thomas Pilkington, &c.

Gentlemen, the Information sets forth, That upon the 24<sup>th</sup> of June last, in Guildhall, there was a Common Hall summon'd by Sir John Moore, Knight, and thereupon held for the Election of Sheriffs for the Year then ensuing the Feast of St. Michael: And that on the same 24<sup>th</sup> of June, Sir John Moore, then Mayor, adjourn'd the Court till the Tuesday following by Proclamation. That after the said Adjournment, my Lord Mayor made Proclamation for all Persons to depart; and that the Defendants, intending to disturb the Peace of the King after the Adjournment aforesaid, did unlawfully, with many Persons unknown, meet together, and riotously assault the Lord Mayor. And after the Adjournment by Proclamation, two of the Defendants, Pilkington and Shute, by Colour of their Office as Sheriffs of this City, and the rest of the Defendants, did continue the Poll, and unlawfully affirm to the People, That Sir John Moore had no Power to adjourn them. And that they continued this great Tumult three Hours, to the Terror of the King's Subjects, and the evil Example of others, and against the Peace of our Sovereign Lord the King. To this the Defendants have pleaded Not Guilty, &c.

Mr. Att. Gen. This Information, my Lord, is brought for settling the Peace in this City, and to shew before you all, who is the Supreme Magistrate under the King in this City; for that, Gentlemen, you see, is grown a great Question, Whether my Lord Mayor is not only in the Hall, but in his Chair, the Supreme Magistrate?

Gentlemen, I must acquaint you, that my Lord Mayor in all Times, even before the City had the Election of him, was the King's Lieutenant, and the Supreme Magistrate in the City, and no publick Assemblies could ever meet together without his Summons; he was the great and chief Director, and this I believe in all your Observations that are of the Jury, I can make it evident, that this hath been the constant Frame of this Government in the City: For the Sheriffs, Gentlemen, they are no Corporation Officers, they are County Officers, as in all the Counties of England, and they are the King's Officers for the Execution of the King's Writs, and the Preservation of the King's Peace; but the Government of the Corporation is in the Mayor, and not in the

Sheriffs. Gentlemen, the Question now arising here, is about the Election of Sheriffs; it's true there were very disorderly tumultuous Proceeding; my Lord Mayor he comes and doth appoint another Day for them, and discharges them at that Time. We will make appear to you, that it was always his Right in all Times, both to summon a Common Hall, and dissipate it, and appoint them another Day, or to dissolve them, as the Mayor did see Cause. The Mayor having, according to the ancient Manner, adjourned this Court, the Sheriffs they proceed; do not only refuse to obey, but they proceed, and make Proclamation, that it is not in the Power of the Mayor, taking upon them that which never any Sheriffs did in any Time; they make Proclamation contrary to what the Mayor had done, and continue the Poll, and proceed and proclaim the Mayor had usurped that Power which was theirs, tho' afterwards they transferr'd the Supreme Power to the Liverymen; but I think no Age will suffer, that the Supreme Power should be in the Liverymen, that are expressly appointed to act by a Common Council, which is indeed the Representative of the whole City. But this, Gentlemen, being done by the Sheriffs having usurped the Power of the Mayor, they did proceed in a riotous Manner; when the Mayor attempted to go out of the Hall, they struck him, struck his Hat off, and pressed several of the Aldermen; the Evidence will make out in what an outrageous Manner it was carried on. If the others had made Opposition, how soon had all been in Confusion upon this Usurpation, that the Sheriffs had set up for themselves, that they are the Delegates of the People, and must appear to be the Supreme Magistrates of the City of London! I think the Citizens themselves will never endure, that those that are but County Officers, should ever invade the Government of the Corporation. Gentlemen, we will shew you the Particulars of this, and you have nothing to inquire after, but whether they are Guilty of the Riot or no.

Mr. Sol. Gen. My Lord, we will call our Witnesses, and prove our Case by these Steps. For the Question, That whether or no the Defendants in the Information were guilty of a Riot, in continuing the Assembly after my Lord Mayor had adjourn'd them, we will prove it by these Steps, that it is in the Power of the Lord Mayor to call a Common Hall, and adjourn the Common Hall; That, my Lord, when the Common Hall was assembled for the Purpose of electing Sheriffs, that he did adjourn the Common Hall; and that contrary to his Adjournment the Sheriffs continued it, declaring my Lord Mayor had no Right so to do; and that afterwards my Lord Mayor commanded them to depart, and they continued their Assembly there in a very riotous Manner; and as my Lord Mayor came down, they offer'd Insolencies to his Person, and they continued the Assembly there in a riotous Manner, and commended the Sheriffs that did assert their Right, following them in a riotous Manner into Cheapside, crying out in a factious Manner, God blejs the Protestant Sheriffs.

Mr. Serg. Jefferies. My Lord, we would begin with our Witnesses; but for the Gentlemen of the Jury, which I think are Men that belong to the City, and that the thing may be very intelligible, I beg Leave to acquaint your Lordship with the Methods that have always been proceeded in, in Choices of this Nature. My Lord, we will make



it appear, and I think it will not be doubted by any Man that knows the City of *London*, that Common Halls are always summon'd to appear by the Intimation of the Mayor, of the Mayor himself, at any Time when he finds an Occasion, either for the assembling of a Common Council, or the assembling of a Common Hall, &c. Precepts are issued; they are Words that you, Gentlemen, do understand very well, to summon a Common Hall from time to time. It is very true, tho' they do usually make Summons for *Midsummer-Day*, yet *Missummer-Day* being a publick and notorious Day for the Choice of some particular Persons, they are not so continually exact in Summons; for they do presume, that every body takes Notice of the Day. But I am to give your Lordship an Account: Whereas in the Record there is only Notice taken concerning the Sheriffs on *Midsummer-Day*, it is notoriously known to all Gentlemen that are Inhabitants in *London*, there is a Choice of Chamberlain, and Auditors of the Bridge-house and Chamber-accounts, down to Ale-conners; and that the Sheriffs of *London*, *quâ* Sheriffs of *London*, are no more in the Case than any private Man is. I do take Notice of this, to give you an Account, that as soon as these Officers are dispatched, I myself had the Honour to serve the City some Time, and know it very well; therefore I take the Liberty to explain it to some of these Gentlemen that are Foreigners. My Lord, as soon as ever this is done, (as it was frequent before People were so ambitious to come into the Office of Sheriffs, as they have been within two or three Years; for it was not known, till of late, that People were fond of the Office; there is a Term they use, *To go a Birding*, as they call it, they did not seek for the Office, as they have done of late) when there was any Person came off from serving, that is, paid a Fine of 400 *l.* for coming off; then the usual Method was to call another Common Hall; for they never made Application to Mr. Sheriff, *Good Mr. Sheriff, let us have a Common Hall*: But the common way, was in time of Vacation, (for in *August*, there are no such things as Courts of Aldermen held; Courts are not then held, except the Sheriffs Court) then to go to my Lord Mayor's House, and he appoints them to come to a Common Hall, a Meeting for to chuse such and such: He orders the Sword-bearer, or other Officer that is Attendant upon his Person in his House, to send forth Summons, in order to such a thing as the assembling a Common Hall, and there may be sometimes but one Sheriff there; nay, I have known it sometimes when there hath been never a Sheriff, and yet they have not thought they have wanted a Judge of that Assembly: But, my Lord, when all the Matter is over, and Persons are declared to be chosen into this or that, or the other Office in the Common Hall, then an Officer in the City, not an Officer of the Sheriffs, but an Officer which is called by the Name of the *Common Cryer*, he makes Proclamation upon the Hustings, where my Lord Mayor is Judge, for all Gentlemen to depart for that Time, and to give their Attendance there at another Summons. And now, my Lord, to make the thing a little more intelligible, there is a Difference between the Choice of the County Officers and the Corporation Officers; for at the Election of City Officers, the *Common Sergeant*, the *Common Cryer*, and *Town Clerk*, are the Officers that attend and manage the Common Hall, where my Lord Mayor is looked upon to be the Super-

intendant; but at the Election of Parliament-men, the Writ is directed to the Sheriffs, and they interpose in all the Management; and then the *Common Sergeant* and *Common Cryer* have nothing to do; but at such times, the *Secondaries of the Compter*, which are Deputies to the Sheriffs, they come and manage the whole Affair. This I tell you, because I have been pretty well acquainted with the Methods of the City. I do very well remember I had the Honour to serve the City of *London*, at that Time Sir *Robert Clayton* was Lord Mayor; and there was a great Occasion to try a Person about the Assassination of Mr. *Arnold*; and the Question was, Whether they should proceed to a Poll or not? because they were to go to the *Sessions-House* in the *Old-Baily*, in order to the trying of that Person. That worthy Gentleman being then in the Chair, I had the Honour to sit by him; ordered the Court to be adjourned for a Day or two, because they were to go to the *Sessions*. There was no asking the Sheriffs Opinion when Sir *Robert Clayton* was Lord Mayor, nor there was no such thing then; but now the Case was altered, for Sir *John Moore* was Lord Mayor. Now, my Lord, Sir *John Moore*, like a good Magistrate, endeavouring to preserve the Privileges of the Chair, there happened a Controversy amongst the Members of the Common Hall, whereby the publick Peace of the Kingdom might have been very much injured, as well as the Peace of the City much disturbed. To prevent which, Sir *John Moore*, with the Advice of his worthy Brethren the Aldermen, came upon the Hustings, and found they were all in an Uproar, and not cool enough for any Debate; for they were wound up to that Height of Fury or Madness, that they had not a good Word to bestow upon their Magistrates, nor upon him whom their chief Magistrate did represent. For we must tell you, when they cried, *Pray God bless the King*, as is usual for the Officer upon such Occasions; many cried, *No, God bless the Sheriffs, the Protestant Sheriffs*. Whereupon my Lord Mayor, for Preservation of the Peace, adjourned the Common Hall, and required the Members to depart and come down off the Hustings: The Rabble, (for by the way, a great many of these Persons in this *Information*, as Mr. *Goodenough*, and the rest of them, were not Liverymen, nor concerned in the Election one way or other; but came there on purpose to foment and to raise up the Spirits and malignant Dispositions of a sort of People that are Enemies to the Government; they came to foment Quarrels, and not maintain Peace) my Lord, when my Lord Mayor came off the Hustings, they came upon him, had him down upon his Knees, and his Hat off; and if some Gentlemen had not come in, they had trod him under Feet; such an Indignity was then done to the Lord Mayor of *London*, who, I think I may say, deserved as well from the Government of this City, as any Gentleman that ever presided in that Office, that before had not been heard. My Lord, we will call our Witnesses, to prove the Manner of the Elections to be as I have opened it, and to prove the Matter in the *Information*. — Call the *Common Sergeant* and Mr. *Lightfoot*, the *Common Cryer*, and the *Sword-bearer*.

Mr. *Att. Gen.* Mr. *Lightfoot*, pray give an Account to the Jury and the Court, of the Manner of Election, and chusing of a Common Hall, and the Manner of it.

Mr. *Lightfoot*. My Lord, I have been almost 25 Years an Attorney; I always took it, that the Sergeant of the Chamber had Order to go down to the Clerks or Beadles of the Companies, to summon a Common Hall by such a Day.

Mr. *Att. Gen.* By whose Command?

Mr. *Lightfoot*. By my Lord Mayor's.

Mr. *Att. Gen.* In all your Time, did the Sheriffs ever summons any?

Mr. *Lightfoot*. O, No.

Mr. *Serg. Jefferies*. Pray, Mr. *Lightfoot*, thus: When they were met, what was the usual Method?

Mr. *Lightfoot*. Before the Lord Mayor and Aldermen were set, the People walked up and down the Hall till the Lord Mayor did come; but as soon as my Lord Mayor came, the *Common Cryer* made Proclamation, *O yes, you good Men of the Livery, summoned such a Day for Election, and so draw near, and give your Attendance.*

Mr. *Att. Gen.* Whose Officer was the *Common Cryer*?

Mr. *Lightfoot*. My Lord Mayor's Officer.

Mr. *Serg. Jefferies*. A Corporation Officer.

Mr. *Att. Gen.* Now for the dissolving them.

Mr. *Lightfoot*. When they have done the Business, Mr. *Town Clerk*, as I take it, takes his Direction from the *Lord Mayor*, and he bids the Officer make Proclamation; *You good Men of the Livery, depart hence for this Time, and appear at a new Summons.*

Mr. *Att. Gen.* Did the Sheriffs ever dissolve them?

Mr. *Lightfoot*. Never.

Mr. *Att. Gen.* Did the *Common Hall* do it?

Mr. *Lightfoot*. No, there was no such thing.

Mr. *Jones*. Mr. *Lightfoot*, after my *Lord Mayor* had dismiss'd the Hall, did you ever hear the Sheriffs keep them together?

Mr. *Lightfoot*. All the People went away, till within this three or four Years.

Mr. *Jones*. Since when?

Mr. *Lightfoot*. Since Mr. *Bethel*, about that Time.

Mr. *Serg. Jefferies*. Ay, in *Bethel* and *Cornish's* Time, then began the Bustle.

Mr. *Williams*. You say you have been an Attorney 25 Years; I would ask you, In all that Time, Mr. *Lightfoot*, in all that Time, did you ever know the Lord Mayor adjourn the Common Hall to a certain Day?

Mr. *Lightfoot*. There was never any Occasion.

Mr. *Thompson*. Answer my Question.

Mr. *Lightfoot*. I never did.

Sir *Fr. Winn*. I would ask you another Question, Mr. *Lightfoot*: Did you ever know, before the Election was over, when the Electors were chusing Sheriffs, or polling, or debating it, did you ever know in the Middle of it, the Mayor, against the Will of the Sheriffs, adjourn it?

Mr. *Lightfoot*. No, no.

Mr. *Sol. Gen.* Did ever the Sheriffs undertake to keep them together before these late Times?

Mr. *Lightfoot*. No, never.

Mr. *Thompson*. Pray, Sir, this: Though it is usual, after the Sheriffs have taken the Poll, to acquaint my Lord Mayor, Did you ever know, that the Sheriffs have adjourn'd the Common Hall without acquainting my Lord Mayor?

Mr. *Lightfoot*. No.

Mr. *Thompson*. I ask you one Question more: Do you remember when there was a Poll between Sir *Thomas Stamp* and another?

Mr. *Lightfoot*. No, I do not charge my Memory with it.

Mr. *Thompson*. Do you remember when there was a Poll between Sir *Robert Clayton* and Mr. *Kyffen*?

Mr. *Lightfoot*. I was about the Hall.

Mr. *Serg. Jefferies*. Do you remember when there was a Poll between Sir *Simon Lewis* and Mr. *Jenks*? Who did manage that Poll?

Mr. *Com. Serg.* I did.

Mr. *Williams*. Are you upon your Oath?

Mr. *Com. Serg.* Yes, I am.

Mr. *Lightfoot*. When they were gone to the Poll, I went out of the Hall.

Mr. *Att. Gen.* Did you ever look upon it, that the Sheriffs had any thing more to do than others?

Mr. *Lightfoot*. No.

Mr. *Att. Gen.* Who were induced to take the Poll? Was it by the Sheriffs, or the Lord Mayor?

Mr. *Lightfoot*. I have been appointed by my Lord Mayor. I do know, that the Sheriffs have taken upon them to appoint a Poll, and then my Lord appointed his Clerks in the House to be assistant to the Common Sergeant, and the Town Clerk: I never was but in two Polls, one for Mr. *Box*, and another for my Lord Mayor. One went on with the Poll in one Place, and the other in another.

Mr. *Att. Gen.* But before that Time, Sir?

Mr. *Lightfoot*. I know nothing of that, Sir, I was never concerned before.

Mr. *Holt*. Pray, Sir, who used to manage the Poll before this Time?

Sir *Fr. Winn*. Mr. *Lightfoot*, I would ask you a Question: Who managed the Poll before?

Mr. *Lightfoot*. I have been in a Common Hall when they have been chusing Sheriffs, when several have fined. And it hath been upon the Question, when the Hall hath divided, and they have polled in the Hall.

Sir *Fr. Winn*. Who polled then?

Mr. *Lightfoot*. The Sheriffs and the Officers stood and saw them go out, and this is within these few Years.

Sir *Fr. Winn*. Mr. *Lightfoot*, I ask you thus: Now in all your Observations, when there was any Contest, who was Sheriff upon the Election, and the Divisions during the Time of Election, and before it, were at an End, who did manage it, the Sheriffs, or the Lord Mayor?

Mr. *Lightfoot*. When the Court had been proclaimed, and the Recorder had spoken to them, my Lord Mayor and the Aldermen withdrew from the Hustings, and the Sheriffs and other Officers stood there with them; then the Commons proposed who they would have put in Nomination, and they were put up; then the Sheriffs have turned back to the Gentlemen upon the Hustings to ask their Opinions, How are your Opinions concerning the Hands? We do think it goes so; then it hath been declared.

Sir *Fr. Winn*. By whom?

Mr. *Lightfoot*. The Common Cryer, or the Common Sergeant.

Sir *Fr. Winn*. You say, as soon as my Lord Mayor withdrew, during the Time of Election, the two Sheriffs managed the Hall.

Mr. *Lightfoot*. In that manner with others.

Sir *Fr. Winn*. Mr. *Lightfoot*, do you remember who adjourned the Hall, when Mr. *Bethel* and Mr. *Cornish* were chosen?

Mr. *Lightfoot*. I can't tell.

Mr. *Serg.*

Mr. Serg. *Jefferies*. Mr. *Common Sergeant*, are you sworn?

Mr. *Com. Serg.* Yes.

Mr. Serg. *Jefferies*. Pray will you tell my Lord and the Jury what you have observed in particular, because I mentioned it, in the Time of Sir *Robert Clayton*? Mention how that was.

Mr. *Com. Serg.* My Lord, when the Common Crier hath made Proclamation, the Lord Mayor and Court of Aldermen being set upon the Hustings, Mr. *Recorder* makes a Speech; as soon as that is done, my Lord Mayor and the Aldermen retire into this Court, leaving the Sheriffs and me, and the rest of the Officers, upon the Hustings, and I there manage the Election; and when the Election is made, I go up to the Court of Aldermen, and make Report of what hath been done in the Hall. I declare the Election, and I manage the Election, and do it as the Duty of my Place.

Mr. *Williams*. Who manages the Election?

Mr. *Com. Serg.* I manage the Election; I declare what is my Opinion of the Election in the Hall; and I come and make Report to my Lord Mayor in this Course; then my Lord Mayor, and the Aldermen, and the Recorder, come down again. I remember particularly when Sir *Robert Clayton* was Lord Mayor, it was about the Choice of Mr. *Bethel* and Alderman *Cornish*, and there was a great Disturbance in the Hall; then I came into the Court, and after I had made my Report, I offer'd to give the Paper to the Recorder that then was, Sir *George Jefferies*. He told me, That the People would not hear him, and therefore he would not take the Paper. Upon that Sir *Robert Clayton* said to me, Pr'ythee, do thou speak to them; they will hear thee, if they will hear any body; for the Hall was in a great Uproar, and they call'd to throw me off the Hustings, and then I made Answer to Sir *Robert Clayton*; Sir, it is not the Duty of my Office, and when I do any thing that is not my Office, I shall expect particular Directions. Then, saith he, you must tell them, I must adjourn them till Monday, because I go to the *Old Baily* to try the Assassins of *Arnold*. Thereupon the Hall was adjourned, and Proclamation made to depart; and my Lord Mayor attempting to go, was beat back twice or thrice, but at last they let him and the Aldermen go, and kept the Sheriffs and me till Evening. At last Mr. *Papillon* came up to me; Mr. *Papillon*, says I, I am glad to see you, you will hear Reason. Says he, Why do not you go on with the Poll? I told him, my Lord Mayor had adjourned the Hall. Says he, I did not hear it before; but now you tell me so, I will go out of the Hall. Says I, Sir, you will do very well to tell the Hall so; which he did, and some went away; and further Adjournments were made by the Direction of my Lord Mayor.

Mr. *Att. Gen.* I would ask you a Question or two: Who do you look upon to be the Chief Magistrate of the City?

Mr. *Com. Serg.* My Lord Mayor, Sir.

Mr. *Att. Gen.* Pray, in all your Time till this, was there no Uproar? Did ever any Sheriff undertake to controul the Mayor in the Business of putting Questions, or taking Votes?

Mr. *Com. Serg.* Sir, there was never any Dispute till Mr. Sheriff *Bethel* was upon the Hustings, and then there was.

Mr. *Att. Gen.* As whose Officer did you do it?

Mr. *Com. Serg.* My Lord Mayor's, and the City of *London's*; I have nothing to do with the She-

riffs; for when there is a Writ comes for the Choice of Parliament-men, directed to the Sheriffs, I never do it, but Mr. *Secondary*.

Mr. *Att. Gen.* I speak of later Disturbances.

Mr. *Com. Serg.* The first Dispute about Sheriffs, since I was Common Sergeant, was about Mr. *Jenks*, and that Poll was taken by the Direction of the Lord Mayor, by the Town Clerk, and myself; and our Books say, If there be a Dispute in the Common Hall, it must be decided as in the Common Council. It is in *Liber albus*.

Mr. *Att. Gen.* *Liber niger*.

Mr. Serg. *Jefferies*. No, *Liber albus*.

Mr. *Att. Gen.* *Liber albus*? It is *Liber niger*, they turn the white Book into a black Book now.

Sir *Fr. Winn*. At that Time, Sir, when my Lord Mayor was willing to go to the *Old Baily*, Did the Sheriffs do any thing farther?

Mr. *Com. Serg.* The Sheriffs did not meddle in the Matter.

Mr. Serg. *Jefferies*. Mr. *King*, pray give my Lord and the Jury an Account of what you know of this Matter.

Mr. *Peter King*. I have been at a Court of Common Hall 28 Years, my Lord, and have been concerned; I never looked upon the Sheriffs to have any Concern there. And I do very well remember Sir *George Jefferies*; I do remember and know, they did always in ancient Times take Advice of the Officers by, and they never did esteem themselves in those Days, to be any more concerned than as the best Officers to be preferred before the rest: When my Lord says, Come up, they come in Order, the Masters and Wardens of the Companies.

Mr. *Att. Gen.* Who did do the Business upon the Hustings?

Mr. *King*. All of them, Sir, all together.

Mr. *Att. Gen.* Was there never any Difference about the Votes?

Mr. *King*. Sometimes they have stood upon it.

Mr. *Att. Gen.* When there was a Question made to know who had the most, who decided it?

Mr. *King*. They generally asked one another, What do you think, and what do you think? I speak for twenty Years together since the King came in.

Mr. *Att. Gen.* I hope in God there hath been a King in *England* for twenty Years, tho' perhaps some of the Sheriffs that were then in Debate, would have had none.

Mr. *Thompson*. Mr. *King*, I only desire to know this of you, because I know you know Questions; I desire, my Lord, to know whether he speaks it to be a Matter of Right, or his Opinion; for we know Mr. *King's* Opinion will go a great way in this Matter. Do you speak it as a Thing of Right, or as your Conceptions?

Mr. *King*. Sir, it would be a thing very confident in me to determine of the Right, but only as I always esteem'd it.

Mr. Serg. *Jefferies*. Mr. *King*, I would ask you this Question; Pray do you tell your Belief upon the Observation that you have made from time to time of the Practice there?

Mr. *King*. An hundred and a hundred Common Halls I believe I have been at.

Mr. *Thompson*. That's good Store.

Mr. Serg. *Jefferies*. That may be when there are many Fines; when I was Common Sergeant, there were 5000 Pounds Fines one Year.

Sir *Fr. Winn*. I desire you to give your Opinion; you say they are all equal that are there.

Mr. *King*:

Mr. King. Every Officer in his Degree; for if twenty Men go together, he that is best speaks first.

Mr. Att. Gen. Were the Sheriffs allowed to be there, or no?

Mr. King. The Sheriffs are always bound to attend my Lord Mayor by their Oaths, unless they have lawful Excuse.

Mr. Jones. Mr. King, did the Sheriffs ever continue the Assembly after it was dissolved?

Mr. King. No, Sir.

Mr. Jones. Or could they do it?

Mr. King. I can't say that.

Mr. Thompson. Did you ever know my Lord Mayor adjourn the Court till the Hall had done?

Mr. King. I can't tell.

Mr. Thompson. I tell you, Sir, Sir Samuel Starling did.

Mr. Serg. Jefferies. But the Sheriffs could not do it.

Mr. Thompson. Nor he neither; for he paid for it.

Mr. Holt. Mr. King, I ask this Question; Who declares the Poll in the Hall?

Mr. King. The Common Sergeant.

Mr. Holt. Who directs him usually?

Mr. King. His Office directs itself.

Mr. Holt. I ask, if the Sheriffs don't agree, who is elected before the Common Sergeant make Proclamation.

Mr. King. They always agree, unless it be very clear; I have known the Common Sergeant do it several times without disputing.

Mr. Com. Serg. When Persons are put in Nomination, and the Hands are held up; I generally ask the People about me, who have most, and particularly the Sheriffs, and so make Declaration.

L. C. J. The Officers ask one another, who they think has most? That doth not give them the Jurisdiction, that they choose Officers without the Lord Mayor or Sheriffs: But, for aught that I see, these Officers have had more to do about the Choice than the Sheriffs have. These Officers consult one with another commonly, and conclude which Side have most; and then report it to my Lord Mayor.

Mr. Serg. Jefferies. First of all, when they put any Question for any Officer in the Common Hall, the usual way of putting the Question is, *As many of you as would have such a Man to be such an Officer, hold up your Hands*: And if the Election be clear, Proclamation is made presently: If not, the Common Sergeant asks, *Who they think hath the Majority?* Which being declared, they acquiesce. But since Mr. Bethel came in, there have been very hot Disputes in the World; but before his Time there were Attempts made to keep Sheriffs off, but never before to get Sheriffs on. And after the Election is declared below, immediately they go to my Lord Mayor, and report it to him: And then comes down the Mayor and Aldermen, to the *Hustings*, and the Recorder says, *We are informed, that such and such Persons have been put in Nomination, and the Election passed upon such and such*. And then the Lord Mayor commands the Assembly to be dissolved.

Mr. Wells. When the Common Hall is first met together, are not the Lord Mayor and Aldermen generally present?

Mr. Com. Cryer. At the first Meeting.

Mr. Serg. Jefferies. When they are there set, give an Account what Proclamation is there made.

Mr. Att. Gen. How long have you known it?

Mr. Com. Cryer. I have been in this Place almost seventeen Years; I always come with my Lord Mayor; I do make Proclamation by Order of my Lord Mayor, dictated by the Town-Clerk; and I take the Words from the Town-Clerk; and his Words I say; *You good Men of the Livery, summoned to appear here this Day, for the Confirmation of such a one chosen by my Lord Mayor, and another fit and able Person, to be Sheriffs of the City of London, and County of Middlesex for the Year ensuing, draw near, and give your Attendance*. I never adjourned the Court in my Life, but by Order from my Lord Mayor; nor never dissolved the Court, but by Order from my Lord Mayor.

Mr. Serg. Jefferies. Mr. Common Cryer, I would fain know this; When my Lord Mayor is gone, and the Aldermen, during the Election, do you ever dismiss the Court before my Lord comes down again; and do not you take the very Words of Dissolution from the Town-Clerk?

Mr. Com. Cryer. I do so.

Mr. Serg. Jefferies. And what is usual in your Time when Sheriffs have fined off; who gives Directions for a Common Hall?

Mr. Com. Cryer. My Lord Mayor, Sir.

Mr. Att. Gen. Who is it puts the Question, the Common Sergeant or the Cryer?

Mr. Com. Cryer. The Common Sergeant dictates the Words to me, and I never take them from any other; I have taken the Paper into my own Hands, but never but one Year neither, when they were in a Confusion; the Time when Mr. Bethel was chosen there was some Difference, I did read the Names that Time, and never but that one Time. I always take the Words from the Common Sergeant; I never put any Vote, but what I have from the Common Sergeant.

Mr. Att. Gen. Do the Sheriffs put any Vote?

Mr. Com. Cryer. Never, Sir.

L. C. J. I do not understand him; I think he did mean, when Bethel was chosen, he put the Question by somebody else.

Mr. Serg. Jefferies. No, no, he took the Paper in his Hand. Before he used to take Dictates from the Common Sergeant; but there was a Confusion when Bethel was chosen, and then he took the Paper from the Common Sergeant, and read it.

Mr. Com. Cryer. He gave the Paper into my Hand.

Mr. Com. Serg. My Lord, they made such a Noise, that he could not hear me.

Mr. Williams. Mr. Wells, How long have you been Common Cryer?

Mr. Com. Cryer. About seventeen Years.

Mr. Williams. In all that Time did you ever hear the Lord Mayor adjourn the Court to a certain Day?

Mr. Com. Cryer. Yes.

Mr. Williams. To a certain Day?

Mr. Com. Cryer. My Lord Mayor adjourn'd this Common Hall to a certain Day.

Mr. Williams. I ask you upon your Oath again, Did you ever know the Lord Mayor adjourn a Common Hall to a Day certain?

Mr. Serg. Jefferies. Do you remember that of Sir Robert Clayton's?

L. C. J. If so be they be adjourned, to meet upon a new Summons, if there be Occasion, no Question but he may to a certain Day.

Mr.

Mr. *Williams*. Now we are upon Matter of Fact.

Sir *Fr. Winn*. Did you ever know my Lord Mayor adjourn them before the Election of Sheriffs was over? Here is my Question, observe it. When after once my Lord Mayor is gone out of the Hall, when the Election begins, did you ever know my Lord come and disturb the Election, or adjourn it before it was done?

Mr. *Com. Cryer*. I never knew any thing of it before now.

Mr. *Att. Gen.* Mr. *Wells*, Do you remember that Instance in Sir *Robert Clayton's* Time?

Mr. *Com. Cryer*. No, Sir.

Mr. *Att. Gen.* Have not you known my Lord Mayor dissolve the Court before the Business hath been done; take up his Sword and be gone?

Mr. *Com. Cryer*. When he hath a mind to adjourn the Court, and declare it, I adjourn it by his Order.

Mr. *Att. Gen.* But have you not known him take up his Sword, and be gone before the Election is over?

Mr. *Com. Cryer*. Sir *Robert Clayton* did do that before the Business was done.

Mr. *Thompson*. Mr. *Wells*, Do not you remember, in Sir *Samuel Starling's* Case, that he did adjourn the Hall?

Mr. *Com. Cryer*. He dissolved the Hall.

Mr. *Thompson*. Very well.

Mr. *Serg. Jefferies*. He did dissolve the Hall, and so hath every Lord Mayor since. My Lord, if your Lordship please, I perceive this Gentleman makes a Question, Whether ever there was an Adjournment of a Common Hall before such a time as the Election of Sheriffs was over. I will give you an Answer to that Question, and a very fair one, and a plain one: I say, till the Time of *Bethel*, in Sir *Robert Clayton's* Mayoralty, there was never such a Thing as a Poll for Sheriffs.

*L. C. J.* Silence, that we may hear.

Mr. *Williams*. My Lord, we only ask a Question; we ask a Question, and take our Answer.

Mr. *Serg. Jefferies*. Will you give us Leave to go on, Sir?

Mr. *Att. Gen.* Sir *William Hooker*, Pray how long is it since your were Sheriff of *London*?

Sir *William Hooker*. About Sixteen or Seventeen Years ago.

Mr. *Att. Gen.* You have been Sheriff and Lord Mayor of *London*: I would only know, Whether you looked upon it as your Right when you were Sheriff?

Sir *William Hooker*. No, nor ever durst presume to think it: In those Days it was not thought upon.

Mr. *Att. Gen.* When you were Lord Mayor, did you order Summons for Common Halls?

Sir *William Hooker*. Always.

Mr. *Att. Gen.* Did you ever use to consult with your Sheriffs when to call a Common Hall?

Sir *William Hooker*. Never; and I think no such Thing was ever heard of under the Sun, till of late.

Mr. *Thompson*. Sir *William Hooker*, did you ever adjourn the Court before the Business was done?

Sir *William Hooker*. I never saw any such Occasion; Rebellion was not ripe then.

Mr. *Att. Gen.* Sir *William*, Pray thus; Have you ever in a Common Council, or Common Hall, known my Lord Mayor rise before the Business was done, and take his Sword?

Sir *William Hooker*. I confess I must own it, that when Things grew to a greater Height, I was forced once in this Place to cause the Sword to be taken up and go out, and the Court was dissolved, and durst not go on after I was gone.

Mr. *Serg. Jefferies*. Now, my Lord, if your Lordship please, I desire to call the Sword-bearer.

Mr. *Williams*. Sir *William Hooker*, if I may, without Offence, ask you, How old are you?

Sir *William Hooker*. Seventy Years of Age, Sir.

Mr. *Williams*. You say, you never knew Rebellion ripe?

Sir *William Hooker*. Good Sir, I perceive you are very apt to mistake: I lived in 41 and 42.

Mr. *Att. Gen.* Sir *William*, Can you remember the Meeting in 48?

Sir *William Hooker*. Ay, very well.

Mr. *Att. Gen.* Then they usurped the very same Power, and an Act of Parliament to confirm it.

Mr. *Serg. Jefferies*. My Lord, I desire Mr. Sword-bearer may be sworn.

Sir *Fr. Winn*. Pray, Sir, in all the Time that you have been acquainted with the Customs of *London*, did you ever know when there was an Election for Sheriffs, that the Lord Mayor did interpose or meddle till the Election was over?

Sir *William Hooker*. Sir, of late Years I have not appeared, because of an Infirmity, I cannot be long in *London*; but in all that Time I used to appear, I never did observe any such Thing.

Sir *Fr. Winn*. That the Mayor ever meddled?

Sir *William Hooker*. Nay, Sir, that the Sheriffs ever meddled: When I was Sheriff of *London*, I durst not presume to meddle, but left the Whole to my Lord Mayor.

Sir *Fr. Winn*. Did you ever know, when the Election of Sheriffs was in a Common Hall, that the Lord Mayor offered to disturb them till the Election was over?

Sir *William Hooker*. Truly I do not remember any such Thing. Sir *Fr. Winnington*, I would give you a full Answer; I do tell you, as it hath been declared, my Lord Mayor and Aldermen come into the Court, and a Report is made; when this is done, they leave the Management of the Affair to others; we come and sit down till it is done.

Sir *Fr. Winn*. To whom do you leave the Concernment?

Sir *William Hooker*. To the Officers that it belongs to.

Sir *Fr. Winn*. Who are those Officers?

Sir *W. Hooker*. I never heard it disputed till just now.

Mr. *Jones*. Sir *W. Hooker*, you have been an ancient Citizen: Do you remember, that ever the Sheriffs presumed to hold this Court?

Sir *William Hooker*. No, never in my Life.— You may confound any Man at this Rate.

Mr. *Williams*. Pray, Sir, in your Time was there a Poll for Sheriffs in *London*?

Sir *William Hooker*. Truly not as I remember.

Mr. *Williams*. Do you remember any Poll in your Time? If you don't remember a Poll, you can't remember who took it.

Mr. *Sol. Gen.* Pray, Sir *William Hooker*, do you ever remember the Sheriffs appointed the Common Sergeant to take the Poll?

Sir *William Hooker*. Never in my Life.

Mr. *Serg. Jefferies*. Mr. Sword-bearer, I won't ask you how old you are; I desire to know how long you have been an Officer in this City?

Mr. *Sword-bearer*. Three-and-twenty Years.

Mr. *Serg.*

Mr. Serg. *Jefferies*. I desire to know in all your Time, who ordered Common Halls? Who gave Direction for the summoning Common Halls?

Mr. *Sword-bearer*. My Lord Mayor always.

Mr. Serg. *Jefferies*. Did my Lord Mayor use to send for the Sheriffs, to know of them when they would be pleased to have a Common Hall?

Mr. *Sword-bearer*. I never knew that the Sheriffs did interpose in calling a Common Hall in my Life.

Mr. Serg. *Jefferies*. Mr. *Sword bearer*, at such time as the Business was done, when the Common Cryer had Directions for dissolving the Common Hall, pray who used to give these Directions all along?

Mr. *Sword-bearer*. It was done by the Town-Clerk, and my Lord Mayor's Officers.

Mr. Serg. *Jefferies*. Did ever the Sheriffs continue the Hall after my Lord Mayor had adjourned it?

Mr. *Sword-bearer*. Truly I know no such thing.

Mr. *Thompson*. Mr. *Sword-bearer*, I would ask you one Question: If in case the Common Sergeant, or the Common Cryer, or any other Officers do put a Question that the Commons would not have put, who orders them to put the right Question?

Mr. *Sword-bearer*. I can't say any thing to that.

Mr. *Att. Gen.* After the Common Sergeant comes up and reports what is done, then what doth my Lord Mayor do?

Mr. *Sword-bearer*. My *Lord Mayor* and the *Aldermen* go down to the Hustings, and it is declared by the Recorder, or the Common Sergeant, by the Order of my *Lord Mayor*. — I think my *Lord Mayor* went once down to give them some Satisfaction upon a Dispute.

Sir *Fr. Winn*. Mr. *Man*, during the Election did you ever hear them adjourn'd before it was over?

Mr. *Sword-bearer*. No, Sir; nor never heard any Occasion for it.

Mr. *Williams*. The *Common Sergeant* affirms himself to be a Servant to the *Commons*, and not to the *Lord Mayor* and *Aldermen*; have you known a Common Sergeant say, he was a Servant to the *Commons*, and not to the *Lord Mayor* and *Aldermen*?

Mr. *Sword-bearer*. I never was in a Common Hall upon any such Dispute, I am with my Lord Mayor.

Mr. Serg. *Jefferies*. I have known a Recorder reprehended by a very learned Lawyer, for saying, *My Masters the Aldermen*.

Sir *Fr. Winn*. I ask you who hath the Management of the Common Hall in the Absence of the Mayor?

Mr. *Sword-bearer*. I am always here waiting upon my Lord Mayor.

Mr. Serg. *Jefferies*. My Lord, if your Lordship please, we will rest here as to Point of Right. Now, my Lord, in the next place we will come to that which is a more immediate Question before you, and we will prove the manner of it, and the Persons that are guilty; for that is the next Step we are to go, — Mr. *Bancroft*.

Mr. *Williams*. My Lord, they have laid in the Information, That the Sheriffs are duly Elected, for one Year next following, from the Eve of *St. Michael*; now prove your Election to be for that Year you have laid in your Information.

Mr. *Thompson*. My Lord, they have certainly in Fact mistaken their Information. My Lord, they

do declare that the Common Hall was held, according to Custom, for the Election of Sheriffs, to hold that Office from the Eve of *St. Michael*, for the Year next ensuing: Now, my Lord, that is not so in Fact, nor never was, for the Election is for a Year to commence on *Michaelmas* Day. They take on the Eve the Office upon them, but they do absolutely exercise the Office for a Year from that Time, from the Eve. Now, my Lord, we say, that Day is excluded; we are sure it is a Common Case, it is known very well; as in a Lease, the *Habendum* from any Date, the Day of the Date is no part of that Lease, it is exclusive and no part of the Term, and therefore, my Lord, if they do not prove it as they have laid it, we hope they will be nonsuited.

Mr. *Sol. Gen.* That is another piece of Law.

Mr. *Holt*. The Eve of *Michaelmas* Day, we make this Objection, and put you to prove it.

Mr. Serg. *Jefferies*. Give us Leave to go on: Gentlemen, let us prove what we think fit; and if we have not made it out, then make your Exceptions.

Mr. *Holt*. Mr. Sergeant, I think it is proper to put it now, for if there be no such Election, there can be no such Riot; for they have made it a Riot in a special manner.

Mr. Serg. *Jefferies*. Mr. *Holt*, under your Favour, it is not a Time now.

Mr. *Att. Gen.* This is the oddest way; these Gentlemen take upon them so: I will not prove it; and pray be quiet till I come to my time.

Sir *Fr. Winn*. Pray, Mr. *Attorney*, if we have an Objection to make, if the Court pleases we may be heard.

Mr. Serg. *Jefferies*. Certainly it was never known, that when Mr. *Attorney* exhibited an Information, to tell us how to prove it. Surely, Gentlemen, you will give us Leave to go on with our Proof, won't ye?

Mr. *Molloy*. Mr. *Bancroft*, How long have you been a Servant of the City? By whose Order was the Hall summoned?

Mr. *Bancroft*. By my Lord Mayor's.

Mr. ——— Who hath dissolved them?

Mr. *Bancroft*. My Lord Mayor.

Mr. ——— Did you ever know the Sheriffs give any Order for the dissolving of it?

Mr. *Bancroft*. No.

Mr. *Thompson*. Did you ever know it dissolved before the Business was done for which they were call'd? Did my Lord Mayor in your time either dissolve them, or send them going, till the Election was over?

Mr. *Bancroft*. I can say nothing to that.

Mr. *Att. Gen.* Mr. *Bancroft*, I would ask you this, Sir; Did the Sheriffs ever continue the Hall after my Lord Mayor had dissolved it?

Mr. *Bancroft*. No, I never knew that in my Life.

Sir *Fr. Winn*. Mr. *Bancroft*, I would ask you a Question; I don't ask you who calls them, or bids them go home; during the Time of the Election did my Lord Mayor ever meddle?

Mr. *Bancroft*. My Lord Mayor withdraws.

Sir *Fr. Winn*. Who are those among the Commons; that manage the Business when my Lord Mayor withdraws?

Mr. *Bancroft*. The Sheriffs, and the Common Sergeant, and the Common Cryer.

Sir *Fr. Winn*. Who manages the Election? Who declares the Election? Who declares who is chosen?

Mr. *Bancroft*.

Mr. *Bancroft*. When the Election is made below, then the Sheriffs come up, and the Common Sergeant, and the Common Cryer along with them, and acquaint my Lord Mayor, and he goes down, and there doth confirm the Election; and withal, when the Work is done he dissolves the Court.

Mr. *Williams*. Did you ever know a Poll for Sheriffs?

Mr. *Thompson*. Do you take the Common Sergeant to be an Officer of the Commons of London, or an Officer of my Lord Mayor's?

Mr. *Bancroft*. I cannot be certain what he is.

Mr. *Thompson*. If in case the Common Sergeant differ from them in declaring the Poll, is it not usual for the Common Hall to order him to put it up again?

Mr. *Serg. Jefferies*. Who does make a Judgment of the Election, the Common Sergeant, or the Sheriffs?

Mr. *Bancroft*. The Sheriffs.

Mr. *Serg. Jefferies*. Does not the Common Sergeant make Observation as well as the Sheriffs?

Mr. *Bancroft*. The Sheriffs give their Opinions in it.

Mr. *Serg. Jefferies*. Now, my Lord, if your Lordship please, if they had done, we would desire to go on to our Fact; for otherwise, for ought I perceive, we shall be in here till this Time Tomorrow, and they say, we must not adjourn till the Cause is over. — Mr. Common Cryer; heark you, Mr. Common Cryer, were you present at *Midsummer Day* when this Business happened? Give my Lord and the Jury an Account of the Carriage then.

Mr. *Com. Cryer*. I was there at the Beginning of the Election; I did make Proclamation, and afterwards there was a Poll demanded, and the Poll was begun, and I went home with my Lord Mayor; afterwards my Lord Mayor came back again, and there was a Hubbub; but about five or six a Clock, my Lord Mayor came down upon the *Hustings*, and I adjourn'd the Court till another Day; I did adjourn it by his Order, according as I used to do, and then I went away with my Lord Mayor.

Mr. *Att. Gen.* But what Usage had you in going out?

Mr. *Com. Cryer*. I went before my Lord Mayor, I was not with him.

Mr. *Williams*. Where was the Adjournment?

Mr. *Com. Cryer*. Upon the *Hustings*.

Mr. *Williams*. Were the Sheriffs polling the People then?

Mr. *Com. Cryer*. I don't know that, Sir.

Mr. *Williams*. Were the Sheriffs near the *Hustings*?

Mr. *Com. Cryer*. I don't know, I saw them not.

Sir *Fr. Winn*. Upon the Election of them, when my Lord Mayor came to adjourn the Court, were the Sheriffs acquainted with it? Where were the Sheriffs?

Mr. *Com. Cryer*. My Lord Mayor sent to them.

Mr. *Serg. Jefferies*. Mr. *Weston*, Pray will you tell my Lord and the Jury, what Directions you had from my Lord Mayor, and how he was used when he came out of the Hall?

Mr. *Weston*. My Lord Mayor sent me, my Lord, to the Sheriffs under the *Lumbard-House* twice to come up to the Council Chamber, and they told me: One told me he was upon the King's Business; and the other said he could not come; and about half an Hour after, my Lord, Sheriff *Pilk-*

*ington* came up to my Lord Mayor into the Council-Chamber, and then immediately came down to the Court of *Hustings*, and Mr. Common Cryer, by my Lord Mayor's Order, did adjourn the Court from *Saturday* till *Tuesday* following; and as we were coming out of the Hall, when Mr. Common Cryer had adjourn'd the Court, and said, *God save the King*, a great Part of the Hall hiss'd; and, but that there were so many honest Gentlemen about my Lord, I was afraid my Lord would have come to some Mischief; but coming to go into the Porch-yard, I saw his Hat off, and I went to catch his Hat, and caught one of his Officers by the Head, that was knocked down, or fell down, that held up his Train. My Lord, the Sword was at that Distance, farther than it is between your Honour and where I stand, and crouded far away; and when my Lord came out into the Yard, Gentlemen, says he, I desire you would go home to your Lodgings, and commanded them in the *King's Name* to depart: And, says he to me, Pray go you back, and let the Sheriffs know, and tell them I have adjourn'd the Court to *Tuesday*. Upon my Lord's Command, I went back to let the Sheriffs know, that my Lord had adjourned the Court till *Tuesday*.

Mr. *Serg. Jefferies*. Both of them, both *Shute* and *Pilkington*?

Mr. *Weston*. No, *Shute*; t'other was by.

Mr. *Serg. Jefferies*. It was in his hearing, was it not?

Mr. *Weston*. It was in his hearing.

Mr. *Serg. Jefferies*. Did you see my Lord Mayor down, and his Hat off?

Mr. *Weston*. I saw his Hat off, Sir *George*, but I can't tell how it came off.

Mr. *Williams*. You say, you saw my Lord's Hat off; can you tell whether my Lord was so courteous to take his Hat off or no?

Mr. *Weston*. I dare say, my Lord did not.

Mr. *Williams*. Did he, or no? I ask you upon your Oath?

Mr. *Weston*. I can't tell that, Sir.

L. C. J. I can't think that those Gentlemen were so extraordinary civil to my Lord Mayor, that when the *Common Cryer* made Proclamation *God save the King*, that there should be hissing; those that hissed were not extraordinary civil to my Lord Mayor, and I believe you don't think so neither.

Mr. *Williams*. I ask you a Question. My Lord Mayor's Hat was off —

L. C. J. Ay, and it must be supposed it was to compliment those fine Men that hiss'd at *God save the King*.

Mr. *Serg. Jefferies*. My Lord, if your Lordship pleases, I would desire to know what Account any of them can give of the Opinion they had of the King, to be sure they had a great Opinion of his Representative: But my Lord Mayor, I find, was so extraordinarily civil, that to this Rabble he must not only pull off his Hat, but fling his Hat to the Ground to them.

Mr. *Thompson*. I ask you whether you know that any of the Defendants in this Information did throw my Lord Mayor's Hat off, or no?

Mr. *Weston*. I can't say that.

Mr. *Serg. Jefferies*. It is not a Farthing matter.

Mr. *Fr. Winn*. Here is a mighty Riot upon the Hat.

Mr. *Weston*. Now I desired them to keep back; my Lord Mayor's Friends did press back as much as they could, to preserve my Lord Mayor; they

they press'd more forward, as the other kept back, and I desired them to forbear; nay, commanded them in the *King's Name*, and upon their Peril, and took my Cane to strike at some of them.

Mr. Williams. Did you?

Mr. Serg. Jefferies. He served them well enough.

L. C. J. He did so. Do you think a Magistrate is to be croud'd and press'd upon?

Mr. Weston. I struck at them, and said, Gentlemen, keep back, and intreated them and commanded them, and all would not do.

Mr. Serg. Jefferies. I would only say this, Mr. Common Sergeant; What did you hear when Proclamation was made to depart?

Mr. Com. Serg. My Lord, I was not in the Hall when Proclamation was made; but I heard them cry out, *No God bless the King*; and I heard them cry out, *Down with the Sword; no Lord Mayor, no King*.

Mr. Williams. Can you name any Person that said this?

Mr. Com. Serg. My Lord, I laid hold on one Man that cried, *No God save the King; no Lord Mayor*, and the Rabble got him from me, one that I heard say so.

Mr. Williams. Mr. Common Sergeant, you say, you heard this; can you name any Person?

Mr. Com. Serg. I tell you I caught hold of him, and the Rabble got him from me.

Mr. Williams. Can you name any one?

Mr. Com. Serg. I tell you I cannot.

Mr. Serg. Jefferies. My Lord, I hope that will not much prevail in this Place; but I hope it doth justify my Lord Mayor, for endeavouring to disperse the Rabble that came together to that Height when the King was *prayed for*, to cry out, *No King, no Lord Mayor*. And we don't give this in Evidence against any one Person, for it was done in a tumultuous Manner; but they were so fond of this Man, as that they rescued him from him; and to fix it upon them, we will prove they were every one of them concerned in the Riot. — Mr. Craddock, What Account can you give of this Matter?

Mr. Craddock. I was standing at the Place where they poll'd, and my Lord Mayor was coming towards it to protest against their Manner of Proceeding; and Sheriff Bethel came to me, and said, *Resist him*, (I think) *he hath nothing to do here*.

Mr. Serg. Jefferies. That was Bethel, Slingsby Bethel?

Mr. Craddock. It was either *oppose*, or *resist him*.

Mr. Sol. Gen. He says he thinks he said, *Resist him*; but he is sure it was either *oppose*, or *resist him*.

Mr. Serg. Jefferies. Did you see Mr. Jenks there?

Mr. Craddock. I can't say I did: I saw Mr. Jenks just as my Lord Mayor came down, not after.

Mr. Serg. Jefferies. Did you see Mr. John Deagle there?

Mr. Craddock. I did not see Mr. Deagle.

Mr. Att. Gen. How did they use my Lord Mayor?

Mr. Craddock. I was not very near my Lord; my Lord, I stood at the Place where the Poll was taking.

Mr. Thompson. Mr. Craddock, we desire to ask you this Question, that you speak particularly to Mr. Bethel; Was it before my Lord Mayor had adjourn'd the Poll, or after?

Mr. Craddock. It was just as my Lord Mayor came to protest against the Manner of polling.

Mr. Thompson. Was the Poll adjourn'd before or after?

Mr. Craddock. It was after.

Mr. Williams. Mr. Bethel, you say, he said, *Oppose*, or *Resist*; did he say it before the Poll was adjourn'd?

Mr. Craddock. Yes, Sir, it was before.

Mr. Williams. Can you say what the Words were?

Mr. Craddock. It was either *Oppose*, or *Resist*, *he hath no Authority here*.

Mr. Serg. Jefferies. Which is George Reeves? Mr. Reeves, Pray will you tell us what you did observe done at this Time by Mr. Pilkington, or Mr. Shute, or any Person else?

Mr. Reeves. I came about four or five a Clock to the Polling-place where the Coaches use to stand, and I saw the Sword up; I suppose my Lord Mayor was there, and came to stop their Proceedings in Polling; and there was a great Contest among them; some saying, *He had nothing to do there; He hath no more to do than I*, says one; another cried, *Stop the Sword, Stop the Sword*; and I laid hold of him, and got him a little way, and made account to have carried him to the Sheriffs, and the Lord Mayor, but somebody got him away.

Mr. Serg. Jefferies. What did you observe Shute and Pilkington do?

Mr. Reeves. They encouraged the People to poll.

Mr. Jones. After my Lord Mayor was gone?

Mr. Reeves. Yes.

Mr. Jones. Pray you, Sir, did you observe either Mr. Shute, or Mr. Pilkington encourage the People to Hollow or Shout, or those Things?

Mr. Reeves. No, Sir.

L. C. J. Hark you, Friend Reeves, hark you? How do you know that Pilkington or Shute were Polling? Are you sure they were Polling after my Lord was gone?

Mr. Reeves. They were at the Polling-places, and they did not go away a great while after that.

L. C. J. From the People that were about them?

Mr. Reeves. No.

Sir Fr. Winn. We agree it; in Fact it was so.

Mr. Att. Gen. Richard Fletcher, pray will you give the Court an Account of what they did?

Mr. Serg. Jefferies. John Hill, What did you observe there?

Mr. Hill. About five a Clock my Lord Mayor came to the Hall; there was with him then, Sir James Edwards, and Sir William Pritchard, now Lord Mayor, to the best of my Memory, and he told them he disliked their Polling any more; and there came a tall black Man; says he, *Mr. Sheriff, go on, it is your Business, we will stand by you*: about a Quarter of an Hour after my Lord came out of the Hall to the great Crowd, some of the People Hissing, and some making a Noise; and one came to the Sheriffs, and, says he, *Gentlemen, Why do not you make Proclamation with Oyes?* And they continued there till towards eight a Clock.

Mr. Serg. Jefferies. Did you hear no Officer adjourn the Court?

Mr. Hill. My Lord Mayor went home, I saw him within Doors, and I came back again.

Mr. Att. Gen. Was there no Proclamation made afterwards?

Mr. Hill. By some of the Officers, but I did not take particular Notice.

Mr. Att. Gen. Who did you see here after you went home with my Lord Mayor, and came back again?



Mr. Hill. I saw here Mr. Robert Key for one; and I saw Mr. Goodenough come in between eight and nine here in the Hall; and my Lord Grey came in, and several other Gentlemen.

L. C. J. What did they do when they came?

Mr. Serg. Jefferies. Hark you, Hill: Was my Lord Grey and Mr. Goodenough, and Mr. Key, were they among the People?

Mr. Hill. After the Sheriffs came up, they went into the Orphans Court; Mr. Goodenough came in and out; and my Lord Grey went in to them.

Mr. Serg. Jefferies. Did they appear among the People up and down in the Hall?

Mr. Hill. They went thro' the Hall to and fro.

Sir Fr. Winn. What was the Christian Name of that Goodenough?

Mr. Hill. I know him; he that was Under-Sheriff last Year: I know him well enough, and he knows me; yes, that is Mr. Goodenough.

Lord Grey. I desire to ask this Witness a Question, my Lord.

L. C. J. Let your Counsel ask, my Lord.

Mr. Serg. Jefferies. I desire to know another Question. Did you see Mr. Cornish?

Mr. Hill. I saw Mr. Alderman Cornish walk in the Hall; but I can't tell whether he went into the Room, or no. After my Lord was gone, he did come up into the Mayor's Court, and came thorough among the People.

Mr. Thompson. Hill, you speak of my Lord Grey; upon your Oath did you see my Lord Grey walk to and fro in the Hall, or only came thorough?

Mr. Hill. My Lord Grey came in at that Gate, and went thorough the Hall, and went in to the Sheriffs.

Mr. Williams. I would ask you this upon your Oath. Did you see him do any thing more?

Mr. Hill. No; I was there to discharge my Office.

Lord Grey. My Lord, I own my being there; but only desire to ask a Question that will clear this Matter.

Mr. Hill. I saw my Lord Grey come up those Stairs, and he went into the Orphans Court.

Mr. Serg. Jefferies. How long might that be after the Poll?

Mr. Hill. After the Sheriffs came up, I believe it might be half an Hour, or a Quarter of an Hour, near an Hour.

Mr. Williams. Did you see my Lord Grey do any thing more than walk?

Mr. Hill. I saw him come to the Orphans Court, and they would not open the Door at first; but they said, it is my Lord Grey, and then they let him in.

L. C. J. Your own Counsel is asking, my Lord; I am willing you should ask a Question if your own Counsel will let you. Gentlemen, my Lord would ask a Question himself, and you won't let him.

Lord Grey. My Lord, though I do not know this Gentleman at all, yet I will venture to ask him a Question. Pray, Sir, did you see me speak to any one Man?

Mr. Hill. I have answered that already; I say not.

Lord Grey. Were the Books brought from the polling Place by the Sheriffs before I came, before that I went in there? — My Lord, I was there, and shall give you an Account of it.

L. C. J. It had been better, my Lord, if you had kept away.

Mr. Serg. Jefferies. Fletcher, pray will you tell my Lord and the Jury, what you observed that Day here, after my Lord Mayor was gone, and had adjourned the Court?

Mr. Fletcher. On the 24th of June I was here by Order of Sheriff Shute, after my Lord Mayor had adjourned the Court, and it was to call all Men that were to poll to come forward, for the Books were to be shut up, and I went away immediately; I was very hot, and went away to the Three-Tun Tavern.

Mr. Serg. Jefferies. Did you see Mr. Shute there?

Mr. Fletcher. Mr. Pilkington was there, and Mr. Shute too.

Mr. Serg. Jefferies. Can you name any body else?

Mr. Fletcher. No; I can name nobody else.

Mr. Serg. Jefferies. What did Mr. Shute say?

Mr. Fletcher. He ordered me to make Proclamation for all Men, them that had a Right to poll, to come and poll, for the Books were to be shut up.

Mr. Serg. Jefferies. Captain Clark, Pray will you give an Account of what you observed?

Capt. Clark. I came down into the Hall, and I did hear a Whispering, whereupon I went to guard my Lord Mayor; my Lord Mayor came down upon the Husings, and Proclamation was made for the Adjournment of the Court; whereupon when Proclamation, *God save the King*, was made, an hundred, &c. I believe more, hist at that; I laid hold of one of them, *No King's-man, no Sword's-man*, cry'd they. *Sirrah, you are a Rascal, and a Traytor in your Heart*, said I, and laid fast hold of him; but there was a very great Croud; and says one or two, *For God's sake, Captain Clark, do you guard my Lord*; there was Mr. Weston and Major Kelsey; *My Lord, said they, is in Danger*; said I, *Gentlemen, keep by him, or go before, I will be in your Rear Guard*. My Lord Mayor was down upon his Knee, I can't tell how he came down; *Press on, press on*, this was the Cry, and *God save the Sheriffs*. After coming down the Steps, I pressed as near as I could to my Lord Mayor, to keep them off; *Now*, said I, *this is the Time to keep the Rabble off, now face about*; I had my Sword in my Hand, and with the Pommel of my Sword kept them off; *Before God*, said I, *I will keep you off*; and so I waited on my Lord home, and went and drank a Glas of Sack. About an Hour or two Hours afterwards, I came down to the Hall and found the People shouting, *God save the Sheriffs, God save the Sheriffs*: *What nothing*, said I, *of my Lord Mayor*? *But*, said I, *this is not a Place to quarrel in, let us not quarrel together*. I saw the Sheriffs Pilkington and Shute were concerned in carrying on the Poll, and this they continued to do for some time; at last, *I am weary of the Hall*, said I, *I will go home*; and this was between eight and nine a Clock.

Mr. Serg. Jefferies. Can you remember any body else besides the Sheriffs?

Capt. Clark. No, Sir, I cannot.

Mr. Serg. Jefferies. Can you remember Sir Thomas Player?

Capt. Clark. No, I can't.

Mr. Serg. Jefferies. Captain Clark, did you know never-a-one of them that cried out so?

Capt. Clark. No, my Lord, I was before Sir Robert Clayton.

Mr. Serg. Jefferies. Major Kelsey, Pray will you give my Lord and the Jury an Account of what you saw on *Midsummer-Day*?

Major *Kelsey*. My Lord, when my Lord came out of the Court, I went after, and some cried, *Stop him, stop him*; but I got between them, and some of my Lord's Friends kept them off; but when we came just to the going-out, they gave a Shout, and I saw my Lord Mayor's Hat upon his Back, and I can't tell whether he touched the Ground with his Hand, but I was e'en almost down; said I, *Gentlemen, do you intend to murder my Lord Mayor?*

Mr. Serg. *Jefferies*. Who did you see there?

Major *Kelsey*. Indeed, Sir, I was almost down, and did not see their Faces.

Mr. Serg. *Jefferies*. Mr. *Trice Hammon*, I would only ask you, Who did you see, who did you observe to be there?

Mr. *Hammon*. About nine a Clock at Night, or something before, I stood at the Door that leads to the \* *Common Pleas*; and there came in Alderman *Cornish* and *Goodenough*; and old *Key*, an old white-hair'd Man; and by-and-by my Master Sheriff *Shute* came out and told me, *I shall give you all Satisfaction by-and-by. God bless you, Mr. Sheriff*, said I; and he went again, and there I staid till they came out, and then he went upon the *Hustings*; and I went along with him when he came out.

Mr. Serg. *Jefferies*. Who went with him out to go to the *Hustings*?

Mr. *Hammon*. Sir *William Gulston*, and several other Men; there is never a Name in the Indictment more.

Mr. Serg. *Jefferies*. None of them that are in the Indictment? Name them.

Mr. *Hammon*. I have named them.

Mr. Serg. *Jefferies*. Prithce name them.

Mr. *Hammon*. Mr. Alderman *Cornish*, both the Sheriffs, my Lord *Grey*, Mr. *Goodenough*, and old Mr. *Key*.

Mr. *Thompson*. Which *Goodenough*?

Mr. *Hammon*. That Mr. *Goodenough* that stands there.

Mr. Serg. *Jefferies*. There is such a Noise, that I did not very well hear that Word.

Mr. *Hammon*. *Goodenough*; not that *Goodenough* that looks upon me, but he that stands behind.

Mr. Serg. *Jefferies*. He falls behind now, but he ran up-and-down then; and Alderman *Cornish* was there too.

Mr. *Jones*. You Witnesses, you have named all these Men; what did *Shute* do, or what did he say?

Mr. *Hammon*. When he came upon the *Hustings*, he made Proclamation himself, because one or two refused it, he did it himself; and after a while he adjourned the Court upon the *Hustings*; this was on *Midsummer-Day*.

Mr. *Jones*. What did he say?

Mr. *Hammon*. As the Common Cryer usually says at such Times.

Mr. *Thompson*. You say you saw Mr. *Goodenough*, and you saw my Lord *Grey*; upon your Oath, can you say they did any thing, or was any thing done, in Abuse to my Lord Mayor?

Mr. *Hammon*. They did not tell me, my Lord, what they did.

Mr. *Thompson*. I ask you what did they do?

L. C. J. Mighty busy they were.

Mr. *Thompson*. How long was it after my Lord Mayor adjourned the Court?

Mr. *Hammon*. About two Hours.

Mr. Serg. *Jefferies*. So much the worse.

L. C. J. You must understand it was some time before Mr. Sheriff had made his Adjournment; they were busy till that Time.

Mr. Serg. *Jefferies*. My Lord; if your Lordship pleases, I do agree with Mr. *Thompson*, that the Jury should remember that this was two Hours after my Lord Mayor had adjourned the Court.

Lord *Grey*. I desire, my Lord; I may ask him some Questions. You say you saw me go to the Council-chamber, at what time, and who went with me?

Mr. *Hammon*. A little before Candle-light.

Lord *Grey*. You say all the Company went out with the Sheriffs, and went away.

Mr. *Hammon*. My Lord, I did not say you came out.

Mr. *Att. Gen.* My Lord was of the Upper House.

Mr. *Thompson*. Yes, and may be there again.

Lord *Grey*. I hope I shall be there; Mr. *Attorney*.

Mr. *Att. Gen.* It had better you had been so then, my Lord.

Lord *Grey*. It will be the worse for you: I shan't lie Perdue for you.

Mr. *Att. Gen.* If you threaten me, my Lord, I shall take notice of it. My Lord, I have done you a Kindness; but if you come under my Hands again, I shall not do it.

L. C. J. They would not have it said, *God save the King*; and, my Lord, you were with some of those that abused him.

Lord *Grey*. After it was over, my Lord.

Mr. *Att. Gen.* You were not within your Duty here.

Lord *Grey*. My Lord, it was after the Poll was closed.

Mr. Serg. *Jefferies*. My Lord; I desire, if you please, what is usual in all Causes, that we might go on without any Interruption. Let us go on for the King, and then make all the Defence you can. Don't think either to hiss or threaten us out of our Cause. Mr. *Higgins*, give my Lord and the Jury an Account of what you saw or heard.

Mr. *Higgins*. My Lord, I attended with several of our Company by my Lord Mayor's Coach to *Guild-hall*, and was in the Council-chamber, and he sent for the Sheriff; after that he went away; and when *God save the King* was said, said they *God save the Protestant Sheriffs*.

Mr. Serg. *Jefferies*. I desire to know; Mr. *Higgins*, this, what they said?

Mr. *Higgins*. They cried, *Down with the Sword*.

Mr. *Thompson*. Mr. *Attorney* is making a Speech to us, I don't know what he hath said.

Mr. Serg. *Jefferies*. I don't think Mr. *Attorney* thinks you worth a Speech. Mr. *Higgins*, I desire to ask you a Question, I ask you this Question upon your Oath, after the Adjournment of the Court; and after this very insolent Behaviour of some of the Rabble that were there, for I can call them no better, who did you see there?

Mr. *Higgins*. After I went home, I went to see my Lord safe home, and came back again, I saw one *Freeman*, that they call the *Protestant Cheesemonger*, calling, *To Poll; to Poll*.

Mr. Serg. *Jefferies*. Pray who else did you see?

Mr. *Higgins*. I saw Mr. Alderman *Cornish* come up towards the Sheriffs: *Gentlemen*; said he, *You are doing right*.

Mr. Serg.